

2396

Intelligence Community Decision Book for the President



DICK CHENEY

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E.O. 12958, Sec. 3.5
NSC Memo, 11/24/98, State Dept. Guidelines
By lt, NARA, Date 3/2000

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E.O. 12958 Sec. 1.5 (c), 3.4(W)(1)
MR 94-3, #1; CIA letter 1/6/99
By lt, NARA, Date 3/2000

INDEX

INTRODUCTION	-	MEMORANDUM FROM JACK MARSH
CHAPTER I	-	PRINCIPLES AND POLICY
CHAPTER II	-	OVERSIGHT AND RESTRICTIONS
CHAPTER III	-	ORGANIZATION AND MANAGEMENT
CHAPTER IV	-	SECRECY
APPENDIX 1	-	NSC/OMB Study and Agency Comments
APPENDIX 2	-	Legal Issue Papers, Draft Executive Order Imposing Restrictions and Fact Sheet
APPENDIX 3	-	Summary of Comments by Outside Experts

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THE WHITE HOUSE

WASHINGTON

December 22, 1975

MEMORANDUM TO: THE PRESIDENT
FROM: JACK MARSH *Jack*
SUBJECT: INTELLIGENCE COMMUNITY DECISION
BOOK

PURPOSE

This book presents the foreign intelligence issues which you must address. After nearly a year of headlines concerning past abuses by the Intelligence Community, you now have an historical opportunity to establish firm ground rules and make other changes to improve the Nation's foreign intelligence capability.

BACKGROUND

As indicated by the Index, this book attempts to deal with this complex issue comprehensively. It draws on the results of several interagency working groups, including the NSC/OMB organization and management study (which is attached).

The book is in decision format but contains no decision "blocks". Its main purpose as I explained orally, is to give you an overview of the situation as we see it at this time. However, I would point out it does not in my opinion yet adequately address all the issues that remain insofar as the intelligence community is concerned. For example there should be further development of matters relating to the NSA and to some extent the FBI. We are seeking your reaction to the issues presented and, after receiving them, we will prepare a final decision memorandum. Not all your senior advisors have reviewed this material, although all the relevant agencies did help in pulling it together. You can expect further inputs from some in the Intelligence community for your final decision memo.



The charts and text used in this book do not reflect your recent decision to fill the second deputy post at Defense, but this does not affect our analysis.

ACTION REQUIRED

Review this Decision Book. I recommend that you call a meeting of the NSC (including the Attorney General) soon after your return from Vail, to discuss this issue.

Approve "expanded" NSC meeting _____

Disapproved _____

NEXT STEPS

If you meet with us upon returning from Vail to present your views on these intelligence issues, we will then present another final decision memorandum (in under a week).

At that time, you may wish to meet again with an "expanded" NSC and, perhaps, separately with others such as the Joint Chiefs.

Once you make your substantive decisions on the foreign intelligence matter, we will prepare a "strategy" paper on the alternatives for presenting your positions to Congress and the public.



PRINCIPLES AND POLICY

The purpose of this chapter is to assist you in developing goals and principles concerning the Intelligence Community. They will provide direction for the Community and serve as "guideposts" as you make your decisions on the issues which follow. This chapter focuses on:

- The need for charters to increase accountability which is necessary to restore public confidence in the Intelligence Community.
- The need to clarify the relationship between the Congress and the Executive.
- The need to clarify relationships within the Executive Branch.

A. INTRODUCTION

The focus of all investigations of the Intelligence Community (principally by the House and Senate Select Committees) has been on abuses, domestic and foreign. On the other hand, other recent studies have addressed the problem of improving the organization and management of the Community. Certain consumers of intelligence have focused on the need to improve product quality and to meet emerging needs in non-Defense areas, such as economic intelligence. And, finally, critics outside the Administration and Community leaders have recognized the need to improve protection of secrecy and, at the same time, to provide for wider dissemination of intelligence product to those who have a need to know.



Goals

The current attention focused on the Community provides you with the opportunity to deal with these issues. In reaching decisions on the more detailed issues, there are five goals which you may wish to adopt:

- Abuses should be eliminated and this must be clearly understood by the Congress and the public.
- The organization and management of the Community should be improved.
- The quality of the intelligence product should be improved.
- Secrecy, including sources and methods, should be protected, consistent with necessary dissemination of the Community's product to policy officials.
- Establish more effective relations with Congress involving the Intelligence Community.

To achieve these five goals, you must restore public confidence in the Community, its legitimacy and its adherence to the law. Unless this confidence is restored, the soundest decisions will never result in achievement of these goals.

The decisions necessary to achieve these goals should, if possible, be taken comprehensively and at the same time. Steps to achieve one goal will necessarily have an impact on another. For example, decisions on organization and management will necessarily affect quality. Preventing abuses



through excessive restriction of Community collection activities may lead to a demoralized and ineffective Community, thus reducing the quality of the product and of the people attracted to the Community. Lack of concern for protection of secrecy sources and methods could severely damage the continuing effectiveness of the Community.

Problems

The analysis of ways to achieve these five goals has shown that there are three underlying problems which must be solved. The first of these is the lack of adequate charters for the key agencies that make up the Community. This lack has made it possible to criticize the Community for actions taken in the past that were consistent with the needs of the time, but that are not acceptable today. Further, there have been ambiguities and imprecision in the role and functions of certain elements of the Community, as pointed out by the Rockefeller Commission. And lastly, because neither the National Security Agency nor the Defense Intelligence Agency has been created by statute, critics have been able to impugn their legitimacy. Restoration of public confidence in the Community may require a more explicit charter, and particularly a set of restrictions on the Community to eliminate and prevent abuses.

The second fundamental problem has been the relationship between Congress and the Executive. This relationship has

gone undefined throughout history, and the recent House and Senate intelligence investigations have strained relations between Congress and the Executive. Congress has asserted a need for more information to be able to judge our foreign policy, but that need must be balanced with the need of the Executive to conduct that foreign policy without necessary or damaging restrictions.

The third underlying problem is the ambiguous relationship among intelligence officials and agencies within the Executive Branch, particularly between the Department of Defense and the Director of Central Intelligence. In 1971, the DCI was designated the leader of the Community by Presidential Directive, but many argue that he was not given the tools to do that job. The need to deal with the first two problems makes this a propitious time to take another look at that relationship and to decide to what degree management and organizational changes are desirable. This is an historic opportunity to make changes that probably would be impossible in normal times.

Strategy

In dealing with these three underlying problems, there are certain questions of strategy which must also be addressed. One is the degree of public discussion and attention which you should give these issues and these changes. Another is the appropriate strategy with respect to Congress and the form your decisions should take: new



legislation, new Executive Orders, classified instructions to the Community, public statements, or combinations of all four. These issues will be dealt with in more detail after you have ^{made} the substantive decisions.

B. THE NEED FOR A CHARTER

In discussing the charter of the Intelligence Community, there is a need to distinguish between two very different activities, policy-making and providing information and services.

If one views the CIA and the Intelligence Community as primarily policy-making organizations, ways would have to be found to increase the participation by the heads of intelligence organizations in major policy decisions.

However, this will probably be characterized by some members of Congress and the Press as having unfortunate consequences. However, the other side of this argument is that the intelligence agencies are and should remain service agencies, and their role of providing intelligence should not be tainted or biased toward attempting to make their bosses' policies come true.

The lack of a charter for specific components of the Intelligence Community (such as the NSA and the DIA) and the lack of a detailed charter for the CIA, have led to ambiguities and unclear guidelines.

In dealing with the broad question of the Community's charter, two subsidiary policy questions can be posed:

ISSUE: Should the charter of the Community institute greater accountability?

A key concept running through the analysis to date is the degree of accountability in the Community -- accountability to the President, to statutes, to the Constitution. Accountability is at the heart of the question of achieving the overriding objective of improving public confidence. The most obvious aspect of accountability is raised by covert actions, but the concept applies to all functions of the Community and its management.

OPTIONS:

1. Visibly increase the accountability within the Executive by streamlining the chain of command to insure that specifically identified individuals are responsible for specifically defined Intelligence Community actions. This will help prevent abuses and encourage efficiency and excellence in performance. (For example, decisions concerning electronic surveillance are made throughout the Community and it is difficult to fix responsibility.)

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2. Do not move toward greater accountability since
the existing mechanisms (including NSC/40
Committee structure) can be improved sufficiently.

Much of the criticism of the approval of covert actions has centered on a few examples which were not in fact in any way the result of inadequate approval mechanism or staff work.

Even if the present system were scrapped, something similar would have to replace it. Some changes could and should be made administratively, but they need not alter the present system and we should oppose attempts on the part of Congress to repeal the flexibility given under the National Security Act of 1947.

The following charts demonstrate the complex relationships in the Intelligence Community and diffusion of accountability.

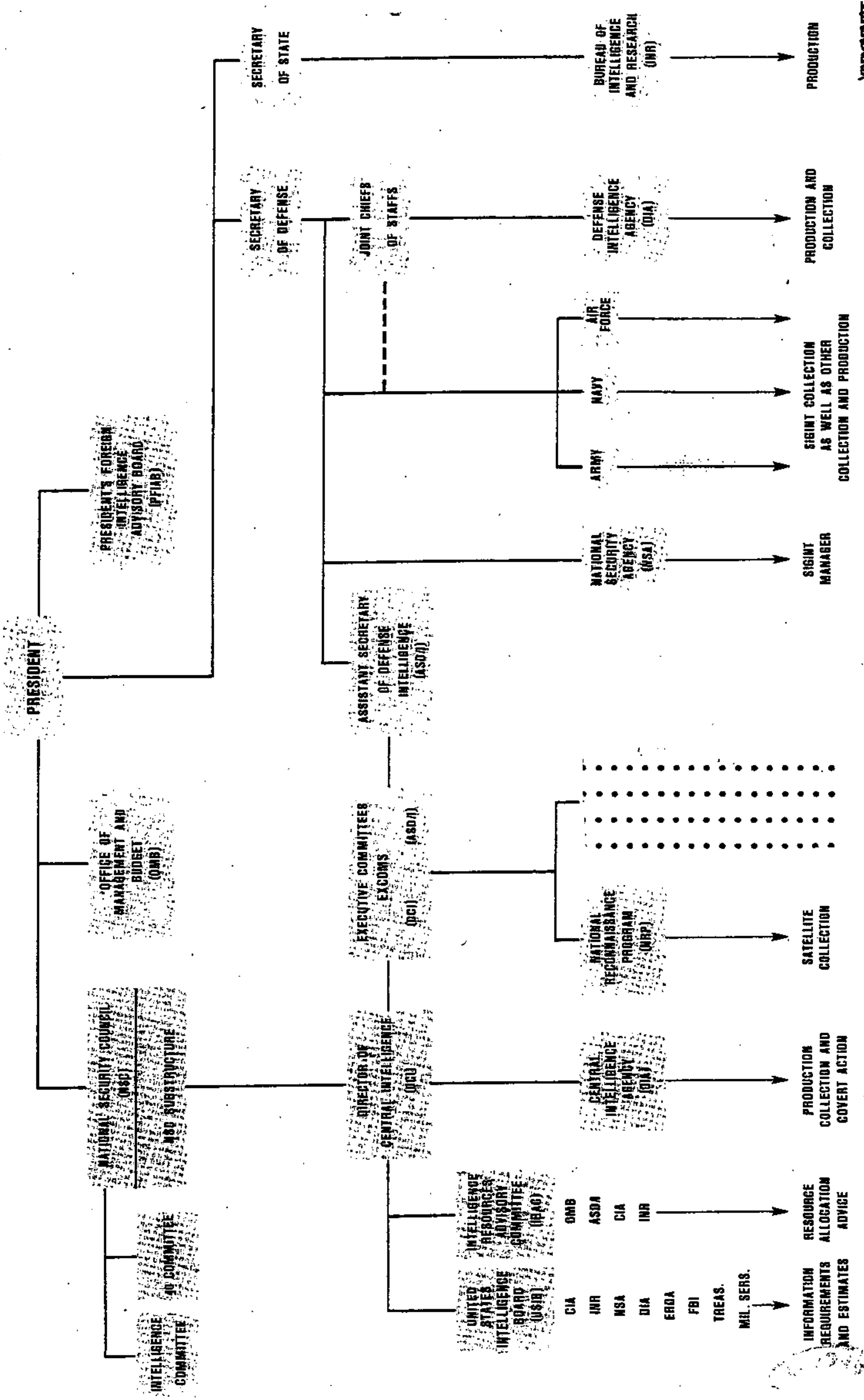


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By let NARA, Date 3/2000

THE INTELLIGENCE COMMUNITY



ISSUE: Do the Community's statutory and administrative charters adequately deal with covert action?

This is currently one of the most controversial aspects of the Community's operations. A great deal of information has come to light on the Community's covert operations. You have addressed several aspects of them as they have emerged through your creation of the Rockefeller Commission, your public response to its Report, comments on the Assassination Report, etc.

You have defined your position on this issue in public statements. You are following two principles concerning covert actions:

First, they are necessary in the national interest and therefore should not be prohibited across-the-board by statute or Executive action; and,

Second, there have been abuses in the past (e.g., assassination planning) and you have stopped abuses and will prevent them from occurring in the future by Executive Order.

C. THE NEED TO CLARIFY THE CONGRESS - EXECUTIVE RELATIONSHIP

ISSUE: Should any new charter for the Intelligence Community be primarily statutory or administrative?

The lack of a statutory charter for specific components of the Intelligence Community (such as the NSA



and the DIA), except CIA's very vague charter in the National Security Act of 1947, have led to difficulties between Congress and the Executive. The prime reason for seeking a new charter for elements of the Community would be to assist in eliminating and preventing abuses. Many argue that this is needed to rebuild public confidence in the Intelligence Community. The present charter does not adequately deal with the reporting relationship to Congress. Further, Congressional oversight is now an issue. The effect of this has been a perceived lack of accountability to Congress.

OPTIONS:

1. Arguments why the charter should be primarily statutory:

- The Constitution requires Executive action to be based on statute in most areas of government.
- Congress is bent on exercising its will and therefore will want to write new laws.
- A statute is more permanent and thus the Community could better predict the standards by which it will be judged.
- In the nature of things Congressional attempts to write a charter will essentially focus on past abuses.



- If you propose a statutory charter for the Community, you show initiative in dealing with the problem.
 - In writing legislation (as opposed to the Select Committees' investigations) the necessity for a "general" charter will be recognized.
2. Arguments why the charter should be primarily administrative (a series of Executive Orders and guidelines by agency heads, supplementing minimal modification of existing legislation).
- Under the Constitution, foreign policy and thus foreign intelligence, is an Executive responsibility.
 - The Community has had a mixed statutory and administrative charter for the last 30 years and it has worked well.
 - It is impossible to foresee all of the actions that will be necessary, and relying on detailed legislative authority for authorization is risky; the President must maintain flexibility to operate in foreign affairs without detailed restrictions from Congress.
 - The public will receive some assurance from the mixed charter, though perhaps not as great as from a statutory charter, depending in part on the firmness and perceived intent of the Presidential statement. (If your intent is

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Cheneys copy. This is a
copy from Marsh files.
KOH

perceived to be to limit the Community's activities and to gain control over it, then the public will be less concerned by the form of the charter.)

ISSUE: Should a new Congressional-Executive relationship provide for greater Executive Branch accountability to Congress?

OPTIONS:

1. All efforts of Congress to institute new forms of accountability should be opposed since foreign policy and intelligence is essentially an Executive Branch matter.
 - Exclusive Presidential authority over intelligence is a plausible though controversial interpretation of the Constitution.
 - With increased accountability to Congress will necessarily come greater Congressional control and interference.
 - Whatever merits of this position, it is doubtful that it can be maintained for long, given the degree of public and Congressional concern over Community abuses.
2. The Executive Branch should be more accountable to Congress, and this should be defined through negotiations between the Branches. (This may be the Hughes Amendment requiring reporting of covert actions,

supplemented by some approval on specific actions, budget approvals, etc.)

- We have already crossed the bridge of Congressional involvement in intelligence matters, and it will be difficult to exclude Congress in the future, particularly on covert actions.
- The traditional oversight mechanisms are no longer valid (because of the collapse of Congressional leadership) and the Executive must take the lead in working out new arrangements.
- Congressional oversight is in fact not likely in the long run to prove onerous, since attention of Congress will tend to flag as these things become more routine.
- Nonetheless, there will always be a countervailing pressure of individual Congressmen to release information gathered, thus frustrating the intent of the Executive. Also, the leaks which have occurred from the Select Committees on Intelligence at the very least raise a strong presumption that sensitive national security information is compromised once given to Congress.
- The Angola matter demonstrates that the present system is inadequate. You do not have sufficient support to gain approval of your positions in Congress.



D. THE NEED TO CLARIFY RELATIONSHIPS WITHIN THE EXECUTIVE BRANCH

Many of the key issues in the Organization and Management section of this book, and in other studies, turn on the relationship between the head of the Intelligence Community (now the DCI) and the Secretary of Defense. This relationship is key because it affects:

- 1) the amount of "competition" in the analysis which produces intelligence;
- 2) where the balance is struck in allocating resources between "national" and "tactical" intelligence; and
- 3) the efficiency in collecting information and producing intelligence.

There are some subtle problems which this relationship raises. For example, to the extent the DCI is viewed as an adviser (and hence stripped of his managerial and/or policy-making roles) his intelligence product is more credible because he is not perceived as biased towards one institution. However, once he loses his institutional "base", he is likely to become less effective in bureaucratic struggles with the Defense and other Departments and eventually could end up with very little, if any, real control over the Intelligence Community.

Another management variable which greatly impacts the functioning of the Intelligence Community, is the process of presenting intelligence to you and your senior advisers. Here the role of the NSC and its staff is critical. The DCI

has direct access to you, but the NSC and its staff are involved in specifying requirements for studies and production, managing the consumer/producer dialogue, approving (through the 40 Committee) covert operations, and using the product as a basis for its own evaluations and assessments. The Assistant to the President for National Security Affairs is a primary channel for intelligence to the President.

In making your Executive Branch organization and management decisions, you may wish to use the following as guideposts:

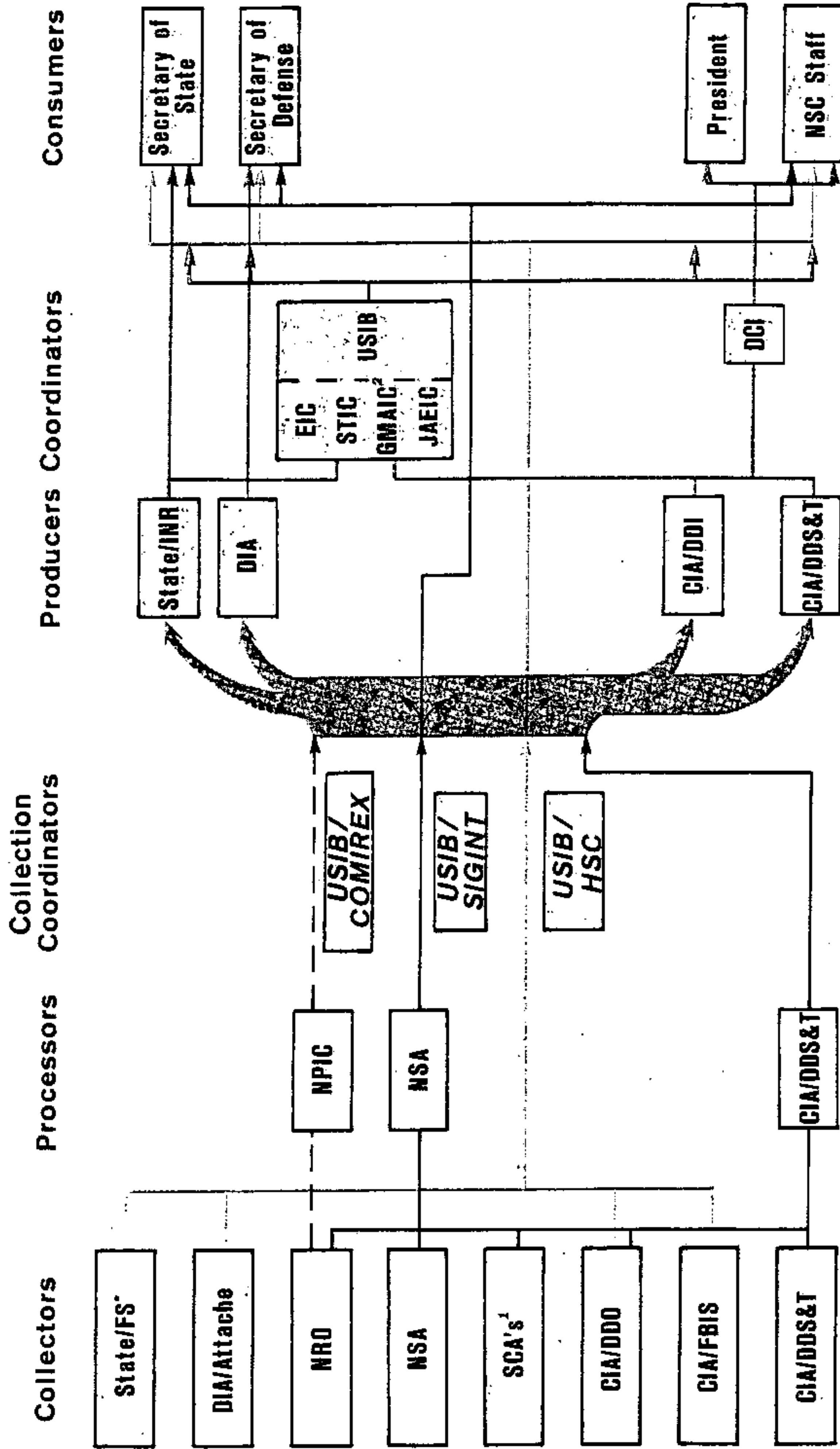
- (1) There needs to be a strong and independent head of the Intelligence Community who is not so committed to one bureaucracy that he loses his objectivity.
- (2) The Community leader should have enough of an institutional "base" so as to maintain his independence vis-a-vis members of your Cabinet.
- (3) There should be "competition" in the production of intelligence, with good coordination between the agencies.
- (4) You should have direct access to an intelligence official who does not have major foreign affairs or defense policy responsibilities.
- (5) Any organizational changes should be designed to promote technological creativity, such as that which led to development of the U-2's and the Glomar Explorator.

To assist you in placing the above in context, the following charts are presented as examples of how information flows through the Intelligence Community.

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FLOW OF INFORMATION THROUGH THE INTELLIGENCE COMMUNITY



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By *LT* NARA, Date *3/2000*

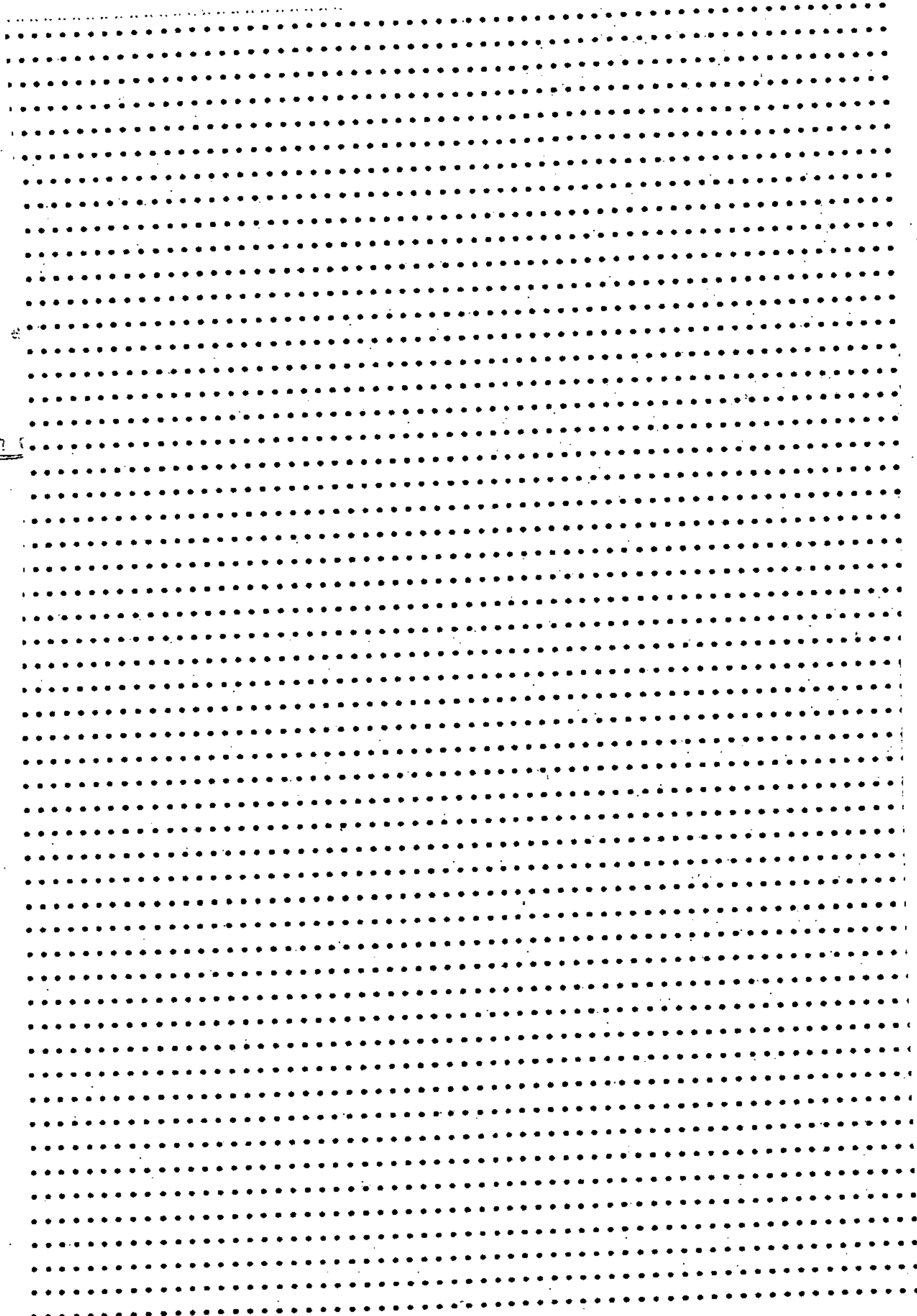
1. Services Cryptologic Agency
2. Guided Missile and Astronautics Intelligence Committee

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*The Foreign Service is not considered part of the Intelligence Community.

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OVERSIGHT AND RESTRICTIONS

This chapter discusses the need to prevent abuses by agencies involved in foreign intelligence. The following issues are covered:

- The domestic jurisdictions of the FBI and the CIA.
- The method of imposing restrictions on the intelligence activities of the FBI.
- Substantive issues concerning your proposed Executive Order imposing restrictions on the foreign intelligence agencies.
- The need for more effective oversight by the Executive Branch.
- The nature of Congressional oversight and its relationship to prerogatives of the Executive.

A. JURISDICTIONAL QUESTION

You should keep in mind that in considering the FBI issues, that some in the Congress have raised a question concerning the foreign intelligence jurisdiction of the FBI.

ISSUE: Should the jurisdictional arrangements between the CIA and the FBI be revised?

During World War II, the FBI had certain overseas intelligence responsibilities in Latin America. With the

creation of the CIA, the FBI jurisdiction was limited to the United States, and the CIA was given certain domestic responsibilities only with respect to protection of sources and methods (in the DCI). The CIA, of course, gathers information overtly in this country through interviews with travelers and businessmen, protects the integrity of CIA premises and conducts security investigations of its employees. The question has been raised whether the CIA should have the responsibility for gathering foreign intelligence from any source, U.S. or foreign? One argument for change is that agencies involved in law enforcement should have absolutely no foreign intelligence responsibilities or authority; therefore, give to the CIA the foreign intelligence activities currently undertaken by the FBI domestically.

OPTIONS:

1. Arguments for maintaining existing jurisdictions.

- None of the abuses which have been uncovered would be prevented by realigning jurisdictions.
- The geographic jurisdictional distinction is an easy one to maintain.
- Giving the CIA domestic responsibilities is a major concern that many in Congress and the public have (although, paradoxically, the suggestion that the CIA should do foreign intelligence



activities here at home comes from liberal elements in the Senate Committee.)

- This would probably lead to duplication of efforts since the FBI would not easily give up its own activities and responsibilities; it would certainly lead to staffing duplication.
- The existing system has proved sufficient and adequate to meet both foreign and domestic intelligence needs.

2. Arguments why jurisdictions should be realigned.

- It is important for intelligence analysts to have access to all information bearing on intelligence requirements no matter where it is found.
- It was argued during Church Committee hearings that the FBI has proven to be no better at respecting individual rights and liberties, and perhaps even worse than, the CIA.
- A firm distinction can be drawn between "intelligence" gathering and "investigation for prosecution." The difference is in the use to which the information is made. Information being gathered for law enforcement purposes should be the subject of stricter control than information being gathered for foreign intelligence purposes.



- The distinction drawn in 1947 is an artificial one and assumes that geography rather than purpose is the more important distinction.
- The duplication would be minimized since the CIA already has domestic offices and installations, the FBI overseas installations, attaches, and connections with foreign and international police organizations.

B. METHODS OF RESTRICTING FBI ACTIVITIES

The Attorney General has under study draft guidelines imposing restrictions on FBI activities. The question arises as to whether the proper form for FBI restrictions is in a Justice Department regulation, Executive Order or a statute.

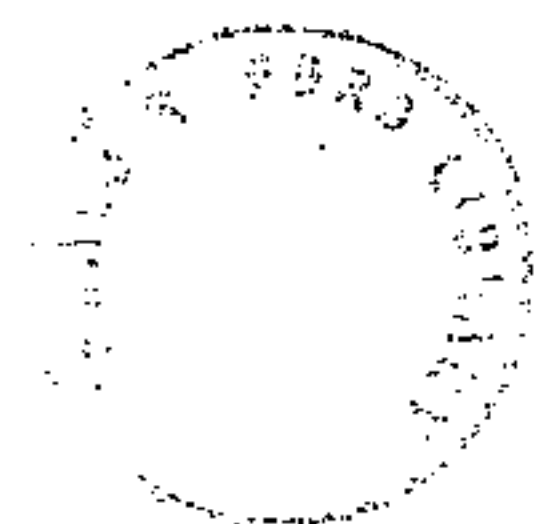
OPTIONS:

1. Justice Department regulation. This alternative leaves the most flexibility in terms of subsequent amendments. Amendments to Justice regulations can be adopted with less bureaucratic and public controversy. However, it is exactly for this reason that such a form for FBI restrictions may give the least assurance to the public that the FBI is in fact being placed under effective control.
2. Executive Order. This form provides greater assurance to the public that the FBI is being controlled.

Since restrictions on the rest of the Intelligence Community are being imposed, the FBI should be treated similarly as to form. On the other hand, an Executive Order, as opposed to regulations issued by the authority of the Attorney General, may have the appearance of asserting direct Presidential power over the FBI, circumventing and perhaps diminishing the authority of the Attorney General. In addition, if issued by the Attorney General, the guidelines would appear not only as the Attorney General's judgments of wise policy and discretion, but the judgments of the Nation's highest legal officer, the Attorney General, as to the FBI's legal authority and obligations.

If the purpose to be served by an Executive Order is to lend the weight of the President's authority to the guidelines effort, it might better be accomplished by a clear expression of support to the Attorney General, directing him to issue detailed guidelines.

3. Statute. Statutory restrictions on FBI authority would give the greatest assurance to the public that there are legally binding limitations on the Bureau's efforts and thus protections against abuse. They would, however, be inflexible after adoption, and



could well contain unreasonable restrictions due to "anti-FBI" forces in Congress. Furthermore, the Executive Branch would have much less control over its content.

4. Mix of statute, Executive Order and regulation.

The Attorney General has publicly suggested that the guidelines now being developed by the Justice Department should eventually take the form of a combination of statute, Executive Order, and regulations, depending on the guidelines' function and content.

Statutory enactment may be most appropriate for defining clearly the FBI's functions and jurisdiction a statutory basis that is now ambiguous and deficient.

An Executive Order may be the most appropriate way of channeling and controlling White House-FBI contacts while regulations may be the best way of establishing internal Justice Department and Bureau procedures and investigation standards.

C. RESTRICTIONS ON FOREIGN INTELLIGENCE COMMUNITY

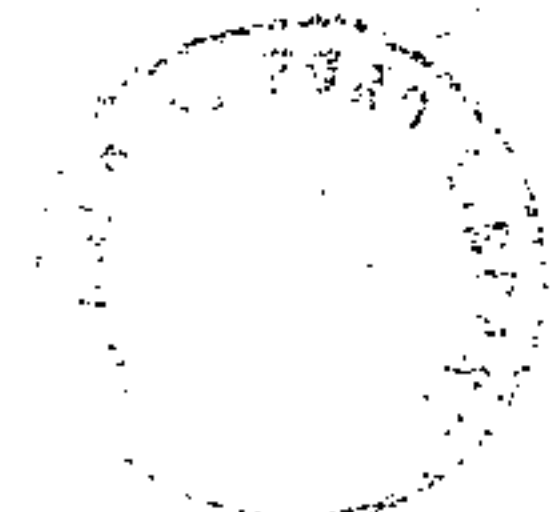
ISSUE: What Substantive Restrictions should be placed on Intelligence Activities other than FBI?

The Rockefeller Commission recommended that certain restrictions be imposed on the activities of the CIA, primarily

related to the domestic collection of foreign intelligence and the collection of information on the domestic activities of American citizens. In early September you decided that an Executive Order imposing such restrictions should be broadened to cover all intelligence agencies except the FBI. A draft of such an Order and Press fact sheet are presented at Appendix 2.

The proposed Executive Order prohibits or imposes restrictions on the following activities by foreign intelligence agencies (or by any other agency -- except the FBI -- when engaged in foreign intelligence or counterintelligence activities):

1. Collection and analysis of information on the domestic activities of United States citizens and permanent resident aliens.
2. Physical or electronic surveillance of United States citizens and permanent resident aliens within the United States.
3. Opening of United States mail in violation of law.
4. Illegally obtaining federal income tax returns or information.
5. Infiltration of domestic groups for the purpose of reporting on them.
6. Experimentation with drugs on humans without the subject's informed consent.



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

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

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

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

Strong substantive disagreements still exist among the various concerned agencies and your advisors with respect to some of its provisions. Most of the major disagreements concern proposed exceptions to the general prohibitions. The major issues for your decision are:

ISSUE: Whether to include an exception which would allow the 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) (1)).



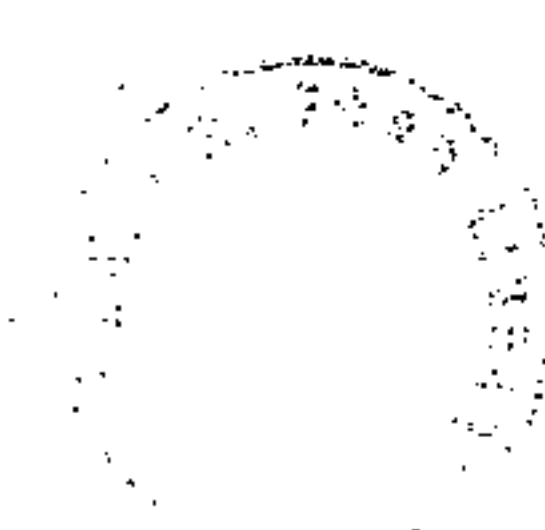
This exception was proposed by the CIA, to allow it to gather and utilize information related to Americans involved in international terrorist or narcotics activities and Americans who may not have committed any crime but are working with foreign organizations or governments. The latter category would include an American supplying non-classified information to a foreign government, for example, on the movement of civilian ships from a U.S. port.

Arguments in support of the exception.

- This exception recognizes that international terrorist and narcotics activities are legitimate subjects of interest for foreign intelligence agencies.
- It recognizes that the domestic activities of Americans working for foreign governments or organizations are of counterintelligence interest.
- It contains the limitation that the excepted information must have been collected abroad or from foreign sources. Often foreign intelligence agencies are the only elements of our government who can obtain information from these useful sources.

Arguments against the exception.

- The exception is too broad. Any person who deals with foreign corporations would be covered.



- The CIA, prohibited by statute from having any "police, subpoena, (or) law-enforcement powers," should not be involved in identifying Americans participating in narcotics or terrorist activities.

ISSUE: Whether to adopt an exception which would permit sharing of information on domestic activities of U.S. citizens among intelligence agencies and other federal agencies under guidelines of the Attorney General.

This exception, proposed by NSC, is designed to permit the CIA to obtain information from other federal agencies (primarily the FBI) on the domestic activities of U.S. citizens which it would not otherwise be permitted to collect under this Order. The provision of the draft Order (Section IV) allows sharing of information only when the information is of a type which the receiving agency would itself have been permitted to collect under this Order.

Arguments in favor of this exception.

- This exception would give CIA and other foreign intelligence agencies access to data helpful in determining whether various domestic groups have contacts with foreign governments or organizations.
- Possible abuses of this exception would be limited by the Attorney General's guidelines.



Arguments against this exception.

- It would allow intelligence agencies to receive data from federal law enforcement agencies on the domestic activities of U.S. citizens which the intelligence agencies themselves would otherwise be prohibited from collecting under the terms of this Order.
- It would permit reestablishment of Operation CHAOS. (CHAOS was the program under which CIA collected information -- largely from the FBI -- on domestic groups and U.S. citizens. The exposure of this program resulted in the forming of the Rockefeller Commission and the Congressional Intelligence Committees.)
- Such an exception would likely undermine the credibility of the Order.

D. EXECUTIVE BRANCH OVERSIGHT

Public disclosure of intelligence abuses have raised the question of the adequacy of Executive Branch oversight. Issuance of guidelines on proper conduct of intelligence activities will go a long way toward preventing impropriety, but there will be a continued need for mechanisms which discover questionable activities and assure adequate deliberation and accountability among appropriate policy-makers. Congress will no doubt be playing

a more active role, encouraged by its successes of the recent months of reviewing CIA activities, blocking further aid to Angola, etc.

ISSUE: Is oversight within Intelligence Community adequate and effective?

In the past, the head of each operating component in the Intelligence Community was held responsible for the propriety of its activities. Inspectors General and General Counsels assisted each operating head. The Rockefeller Commission found both the CIA's Inspector General and its General Counsel did not have adequate access to details of Agency activities. Although the DCI is charged with leadership of the Intelligence Community, he has never been responsible for inspection of intelligence organizations other than the CIA. So the question remains, who should be accountable for oversight within the Intelligence Community?

Director Colby sent to you on August 30, 1975, his proposed new regulations and managerial changes to implement Rockefeller Commission recommendations concerning the Inspector General and General Counsel.

No actions have, however, been taken with respect to a more general Community-wide inspection responsibility.



OPTIONS:

1. Establish a Community Inspector General working for the DCI as examined in the NSC/OMB study.
(Such an Inspector would not, however, inspect the FBI, as it is outside of the foreign Intelligence Community.) Establishment of such an Inspector would create antagonism between the DCI and other intelligence organizations. Disputes could be expected over the authority and access of the Inspector.
2. Alternatively, upgrade the Inspector General capability within each intelligence organization. All Inspectors would be ordered to report to the DCI, so that he would be in a position to advise the President on propriety throughout the Community. Again, however, antagonism could develop if Inspectors were asked to report outside of their parent agencies. If, on the other hand, neither alternative were chosen, no one person within the Community could be accountable for propriety throughout the Community.

ISSUE: Does effective oversight call for mechanism outside the Intelligence Community to advise the President on propriety?

The question is, to what person or organization should responsibility be assigned for advising the President

on propriety of oversight of the Intelligence Community. In the past, there has been no central focus for consideration of propriety of intelligence activities outside the Intelligence Community.

OPTIONS:

The NSC/OMB study sets forth three alternatives for Executive oversight: (1) the Attorney General; (2) a Special Counsel to the President; and (3) a Government-wide Inspector General. A fourth alternative could be use of the NSC structure. Each of these options could have its own inspection or staff capability, or rely on Inspectors within the the Community to report questionable activities to them. Their primary purpose would be to provide independent advice to the President based on their knowledge of Community activities and consideration of legal and moral issues relevant to the activities. The Attorney General already has responsibilities as chief legal officer.

The NSC already has the statutory responsibility of integrating domestic and foreign policies, but its lack of independence from the White House might lessen its effectiveness. Further, a potential problem with any special White House adviser with oversight responsibility is the difficulty it could create for the President if the adviser

approved actions which were subsequently found to be illegal by the Attorney General..

ISSUE: Should public confidence in Executive oversight be enhanced by use of non-government overseers?
Should an outside advisory board be given intelligence oversight responsibilities, and, if so, should it be the PFIAB?

Both the Rockefeller and Murphy Commissions recommended that the President's Foreign Intelligence Advisory Board (PFIAB) be given the new responsibility of overseeing intelligence activities to prevent abuses.

Appointment of outside overseers could help reassure the public that intelligence activities are receiving adequate scrutiny and consideration within the Executive Branch. This would especially be true if the advisory board made periodic public reports. However, a group of part-time advisers, even with a full-time staff, might have difficulty learning all they needed to know to do an adequate oversight job.

A particular problem arises with assignment of this responsibility to the PFIAB. Oversight might dilute, and even conflict with, the Board's traditional role of pushing the Intelligence Community to greater intelligence collection efforts. Also, PFIAB does not have a great deal of credibility among the "foreign affairs community" and some in Congress.

An alternative would be to establish an independent oversight board. This will, however, require duplicating the staff capability of PFIAB.

ISSUE: How can adequate deliberation of covert action proposals be assured?

One type of Executive oversight -- approval of covert actions -- has traditionally been centralized in the White House. The NSC's 40 Committee has been criticized by the Murphy Commission and Congressional spokesmen for inadequate deliberation.

OPTIONS:

Greater assurance of deliberation within the 40 Committee could be achieved through:

- Reinstating formal Committee meetings on all significant covert proposals;
- Redesignating the Attorney General as a Committee member (in his legal adviser's role) and adding representation from other departments as the subject demands; and
- Adding NSC staff to provide non-departmental analysis on need, risk and potential benefits of each action.

Each of these procedural changes would help to promote more deliberative decision-making, but would also restrict flexibility and increase the number of persons involved in sensitive activities. A particular problem might arise if the Attorney General were asked to serve both as policymaker on the 40 Committee and as the President's chief intelligence overseer.



E. CONGRESSIONAL OVERSIGHT

The Intelligence Community's old, comfortable relationship with a small number of senior Congressmen who had been delegated responsibility for oversight and budget approval, no longer exists. Even after the conclusion of the current special investigations, Congress is likely to be interested, at a minimum, in budgetary and financial issues, impact of intelligence agencies on the rights of Americans, covert action, and the quality of the Community's intelligence product. In addition, Congress will be demanding more substantive intelligence from the Community.

ISSUE: What principles should be important to you in developing an overall structure to work with Congress on intelligence matters?

New committee structures for oversight of the Intelligence Community are anticipated. The concept of a Joint Intelligence Committee in Congress is 20 years old, and its time may have come. It is almost inevitable that Congress will seek to remove some jurisdiction in the oversight area away from the Armed Services and, perhaps, Appropriations Committees. Of course, we have no control over the internal rules and procedures of Congress but they have a critical effect on Executive efforts to safeguard classified information.

This conflict with respect to jurisdiction may be especially troublesome in the area of authorization legislation for appropriations. At present, appropriations for CIA (and

most appropriations for other intelligence agencies) do not require periodic authorization. However, a requirement for periodic or annual authorization may result from increased Congressional interest in controlling intelligence funding. If so, the conflict between the Armed Services Committees and any new intelligence committee as to jurisdiction over this legislation would likely be intense.

Congressional oversight is complicated by the need for secrecy. The need to limit knowledge about sensitive intelligence activities requires that both the quantity and quality of information given to Congress be limited in order to reduce the potential for damaging disclosures. Limits on information flow to Congress, however, create difficulties for oversight Congressmen. The overseer can be credible only if he is aware of the total spectrum of intelligence activities. Silence about these activities, however, can be construed as acquiescence in their conduct, even though vigorous steps were taken privately to oppose them.

A second and more difficult dilemma faces Congressmen who may oppose the propriety or efficacy of a given activity. Public opposition to a specific intelligence program will certainly cast the activity in grave jeopardy. Acceptable means are needed by which members can be assured of an adequate voice in the decision-making process within the responsible committees.

OPTIONS:

One possibility would be to include a confidential "appeal channel" outside the committee (perhaps to Congressional leaders). The provision for such an "appeal channel" would require, for effectiveness, new rules of each House which would provide for expulsion of any member who flagrantly reveals truly sensitive information. Such expulsions, however, might be judicially reviewable under the doctrine of Powell v. McCormack.

Congressional oversight of intelligence activities is ultimately limited by the Constitutional doctrine of separation of powers and the President's Constitutional duties and powers in the area of defense and foreign affairs. That is, for example, a requirement that specific intelligence operations receive prior authorization of a Congressional Committee would raise Constitutional questions.

Although it may be inappropriate for the Executive Branch to suggest precisely how Congress conducts its oversight role, it should consider the principles which ought to be important to Congress. These include:

1. Authorizing a limited number of Congressmen to act for all. The risk of disclosure of any information available to 535 Congressmen and their staffs is too great to allow such wide dissemination of sensitive secrets. Although the old system which limited knowledge to just a handful of Congressmen is no longer viable, the principle of delegation of oversight responsibility to a limited number of Congressmen remains sound.



2. Limiting the number of oversight committees. Just as intelligence is best viewed within the Executive Branch from a centralized perspective, Congress will be better able to limit dissemination of secret information and to understand the Community if it adopts the same perspective.
3. Limiting access to sensitive intelligence information by committee rules and strengthening penalties for disclosure. A persistent problem in the House has been House Rule XI (2) (e) (a) that grants access of all Congressmen to all committee materials. (There is no comparable rule in the Senate.) If the need for secrecy is to be honored, this Rule needs modification.

In its final report, the Bolling Committee concluded that "if the highest officials of the executive branch...believe that sharing [sensitive material] with Congress will lead to its public disclosure, they will not make it available, even when committees go into executive session to receive such information." "Leaks" out of the Select Committees on Intelligence have seriously undermined the argument that Congress can handle classified information in a responsible manner.

Under the Speech and Debate clause, as interpreted in the Gravel case, a member may disclose security information, without fear of prosecution, if it is done in any manner or forum which can be reasonably construed as part of his legislative duties.



However, under the Constitution (Article I, Section 5), "Each House may determine the Rules of its Proceedings, punish its Members for Disorderly Behavior, and, with the Concurrence of two thirds, expel a Member."

Therefore, consideration should be given to whether the rules of each House should be revised to provide for appropriate disciplinary action -- including expulsion -- for unauthorized disclosure of classified information.

4. Avoiding the imposition of statutory requirements that oversight committees be "fully and currently informed", as in the case of the Joint Atomic Energy Committee. The fully-and-currently-informed principles can encourage too much day-to-day interference by Congress and its committee staffs in agency operations.
5. Encouraging non-statutory understandings. Statutory guidance on Executive-Legislative relations is more likely to impede than aid good and effective relationships. Congress, too, should benefit from informality.
6. Separating foreign intelligence from law enforcement oversight. Intermingling of these two areas is often confusing.

ISSUE: What should be your substantive position concerning intelligence oversight committees?

OPTIONS:

1. Support efforts to create a Joint House Select Committee on Foreign Intelligence.

Such a committee probably should have equal delegations from both Houses, membership for limited terms, and jurisdiction over the entire foreign Intelligence Community. There is considerable disagreement concerning the scope of its authority. The alternatives are: (1) oversight only; (2) legislative and oversight; and, (3) oversight with legislative jurisdiction shared with present Committees.

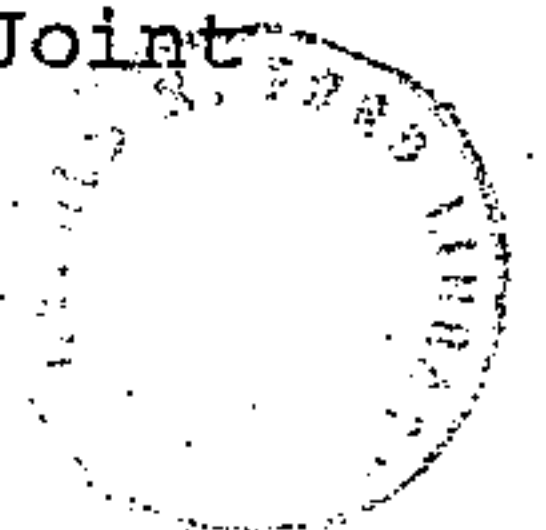
The main argument in favor of a Joint Committee is that it limits dissemination of classified information, thereby promoting secrecy. The key arguments against are: (a) it violates normal procedures and, by eliminating independent House-Senate action, may lead to errors and abuses, and, (b) in the case of foreign affairs and -- arguably in foreign intelligence -- the Senate has a preeminent Constitutional role.

2. Support efforts for new, but separate, intelligence committees in each House.

This will help control dissemination of classified information without the problems of trying to create a Joint Committee.

ISSUE: In what manner should the intelligence budget be displayed to Congress?

There have been many demands for wider distribution within Congress of Intelligence Community budget information. In the past, intelligence budget details were presented only to



the small number of Congressmen on Appropriations and Armed Services Subcommittees involved in oversight and budget review. This year details were more widely released to all members of those committees. A proposal this year by Representative Giamo to reveal the total amount of the CIA budget was soundly defeated. The size of the intelligence budget remains undisclosed to the public.

There is no question that intelligence oversight committees will continue as they did in the past year to require detailed analyses of the intelligence budget. The major issue is what amount of information should be presented to all 535 members of Congress.

The NSC/OMB study discussed the possibility of inclusion of a classified annex in the President's Budget, which would be available to all Congressmen, but which would include only general, big dollar information. This classified annex would encompass the overall intelligence program. Provision of this amount of budget information attempts to comply with Congressional needs without unduly risking leaks of sensitive information. On the other hand, once such information is provided, it may simply lead to demands for more and more details.

ISSUE: What substantive intelligence should be sent to Congress, and what official should be responsible for making such determinations?



Congress is quite interested in receiving more substantive intelligence from the Intelligence Community. In the past, the CIA and other intelligence producers have briefed many Congressional committees on specific subjects, and some general unclassified foreign information is regularly made available to all Congressmen. However, the National Intelligence Estimates and many other Community publications have not as a matter of course been supplied to Congress. Increasing demands for such information create new problems.

Congress has a legitimate need for -- and right to -- some national intelligence products. Informed public debate is desirable. For the national intelligence structure, however, provision of intelligence is complicated by four considerations:

1. Sensitive information is unlikely to be protected or kept out of the public domain if it is widely disseminated on Capitol Hill. Sources and methods can be difficult to separate from substantive intelligence.

2. In many situations, there are likely to be sharp, profound differences of opinion between a President and his senior subordinates and Congress over what members of Congress are proper consumers of what intelligence products.

3. No President will be happy about any component of the Intelligence Community that furnishes information which is used to oppose his policies.



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4. The Intelligence Community's ability to be objective and candid can be threatened if its products are widely used in partisan political controversy. It is desirable for divergent analyses to exist within the Intelligence Community; if, however, these views become widely circulated in the political arena, internal expression of such views may be inhibited.

A particular problem arises in connection with National Intelligence Estimates. Many Congressmen have focused on these analyses as particularly deserving of Congressional distribution. Although some NIE's represent general background information that would be appropriate for distribution, others, because they deal with questions such as "what if a certain action were taken," involve policy considerations that would make distribution unwise.

Any attempt to write into law a requirement that intelligence information be systematically shared with Congress should be avoided. However, more can and probably should be done to insure that production elements of the Intelligence Community, particularly those in INR, DIA, and CIA, give systematic, formal attention to Congressional information needs. The increasing chorus of demands for such information seems to require a centralized office for its dissemination. Only with such an office can Administration positions be coordinated and some of the dangers pointed out above avoided. The DCI, as leader of the Community, must be the focus of any such centralization.

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ISSUE: Under what ground rules should Congress be provided substantive intelligence?

OPTIONS:

1. In sorting out the problem of how Congress or its committees formally decide to publish classified information provided by the Executive (this issue is distinguished from the problem of "leaks"), it may be useful to consider the possibility of a "third entity". For example, a joint Executive-Congress board could assign security classifications to foreign intelligence information and then both Branches could agree -- in advance -- to respect these designations.
2. A more promising alternative may be to expand on the "Case Act" approach. This statute requires the Executive Branch to submit certain international agreements to Congress, but classified agreements are given only to the House International Relations and Senate Foreign Affairs Committees under an injunction of secrecy. The secrecy injunction can only be removed by the President.

This procedure is almost identical to the publication agreement worked out between you and the Pike Committee. While this approach has promise, its weakness was demonstrated last



week when the Pike Committee voted to ask you to declassify two covert action reports -- Italian elections and Angola -- but on the very same day, their contents were leaked to the Press.

F. PUBLIC

ISSUE: To what extent is public oversight appropriate?

The extent to which the public and the Press can play a role in the oversight of the Intelligence Community, or even to be aware of and appreciate its value is, of course, limited by the general need for secrecy in intelligence activities. To a great extent, however, public confidence in the Intelligence Community can be rebuilt through greater public understanding of the responsibilities and activities of the Community.

OPTIONS:

There may be some actions you could take to improve public understanding of the community. Possible examples are:

1. Require the reorganized PFIAB to issue an unclassified annual report on the activities and effectiveness of the Intelligence Community. This would require careful judgments on difficult classification questions but, on balance, would probably be valuable in educating the public about intelligence activities and their importance. It would also tend to reassure the public that the PFIAB was keeping an eye on the Community.

2. Require CIA to publish a periodic, unclassified intelligence report. This would assure the public that some product was resulting from its expenditures. However, since an unclassified report would probably have to read much like a newspaper (or be even less informative), on balance this might damage the public perception of the Community's effectiveness.

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ORGANIZATION AND MANAGEMENT

This chapter presents the issue of how the Intelligence Community should be structured. The following subjects -- most of which were analyzed in the NSC/OMB study -- are covered:

- The problem of leadership in the Intelligence Community.
- Management of the budget of the Intelligence Community.
- The management of resources for intelligence collection.
- Means of improving the timeliness and quality of intelligence production.
- The problem of covert activities.

A. OVERALL DIRECTION

ISSUE: What type of leadership does the Intelligence Community require (both internally and externally) to efficiently provide quality intelligence on a timely basis? Which person, or persons, shall be held accountable for leadership of the Intelligence Community?

The CIA was established by statute to operate under direction of the NSC, and questions are now being raised about the adequacy of mechanisms to guide the Agency, or more generally, the Intelligence Community.

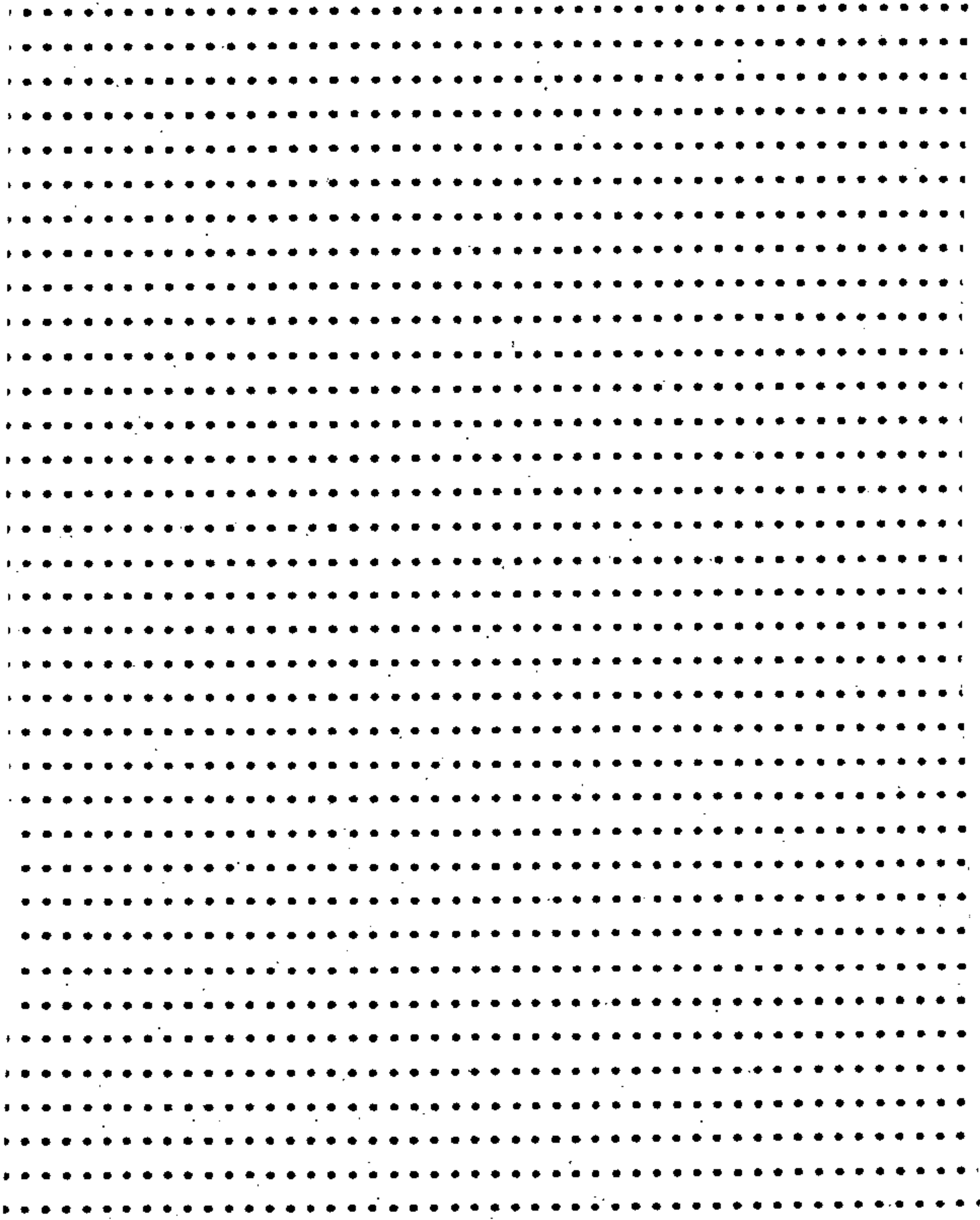
Leadership of the Community was assigned to the DCI by President Nixon's memorandum of November 5, 1971. It charged the DCI with (1) planning and reviewing all intelligence activities; (2) planning and reviewing allocation of all intelligence resources; and, (3) producing national intelligence. He exercises, however, line and resource control only over the CIA Program Resource and line control over more than ...percent of intelligence assets is in the Defense Department and includes the Consolidated Cryptologic Program (CCP, which includes NSA and the Service Cryptologic Agencies), National Reconnaissance Program (NRP) and General Defense Intelligence Program (GDIP). Within Defense, intelligence expenditures are a small part of a \$100 billion plus budget, but this is large relative to other defense components.

The DCI's leadership over the NRP is exercised through chairmanship of the NRP Executive Committee (ExCom), a two-man committee made up of the Assistant Secretary of Defense for Intelligence and the DCI, although final resource decisions reached by the ExCom are subject to review and approval by the Secretary of Defense. The DCI's influence over the CCP and GDIP is solely advisory and is exercised through chairmanship of the Intelligence Resources Advisory Council (IRAC) and the U.S. Intelligence Board (USIB), which sets collection requirements and priorities.

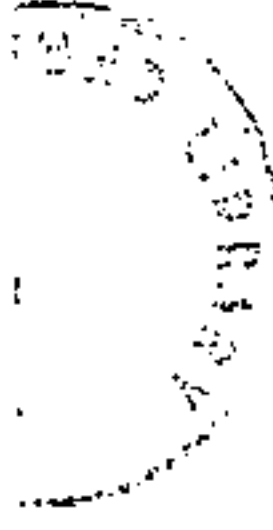
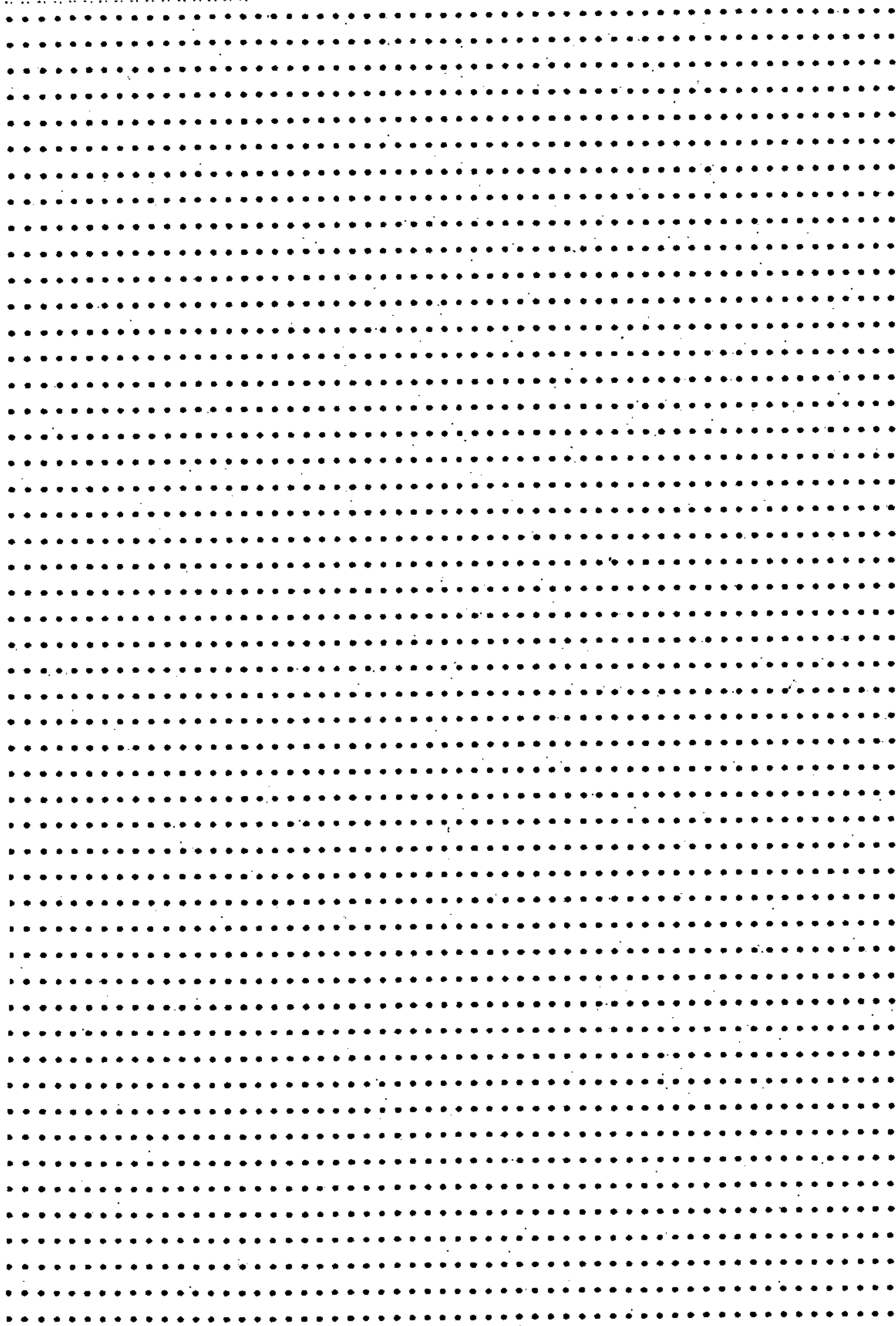
See the following charts which show (1) The Percentage of Intelligence Funds Administered by Government Agencies, and (2) FY 1976 Funding.

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The relationship of the DCI to Defense is crucial to leadership, not only in determination of resource use, but also in war contingency planning, provision of intelligence from national collection systems (primarily satellites) to tactical field commanders, and integration of information during crises. In each of these areas, the DCI must rely on Defense cooperation. Because of the divided line and resource authority, a maze of committees has been developed over the years to cope with problems as they arise.

Primary leadership of the Intelligence Community must start with the policy-makers outside the Community. Although committees could perform this function, the NSC already has the statutory responsibility for integrating domestic, foreign and military policies. The NSC represents the primary consumers -- the President, Vice President and Secretaries of State and Defense. The Secretary of Treasury and other top officials have been represented in NSC committees, including the NSC Intelligence Committee, when their interests were relevant.

OPTIONS:

1. Make the NSC more effective through assignment of responsibility for guidance to the Community to a



new Deputy to the National Security Adviser;
reinvigoration of the NSC Intelligence Committee;
and/or establishment of new NSC committees.

2. Make the DCI more effective. Within the Intelligence Community, leadership is currently assigned to the DCI but, in fact, is shared with other officials, primarily the Secretary of Defense. The DCI's role has been hampered by his dual role as Community leader and head of one part of the Community, the CIA.

The Defense Department has long felt that the DCI cannot be an independent leader as long as he is so closely tied with one part of the Community.

Suggestions have thus been made that the DCI should be separated from the CIA and moved into the NSC structure or the Executive Office, as an independent intelligence adviser to the President. Alternatively, the DCI could be given direct line and resource control over all national intelligence programs, including the CIAP, CCP and NRP. The latter alternative, however, separates Defense from control of assets on which it must depend directly for tactical support to wartime forces.

3. Designate a member of the White House staff as "Special Assistant for Foreign Intelligence".

Surprisingly, the "liberal" wing among the Congressional staff have proposed creating such a position and giving it Cabinet rank. One argument made is that foreign intelligence is involved in a broad spectrum of issues with increasing emphasis on matters other than foreign or military affairs, such as economic and resource issues. Thus intelligence leadership in the White House should not be controlled by the NSC.

On the other hand, it would appear that this approach could be perceived as leading to greater abuses by "politicizing" intelligence and, in any case, it is difficult to see how such an individual could be effective without any institutional base of support.

Under any of the options, significant leadership responsibilities will continue to lie with the Secretary of Defense. He should be expected to examine the organization and management of intelligence assets within his Department. He will need to focus on NSA and DIA because both the select and standing committees have raised questions concerning the authority, efficiency and funding of these agencies.



B. BUDGET AND RESOURCES CONTROL

ISSUE: What mechanism would best provide for control over intelligence resources?

The Intelligence Community has approximately a budget that must be efficiently controlled if it is to make maximum use of scarce resources. There is no single central controller now of intelligence resources, not even OMB.
.....
..... A number of advisory committees, including IRAC and USIB, attempt to coordinate resource allocation, but are limited by their advisory nature. OMB reviews the intelligence budget in detail but has had difficulty in making trade-offs among collection, processing and production functions. Resources tend to be allocated because collection is technologically possible, rather than because certain information is needed for intelligence reasons.

The charge to the DCI to review all resource allocation in the Community has proven unworkable, and fragmented budget allocation still remains a problem five years after the Schlesinger OMB study.

OPTIONS:

Three options have been advanced to cure this problem:

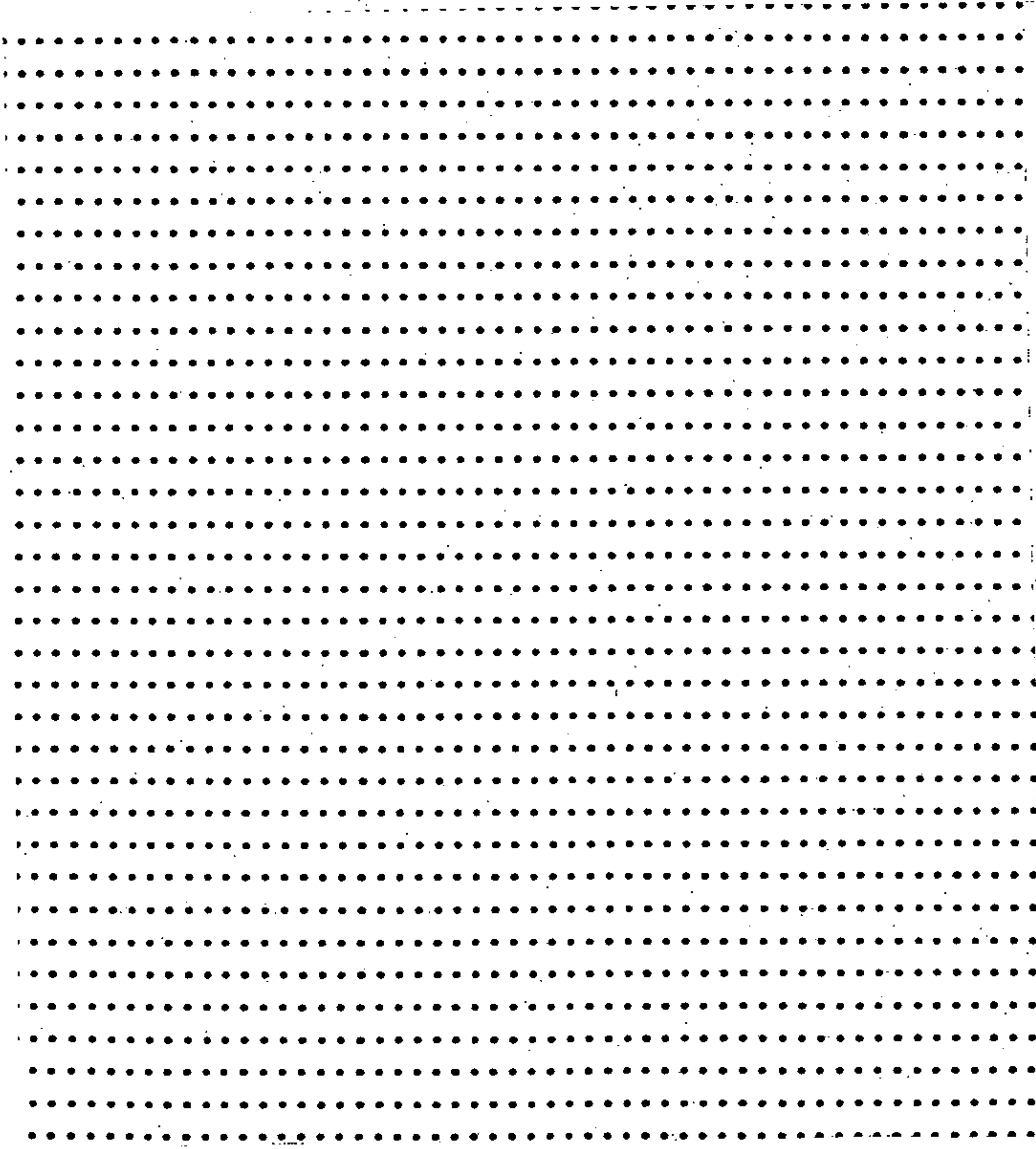
1. Charge OMB with a more active role in intelligence resource allocation. OMB, as the President's adviser on the budget, is in the right position to deal with



the cross-departmental problems of intelligence resources. It could serve as the bridge between consumers (as represented on the NSC) and producers and collectors. With reprogramming, transfer and outlay controls imposed (by the House Appropriation Committee) for the first time, OMB should be better able to integrate the budget.

2. Support the DCI in a more active exercise of the resource role he already possesses. Many feel that the DCI has not exercised the authority implicit in the November 1971 letter.
3. Consolidate all national programs -- the CCP, NRP and CIAP -- under a single manager so that he has direct resource control over the bulk of intelligence resources. Such centralization would make the manager most likely the DCI, accountable for resource trade-offs.

The allocation of resources among targets within the National Foreign Intelligence Program is shown in the following chart.



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C. ORGANIZATION OF THE COMMUNITY

ISSUE: Should the collection organizations be consolidated to improve quality, simplify management and achieve greater cost effectiveness?

Collection of intelligence requires significant resources, which, given limited appropriations, must be efficiently managed. Consolidation of intelligence collection organizations has been a perennial topic for study. The possibility of resource savings from consolidations was a major theme of the 1971 Schlesinger Report. To some extent, such consolidation is no longer the central focus of attention because of tight Community budgets in the last five years.

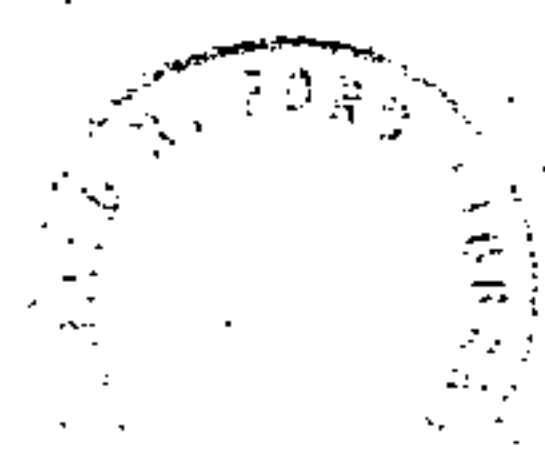
In the case of collection -- as opposed to the production (analysis) function -- there is "general" agreement that competition is not a necessary objective.

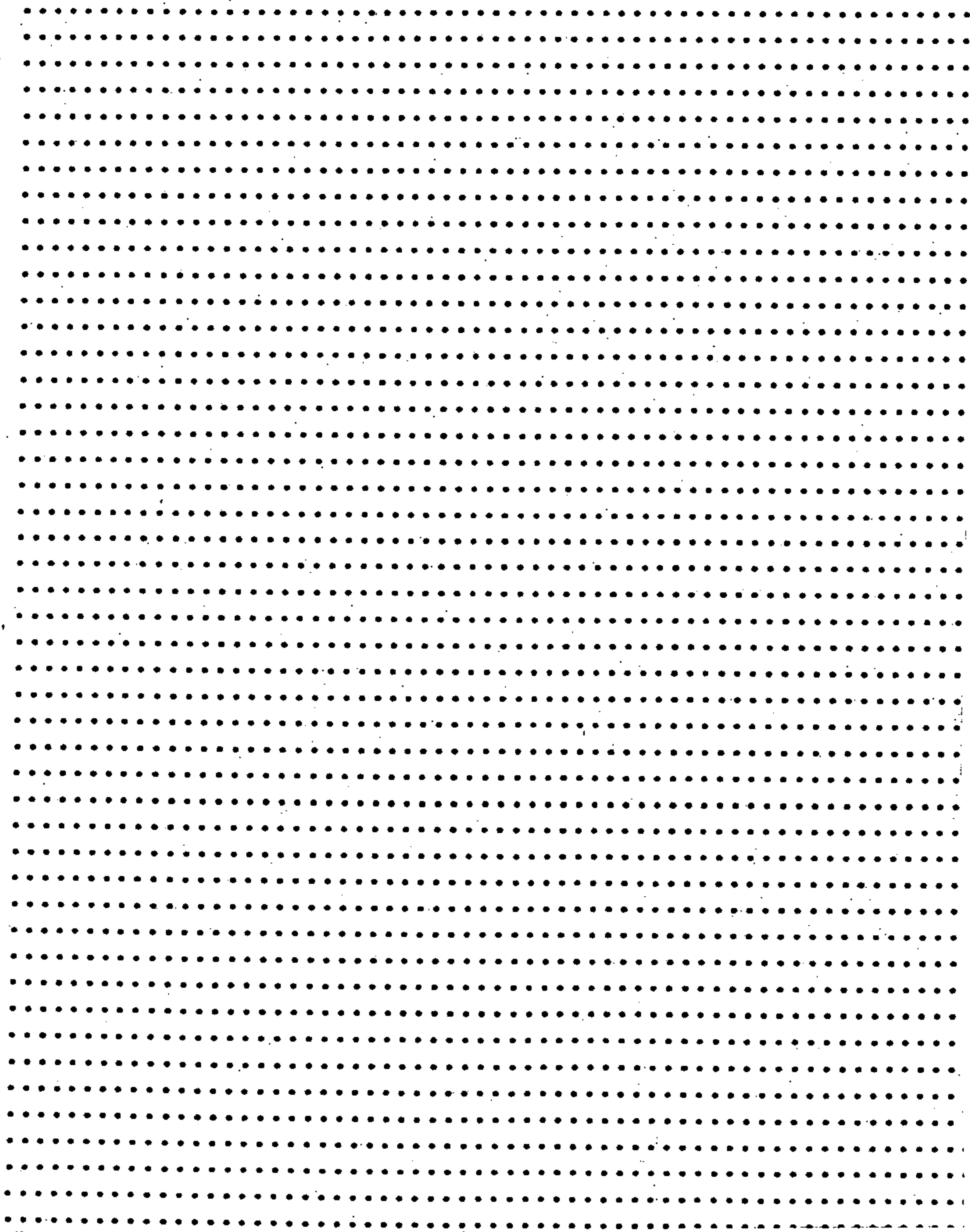
The central challenge in collection management is efficient use of resources; duplication of facilities is of little value. At present, signal intelligence collection is conducted by NSA, the Service Cryptological Agencies and CIA; photo intelligence by the NRO, which is in both CIA and the Air Force; and human intelligence by the CIA, armed services, State Department, and various other cabinet agencies.

OPTIONS:

1. Minor Consolidation -- transfer of about
..... of signal intelligence activities out of
..... CIA and into NSA; transfer of a small amount of
clandestine collection activities out of Defense,
and into CIA; total consolidation of NSA and
the Service Cryptologic Agencies; and consolida-
tion of all NRO activities in Defense.
2. Major Consolidation -- consolidation into one
agency of all the national collection programs --
the CIAP, CCP and NRP.
3. No Consolidation -- The current division of both
SIGINT and NRO activities between CIA and Defense
represents particular expertise in each agency
that might be lost in any consolidations. In any
consolidation, bureaucratic infighting might lead
to a loss of qualified personnel and short-term
inefficiency due to turmoil. Consolidation might
also separate certain collection systems from
consumers, especially military commanders, and
thus reduce responsiveness.

FY 1976 Funds Requested for Intelligence Collection
are shown in the following chart.





ISSUE: Can the production (analysis) capability of the Intelligence Community be improved through "organizational" realignments?

Production of intelligence must be timely, of high quality and responsive to consumer needs. The basic arrangement of production responsibilities at present is that CIA, Defense and, to some degree, State produce defense-related intelligence; and CIA, State's Bureau of Intelligence and Research (INR) and, to some degree, Defense produce political intelligence; and CIA, State and Treasury produce economic intelligence analysis. Each of these agencies serves both departmental and national consumers. The Intelligence Community has been publicly criticized for failing to predict a number of recent international crises; the NSC/OMB study reported State and Treasury disappointment with the Community's longer-term estimative capabilities in economic intelligence.

Production (analysis), unlike collection, can benefit from competition and duplication. Analysts who differ in interpretation of collected information can provide valuable insight to policy-makers.

OPTIONS:

Two major realignments of existing production responsibilities have been suggested:

1. Spin off the production components of the CIA into a new national analytic capability entirely independent from any operational or collection

responsibilities (NSC/OMB Study Option #2A).

This option has considerable support among the liberal wing of the foreign affairs "community".

2. Reject the concept of a national production capability and upgrade departmental intelligence capabilities. Certain key intelligence products could still be coordinated by the DCI or NSC in the manner National Intelligence Estimates are now prepared (NSC/OMB Study Option #3A).

The first alternative would free the national production capability from any taint it now has from being associated with clandestine activities. It would create an intelligence capability quite divorced from policy, thus providing independence, but also perhaps lead to less responsiveness to policy-makers. The second alternative could improve departmental support to policy-makers, but would eliminate the traditional independence asserted to exist in the CIA. Even if neither major alternative is desirable, departmental intelligence production assets could be built up; production constitutes only 10 per cent of the intelligence budget, a reflection of the absence of the expensive hardware which makes collection so costly.

As an example to bring the production process into focus, the process for producing the key National Estimate on Soviet Strategic Capabilities and for producing economic intelligence is shown in the following charts. (Note: the Soviet Estimate was unusually extensive.)

THE INTELLIGENCE PROCESS: NIE 11-3/8-75 SOVIET F

IDENTIFICATION OF KEY ISSUES

● SUBSTANTIVE RESOLUTION OF KEY ISSUES

PARTICIPATING OFFICES AND AGENCIES

**NIO/SP
CIA
STATE
NSA
DIA
ARMY
NAVY
AIR FORCE
ERDA**

USIB Committees

**Guided Missile and Astronautics Intelligence Committee
Scientific and Technical Intelligence Committee
Joint Atomic Energy Intelligence Committee**

KEY ISSUES—SOVIET CAPABILITIES

- Anti-Submarine Warfare
- Directed-Energy Weapons
- Low-Altitude Defense
- ICBM Accuracy
- SLBM Accuracy
- Backfire Bomber

SUPPORTING AGENCIES AND CONTRACTORS

**Missile Intelligence Agency, Army
Foreign Technology Division, USAF
TRW Systems Group
Charles Stark Draper Laboratories
Lockheed Aircraft Corp.
Hughes Aircraft Co.
McDonnell Douglas Corp.
BDM Corp.
Lawrence-Livermore Laboratory
Stanford Research Institute
Rand Corp.
Electro-Magnetic Systems Laboratory**

**Strategy Sessions
On Key Intelligence
Questions
Under Direction of
National Intelligence
Officer for Strategic
Programs (NIO/SP)**

**Drafting of NIE
By Interagency
Working Groups
(11 Major groups,
numerous minor
groups)**

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.FF

TELLIGENCE

JAN-MAR

APR-JUNE

JUL-AUG

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PROCESSES FOR INTERCONTINENTAL CONFLICT THROUGH THE MID-1980's

DELIBERATIONS BY REPRESENTATIVES OF USIB PRINCIPALS

- CIA
- STATE
- DIA
- ERDA
- NSA
- AIR FORCE
- ARMY
- NAVY

- NIE TOPICS**
- Soviet Policy for Strategic Forces
 - Soviet Forces for Intercontinental Conflict
 - Soviet Forces for Strategic Defense
 - Present Capabilities
 - Future Forces and Implications
 - Force Tables
 - Accuracy of the New Soviet ICBMs
 - Directed-Energy Systems for Strategic Defense

Drafting of Working Drafts by [Name], Chairman, Manager

DEBATE ON KEY ISSUES BEFORE USIB

Development of Key Judgments

- Soviet Strategic Policy
- ASW
- Low-Altitude Defense
- Directed-Energy Weapons
- Backfire Bomber
- Force Projections
- Threat to US Minuteman Silos

USIB DELIBERATION

The Estimate (in three volumes)

DISSEMINATION OF USIB-APPROVED DOCUMENTS

- Vol. I Key Judgments and Summary
- Vol. II The Estimate
- Vol. III The Annexes

Critique for Preparation of Next Year's Estimate

SEP-OCT

NOV

DEC

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E.O. 12958 Sec. 3.6

MR 94-3, #1; CIA Ltr 1/6/99
Let NARA, Date 2/2000

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TOP SECRET SENSITIVE

**National Intelligence Officer
for Economics and Energy**

CIA

State

DOD

Treasury

ERDA

Key Intelligence Questions

Identification of Key Issues

Future demand for OPEC oil

Stability of the cartel

OPEC revenues

**Development of alternatives
energy sources**

New non-OPEC oil sources

Petrodollars

**Feedback from Consumers on
previous publications**

NSC

CEA*

CIEP

Treasury

FEA

State

DOD

ERDA

STR**

*Council of Economic Advisors

**President's Special Trade Representative

: INTERNATIONAL OIL DEVELOPMENTS (Weekly)

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**Collection
Requirements**

Intelligence Sources

- Open sources (press, trade publications, etc.)
- Clandestine reporting
- Other government agencies (State, DOD, etc.)
- Communications intelligence
- Contacts with US firms

IOD Preparation

- Analysis
- Drafting of articles
- Review
- Coordination

**Dissemination
to Consumers**

- NSC
- CEA*
- CIEP
- Treasury
- FEA
- State
- DOD
- ERDA
- STR**



SECRET
596192

DECLASSIFIED
E.O. 12958 Sec. 3.6

MR 94-3, #1; CIA letter 1/6/99

By Lt NARA, Date 3/2000

ISSUE: Should the covert action capability and possibly all clandestine activity be separated from the CIA?

The covert action capability has been included in the Intelligence Community since its inception, but its action orientation has led many to propose that it be transferred.

.....

..... The covert action capability in CIA has been strongly criticized in the Press and Congress for inadequate control, biasing of the independence of CIA analytical judgments, and detrimental effects on CIA recruitment of analysts. Although the arguments for separating covert action from the CIA have some merit, serious practical problems arise.

OPTIONS:

1. Transfer to the State Department would endanger its primarily overt status and be contrary to international diplomatic practice.
2. Transfer to the Defense Department would raise public apprehension over accountability given the size and scope of Defense's activities. (However, any resort to large scale covert paramilitary activities in the future could appropriately be conducted through Defense.)



3. The third alternative, moving covert action and clandestine collection into its own agency would separate covert operatives from the supervision of Agency officials and encourage them to fill slack time looking for new covert actions, the only justification for their continued employment.

This option has support among the liberal wing of the foreign affairs "community".

D. ORGANIZATION OPTIONS ANALYZED IN NSC/OMB STUDY

In light of the five issues discussed above, the NSC/OMB study set forth four major options for reorganization of the Intelligence Community, the first three of which would require legislative action:

1. Creation of a new expanded intelligence agency, headed by a Director of Intelligence, with resource and line control over the national programs -- the CIA Program (CIAP), Consolidated Cryptologic Program (CCP), and the National Reconnaissance Program (NRP). This option is based on the premise that national programs are best managed if centrally funded and controlled, and that gains from centralization outweigh disadvantages resulting from separation of collectors from their primary consumers.



2. Creation of a Director-General for Intelligence (DGI)
with resource control over the CIAP, CCP and NRP,
but line control only over his immediate staff.
This option is based on the premise that a central
leader with resource control and without a vested
interest in any one element of the Community is
needed. Option 2A would leave line and resource
control over CIA analysts with the DGI.
3. Creation of a Director of Foreign Intelligence (DFI)
with broad coordination powers but neither resource
nor line control over any part of the Intelligence
Community. This option is based on the premise that
an intelligence leader, independent of any organiza-
tion within the Community, would be best able to
coordinate its activities, and that the Defense
Department requires a major voice in resource and
line control of intelligence assets. Option 3A would
break up CIA production elements and transfer them to
other departments.
4. Retention of current Community relationships with
the addition of a second full Deputy to the DCI with
management responsibility for the CIA and perhaps
with expanded or restructured Executive Committees
and production responsibilities. This option is
based on the premise that major organizational changes



may be undesirable, and that improved Community leadership structures are possible through administrative action.

These options and their effects on leadership, collection, production, and the budget are detailed in the following chart.

Following the summary charts are diagrams of the four NSC/OMB study options. And finally, there is a chart summarizing agency reactions to the four options.



SUMMARY OF
INTELLIGENCE COMMUNITY LEADERSHIP OPTIONS

	OPTION #1	OPTION #2	OPTION #3	OPTION #4
	<u>CENTRALIZED NATIONAL INTELLIGENCE PROGRAM</u>	<u>CENTRALIZED RESOURCE CONTROL</u>	<u>DEPARTMENTAL EMPHASIS</u>	<u>MODIFIED CURRENT ARRANGEMENTS</u>
<u>SUMMARY</u>				
Leadership of Community	Director of Intelligence (DI)	Director General for Intelligence (DGI)	Director, Foreign Intelligence (DFI)	Director, Central Intelligence (DCI)
Operational Responsibilities	DI line authority over CIAP, CCP, NRP	DGI no line authority	DFI no line authority	DCI delegates CIA line authority to a 2nd Deputy
Resource Responsibilities	DI controls CCP, NRP, CIAP resources	DGI controls CCP, NRP, CIAP resources	DFI review only; Chairman, NRP ExCom	DCI controls CIAP; Chairman NRP & SIGINT ExComs; Reviews other resources
Collection Responsibilities	DI controls all CIAP, CCP, NRP elements	DGI establishes requirements & priorities	DFI establishes requirements & priorities	DCI establishes requirements & priorities
Production Responsibilities	DI produces all national intelligence	DGI produces national estimates; tasks other production elements	DFI produces national estimates; tasks other production elements	DCI produces national estimates; controls CIA production
Committee Structure	Most existing committees can be eliminated	Retain existing or similar committees; Eliminate IRAC	Retain existing or similar committees	Retain existing committees; Add SIGINT ExCom
Legislation Required	Yes	Yes	Yes	No

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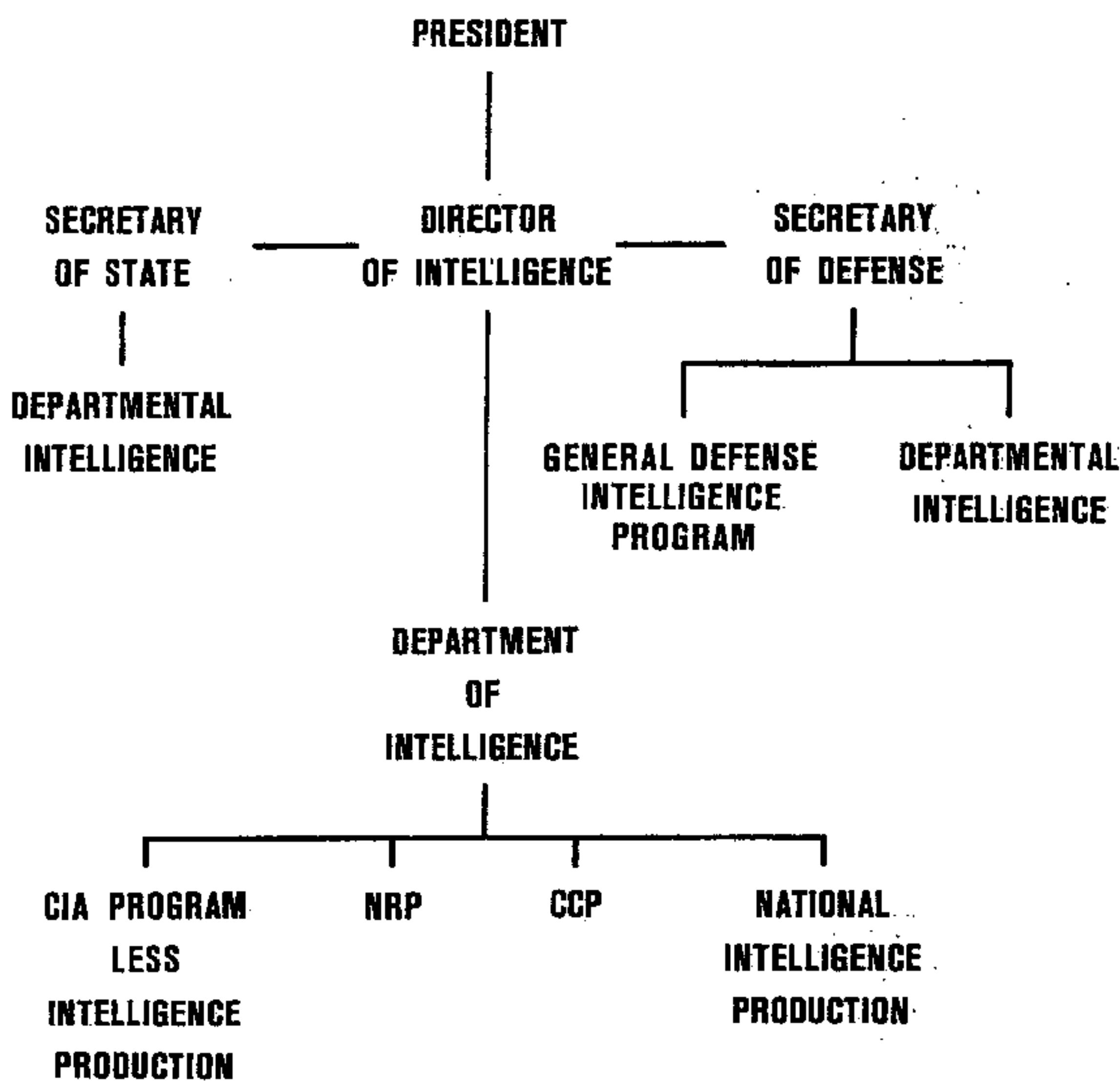
E.O. 12958, Sec. 3.5

NSC Memo, 11/24/98, State Dept. Guidelines and MR 94-3, #1; CIA/IL/IA 1/99
By lct, NARA, Date 4/2000

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OPTION I

FROM THE REPORT TO THE PRESIDENT ON THE FOREIGN INTELLIGENCE COMMUNITY



~~TOP SECRET SENSITIVE~~

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E.O. 12958 Sec. 3.6

MR 94-3 #1; CIA letter 1/6/99

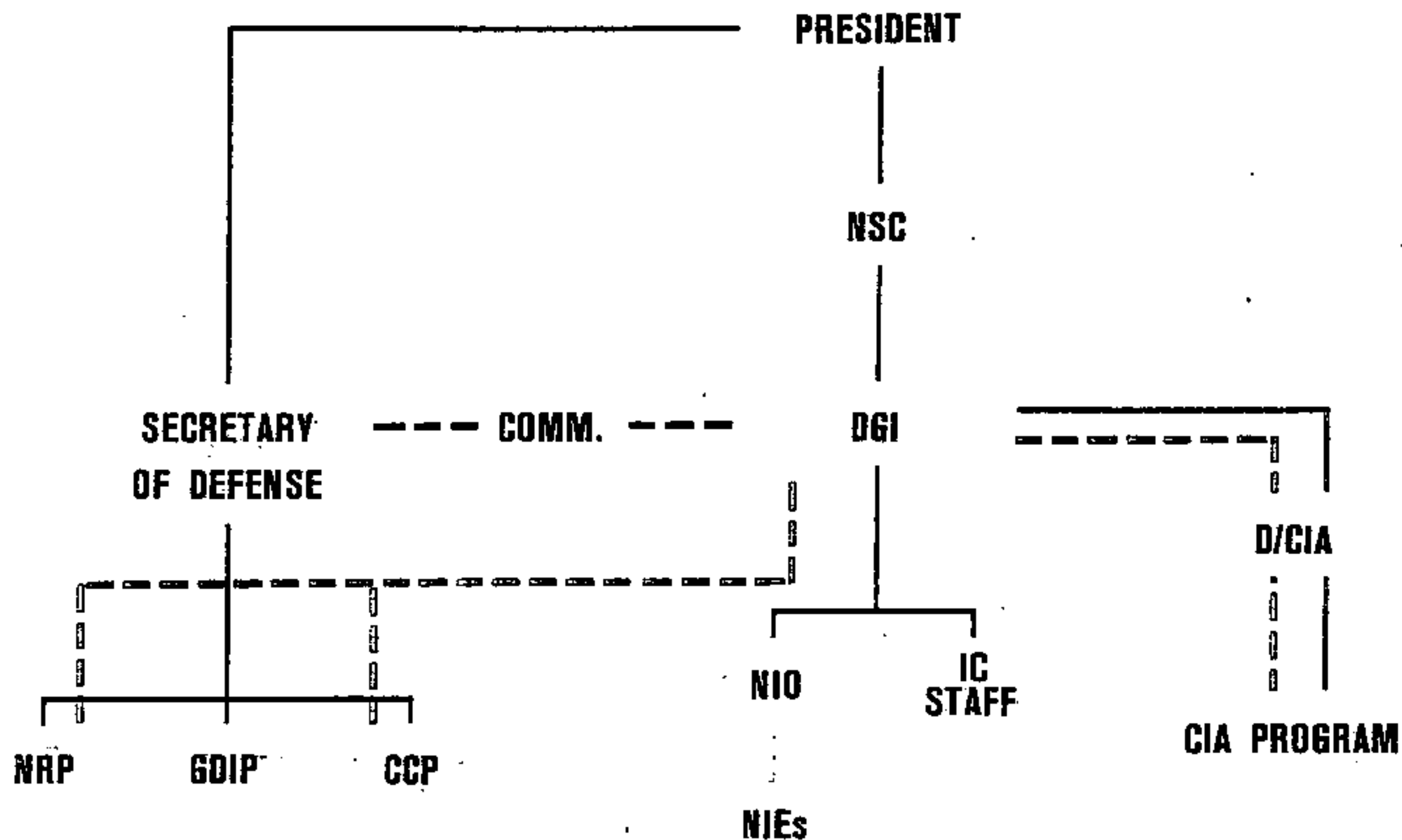
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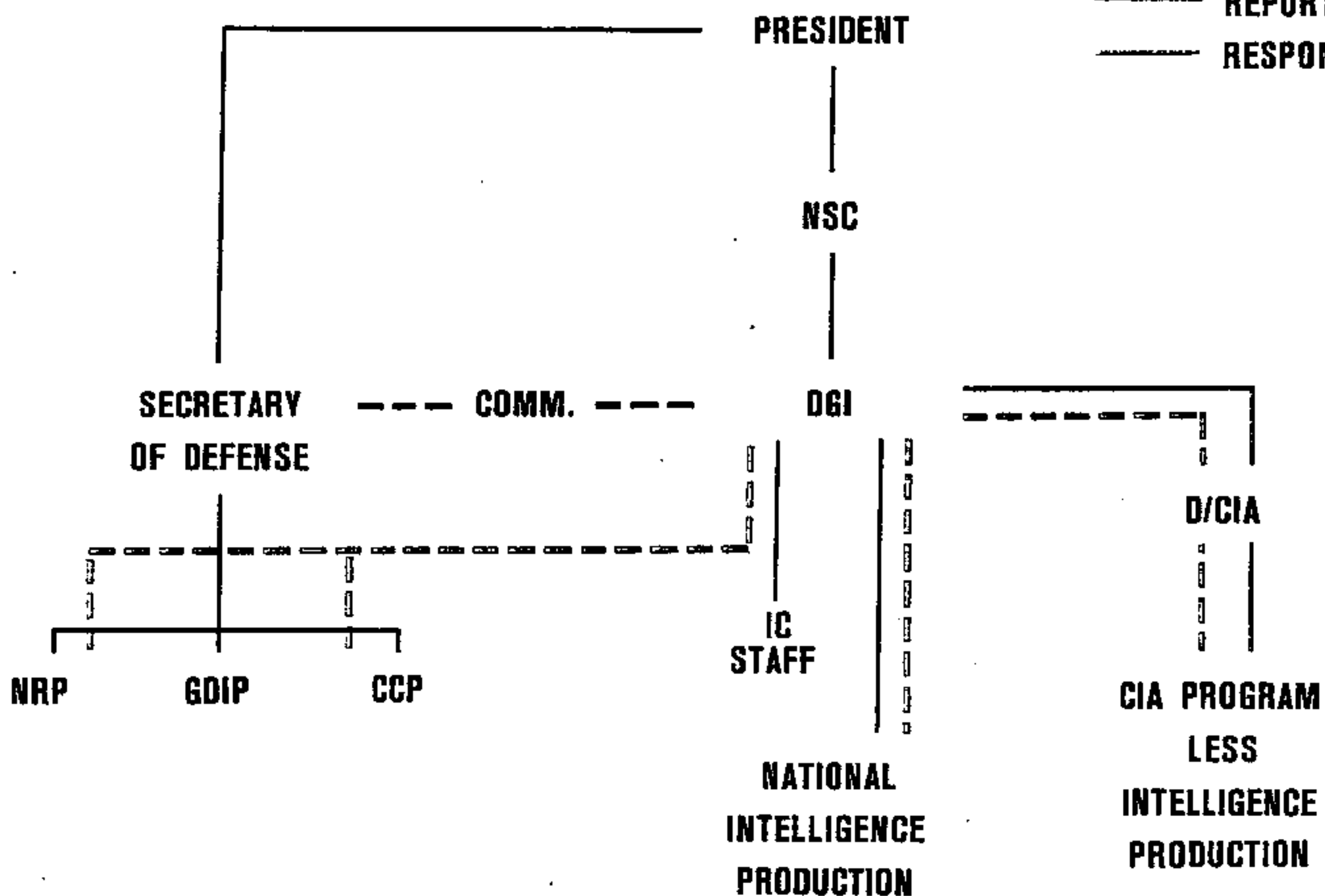
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OPTION II

FROM THE REPORT TO THE PRESIDENT ON THE FOREIGN INTELLIGENCE COMMUNITY



OPTION IIA



- OPERATIONAL CONTROL
- CONSULTATION
- RESOURCE CONTROL
- REPORTS TO NSC THROUGH DGI
- RESPONSIBILITY FOR NIEs

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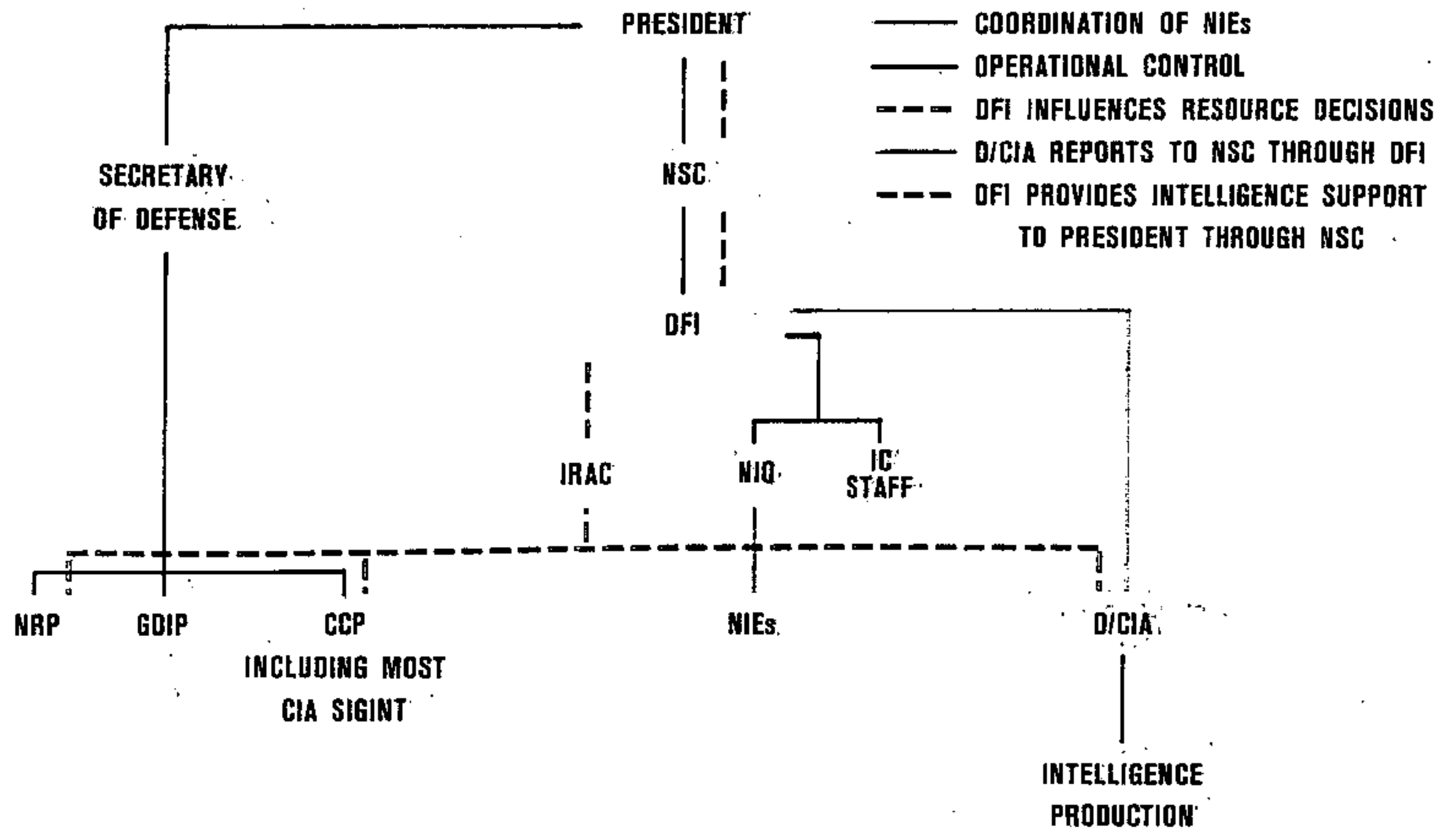
MR 94-3, #1; CIA letter 1/6/99

By Lt NARA Date 3/2000

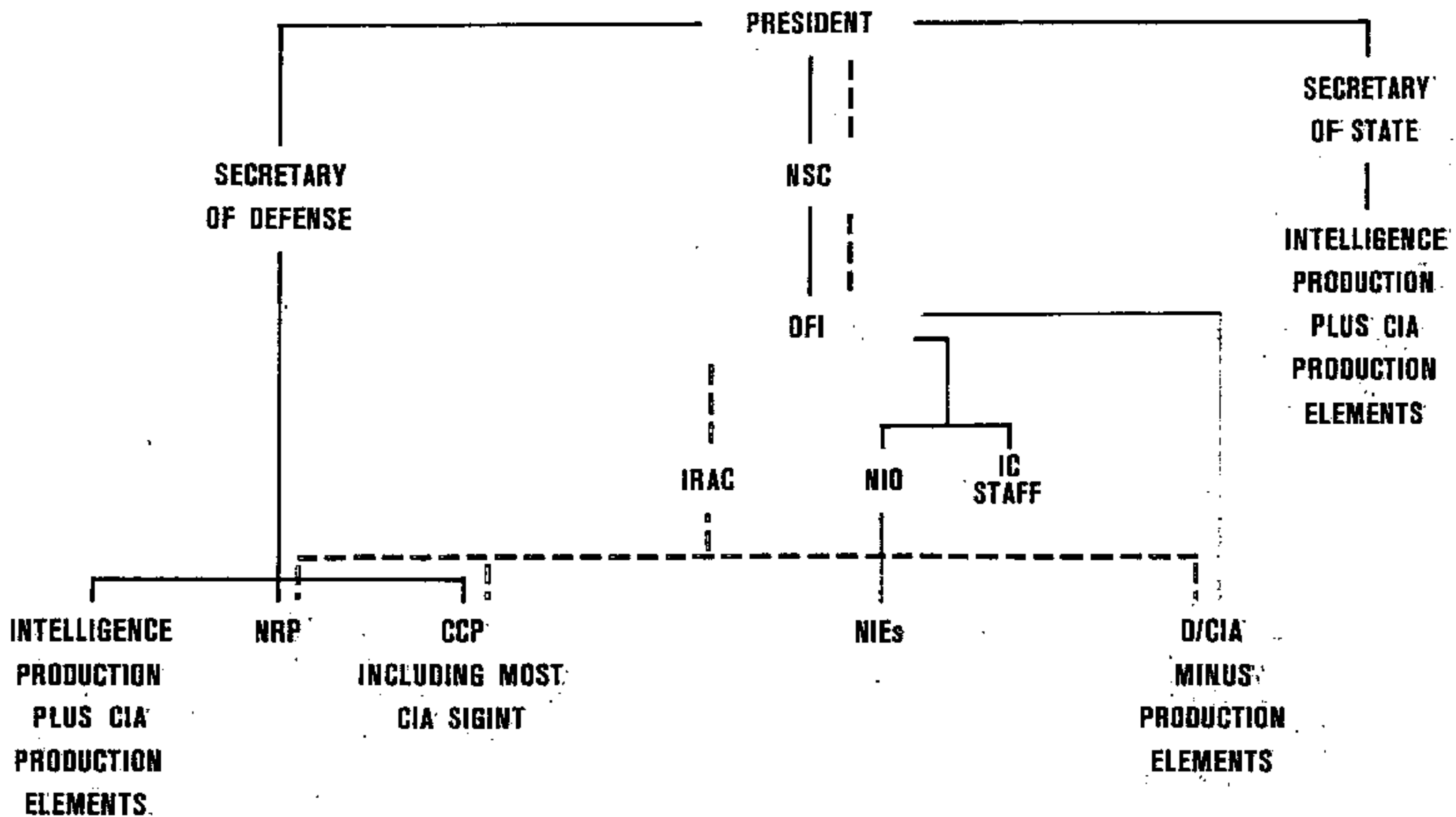


OPTION III

FROM THE REPORT TO THE PRESIDENT ON THE FOREIGN INTELLIGENCE COMMUNITY



OPTION IIIA



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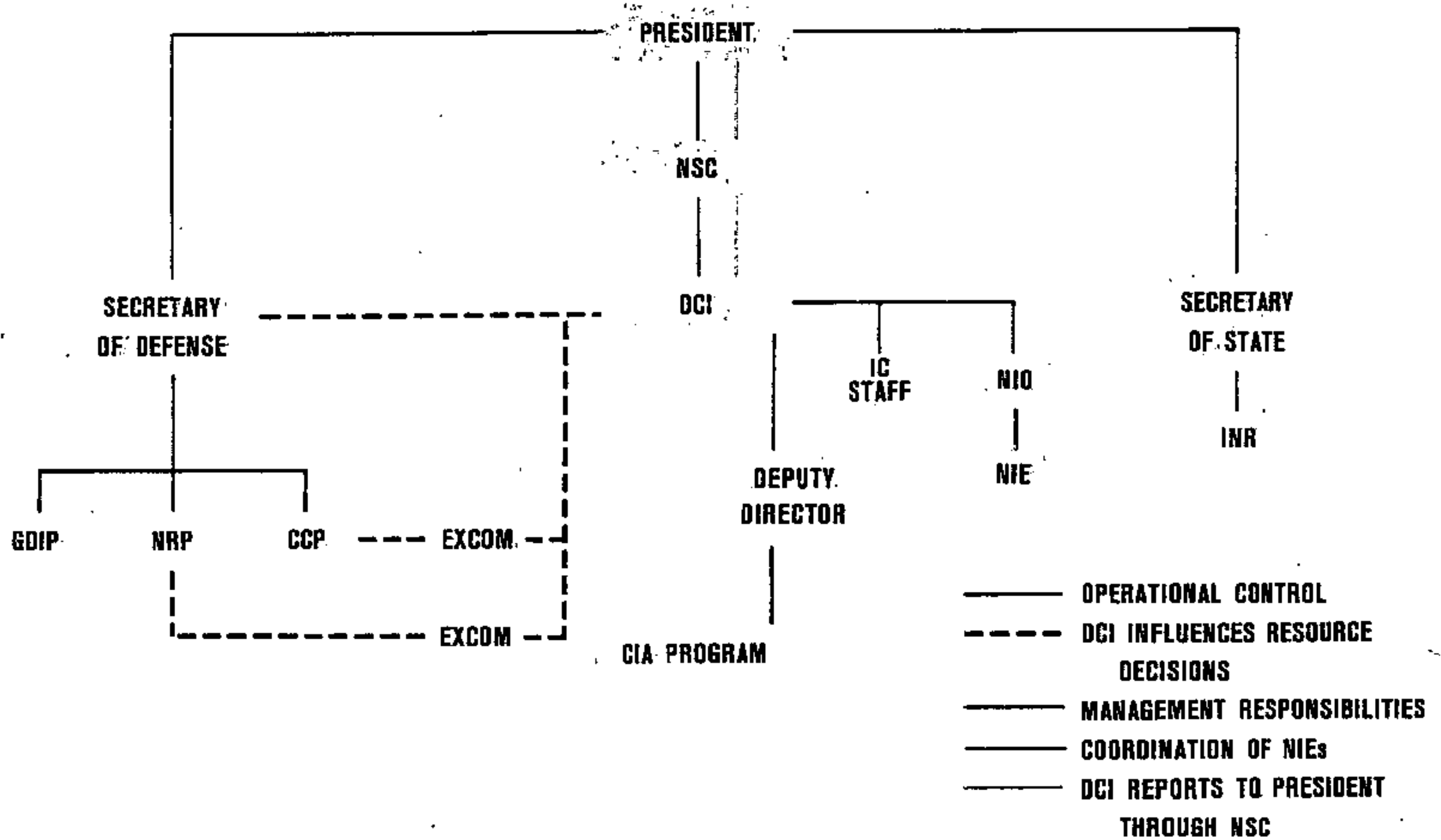
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E.O. 12958 Sec. 3.6

MR 93-4, #1; CIA LHM 1/4/99

By LIT, NARA, Date 3/2000

OPTION IV

FROM THE REPORT TO THE PRESIDENT ON THE FOREIGN INTELLIGENCE COMMUNITY



~~TOP SECRET SENSITIVE~~
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DECLASSIFIED
E.O. 12958 Sec. 3.6

MR 94-3, #1; CIA letter 1/6/2000
By Lt NASA, Date 3/2000



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SUMMARY OF AGENCIES' RECOMMENDATIONS ON THE ORGANIZATION AND MANAGEMENT OF THE FOREIGN INTELLIGENCE COMMUNITY

	DEFENSE	JCS	DCI	STATE*	TREASURY	JUSTICE
<u>CORRECT CURRENT ABUSES</u>						
1. Guidelines on Propriety	Yes	Yes	Yes	---	Yes	Yes
2. Executive Branch Oversight						
a. Within the Intel Community						
• Strengthen Agency IG	Yes	Yes	No	---	Yes	Yes
• Community-wide IG	---	---	---	---	---	---
b. Outside the Intel Community						
• Attorney General Staff	Yes	Yes	Yes-NSC	---	Yes	No
• Special Counsel to President	---	---	---	---	---	No
• Government-wide IG	---	---	---	---	---	No
c. Outside Government Advisers						
• Expand PFIAB	No	Yes	---	---	Yes	---
• Establish New Group	No	---	---	---	---	---
3. Intelligence Policy Coordination						
• Expanded Use of NSC Structure	Yes	Yes	Yes	---	Yes	---
• Intelligence Adviser to President	---	---	---	---	---	---
• Improved DCI/Agency Coordination	---	---	---	---	---	---
4. The 40 Committee						
• Reinstitute Formal Committee Mtgs	Yes	Yes	Yes	---	Yes	---
• Attorney General Membership	optional	---	---	---	optional	---
• Additional Staff	---	---	---	---	Yes	---
<u>COVERT ACTION</u>						
• Remain in CIA	Yes	Yes	Yes	---	Yes	---
• Separate Agency	---	---	---	---	---	---
<u>MANAGEMENT IMPROVEMENTS</u>						
Budgetary and Fiscal Controls						
• Classified Budget	No	No	No	---	No	---
• DCI/OMB Budget Execution Controls	No	No	No	---	Yes	---

*State has decided not to comment at this time.



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SECRECY

The purpose of this chapter is to present the problem of maintaining control over classified foreign intelligence activities and information. The following issues are addressed:

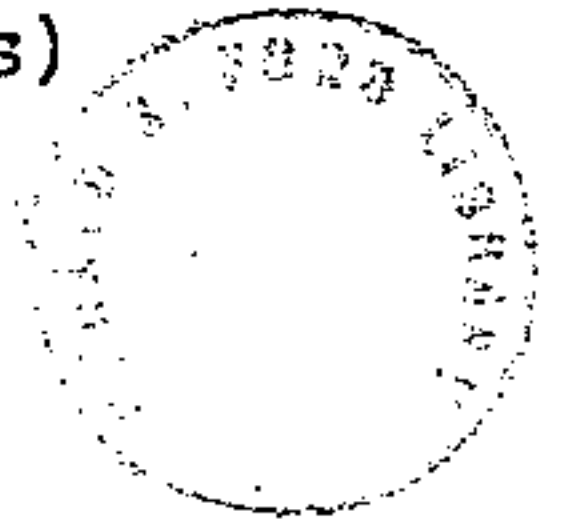
- The need to revise the classification system.
- The need to protect classified information more effectively.
- The form of statutory protection for classified information.

A. CLASSIFICATION SYSTEM

ISSUE: To what extent should the existing classification system be revised?

The current classification system (established by Executive Order No. 11652 issued by President Nixon on March 10, 1972) has been the subject of much criticism, notwithstanding that it represented a comprehensive reform of the prior system. The criteria established for the various categories of information (e.g., TOP SECRET, SECRET) are vague, leading to much over-classification. There are provisions for automatic downgrading and eventual declassification, but the exceptions to them are frequently invoked, particularly in the Intelligence Community.

The system of "compartmentation" (special clearances giving access to information only on a need-to-know basis)



is not explicitly authorized by Executive Order and has been the subject of much criticism on the ground that it allegedly has kept valuable intelligence from policy-makers and analysts who would have warned against improvident policies. The current statutes clearly contemplate the existence of a classification system.

Many critics argue that protection of classified information by criminal statutes is unwise because the current classification system has resulted in great overclassification. Passage of such legislation will be much more difficult if the classification system is not overhauled. Indeed, a revision of the classification system could be viewed as a necessary price to be paid for passage of legislation to protect classified information.

ISSUE: If the current classification system is to be revised, should its revision be accomplished by Executive Order or statute?

Classification system design has historically been a function of the Executive. The President is in a better position than Congress to know what categories of information need protection, and to what extent. The Administration's proposal can be adopted with precision in an Executive Order while, of course, legislative proposals may be subject to significant amendment. However, Congress would probably



be more willing to provide statutory protection for classified information if it had created the classification system by statute.

B. PROTECTION OF CLASSIFIED INFORMATION

ISSUE: Should the Administration propose revised legislation to protect classified information?

Present statutory protection is inadequate. Current statutes prohibit the transmission of classified information by a government employee only if made to an agent of a foreign power. The law prohibits such transmission by a non-employee only if done with intent to injure the United States or aid a foreign government. There are only two types of classified information which receive special protection from media publication. It is a crime for any person to deliver (individually or by publication) to any unauthorized person any classified information relating to cryptology or communications intelligence. (The comprehensive statute dealing with these limited types of information, grew out of the publication by the Chicago Tribune of the fact that the U.S. could read Japanese codes.

Even if the information the defendant divulged to an unauthorized person has not become public knowledge, a successful prosecution requires that it be made public at the trial. Under present law, the government may obtain



an injunction in a civil action against the revelation of classified information by a present or past government employee who has signed a secrecy oath, although no statute explicitly provides such a remedy. This, however, is not an effective means of protection.

The issue of statutory protection of classified information is, of course, a politically controversial one. The Press has been extremely critical of the provisions of the current proposed revision of the Federal criminal code (S. 1) which imposes criminal sanctions on the unauthorized disclosure of classified information.

ISSUE: Whether statutory protection should be accorded only to intelligence sources and methods or to all types of classified information.

By statute, the DCI is required to protect "intelligence sources and methods" which constitute one type of classified information. Basically, this term refers to sensitive information about methods of collecting and analyzing foreign intelligence and sources of foreign intelligence, whether human or technical. The disclosure of information of this type can, of course, be more or less damaging than that of other types of classified information, depending on many factors. However, there is an exception to the automatic declassification requirement in the current Executive Order for information relating to intelligence sources and methods.



Two draft statutes currently exist within the Administration for the protection of classified information. A CIA-sponsored bill would only cover information related to intelligence sources and methods. There is disagreement between CIA and Justice over certain of its provisions.

S. 1, a proposed revision of the Federal criminal code contains certain provisions which would protect classified information of all types. The Administration has urged prompt action on S. 1, although it has not endorsed its particular provisions. S. 1 has been referred to the Criminal Law Subcommittee of the Senate Judiciary Committee; as yet, no formal action has been taken by the Subcommittee.

The current proposed revision to the Federal criminal code (S. 1) provides protection for all types of classified information. It may be that legislation which covers only sources and methods would stand a better chance of passage than a broader bill, since information related to sources and methods may be perceived by the Congress and the public as more worthy of protection; such information does not relate to policy formulation and is less likely to be classified for purely bureaucratic reasons. However, if the classification system is rationally designed, there seems no legitimate reason to provide protection only for intelligence sources and methods.



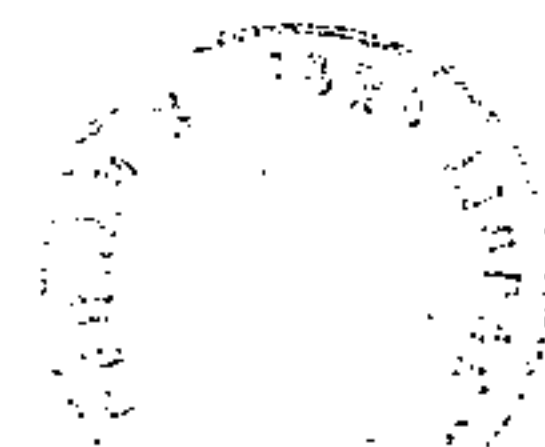
ISSUE: Whether statutory protection for classified information should cover only government employees or also the unauthorized recipient.

Current statutes related to classified information impose no direct sanctions on the recipients of leaks of such information unless they are acting as agents of foreign powers. However, if the employee who divulges such information intends to harm the United States, the recipient may be criminally liable under statutes on conspiracy and aiding and abetting. As a practical matter, very few leak recipients could be successfully prosecuted under current law. Both the CIA bill and S. 1 impose sanctions only on government employees. If they were extended to cover leak recipients, opposition would be even greater than it is now and First Amendment problems might be raised.

C. SANCTIONS AGAINST SECURITY VIOLATIONS

ISSUE: What form of statutory protection should be given to classified information (i.e., criminal or civil, or both)?

There are two basic methods for discouraging disclosure of classified information: criminal sanctions to be imposed after an unauthorized disclosure, and a civil injunction to be issued before a threatened disclosure. The CIA bill (but not S. 1.) provides for both types of actions. It would seem unwise to rely on the civil injunctive remedy alone. Although



in one respect it can be a more severe sanction (in that if one violates an injunction he may be punished for criminal contempt without a jury trial), it is generally ineffective since the government is usually unaware that disclosures are about to take place. Indeed, even in the absence of a statute, the civil injunctive remedy is available now to some extent in the cases of employees who have signed secrecy oaths; it has not proved particularly effective, standing alone. One might argue that proposed legislation should not include the civil injunctive remedy at all because of its lack of effectiveness and controversial identification with "prior restraint", especially since the remedy is available to some extent anyway if the employee has signed a secrecy oath.

It should be noted that neither type of remedy is likely to be effective in the case of disclosures by members of Congress and their personal and committee staffs either on the floor, in committee hearings, or in committee reports. Statements in such contexts are generally protected by the Speech and Debate clause of the Constitution.



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APPENDIX I - INDEX

- NSC/OMB Study
- Agency Comments (President's Copy Only)



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DRAFT REPORT TO THE PRESIDENT ON
ORGANIZATION AND MANAGEMENT OF THE
FOREIGN INTELLIGENCE COMMUNITY

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December 16, 1975

I/R-75/S-665

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MR 94-3, #1; CIA WHU 1/6/99

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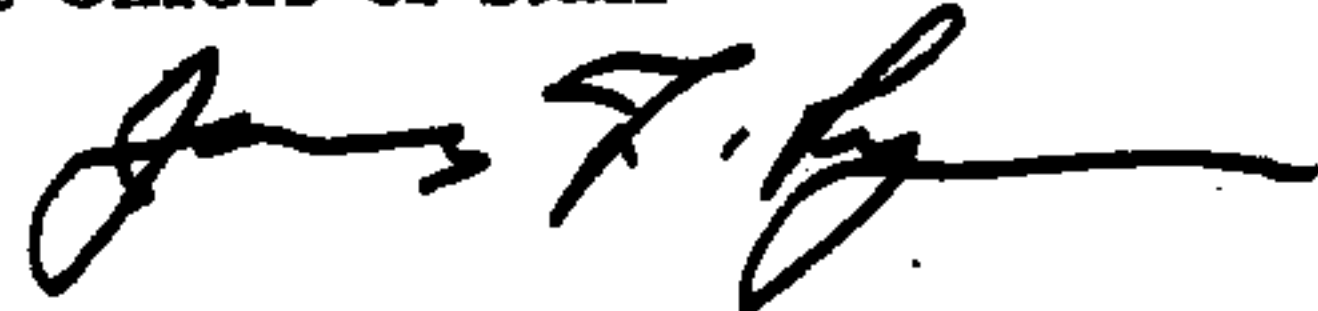
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16 December 1975

MEMORANDUM FOR: Secretary of State
Secretary of Treasury
Secretary of Defense
Attorney General
Director, Central Intelligence
Chairman, Joint Chiefs of Staff

FROM:

James T. Lynn



SUBJECT:

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

Transmitted herewith is the latest draft of the options and recommendations paper for the President concerning the organization and management of the foreign intelligence community. I understand that the text of the options paper has been reviewed by your working group representative.

The deadline for your comments and recommendations to the President with respect to the various policy options is Noon, Thursday, December 18. I appreciate the shortness of this deadline, but it is necessary in order to ensure that the President has the benefit of your views.

Thanks.

Attachment



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TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
I. Introduction	1
II. Current and Future Trends	2
Future Trends	6
III. Problems in Intelligence	10
A. Proper Safeguards Against Future Abuses	10
B. Quality Intelligence on a Timely Basis	12
C. Well-directed Intelligence Activities	17
D. A Need for Change?	22
IV. Actions to Prevent Abuses	24
A. Guidelines for Propriety and Restrictions	24
B. Oversight	24
C. Intelligence Policy Coordination	27
D. The 40 Committee	29
V. Intelligence Community Organization Options	30
Option #1 Centralized National Intelligence Program	32
Option #2 Centralized Resource Control	36
Option #2A	40
Option #3 Departmental Emphasis	41
Option #3A	45
Option #4 Modified Current Arrangements	46
Covert Action Location	50
VI. Management Improvements	53
A. Budgetary and Financial Controls	53
B. Compartmentation	55
C. Consumer Interaction with the Intelligence Community	55
D. Performance Evaluation System	56
E. Cover and Clandestine Collection	56

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ORGANIZATION AND MANAGEMENT OF THE
FOREIGN INTELLIGENCE COMMUNITY

EXECUTIVE SUMMARY

The primary objective of the foreign intelligence community is to provide quality intelligence on a timely basis to both policy-makers and operational officials. Any organization and management of the Community -- its collectors, processors, and producers -- must be shaped to accomplish this objective. To assure public confidence and support, organization and management must be structured to prevent potential abuses and to make maximum use of limited resources.

Demands from Congress for information on intelligence operations and substantive intelligence will force the Intelligence Community to operate in a more public arena. Diffusion of political and economic power, proliferation of nuclear and sophisticated conventional weapons, and growth in terrorism are creating broader demands for timely integrated analysis. Ever-increasing demands for high quality intelligence assessments, especially in crisis situations, will require increased use of advanced technological systems as well as the more traditional human intelligence sources. Any restructuring of the organization and management of the Community must respond to these challenges.

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Executive Branch safeguards are necessary to prevent potential abuses. Options include: (1) guidelines defining the scope of permissible intelligence activity and (2) mechanisms to improve Executive Branch oversight.

To improve quality and direction in the Intelligence Community, four major structural options -- three requiring legislative action -- are examined:

#1: Creation of a new expanded intelligence agency, headed by a Director of Intelligence, with resource and line control over the national programs -- the CIA Program (CIAP), Consolidated Cryptologic Program (CCP), and the National Reconnaissance Program (NRP). This option is based on the premise that national programs are best managed if centrally funded and controlled, and that gains from centralization outweigh disadvantages resulting from separation of collectors from their primary consumers.

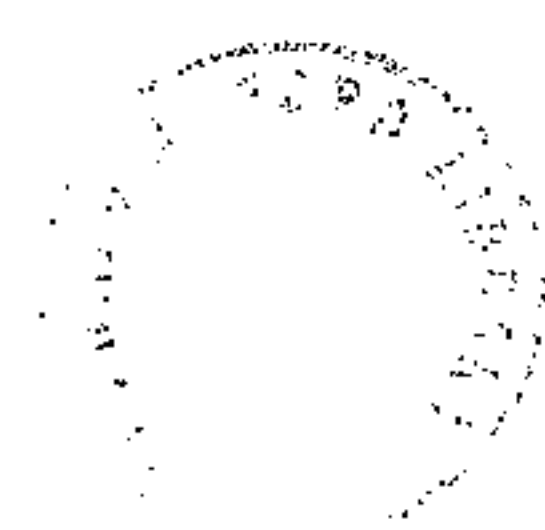
#2: Creation of a Director-General for Intelligence (DGI) with resource control over the CIAP, CCP and NRP, but line control only over his immediate staff. This option is based on the premise that a central leader with resource control and without a vested interest in any one element of the Community is needed. Option #2A differs from Option #2 by giving the DCI line control over present CIA production elements.

#3: Creation of a Director of Foreign Intelligence (DFI) with broad coordination powers but neither resource nor line control over any part of the Intelligence Community. This option is based on the premise that an intelligence leader, independent of any organization within the Community, would be best able to coordinate its activities, and that the Defense Department requires a major voice in resource and line control of intelligence assets. Option #3A differs from Option #3 by decentralizing intelligence production responsibilities through transfer of present CIA production elements to the relevant departments.

#4: Retention of current Community relationships with the addition of a second full Deputy to the DCI with management responsibility for the CIA and perhaps with expanded or restructured Executive Committees and production responsibilities. This option is based on the premise that major organizational changes may be undesirable, and that improved Community leadership structures are possible through administrative action.

The study also discusses moving the covert action capability out of CIA and placing it in a new, separate agency.

Finally the study also discusses certain possible management improvements.



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ORGANIZATION AND MANAGEMENT OF THE
FOREIGN INTELLIGENCE COMMUNITY

I. INTRODUCTION

On November 14, 1975, the President initiated a study of the organization and management of the foreign intelligence community, including an examination of:

- the basic structure of the Community,
- key problems of organization and management,
- definition of requirements,
- systems design and selection,
- resource allocation,
- guidance mechanisms,
- consumer-producer relationships, and
- relevant recommendations of the Rockefeller and Murphy Commissions.

Based upon the results of these reviews, the study was directed to:

- evaluate the need for changes in the current organization of the foreign intelligence community,
- present options for a possible reorganization of the foreign intelligence community, and
- submit the recommendations of each addressee [the Secretaries of State, Treasury, and Defense, Attorney General, Directors of OMB and CIA, and Chairman of the Joint Chiefs of Staff] on the options presented.

The study group determined that its charge did not include counter-intelligence or assistance to law enforcement agencies, because these areas include components outside the foreign intelligence community, primarily the FBI.

Classified by ~~Donald G. Ogilvie~~
Exempt from general
declassification schedule of E.O. 11652
exemption schedule 5B (1), (2), (3)
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Date Impossible to Determine

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II. CURRENT AND FUTURE TRENDS

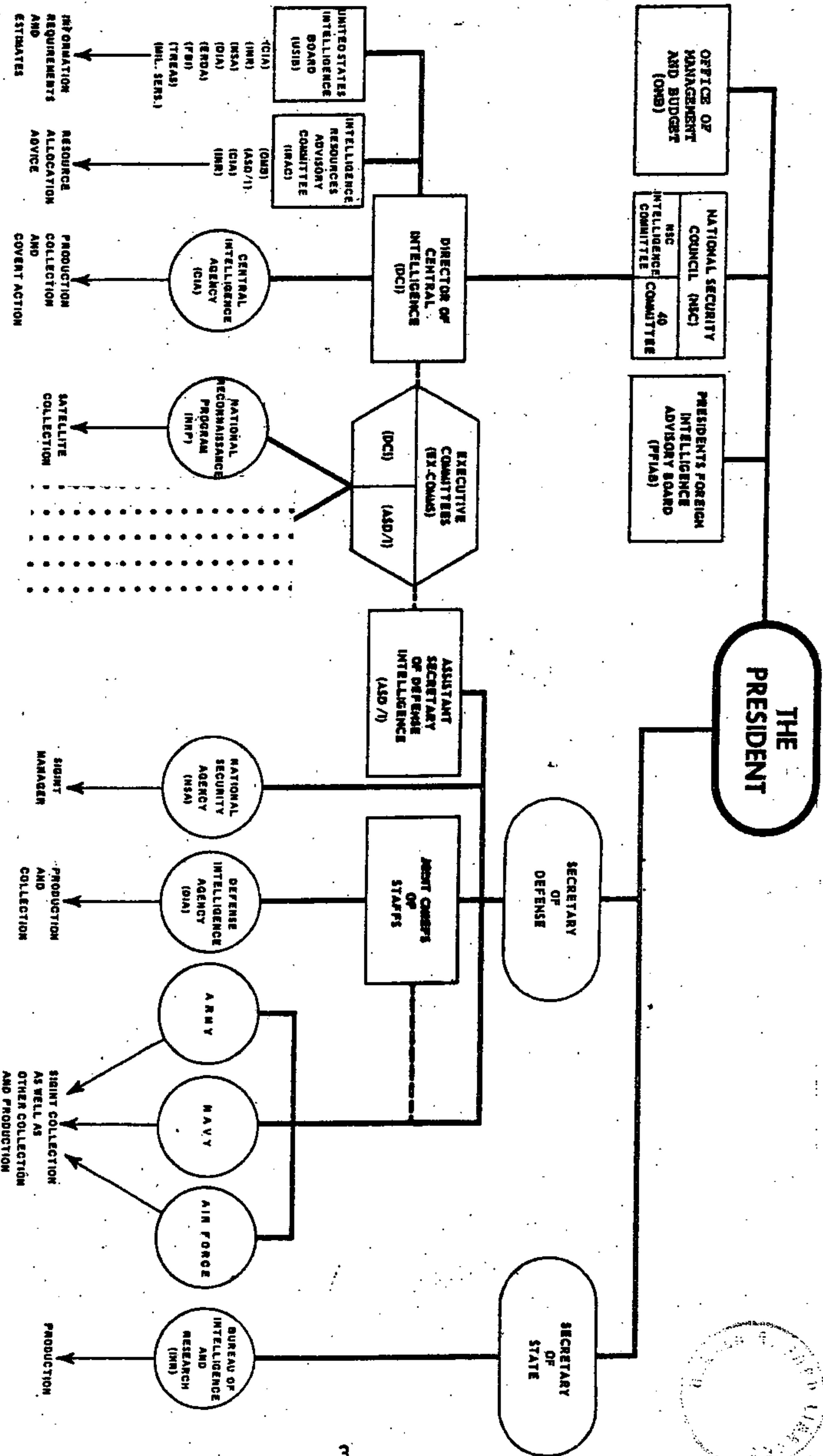
The foreign intelligence community serves a wide variety of consumers, not only at the national level but also in the field. These include the members of the NSC -- the President, Vice President, and Secretaries of State and Defense -- the Secretary of Treasury, and, to a lesser extent, the Secretaries of Commerce and Agriculture and the other members of the economic policy community. Also included are Ambassadors, trade negotiators, and military command authorities -- all stationed outside of Washington. These consumers use intelligence to guide policy decisions in the military, diplomatic, political, and economic areas.

Analysts and producers of intelligence include parts of the CIA, the Defense Intelligence Agency (DIA), the State Department's Bureau of Intelligence and Research (INR), Treasury and elements in the armed services. Collectors of intelligence include the CIA, the National Security Agency (NSA) and military Service Cryptologic Agencies, the National Reconnaissance Office (NRO), members of the Foreign Service Officer corps, Treasury, Agriculture, Commerce and Defense attaches, and elements of the armed services intelligence staffs. The chart on the facing page displays relationships in the foreign intelligence community.

The Director of Central Intelligence (DCI) is currently charged by the President with leadership of the Intelligence Community. His four major responsibilities are:

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INTELLIGENCE COMMUNITY ORGANIZATIONAL STRUCTURE



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WITH PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c), 34(b)(1)

MR 94-3, #1; CIA Ltr. 1/6/99

By let, NARA, Date 3/2000

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- Planning and reviewing all intelligence activities and the allocation of all intelligence resources.
- Producing national intelligence required by the President and other national consumers.
- Chairing and staffing all Intelligence Community advisory boards or committees.
- Reconciling intelligence requirements and priorities within budgetary constraints.

The DCI exercises both resource and line control over the CIA. The Defense Department exercises resource and line control over the Consolidated Cryptologic Program (CCP), the National Reconnaissance Program (NRP), and the General Defense Intelligence Program (GDIP). The DCI exercises the responsibilities outlined above through his line control over CIA production and collection components, through chairmanship of Community advisory committees on requirements, resources, and production, and through his authority to establish collection requirements and priorities. He is also chairman of an Executive Committee (ExCom) which sets budgetary and operating policy for the NRP. Finally, the DCI annually presents his recommendations on the total Intelligence Community program to the President.

Resources and personnel available to the Intelligence Community reached a peak during the Vietnam War and have declined in real terms since. An agency and functional picture of the 1976 intelligence budget request is shown on the facing page. CIA has about . . . percent of the total

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national intelligence resources with the bulk of its efforts concentrated in human intelligence collection, production, and various support functions. Almost all other intelligence resources are carried in the Defense budget, with signals intelligence, photo intelligence, and intelligence-related resources dominating the picture.

National intelligence resources can be described in three different ways:

- By function, about 85 per cent are dedicated to collection and processing, about 10 per cent to analysis and production of intelligence and the balance to support.
- By target area, over 75 per cent of foreign intelligence assets are directed at the communist world, primarily the USSR;
- By output category, about 85 per cent relate to the size and status of foreign military forces (including scientific and technical information), and the remaining 15 per cent cover political and economic subjects.

Future Trends

The USSR and Communist China will remain our major intelligence targets. There are, however, developing international trends and issues which will pose new challenges to the Intelligence Community over the coming years:

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- Largely because of the spread of new technology and the growth of global interdependence, more nations will acquire some measure of leverage in world affairs.
- The proliferation of nuclear and sophisticated conventional weapons, the organization of cartels such as OPEC, and the growing demand for raw materials will make coercive power increasingly available to foreign governments and non-governmental groups, including terrorist organizations.
- The gap between the have and have not nations will continue to widen. Issues such as mass starvation and overpopulation will grow in importance. The conflict between economic realities and social welfare aspirations will continue to create fertile fields for communist subversion, political turbulence, and growth of terrorist threats (perhaps involving nuclear weapons).
-
-
-
-

In the coming years, additional challenges to the Intelligence Community will be posed by the acceleration of international events requiring the capability to assess and respond on a near real-time basis. New collection and data systems will produce large amounts of information requiring a need for improved communications between agencies, better management and information handling capabilities, more advanced analytical methodologies, and new types of product presentation.

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A great variety of demands, issues and opportunities face the Community's leadership:

- Notwithstanding the increased sophistication of collection systems, there is a rising demand, particularly in crisis situations, not only for the kind of intelligence available from technical sensors, but also for intelligence which can normally be acquired only from human sources.
- The need for confident monitoring of Soviet compliance with SALT and other agreements and support of MBFR negotiations will require more detailed intelligence on Soviet and Eastern European military targets.
- Collection systems must be able to survive and be useable in wartime to satisfy combat needs.
- Congress will demand more substantive intelligence. Policies will have to be developed to determine what intelligence should be provided, how sensitive information is to be protected from public disclosure, and how to avoid inhibitions on the analytic independence of the Community.

Changes in the world at large, and in the means of perceiving and assessing their significance, have complicated the tasks and challenged the resourcefulness of the Community. These challenges do not argue

for any particular organization of the Community; they illustrate the diversity and scope of the demands upon the Community and suggest the potential significance of the way in which the Community is structured.

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III. PROBLEMS IN INTELLIGENCE

The Intelligence Community has made many vital contributions to the national security of the United States. Throughout its history efforts have been made to improve Community performance. Inevitably, in any study of this type, the focus must be on problems, rather than achievements, in intelligence. Problems in intelligence can be viewed in the context of three major objectives for management and organization of the Intelligence Community:

- Create proper safeguards against future abuses;
- Provide customers with quality intelligence on a timely basis; and
- Ensure that intelligence activities are well-directed.

A. Proper Safeguards Against Future Abuses

The current public focus on the Intelligence Community evolved from a concern over alleged abuses: surveillance of Americans, domestic electronic intercepts, mail openings, and assassination plots. The Commission on CIA Activities within the United States (the Rockefeller Commission), the Murphy Commission and recent Congressional investigations all concluded that existing safeguards against abuses, including guidelines, have been inadequate. The Commissions made a number of recommendations aimed at (1) ensuring that top policy-makers were aware of possibly questionable activities, and (2) promoting deliberative consideration of such activities.

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Inadequate safeguards were found within the Intelligence Community, the Executive Office of the President, and Congress. Although many Community-wide directives have existed for assignment of responsibilities and other management purposes, directives on proper conduct have been rare. The DCI, the leader of the Community, has no clear authority to inspect activities except within the CIA. Particular problems within the CIA identified by the Rockefeller Commission include the limited role of the Inspector General and General Counsel, absence of written regulations on this subject, and over-compartmentation of some activities. Within the Executive Office, inadequate mechanisms exist to review the legality and propriety of intelligence activities. Responsibilities for propriety rest primarily with the head of each operating component. Within the Congress, oversight of the CIA and other components of the Intelligence Community was conducted until quite recently by a senior group of Senators and Congressmen. This small group of Congressmen reviewed Community activities and approved intelligence budgets.

The recurring theme in oversight and safeguards against potential abuse at all three levels is the inadequacy of review mechanisms and insufficiency of attention to propriety. Because attention was not focused on this responsibility, certain activities were conducted without the top level attention they merited.

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B. Quality Intelligence on a Timely Basis

Production of quality intelligence on a timely basis extends deeply into the management of the whole intelligence effort. It includes the process by which resources are allocated to collectors, processors and producers; the quality and organizational placement of collection and production functions; the nature of the research and development efforts; and even the development of programs which provide necessary support for intelligence activities. While the leadership will continue to be challenged by the need to provide efficient management of Community resources, major attention must be devoted to intelligence production.

The Intelligence Community has been criticized for failing to predict major events and crisis situations such as the 1973 Middle East War. Over the years, however, the Community has dealt successfully with many different crises such as the 1967 Middle East War. Success or failure in forecasting events rests on the perceptiveness of the estimative judgments of the Community as well as the sufficiency of timely, relevant and accurate intelligence from which judgments of intent could be derived.

The Community's performance with respect to longer term estimates has also been mixed. The production of such estimates is complicated by (a) the paucity of hard evidence and (b) the fact that judgmental accuracy hinges on future decisions or actions of foreign governments, or on U.S. decisions or actions to which the estimators are not privy. Accuracy

apart, the utility of estimates is also complicated by problems of dialogue and feedback between intelligence consumers and intelligence producers. While senior policy officers have often felt that intelligence assessments are not sharply focused on their real needs and concerns, these policy officials often do not clearly articulate their needs. The estimates production process, however, does compel an orderly review of all new intelligence and analysis and forces old assumptions to be retested and discarded or revalidated.

Estimates of concrete, factual subjects -- e.g., military capabilities -- are generally well regarded and thought to be useful. In those addressing political and economic subjects, the judgment quotient is much higher. They elicit a more mixed reception and represent areas in which State and Treasury rely heavily on their own analytical resources.

A number of problem areas in provision of quality intelligence have been identified:

Consumer relations with the Intelligence Community. While intelligence produced for policy-makers in recent years has improved in quality and timeliness, certain problem areas remain that impact adversely on the intelligence product and on the efficiency of the intelligence process. There is inadequate guidance and feedback from senior policy officials, compounded by a traditional reluctance to make certain sensitive policy or operational information available to intelligence officials. When intelligence

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personnel are in close contact with policy and operational activities, their appreciation of the priority issues is vastly improved. The present active participation of CIA, DIA, and INR in the SALT and MBFR delegations, for example, is considered a useful model for intelligence working relations with policy elements.

The NSC Intelligence Committee (NSCIC) has been criticized for not performing the product review and consumer guidance functions for which it was organized. However, the NSCIC working group now meets regularly, has provided some guidance on requirements, and has initiated a consumer survey.

Consumers are often inadequately informed as to the resource implications of their requirements. Although they need not be intimately involved or knowledgeable concerning the details of the intelligence resource allocation process, they should be informed when the cost of their intelligence requirements has significant cost or trade-off implications.

Crisis management. The consumer relationship becomes especially crucial during crises. It is essential that intelligence analysis in critical circumstances proceed from an understanding of operational policy decisions so that the likely reactions of the other side can be assessed. The White House, State, Defense and the DCI all have major roles to play in improving procedures to develop better intraagency, interagency and White House ties.

In times of crisis, each Agency organizes itself to maximize support for its chief who participates in crisis management decision-making through

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the NSC's Washington Special Action Group or less formal arrangements. These generally work well; but, there is little overall coordination of agency activities. They often result in a large volume of unevaluated information at the top. Timeliness of intelligence reporting has taken precedence over careful analysis and interagency coordination. The future challenge is to ensure adequate analysis and timely reporting and to provide for more interagency dialogue.

National intelligence support to field commanders. National collection systems can provide information to military commanders at the level of detail needed for planning and conducting military operations, but their utility as wartime assets remains to be tested. Military intelligence is an essential element of the combat commander's force. National collection assets offer promise of contributing significantly to the commander's intelligence needs. If the national assets cannot meet requirements for timeliness, accuracy, availability, dependability and survivability in a combat environment; however, combat commanders will remain understandably reluctant to become overly dependent on national collection systems. An effort is currently under way to provide processed information directly to military commanders at the theater level and below.

Secrecy and compartmentation. Access to some intelligence information at both the policy and operational levels requires special clearances, which are considered necessary to protect sources and methods of



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intelligence and other sensitive information from unauthorized disclosure. A classification system established by an Executive Order, reinforced by unusual employment termination authorities over employees of CIA and NSA, and a series of less than airtight criminal statutes are used with varying degrees of effectiveness to protect intelligence. For many years, it has been recognized that these procedures and sanctions are inadequate to accomplish their task and to allow the DCI to fulfill his statutory responsibility to protect sources and methods.

In part because of the inadequacy of classification and statutory sanctions, a number of special control systems for particular types of intelligence information have been developed. Compartmentation, properly applied, permits a broader dissemination of less sensitive material while protecting the most sensitive. However, procedures to remove classified information from control systems are usually elaborate and time consuming. A continuing problem is the difficulty of ensuring that consumers have access to the kinds of intelligence products they require. Separate control systems also inhibit useful intelligence analysis and production. Compartmentation procedures in some organizations artificially divide the intelligence data base and make it difficult -- in some cases impossible -- to store and integrate information collected at great costs. Much has been done to sanitize and decontrol intelligence to make it more widely available. More remains to be done. In undertaking such changes, sensitive material must be protected.

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C. Well-Directed Intelligence Activities

Consideration of the third objective -- ensuring well-directed intelligence activities -- starts with the National Security Act of 1947 which gave CIA the responsibility to advise and make recommendations to the NSC and to correlate and evaluate intelligence relating to the national security. Existing Presidential directives state that the DCI "shall assume leadership of the Community in planning, reviewing, coordinating, and evaluating all intelligence programs and activities, and in the production of national intelligence." Today, the DCI has resource and line control authority over only one part of the Intelligence Community -- the CIA. His Community responsibility to set requirements and priorities for collection is established in NSC directives and is exercised through a variety of committees and ad hoc arrangements. The DCI must coordinate all national intelligence resources to assure that military, economic and political concerns receive appropriate emphasis. The Secretary of Defense must ensure that his military intelligence organization, as an integral part of the national intelligence community, provides information to all echelons of command. The increasing capability of national collection assets to provide intelligence to field activities calls for closer interagency cooperation in a number of areas:

Peacetime/wartime transition. In peacetime, centrally-managed technical collection systems such as the National Reconnaissance Program



and the Consolidated Cryptologic Program are controlled by a variety of mechanisms in which the DCI's influence varies. In wartime, Defense intelligence requirements are paramount.

For transition to wartime, the Joint Chiefs of Staff and the DCI have concluded formal understandings governing military/CIA command relationships at the theater level in war and contingency situations. There is, however, no peace/war transition agreement at the national level. Closely related is the question of whether existing arrangements provide for an effective transition to crisis and hot war conditions. Formal agreements concerning DCI and CIA support to Defense in time of war could enhance collaboration between the two organizations in time of peace.

Control over Community resources. The DCI has direct resource control over the CIA, less direct control but substantial influence over the National Reconnaissance Program, and influence through the requirements process and the recommended program budget over the General Defense Intelligence Program and Consolidated Cryptologic Program.

Budget development and execution occurs primarily within the departments. However, the National Reconnaissance Program budget developed by an Executive Committee (ExCom) made up of the DCI and the Assistant Secretary of Defense for Intelligence.

Although the budget is handled primarily within the departments, the DCI submits each year a set of program recommendations to the President

for his consideration in preparing next year's budget. In this document the DCI discusses important aspects of the U.S. Foreign Intelligence Program, presents his position on budget issues, and displays a recommended level of Community resources for the coming year. Because it is superimposed on the normal budgetary process, there have been problems of timing associated with this submission. It must be formulated after the preliminary budgets are formed and the issues defined and debated, but before the President's budget is assembled.

The DCI also uses two interagency advisory review mechanisms:

- The United States Intelligence Board (USIB). The USIB was established to advise the DCI and identify information needs and requirements. When the information requirements can be readily translated into resource requirements, they influence resource levels.
- Intelligence Resources Advisory Committee (IRAC). The IRAC was established to advise the DCI on the preparation of the intelligence budget and the allocation of resources among programs. It has as members the DCI and senior representatives from State, Defense, the CIA and OMB.

There is no single central controller of intelligence resources. Trade-offs among collection, processing and production functions seldom are made, in part because of the diverse budget review process. It is



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difficult to relate resource inputs to product outputs. While there is a tie between processed intelligence input and finished analytical output, the relationship of product to processing and collection activities except in isolated circumstances is difficult to quantify. Further, decisions tend to be made in terms of particular sensor collection capabilities to the exclusion of consideration on an across-the-board basis among available resource options.

Clandestine collection and covert actions. CIA, and to a limited extent the military services, conduct clandestine collection abroad. The importance of such collection remains high in learning about the secret activities, plans and intentions of foreign states.

Cover is essential to CIA's clandestine collection. Few foreign governments could tolerate an openly identified CIA contingent. As the size of the American official presence abroad has decreased in recent years, so has the opportunity for official cover for CIA operatives. CIA has made increasing use of non-official cover; but these arrangements are generally costly and inefficient and sometimes dangerous to the operative. The CIA and State have been unable to resolve to their mutual satisfaction how much and what kind of State Department cover can be provided.

Clandestine collection by its nature is often extremely sensitive politically. Because of the importance of secrecy in these matters, coordination of sensitive clandestine collection has tended to be worked

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out at the local level, between the Ambassador and the CIA Station Chief. Public Law 93-495 expresses Congress' view that coordination is essential. While a limited amount of Washington-level coordination takes place at working levels between State and CIA, mutually acceptable procedures have not been achieved.

Covert actions, including political and psychological projects and paramilitary warfare, have been carried out by the CIA almost since its inception. Proposals for moving covert action out of the CIA have been made many times but have always been rejected.

Review, coordination, and approval of covert operations is the responsibility of an NSC subgroup, the 40 Committee. The Murphy Commission and congressional observers have criticized this committee for inadequate deliberation and staff support and for failure to represent a broad enough diversity of policy-makers. At times in the past, 40 Committee meetings have not been held; decisions were made by telephone or written correspondence. Inadequate time for staff consideration has been a criticism both within the government and outside. Although the 40 Committee charter calls for annual reviews of ongoing programs, this direction has not always been followed. The Attorney General has served on the 40 Committee in the past, but served more as a trusted Presidential aide than as the government's chief legal adviser.

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D. A Need for Change?

Since 1947, major changes have occurred in the size and scope of the responsibilities and activities of the Intelligence Community. Over this period the DCI's Community leadership has remained basically constant; however, the intelligence leadership structure within Defense has become increasingly centralized. A wide assortment of committee arrangements has been developed to advise the DCI, who has coordinating authority, and managers within the Community, who have resource and line authority.

In the oversight area, new arrangements seem required. Although the publicity of the last year was probably the most effective safeguard possible against potential impropriety, the preferred prescription for the future is not continued exposure, but rather sound oversight within the Community, at the Executive Office level and in Congress.

With respect to the management and control of Intelligence Community resources, the 1971 Presidential Directive gave the DCI a resource review responsibility for the entire Intelligence Community but no statutory or fiscal authority to enforce such a responsibility. Arguments for centralization based upon the growing resource management task stress the DCI's lack of real authority and the Intelligence Community's increasing reliance on expensive collection systems which require central management to serve the full range of potential consumers. Counter-arguments stressing the need for greater, or at least unimpaired, departmental authority point to

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the substantial influence that the DCI has exercised under present directives and arrangements. They also contend that major technological collection programs, such as the National Reconnaissance Program and Consolidated Cryptologic Program have worked well, are responsive to national requirements, and represent a form of Community management that while decentralized makes effective use of scarce resources and expertise.

Proponents of major organizational change believe that new institutional arrangements at the top of the Community are necessary for effective consideration and solution of many complex problems. Opponents, on the other hand, believe major organizational change is not required and would be disruptive, reduce morale and actually decrease efficiency, at least in the short run.

As a final point, it is generally agreed that the House and Senate Select Committees will make proposals for reorganization and that the President would be well advised to set forth his own proposals which could be useful as guides for Congress in its deliberations. On the other hand, while such proposals will be advanced, there is no certainty that Congress will act.

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IV. ACTIONS TO PREVENT ABUSES

Recent events have demonstrated the need for improvement in existing control procedures over the Intelligence Community within the Executive Branch and in Congress. Changes in both organization and procedures to provide additional control are examined below.

A. Guidelines for Propriety and Restrictions

A code of standards for the conduct of intelligence activities is needed. A draft Executive Order has been prepared for intelligence agencies (excluding the FBI) which sets restrictive guidelines for domestic activities (e.g., mail opening, infiltration of dissident groups, illegal electronic surveillance, inspection of tax returns, collection of information on U.S. citizens and drug testing) and which limits activities which can be taken to protect intelligence sources and methods. Approval and dissemination of an Executive Order is a necessary first step toward providing the guidelines within which the Intelligence Community must operate.

B. Oversight

A number of legislative proposals have already been introduced to enhance the congressional oversight role. Two distinct possibilities are emerging:

- Establishment of a joint oversight committee with responsibility to review all intelligence activities; and
- Establishment of a wider General Accounting Office role in review of intelligence.

Against this backdrop, three tiers of potential options exist within the Executive Branch:

1. Executive Branch oversight -- within the Intelligence Community.

The DCI currently utilizes an Inspector General (IG) to review only CIA activities. Each agency is responsible for carrying out an inspection function of its own activities. Special clearances and sensitive aspects of intelligence functions have inhibited deep scrutiny in the past. Two options can be considered:

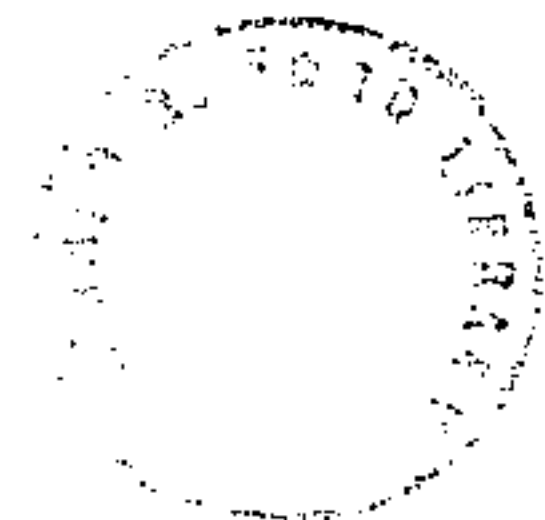
- Strengthen the inspection function in each agency;
- Establish a Community IG under the DCI.

Establishment of a Community IG should reflect the planned future role of the DCI. Conflicts may arise between a Community IG and the intelligence agencies regarding access and degree of authority. Also relevant is the decision on the need for a Counsel to the President, as addressed in the following section. The arguments for either a Community IG or oversight at the Presidential level are fairly clear, but the functions of the two would overlap. Some would question the need for both.

2. Executive Branch oversight -- outside the Intelligence Community.

A decision in this area should address the following:

- Usefulness to the President of an independent oversight official;
- Ability of this official to gather useful information; and
- Public perception of the change -- substantive or cosmetic.



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Three options have been identified:

- The Attorney General, who would advise the President through use of a staff established within Justice to monitor intelligence activities; or
 - A Special Counsel to the President, together with an appropriate staff, who would be responsible for advising the President on the legality and propriety of intelligence activities; or
 - A government-wide Inspector General, who would also respond for the President to improprieties in Federal activities beyond the Intelligence Community. His appointment would demonstrate a willingness to address other Executive Branch improprieties.
3. Executive Branch oversight -- by outside Government personnel.

Another approach to oversight involves the use of a non-government group to advise the President. Two options are identified:

- Adding an oversight responsibility to the President's Foreign Intelligence Advisory Board (PFIAB); or
- Establishing a new oversight group.

The Rockefeller and Murphy Commissions both strongly endorsed the concept of expanding the PFIAB charter. The key question to be resolved here is the extent to which an advisory group (even with a permanent and expanded staff), meeting on an occasional basis, could effectively oversee ongoing intelligence

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operations. Expansion of the PFIAB charter should probably be coupled with appointment of a more diversified membership. Determination of whether to use the PFIAB or to establish a new group depends heavily on consideration of the extent to which the PFIAB's primary role in the past -- encouragement of the Intelligence Community to do the best job possible -- would be diluted by, and perhaps even conflict with, this new responsibility.

C. Intelligence Policy Coordination

A number of intelligence activities impact on policies -- domestic, diplomatic and military -- outside the Community. The NSC has the statutory duty of integrating domestic, foreign and military policies. This duty is currently carried out through NSC directives and NSC committees. Coordination of intelligence activities, in large part due to their highly sensitive nature, remains a difficult problem. Ad hoc arrangements have, with varying effectiveness, been used to integrate policy in intelligence-related areas such as surveillance of Americans, official cover for clandestine operations and communication intercepts.

The organizational focus within the Executive Office should address:

- The ability to coordinate the efforts of foreign intelligence, counterintelligence, and domestic intelligence on specific projects; and
- The public and Congressional perception of Executive Office control over intelligence activities.

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Three options have been identified:

- Expanded Use of the NSC Structure. The NSC structure could be better used to integrate policies involving domestic and foreign intelligence. NSC Committees could be augmented to include Justice and Treasury. Other departments could be brought in as the subject demands. Either a new committee could be established, or the functions assigned to the NSC Intelligence Committee could be expanded.
- Intelligence Adviser to the President. One person located in the Executive Office could be assigned responsibility for integrating those interagency policies affecting foreign and domestic intelligence activities. A special adviser would have some authority and high public visibility. Ad hoc committees could work with the intelligence adviser and his staff on designated problems; oversight responsibility could also be assumed. Conflicts with the NSC could occur, however, because the special adviser's responsibilities would overlap those of the NSC.
- Improved DCI/Agency Coordination. Foreign and domestic policy considerations involving foreign intelligence efforts could be handled through existing informal mechanisms directly between the DCI and involved agency heads without White House participation. This would require re-examination of the current role of the DCI.

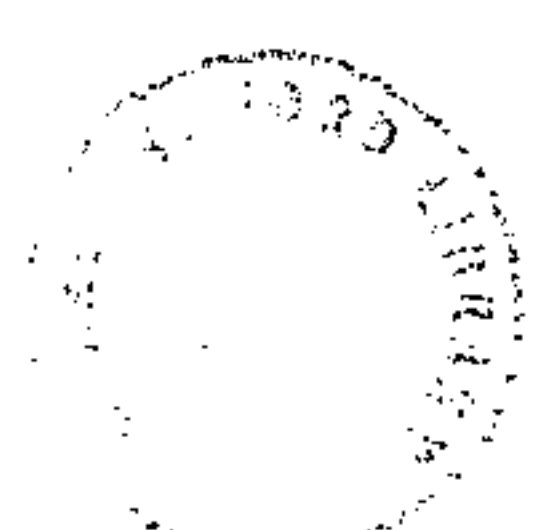
D. The 40 Committee

The NSC's 40 Committee provides policy approval for covert actions. The group is chaired by the Assistant to the President for National Security Affairs and includes the DCI, State, Defense and the Joint Chiefs of Staff. The Attorney General is formally a member but has not been an active participant in recent years.

While formal review procedures have been established, there is a general perception by Congress and independent commissions that there has been an inadequate substantive review of proposed actions. Improved review might be achieved by:

- Reinstating formal committee meetings on all significant covert and sensitive requests;
- Redesignating the Attorney General as a committee member with additional representation from other departments as the subject demands (with attention paid to possible conflict of roles for the Attorney General if he is designated as the President's intelligence inspector); and
- Adding staff to provide non-departmental substantive analytic input on the need, risk and potential benefits of each operation.

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V. INTELLIGENCE COMMUNITY ORGANIZATION OPTIONS

In the context of addressing the problems discussed in Section III, the study group examined a wide variety of Community leadership alternatives, ranging from total centralization of all intelligence resources and programs to elimination of any central intelligence coordinator. Four organizational options were analyzed in depth. These options are intended to present a range of choices and need not be adopted in their entirety.

Key elements of these options are:

- Identification of the overall leader of the Intelligence Community and definition of his place within the hierarchy of the Executive Branch and the Intelligence Community;
- Specification of operational responsibilities;
- Specification of analytic and production responsibilities;
- Specification of resource responsibilities; and
- Definition of the jurisdictions and organizational inter-relationships of the major components of the Intelligence Community.

All options would accommodate an intelligence leader who could either continue in his traditional role as adviser to the NSC or himself become a member of the NSC. Full NSC membership, by increasing the intelligence leader's stature, would strengthen his role within the Community. Conferral of Cabinet rank or statutory direct access to the President could serve the same purpose. Retention of the adviser role has the advantage of keeping

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intelligence separated from policy and precludes over-identification of the Government's chief intelligence officer with specific policy choices.

Of the four options considered, legislation would be required to implement the first three. The fourth could be accomplished through administrative action.

Certain elements are common to all options. First, all options would accommodate an Inspector General under the direction of the Community leader to ensure legality and propriety in the conduct of intelligence activities. The more control the leader of the Community had, the more authority and access his Inspector General would have.

Second, all options envisage the head of the Intelligence Community as Community spokesman in relations with Congress including the presentation of an overall intelligence budget and provision of substantive intelligence. The extent to which the DCI would speak for the Community is greater under options envisaging increased centralization than in those stressing departmental roles.

Third, all options envisage continuance of departmental intelligence production to support departmental missions and to contribute to national intelligence production.

Finally, all options would relieve the DCI of responsibility for day-to-day management of CIA and for reviewing tactical intelligence resources.

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SUMMARY OF
 INTELLIGENCE COMMUNITY LEADERSHIP OPTIONS

	OPTION #1	OPTION #2	OPTION #3	OPTION #4
	CENTRALIZED NATIONAL INTELLIGENCE PROGRAM	CENTRALIZED RESOURCE CONTROL	DEPARTMENTAL EMPHASIS	MODIFIED CURRENT ARRANGEMENTS
Leadership of Community	Director of Intelligence (DI)	Director General for Intelligence (DGI)	Director, Foreign Intelligence (DFI)	Director, Central Intelligence (DCI)
Operational Responsibilities	DI line authority over CIAP, CCP, NRP	DGI no line authority	DFI no line authority	DCI delegates CIA line authority to a 2nd Deputy
Resource Responsibilities	DI controls CCP, NRP, CIAP resources	DGI controls CCP, NRP, CIAP resources	DFI review only; Chairman, NRP ExCom	DCI controls CIAP; Chairman NRP & SIGINT ExComs; Reviews other resources
Collection Responsibilities	DI controls all CIAP, CCP, NRP elements	DGI establishes requirements & priorities	DFI establishes requirements & priorities	DCI establishes requirements & priorities
Production Responsibilities	DI produces all national intelligence	DGI produces national estimates; tasks other production elements	DFI produces national estimates; tasks other production elements	DCI produces national estimates; controls CIA production
Committee Structure	Most existing committees can be eliminated	Retain existing or similar committees; Eliminate IRAC	Retain existing or similar committees	Retain existing committees; Add SIGINT ExCom
Legislation Required	Yes	Yes	Yes	No

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 E.O. 12958, Sec. 3.5
 NSC Memo, 11/24/98, State Dept. Guidelines and MR 94-3, #1; CIA LHM 1/6/99
 By lf, NARA, Date 4/2000



OPTION #1

CENTRALIZED NATIONAL INTELLIGENCE PROGRAM

RATIONALE

This option is based on the premise that the present intelligence system suffers from a division of responsibility and control of resources and operations, and that the best approach to the problem is to centralize every element that reasonably can be centralized -- the CIA Program (CIAP), the Consolidated Cryptologic Program (CCP), and the National Reconnaissance Program (NRP). This option assumes that the gains in centralizing intelligence resources outweigh any disadvantages resulting from transferring some collection agencies from their primary customers. This new agency would serve the Government's intelligence needs much as the Justice Department serves its legal needs.

SUMMARY DESCRIPTION

The major and most costly national intelligence activities, CIAP, NRP and CCP, would be combined into a single agency, headed by a Director of Intelligence. Departmental analysis and production centers would be retained, permitting the presentation of contrasting points of view in national intelligence production.

While this option creates the maximum centralization of intelligence of all the options presented, it does not encompass all intelligence. Thus, departmental intelligence components would remain basically unchanged.



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PRIMARY CHANGES AND EFFECTS

Leadership of Community

The Director of Intelligence would have line authority over national foreign intelligence activities, including the CCP, NRP and CIAP. This provides the maximum leadership authority of all the options.

Operational Responsibilities

The Director of Intelligence would be fully responsible for operational and other aspects of national intelligence, including the CIAP, the CCP and the NRP.

Resource Responsibilities

The new agency would include the budgets of the CCP, NRP and CIAP, which the Director of Intelligence would review and approve. The Director of Intelligence would develop and submit the overall intelligence budget to the President and Congress.

Collection Responsibilities

All collection elements included within the CIAP, the CCP and the NRP would be contained in the new agency. Their organization would be left to the Director of Intelligence.

Production Responsibilities

Production of national intelligence (national current intelligence production, national estimates, maintenance of national intelligence data, and specialized intelligence research) would be centralized in the new agency,

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but other departments would continue to produce departmental intelligence. The nucleus for the production component would be centralized in the new agency but other departments would continue to produce departmental intelligence. The nucleus for the production component would be the production elements of what is now the CIA, possibly with augmentation from analytical elements of other departments.

Committee Structure

The Director of Intelligence would have authority to settle disputes without recourse to the present committee structure; however, some form of committee structure would be required for interaction with other departments.

Effect on Intelligence Product

Centralization of control over national programs under the authority of one individual could result in improvements in overall product quality as collection, processing, and production resources are focused on highest priority problems. However, diversity and competition of views will be submerged to the extent that production is centralized at the expense of the departments.

Effect on Intelligence Management

Combining resource and management control in one agency could result in the most effective and efficient intelligence management system of all options by eliminating conflicts between responsibility and control.



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A short-coming is the possibility of decreased responsiveness to the requirements of Defense which currently generates the preponderance of intelligence requirements. At the outset, realignment and reorganization would be unsettling and would adversely affect efficiency.

The proposal to establish a new intelligence agency would encounter congressional and departmental opposition.

Finally, establishment of such an agency would focus attention on the intelligence budget and might increase demands for more open consideration of it.

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OPTION #2

CENTRALIZED RESOURCE CONTROL

RATIONALE

This option is based on the premise that there is a need for a stronger Community leader, but that Defense, with its military requirements, must retain a strong voice in the management of certain intelligence assets now under its direct control. This option strengthens the leader by giving him resource control over the national intelligence programs -- the CIAP, NRP and CCP -- while leaving Defense's operational control over the NRP and CCP intact. The leader is separated by statute from the CIA, reducing the conflict between his present roles as head of the Intelligence Community and head of the CIA. These changes are intended to strengthen the leader of the Community and relieve him of vested interest in any one segment of the Community.

SUMMARY DESCRIPTION

The DCI would be separated from CIA and renamed the Director General for Intelligence (DGI). He would have no operational responsibilities but would continue to be the President's chief intelligence adviser. He would have control over the national intelligence budget which includes the CIAP, CCP and NRP. Defense would continue to manage the NRP and CCP; and a newly created Director of CIA would manage the CIAP. The Director of CIA would report to the NSC through the DGI. The Director of CIA would be responsible

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for day-to-day management of CIA and for management of national intelligence production, drawing on other agencies, as now.

A variant of this option discussed as Option #2A below would give the DGI direct management responsibility for intelligence analysis and production.

PRIMARY CHANGES AND EFFECTS

Leadership of Community

The DGI would be charged with overall policy direction for the Intelligence Community, without direct line management over any of its operational elements. His leadership authority would rely on resource control and independence from agency ties.

Operational Responsibilities

The DGI would have a staff similar to the present DCI Staff, i. e., the National Intelligence Officers (NIO's) and the Intelligence Community Staff (IC Staff), but no operational responsibilities. Operational control of the NRP, CCP and GDIP would be retained in Defense. Operational control of the CIAP would be vested in a Director of CIA.

Resource Responsibilities

The DGI would control budgets for the three major national intelligence programs. Funds for these programs would be appropriated to the DGI for reallocation to program managers. The DGI would develop and submit the overall intelligence budget to the President and Congress.

Collection Responsibilities

The DGI would provide guidance concerning information requirements, review the adequacy of collection requirements developed by the Community, and make recommendations for necessary improvements. He would use his control over the budgetary process to insure adherence to his policy guidance.

Production Responsibilities

The DGI would be directly responsible through his NIO Staff for the production of national intelligence estimates. He would be responsible for providing guidance to the Intelligence Community on needs and priorities and for arranging for the provision of intelligence support to the President, the NSC and Congress.

Committee Structure

The DGI would require USIB, IRAC, ExComs or similar bodies to insure effective coordination and integration of resource and operational matters. This option presents an opportunity to streamline the committee structure.

Effect on Intelligence Product

By giving the DGI basic authority over the resource allocation process, he should be able to focus collection systems on high priority production requirements and to evaluate the performance of both collectors and producers in meeting consumer needs. DGI control over resource decisions concerning the CCP and NRP might provide insufficient assurance of adequate resources

to meet the needs of military customers. Defense operational control over the CCP and NRP would be an offsetting factor.

Over the longer term, development of a resource review process in which fundamental trade-offs can be considered, and costs and benefits can be evaluated, could have a positive effect upon overall product quality.

Effect on Intelligence Management

The changes proposed would give one individual, the DGI, effective authority to establish a comprehensive and integrated resource review process for the three major national intelligence programs. This arrangement allows the DGI to establish priorities and effect trade-offs in developing an optimal intelligence program. By leaving operational control over the CCP in Defense, and by maintaining existing NRP arrangements, Defense would continue to exercise significant control over these programs in order to satisfy essential military requirements.

A potential problem with such an arrangement, most particularly in the case of the CCP, is whether a program manager could efficiently carry out his responsibilities while reporting to Defense on operational matters and to the DGI on resource matters. This could also create problems in ensuring that Defense planning was adequately related to resource decisions made by an independent DGI. However, analogous procedures, including the NRP ExCom, exist elsewhere in government.

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OPTION #2A.

This option is identical in all respects to Option #2 except that, under this variant, in order to concentrate his efforts on improving the national intelligence product, the DGI would retain full responsibility for line management of present CIA production components.

The principal advantage of this variant is that it would give the DGI line control over production resources to carry out the substantive responsibilities given to him under the option. Also, it would disassociate present CIA production elements from operational components of CIA. The principal disadvantage of this variant is that it gives the DGI line management responsibility for a sizeable production program, thereby reducing his ability to carry out an impartial resource management role as established under the basic option.

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OPTION #3

DEPARTMENTAL EMPHASIS

RATIONALE

This option is based on the concept that the necessary independence of the DCI within the Intelligence Community is compromised by his ties to the CIA, and that the responsibilities of the Department of Defense require a major voice for the Secretary of Defense in the development and management of intelligence assets. This option attempts to increase the DCI's stature as an independent leader of the Community by divesting him of his management responsibilities over the CIA, while retaining his role in major resource decisions. Resource control would reside in the departments and agencies.

SUMMARY DESCRIPTION

Under this option, the present DCI would be renamed the Director, Foreign Intelligence (DFI); and the DFI would be organizationally separated from the CIA. The DFI would take the NIO structure and IC Staff from the DCI organization. The CIA would be rechartered under a Director of CIA reporting to the NSC through the DFI. Most present CIA SIGINT functions would be consolidated in the CCP in Defense. The DFI would have the primary responsibility of providing substantive intelligence support to the President and the NSC. The DFI would have a role in Community resource decisions concerning major national intelligence systems through his

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authority to establish requirements and priorities and through his chairmanship of the IRAC and the NRP. The DFI would provide independent assessments regarding national intelligence on both substantive and resource matters, and he would task elements of the Community to aid him.

Under a variant, Option #3A discussed below, CIA production elements would be transferred to other departments; and the DFI would be cast in the role of "coordinator" of departmental intelligence.

PRIMARY CHANGES AND EFFECTS

Leadership of Community

The DFI would be charged with overall policy direction for the Intelligence Community, without direct line management or resource control over any of its operational elements. His authority would be vested in him through appointment by the President as an independent leader.

Operational Responsibilities

The DFI would have a staff similar to the present DCI Staff, i. e., NIO's and the IC Staff, but no operational responsibilities. Control of the NRP, CCP and General Defense Intelligence Programs would be continued under the Secretary of Defense. ExCom arrangements for the NRP would remain essentially unchanged. NSA would remain under Defense (the Secretary of Defense is the Government's executive agent for SIGINT) with



SIGINT activities now conducted by CIA, except those in direct support of agent operations, included in the CCP. Operational control of the CIAP would be vested in a Director of CIA.

Resource Responsibilities

Development of program budgets would remain as a departmental or agency responsibility. The DFI, in an advisory role, would provide the President with an independent review of the entire intelligence budget as at present. Funds for the CIAP, CCP and NRP would be appropriated to operating departments and agencies for reallocation to program managers.

Collection Responsibilities

The DFI would establish requirements and priorities and provide recommendations regarding the national intelligence program, but would lack resource control. The Director of CIA would supervise all clandestine HUMINT collection activities, except those organic to combat units or in direct support of military activities. Defense would control all SIGINT collection activities except those in close support of CIA agent operations.

Production Responsibilities

The DFI would have no production organization, but would be responsible for providing guidance to the Intelligence Community on intelligence needs and priorities, arranging for intelligence support to the President, the NSC and Congress, and for reviewing and evaluating the resulting national intelligence products. The DFI, through his NIO's, would coordinate and

arrange with departmental elements for the production of National Intelligence Estimates. The DFI would coordinate the integration of the intelligence production activities.

Committee Structure

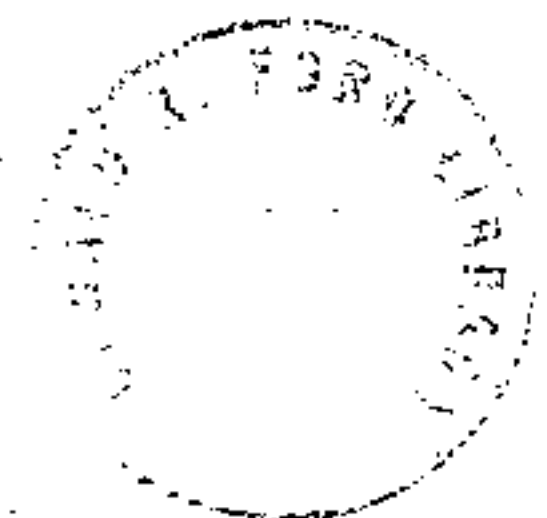
The present committee structure, or some similar structure, with the DFI chairing appropriate committees, would be needed.

Effects on Intelligence Product

Emphasizing departmental responsibility for production could lead to improved responsiveness to departmental heads. An inherent danger could be the diminution of an independent capability to produce and critique intelligence assessments.

Effect on Intelligence Management

This approach effectively removes the present conflicts between the DCI's roles as Community leader and as head of CIA, but it leaves him with neither budget nor operational authority to shape the programs of the Intelligence Community. However, through presentation of annual budget recommendations to the President and his chairmanship of USIB, the IRAC and ExCom or similar committees, the DFI would still have a role in Community resource decisions concerning major national intelligence systems.



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OPTION #3A

This option is identical in all respects to Option #3 except that, under this variant, present CIA production responsibilities and resources for intelligence analysis would be transferred to the relevant departments. The underlying assumption is that policy-makers would be better served by departmental producers than by a central agency.

The principal advantage of this option is that it would place primary stress on the value of strong participation in the production process by the relevant departments, thereby better linking producers and consumers of intelligence. The principal disadvantage is that it would eliminate an independent analytical entity separate from policy-makers and thus independent of their operational or policy biases. There is also a question as to whether a DFI with only production coordination responsibilities could usefully serve as the senior intelligence adviser. This coordinator role was contemplated for the DCI with passage of the 1947 Act, but early Agency experience strongly suggests that the coordinator can only function effectively if he has direct access to a production capability which gives him an independent basis for judgment.

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OPTION #4

MODIFIED CURRENT ARRANGEMENTS

RATIONALE

Each of the three prior options would require basic changes in the National Security Act of 1947. It is uncertain that such changes can be accomplished without a major controversy within the Executive Branch and without major legislative changes. A series of proposals which can largely be accomplished within existing legislation, or with only minor changes in existing statutes, may have appeal. The three options discussed above, and the variants to them, all solve certain perceived problems but may create others. Finally, it can be argued that Congressional legislative proposals are most likely to focus on the question of control of past abuses and only secondarily on major, largely unrelated, management and organizational changes. Much of what may be needed to reduce the potential for future abuses can be accomplished without considering major organizational change.

SUMMARY DESCRIPTION

Changes addressed in this option involve the establishment of a second full Deputy for the DCI. This would allow the use of one Deputy for line management of the CIA and a second Deputy to carry out the present Intelligence Community responsibilities assigned under the President's November 1971 letter. Changes could also be made to the existing committee

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structures regarding resources and to delegations of responsibility for production without changing the basic organization of the Community.

PRIMARY CHANGES AND EFFECTS

Leadership of the Community

Present arrangements for policy direction of the NRP, including the Executive Committee (ExCom) chaired by the DCI with Defense participation, have helped assure that these programs meet the needs of all major producers. The CCP and the CIA collection program, however, serve national as well as departmental interests. With increased dependence on technical collection, a similar ExCom arrangement could be established for the CCP to ensure that views of other producers are taken fully into account in tasking and processing. Consideration could also be given to an ExCom review of CIA collection programs. Since principals will remain essentially the same for consideration of NRP and CCP matters, consideration might also be given to consolidating the two review functions within one ExCom, perhaps with an expanded membership to reflect consumer, as well as producer interests.

Operational Responsibilities

The DCI would continue to be legally responsible for the operation of CIA. However, a second Deputy with responsibility for CIA management would absorb substantial responsibilities in this area.

Resource Responsibilities

No basic change from present practice would occur, except that establishment of an ExCom chaired by the DCI and charged with the responsibility of policy overview and resource review of the CCP and CIA SIGINT activities could enhance the DCI's ability to influence the overall direction of these major programs.

Collection Responsibilities

No change would occur.

Production Responsibilities

No change would occur.

Committee Structure

Adjustments in the responsibilities of committees might be necessary in recognition of an enlarged ExCom.

Effect on Intelligence Product

This option would largely continue present arrangements. The DCI would retain unimpaired his Community-wide responsibility for production of national estimates, current intelligence, and crisis warning, and for evaluating the Community's performance. Existing independent and competing production capabilities in Defense, CIA, State and Treasury could be retained or augmented. Structural changes at the leadership level in CIA should free the DCI to devote more of his attention to production issues.



Effect on Intelligence Management

As discussed under the summary description above, this option would clarify management arrangements within CIA and moderately enhance the DCI's ability to carry out his Community management and resource review responsibilities. This option would not, however, give the DCI new basic authority to deal with these responsibilities.

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Covert Action Location

One last organizational issue cuts across all four options: the placement of a covert action capability. Covert action was originally placed within the CIA to accompany its clandestine collection capabilities. Transfer to the State Department would endanger the primary activities of this overt service and be contrary to international diplomatic practices. Transfer to the Defense Department would raise public apprehension over accountability given the size and scope of the Department's activities. A number of observers have, however, strongly promoted placing the covert action capability in an entirely separate agency directly under the control of the NSC. They have argued:

- If the covert action capability were isolated in a small agency, oversight would be easier; fewer resources and personnel would need to be kept under close supervision.
- The independent analytic capabilities of the CIA are biased because covert actions make it an operational agency. Covert actions create a departmental interest in the CIA which is contrary to its basic national functions.
- The CIA might be better able to attract analysts and scientists if it shed its "dirty-tricks" image which is closely connected to its covert action capability.



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On the other hand, a number of strong arguments exist for retaining the covert action capability in the CIA:

- Separation, rather than improving possibilities for effective oversight, would create greater oversight problems by isolating this activity from conflicting agency demands and from agency supervision.
- During the brief period in the early 1950's when clandestine collection and covert actions were in separate offices, the two offices were in conflict for resources and attention, inevitable redundancy existed, and units worked at cross-purposes. That experience demonstrated the close connection in terms of contacts, methods, goals and support that is desirable between the two activities. For example, the covert action agent is often also an intelligence source, and clandestine tradecraft required to run a covert action agent is essentially the same as that for an intelligence agent.
- The need for cover, already a difficult problem, would be further aggravated by the requirement to increase the number of officials requiring cover status.
- Merely shifting around within the Government of the covert action capability will neither assuage public fears nor reduce attacks on the CIA. Outsiders will never believe that "dirty tricks"

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have been taken out of the CIA, and indeed, their perceptions may be somewhat accurate as the new organization would inevitably have to work closely with CIA clandestine activities.

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VI. MANAGEMENT IMPROVEMENTS

Although organizational reforms can help solve many of the identified problems of the Intelligence Community, sustained management attention will also be required to resolve these problems. The study group identified some possibilities for management improvements in areas of particular significance which should contribute both to a prevention of abuses and to a better intelligence product.

A. Budgetary and Financial Controls

Financial and budgetary procedures provide an effective discipline in government operations for the President, the Congress and the agencies. The lack of public perception of the budget and financial controls over intelligence activities contributes to public and Congressional opinion that no system of checks and balances exists on the intelligence agencies within the Executive Branch or, for that matter, within the Congress.

In the present situation, while fiscal information on the intelligence agencies is contained in the President's budget, it is not openly identified. Centralized control over the financial execution of intelligence budgets is not exercised. Two options by which the budget process could be strengthened are:

- Provision by the President to Congress of a separate classified budget appendix that contained information similar to that provided for all other government activities; it would be prepared at the appropriate security level and would require special handling

within the Congress. This option has the advantage of a formal Executive Branch initiative (within acceptable security bounds) to the Congressional request for more information. The primary arguments against this proposal involve the precedent setting nature of a formal budget submission for intelligence and the inevitable congressional demand for more detailed information.

- Implementation of controls by OMB on the apportionment, reprogramming, transfer and outlay of intelligence funds, similar to those for other agencies. Initiation of these controls would increase OMB's involvement in the execution phase of the intelligence budget which is currently limited to the CIA reserves. Congressional reports have already identified the need for imposition of reprogramming controls on intelligence programs. Arguing against this proposal is the appropriateness of relying on budget control for effective direction of an organization rather than establishing objectives and evaluating achievements against them. Also, imposition of reprogramming controls could adversely limit the flexibility to respond to crisis situations.

These proposals for providing budgetary information to the Congress and enhancing the visibility of Presidential budgetary control may not be particularly effective in identifying abuses, but they would enhance public



and congressional confidence that the Intelligence Community is subject to the same set of checks and balances as all other agencies.

B. Compartmentation

Present arrangements for compartmenting sensitive information have impeded the flow of information to consumers. The NSC should assure itself that current Community studies of decompartmentation be intensified with an eye to improving consumer access to the intelligence product.

C. Consumer Interaction with the Intelligence Community

A number of improvements are required in the interactions of policy officials with the Intelligence Community:

- The NSC should undertake a more active program to improve consumer interactions with the Intelligence Community. Surveys should be undertaken to identify the strengths and deficiencies that consumers find in intelligence support (from the NIE's, for example) and to determine what actions the policy consumers and intelligence producers should take to ensure more useful intelligence contributions to the decision-makers.
- The NSC should specifically address problems identified in this report including the need for: guidance and feedback from decision-makers to the Intelligence Community; a better intelligence appreciation of those policy and negotiating issues which might benefit from intelligence inputs; and arrangements within

the economic policy-making organizations required to promote a more effective interchange with the Intelligence Community. The NSC Intelligence Committee should also address the special problem of the need for better dissemination of sensitive memoranda, reports and telegraphic traffic to officials with a need to know.

D. Performance Evaluation System

Measures are needed, particularly in certain high cost areas, which will permit a comparison of the value of certain intelligence contributions with their anticipated cost. The purpose of such measures is to ensure that intelligence collection and production are focused in a way which will achieve more effective expenditures in terms of consumer needs. These measures would be an important criterion in evaluating intelligence performance. The DCI should intensify efforts, including consultations with consumers, to strengthen arrangements for evaluating Community performance.

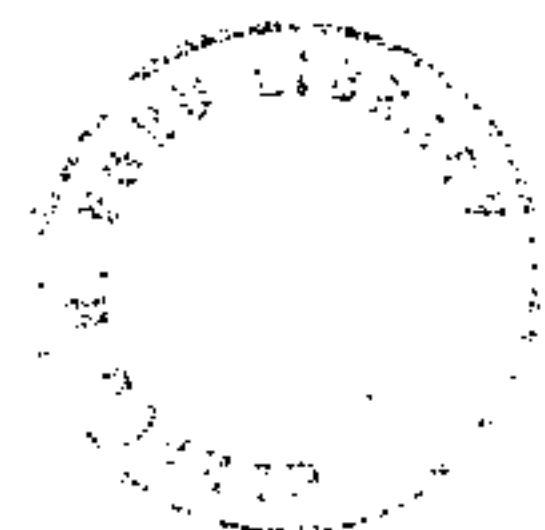
E. Cover and Clandestine Collection

The NSC could be tasked to conduct an interagency study addressing both the effectiveness of present cover arrangements and the adequacy of coordination of clandestine collection.



SUMMARY OF AGENCIES' RECOMMENDATIONS ON THE ORGANIZATION AND MANAGEMENT OF THE FOREIGN INTELLIGENCE COMMUNITY

	<u>DEFENSE</u>	<u>JCS</u>	<u>DCI</u>	<u>STATE*</u>	<u>TREASURY</u>	<u>JUSTICE</u>
<u>CORRECT CURRENT ABUSES</u>						
1. Guidelines on Propriety	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	---	<u>Yes</u>	<u>Yes</u>
2. Executive Branch Oversight						
a. Within the Intel Community						
• Strengthen Agency IG	<u>Yes</u>	<u>Yes</u>	<u>No</u>	---	<u>Yes</u>	<u>Yes</u>
• Community-wide IG						
b. Outside the Intel Community						
• Attorney General Staff	<u>Yes</u>	<u>Yes</u>	<u>Yes-NSC</u>	---	<u>Yes</u>	<u>No</u>
• Special Counsel to President						<u>No</u>
• Government-wide IG						<u>No</u>
c. Outside Government Advisers						
• Expand PFIAB	<u>No</u>	<u>Yes</u>		---	<u>Yes</u>	---
• Establish New Group	<u>No</u>			---		---
3. Intelligence Policy Coordination						
• Expanded Use of NSC Structure	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	---	<u>Yes</u>	---
• Intelligence Adviser to President						
• Improved DCI/Agency Coordination						
4. The 40 Committee						
• Reinstitute Formal Committee Mtgs	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	---	<u>Yes</u>	<u>Yes</u>
• Attorney General Membership	optional				optional	
• Additional Staff					<u>Yes</u>	
<u>COVERT ACTION</u>						
• Remain in CIA	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	---	<u>Yes</u>	---
• Separate Agency						
<u>MANAGEMENT IMPROVEMENTS</u>						
Budgetary and Fiscal Controls						
• Classified Budget	<u>No</u>	<u>No</u>	<u>No</u>	---	<u>No</u>	---
• DCI/OMB Budget Execution Controls	<u>No</u>	<u>No</u>	<u>No</u>	---	<u>Yes</u>	---



*State has decided not to comment at this time.

**SUMMARY OF AGENCY RECOMMENDATIONS ON THE
ORGANIZATION AND MANAGEMENT OF THE FOREIGN INTELLIGENCE COMMUNITY**

TREASURY

DCI

JCS

DEFENSE

INTELLIGENCE COMMUNITY
LEADERSHIP OPTIONS

Option #1 - Centralized
National Intel Program

Option #2 - Centralized
Resource Control

#2A - Separate
Production Center
Under DGI

Option #3 - Departmental
Emphasis

#3A - Transfer CIA
Production to
Departments

Option #4 - Modified
Current Arrangements

(DCI prefers
Option #4, but if
major organization
is required, then
Option #2 is
preferred)

(Treasury prefers
Option #4, but also
sees advantages in
Option #2A)

- Option #3 plus
 - Deputy DFI a military officer
 - All overhead programs under DoD, eliminate ExCom
 - Transfer CIA production to the DFI
- Option #3 plus
 - Deputy DFI a military officer
 - DFI fixed term of office
 - DoD controls all scientific and technical collection systems

- Option #4, including
 - 2nd Deputy Director
 - Consolidate all existing committees into two:
 - NSC Exec Committee for Intel, chaired by DCI
 - National Intel Board for production estimates
- Option #4, including
 - 2nd Deputy Director
 - SIGINT ExCom
 - Additional resources control for DCI

NOTE: State and Justice have decided not to comment on the leadership options. JCS believe the Intelligence Community reorganization should be addressed by the NSC prior to decision.

**NATIONAL ARCHIVES AND RECORDS SERVICE
WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)**

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
1. Book	<p>Intelligence Community Decision Book (250²⁵⁰ pp.)</p> <p><i>page count for each chapter and appendices on pink sheet in closed file.</i></p> <p><i>opened in sanitized form CIA letter 1/6/99 let 4/2000 except for.</i></p>	12/22/75	A
	<p>1a. letter, Albert Hall (OSD) to James Lynn 3pp.</p>	12/18/75	A
	<p>1b. memo, Stephen Gardner (Treasury) to James Lynn re: Study of the Organization and Management of the Foreign Intelligence Community 6pp.</p>	12/18/75	A

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

RESTRICTION CODES
 (A) Closed by Executive Order 12356 governing access to national security information.
 (B) Closed by statute or by the agency which originated the document.
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THE JOINT CHIEFS OF STAFF
WASHINGTON, D.C. 20301

JCSM-442-75

17 December 1975

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: Organization and Management of the Foreign
Intelligence Community (U)

1. (S) The Joint Chiefs of Staff have reviewed the report on "Organization and Management of the Foreign Intelligence Community" and have considered the options for reorganization contained in the report. In selecting a preferred option, it was believed that any solution to the problems presented in the report must consider that:

a. Intelligence support to US operating forces should not be degraded through organizational or management changes.

b. While US operating forces may receive important intelligence support from "national systems," they require a directly responsive, organic intelligence capability in order to meet full intelligence needs.

c. Improved oversight, within the executive branch, of certain intelligence activities is needed.

d. Multiple, independent, analytical capabilities should be retained.

e. Cost effectiveness in peacetime must not be achieved at the expense of responsiveness in wartime.

2. (U) The Joint Chiefs of Staff have no fundamental criticism of the collection, analysis, and production performance of the foreign intelligence community. While improved production and performance must be primary goals in any intelligence restructuring, they are not in themselves sufficient justification for reorganization.

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3. (U) Any reorganization will entail turbulence and uncertainties; thus, the full implications of change must be clearly understood prior to implementation. The case for organizational change rests primarily on the need for an improved ability to prevent the improper use of intelligence assets and, secondarily, on the need for fiscal savings by the elimination of unnecessary duplication. However, in determining the necessary realignment, it should be emphasized that military reconnaissance and intelligence forces are structured to support combat capability and cannot be judged solely on their contribution to the peacetime national intelligence effort. In this regard, it is essential that armed forces possess those intelligence resources which support their operational forces.

4. (U) The Joint Chiefs of Staff concur in the need for improved management control in the areas identified in Section VI; however, that section has insufficient data for determining the specific option desired.

5. (S) In reviewing the proposed alternatives, the Joint Chiefs of Staff are concerned over the emphasis on resource control as the primary means for management control. While the threat of withholding funds is an effective means of conveying general direction, it is not a conceptually sound or efficient means of directing an organization on a daily basis. It creates an adversary relationship between layers of leadership rather than the more desirable, effective attitude of cooperation that stems from a management by objective and evaluation process.

6. (U) The Joint Chiefs of Staff consider that Options 1 and 2 and variants 2A and 3A could adversely impact on the intelligence support to the Armed Forces. At the same time, they consider that Option 4 fails to address adequately the problems noted in the report. Detailed discussion of these options is contained in Appendix B.

7. (U) In view of the considerations cited above, the Joint Chiefs of Staff have concluded that Option 3, with modifications as specified in Appendix A, is the most viable option presented in the study. It creates proper safeguards to preclude abuses and provides the basis for improving the management of national intelligence assets, while providing for retention within the Department of Defense of those intelligence assets which are essential for military planning and operations.

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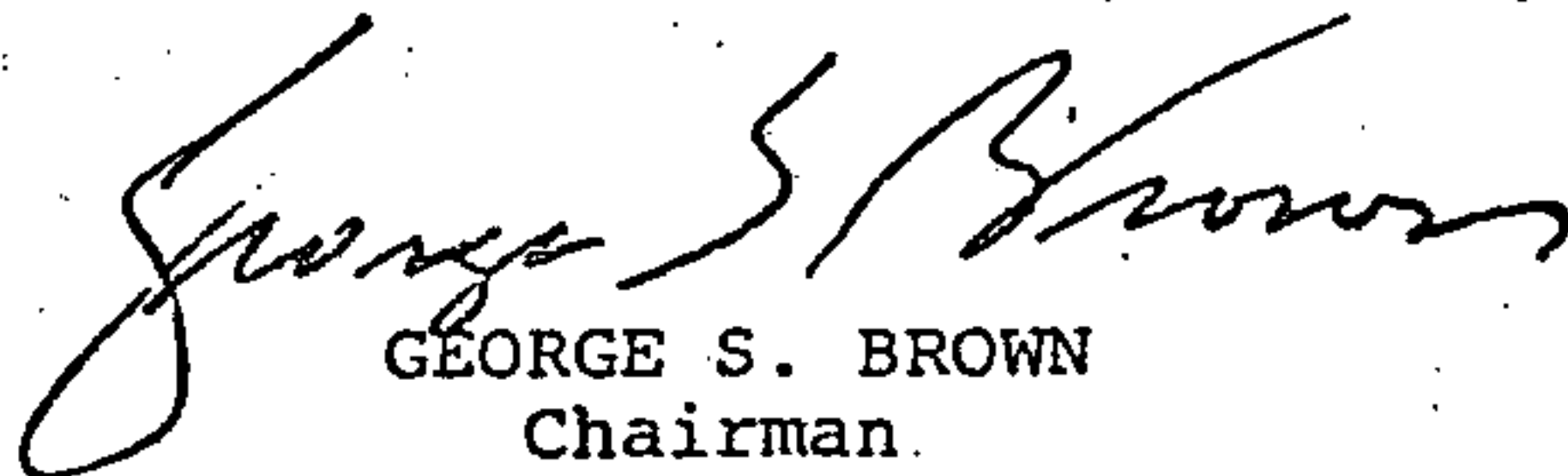
3. (S) With regard to covert actions, the Joint Chiefs of Staff favor retention of that responsibility in the restructured CIA--based on its close affinity to clandestine collection and responsibilities for political intelligence.

9. (U) On 14 December 1975, Mr. Donald Ogilvie, Associate Director of OMB and Chairman of the Senior Steering Group directing the study, forwarded a letter requesting agency positions on an attached matrix. Appendix C contains responses to the options contained in that matrix.

10. (U) In conclusion, given the ramifications on the security of the United States, the Joint Chiefs of Staff believe the reorganization of the intelligence community should be addressed by the National Security Council prior to decision.

11. (U) The Joint Chiefs of Staff request that you take into account, in your response, the views of the Joint Chiefs of Staff and insure that their views are appropriately forwarded to the President.

For the Joint Chiefs of Staff:



GEORGE S. BROWN
Chairman
Joint Chiefs of Staff

Attachments

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APPENDIX A

OPTION 3

Study Provisions from Option #3

- Director, Foreign Intelligence 1
- Principal intelligence adviser to President and NSC 2
- Organizationally separated from CIA 3
- Relieved of responsibility for reviewing tactical intelligence 4
- Chairman of USIB, IRAC, and NRP EXCOM 5
- Provide assessments on national intelligence both substantive and resource matters 6
- NIO and intelligence community staffs move with DFI 7
- No operational or production responsibilities 8
- Review entire intelligence community budget 9
- Provide executive oversight through enhanced Inspector General responsibilities 10
- Responsible for NIEs 11
- Integrate intelligence production activities 12
- CIA would be rechartered under a Director (D/CIA) 13
- Would report to NSC through DFI 14
- Most CIA SIGINT functions consolidated in CCP in DOD 15
- Each department engage in intelligence production consistent with its mission. 16

Additional JCS proposals for Option #3

- Designate a senior military officer as Deputy Director Foreign Intelligence. 17
- DFI appointed by President and confirmed by Senate for fixed term of office. 18
- Defense responsible for development and operation of all scientific and technical intelligence collection system. 19
- NIOs perform as DFI adviser/liaison to the USIB in the preparation of national estimates and other national level estimates requested by NSC and other agencies. 20

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APPENDIX B

JCS ANALYSIS OF THE PROPOSED STUDY GROUP OPTIONS

OPTION 1: Centralized National Intelligence Program

This alternative is considered the least practical solution. The creation of a Secretary of Intelligence is an expensive over-reaction to the community's alleged improper activities and would tend to isolate the intelligence producers and consumers. Furthermore, it would inappropriately place intelligence at the same level as the senior national policy decision makers. Such an arrangement would complicate the national intelligence effort, the national departmental interface, and provision of responsive national intelligence support to the operating forces. Additionally, such centralization of authority could heighten rather than diminish congressional concern. Creation of a new department with its attendant expenditures would likely result in strong congressional and public opposition.

OPTION 2: Centralized Resource Control

This option is undesirable from the JCS viewpoint because it is contrary to efficient and effective management. Separating resource from line control causes conflict and leadership ambiguity which would seriously detract from US national intelligence effort. It is inappropriate to rely solely on budget control for effective direction of intelligence activities. It is a check, but daily routine guidance and direction should stem from establishing goals and evaluating the achievement of same and not from the inefficient approach of periodically loosening or tightening the purse strings.

OPTION 3A: Deletion of CIA Production

This variation of Option 3 should be withdrawn from further consideration. The Joint Chiefs of Staff support the retention of CIA as a separate organization disassociated with the present DCI responsibilities.

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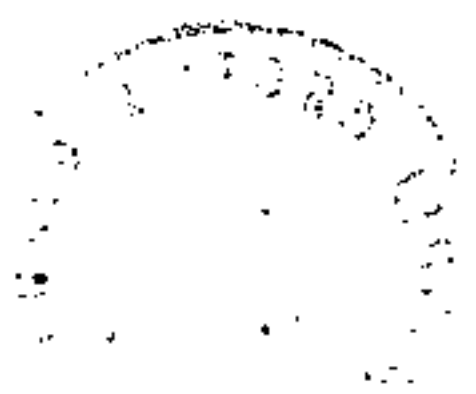
OPTION 4: Modified Status Quo

This option is not supported because the proposal does not respond to congressional desire for a strengthened executive cognizance of the intelligence community. It is also deficient in that it continues the DCI as Director, CIA, with line authority over one of the elements of the foreign intelligence community.

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APPENDIX C

COMMENTS ON LETTER FROM THE ASSOCIATE
DIRECTOR OF OMB AND THE CHAIRMAN OF THE
SENIOR STEERING GROUP

1. (S) On 14 December 1975, Mr. Donald Ogilvie, Associate Director, OMB, and Chairman of the Senior Steering Group that directed the study on the Organization and Management of the Foreign Intelligence Community, requested agency recommendations on a number of specific issues addressed in that study. Detailed answers to Mr. Ogilvie's letter are contained below.
2. (S) The Joint Chiefs of Staff recommend that:
 - a. An executive order providing for guidelines for intelligence agencies be approved and promulgated.
 - b. A community-wide Inspector General under the DFI (as defined in Option #3) be established.
 - c. The Attorney General be assigned a staff within the Department of Justice to advise the President on the legal aspects of intelligence activities.
 - d. The PFIAB charter be expanded to give it an oversight function but members not be approved by Congress as some have recently suggested.
 - e. Intelligence policy coordination be strengthened by an expanded use of the NSC structure.
 - f. Control of 40 Committee activities could be improved by reinstating formal committee meetings on all significant covert and sensitive recommendations and periodic review of

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ongoing activities as recommended by the Murphy Commission. 1
Questions on membership of the 40 Committee and staff 2
requirements are more properly addressed by the President. 3
g. Option #3, as modified by comments in the basic memorandum, 4
be considered the only viable option developed. Specific 5
reasons for rejection of Options 1, 2, 2A, 3A, and 4 are 6
also presented. 7
h. Covert action remain within the CIA under any circum- 8
stances, including any of the four options developed in the 9
study. 10
i. No decision be made on the two options presented to change 11
the budget process since the Intelligence Organization Group 12
did not consider all possible options. Furthermore, neither 13
of the two options proposed is considered sufficiently 14
promising nor adequately developed to warrant serious con- 15
sideration without detailed study in the context of an effort 16
devoted to a review of the financial and budgetary aspects 17
of management of the foreign intelligence community. This 18
study addressed the subject in only an indirect and incomplete 19
manner. However, the provision of a classified intelligence 20
budget has some merit. 21

--The system that supports him should be shaped to provide the best possible intelligence; resource allocations, procedures, and organization should be driven by the substantive goals set by national needs for intelligence.

--The DCI should have an established relationship with the Secretaries of State and Defense that enables them to work efficiently together.

--The Department of Defense should be assured that the intelligence capabilities it needs in wartime will be available.

--That portion of the Defense budget allotted to national intelligence resources should be clearly identified and segregated from the Defense budget proper.

--In assessing foreign events competition in analysis should be encouraged. In collection, duplication should be avoided except where it greatly increases the chances of acquiring vital intelligence.

--The Intelligence Community should be managed with due regard for resource constraints. (This point is put last for a reason. Too many studies of intelligence approach it with a total focus on economy. Economy is necessary, indeed it is incumbent on all intelligence managers to make hard choices to that end, but it should not be an end in itself. The primary purpose must be to produce good intelligence).

Effective management of an intelligence organization built on these principles will depend to a considerable extent on the way it structures the relationship between the DCI and the Secretary of Defense. My basic difficulty with the Study Group's report is that it deals with a number of separate aspects of this problem, but does not pull them together so as to focus attention

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on a matter of such fundamental importance. In simplest terms, the DCI is supposedly responsible for "planning and reviewing all intelligence activities and the allocation of all intelligence resources." Of the total intelligence budget, however, the Secretary of Defense controls and the DCI..... On the other hand, the CIAP, NRP, and CCP make up the bulk of the national intelligence budget, yet they are equal to less than of the Defense budget. These two statistics mean that:

- Defense has a preponderant voice in how intelligence money is spent.
- When faced with a choice between primary and secondary goals, warfighting capabilities or intelligence capabilities, Defense will tend to choose warfighting.
- Intelligence money is so small a part of the total Defense picture that it cannot get the attention I think it deserves.

Together these facts mean that, under present arrangements, unless a DCI and a Secretary of Defense see things the same way, the former is not going to be able to do his job.

There are several other topics which must be addressed in any study of Intelligence Community management that seem to me not fully treated in this report.

a. I have noted the importance to the DCI of an independent analytic capability. This is crucial to an understanding of the DCI's role. Without it, no matter what the DCI's paper independence, he is the prisoner of departmental analysis. With it, he can challenge long-standing departmental positions and stimulate new attacks on stubborn problems.

b. The paper gives insufficient emphasis to the importance of an authoritative and informed focus in the Executive for preparing the intelligence program and defending the budget before

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Congress. Congress is moving aggressively toward assuming what are essentially management functions over intelligence programs. This trend can only be reversed if the congressional members of the oversight committees develop confidence in the Executive both with respect to the intelligence program and the execution of its budget.

c. The document does not discuss the importance of maintaining an independent and innovative capability for developing technology and applying this technology to technical collection programs.

Against this background, my reaction to the options developed by the Study Group paper is that they get ahead of the problem by being too specific on complicated issues. The fact is we are not yet ready to ask the President to make a definitive choice on a future intelligence structure. There is no "one" solution to the problems that face us, and every change in one function has repercussions in others that may be impossible to foresee. The Study Group's options will be extremely useful in illustrating for the President the range of choice, but should not be used as a basis for decision. In my view, we should use them to seek from the President a general indication of the direction in which he wants to move. On that basis we can then set in motion detailed studies of the consequences that will ensue from a given choice, and can present for him in some detail the choices he has in reaching that goal.

My comments on the Options themselves are derived by testing them against the principles stated above. By that standard:

--Option 1, which centralizes control of national systems under a DCI, cannot meet Defense's legitimate requirements.

--Option 3 effectively destroys the DCI's present limited authority, and thereby makes it impossible for him to be an effective advocate of independent intelligence positions at the NSC level.

--Options 2 and 4 would appear compatible with the principles stated. Option 2 in its present form has serious workability problems but goes as far as I think we can go in strengthening the DCI relative to Defense. Option 4 does not have these problems but, as it stands, leaves the basic problems of management and resource allocation about where they are now.

The first question that the President must decide is whether major change in intelligence organization is a goal to be sought this year. Congress appears to be moving in this direction, but I doubt that the disruption of our effort that would result from major re-organization would be repaid by the results. I would propose instead to take the initiative by moving to achieve better management of the Community in a way that will not require lengthy Congressional debate. Option 4 provides a basis for such a move, but I believe it is somewhat too weak for the purpose. For this reason I suggest a stronger modification.

This proposal, Attachment A, differs from Option 4 more in intent than in substance. It is specifically aimed at reaching the kind of DCI-SecDef relationship that I believe essential, but without the traumatic change in bureaucratic equities required by Option 2. (On the other hand, it gives no additional muscle to the DCI). It provides a central mechanism for managing the Community, and it makes a clearer distinction between resource issues, where the DCI is at best first among equals, and substantive issues, where he is and should be a great deal more. I think it offers promise for real progress with a minimum of disruption.

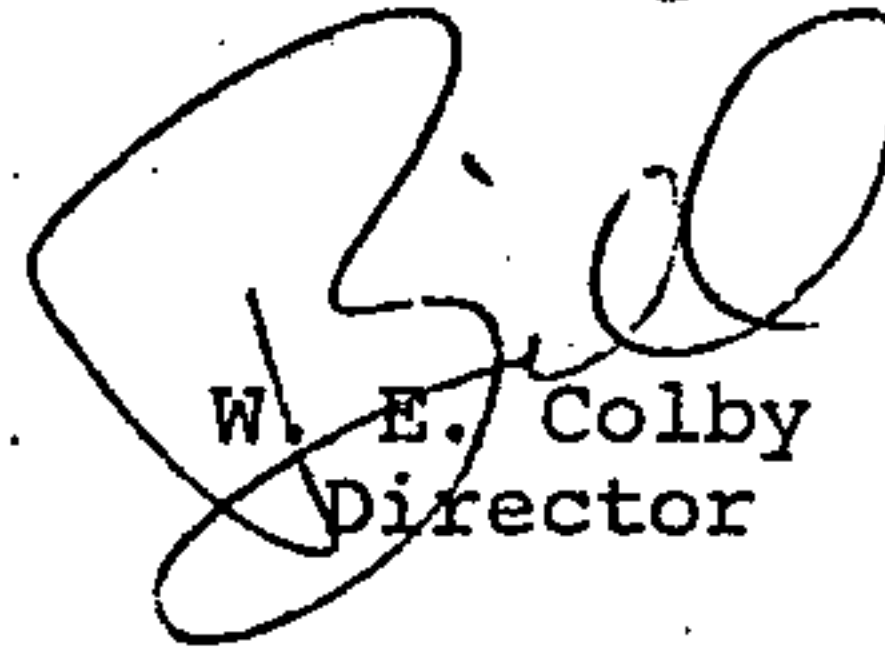
While it is true, as the Study Group emphasizes, that Option 4 (or the attached modification) could be carried out by administrative rather than legislative action, I believe that strong confirmatory legislation will eventually be required if the recommended changes are to endure. The authorities and responsibilities of our complex Intelligence Community should not be left to bureaucratic conflict and changes in Administration. Executive action could start us on our way to the changes we think essential, but the ambiguities of the existent statutes must be corrected if there is to be any degree of stability in the new organizational arrangements, and if the Congress is to stand behind them.

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All of the above is predicated on a decision by the President to avoid major change this year. If, however, the President feels that a major reorganization is required, then I believe we should look to some form of Option 2. I believe it provides a tentative basis for planning a proposal, primarily because it seeks a solution to the central DCI-SecDef problem. Should the President go that route I would recommend that he give the departments and agencies time to consider the detailed consequences of the Option 2 approach before finally committing himself to it.

Sincerely,



W. E. Colby
Director

Attachments:
Attachment A
Attachment B

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ATTACHMENT A

Option 4, Modified - "Collective Management"

RATIONALE

This Option starts from the premise that stronger management of the Intelligence Community is highly desirable, but that the balance of interests reflected in the present structure is a realistic one and should be maintained. It presents a concept for achieving a degree of collective management while preserving present organizational relationships. It requires a minimum of legislative change.

SUMMARY DESCRIPTION

The DCI would continue to be advisor to the President, coordinator of the Community, and Director of CIA. The present structure of Committees and Boards would be consolidated into two, both chaired by the DCI: an Executive Committee of the NSC for Intelligence at the deputy secretary level, responsible for all Community management and policy matters, and a National Intelligence Board at the present USIB Principals level, responsible for substantive production. To enable the DCI to give more attention to his Community responsibilities he would be provided with a second deputy.

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PRIMARY CHANGES AND EFFECTS

The DCI's Responsibilities

The DCI would be the President's chief intelligence advisor, and would remain Director of CIA. With a view to raising the stature of the job, consideration should be given to granting him Cabinet rank. He would be responsible, under the NSC, for the coordination of national intelligence policy and for the production of national intelligence. A clear distinction would be made, however, between his Community and CIA roles.

To this end, he would be provided with an additional Deputy, appointed by the President and confirmed by Congress. The present Deputy would be specifically responsible for managing the Agency under the DCI; the other Deputy would be responsible under the DCI for coordination of the Community. The DCI would have an Agency office at Langley and a Community office downtown, where his Community Deputy would be located.

Coordination of National Intelligence

The present structure of boards and committees would be rationalized, on the basic principle that policy and resource matters requiring a balancing of departmental interests would be considered collectively by the senior officers controlling the assets and resources concerned. A separate forum would be provided for substantive intelligence issues, on the grounds that these are inappropriate for policy officers to adjudicate and that departmental interests are protected by the right of dissent.

Policy and Resources

For the first of these purposes the DCI would chair an NSC Executive Committee for Intelligence, with Deputy Secretaries of State and Defense as members. The committee would have under control of its members all important intelligence assets, and would act as a board of directors for national intelligence. EXCOM(I) would absorb the functions of NSCIC, EXCOM (NRO plus equivalent responsibilities for NSA), IRAC, and USIB (except national intelligence production).
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The DCI's Community Deputy would be his alternate in EXCOM(I) but would not serve as Chairman in his absence. The IC Staff would be the secretariat of EXCOM(I). The DCI would carry out his existing responsibilities for the NFIP (less its tactical and departmental components) with the assistance of the Committee. EXCOM(I) would have approval authority for the NFIP (CIAP, NRP, CCP, and some elements of the GDIP) and its decisions would be binding. The DCI would have administrative and resource authority only over CIA. Present administrative arrangements for the NRP and CCP would be preserved.

Production of National Intelligence

USIB would be reconstituted as a National Intelligence Board, limited by charter to substantive matters, and advisory to the DCI. The NIO's would act as the DCI's staff for the NIB. The Board would be chaired by the DCI, with his Agency Deputy as CIA member. The latter would serve as Chairman in his absence.

Covert Action

The DCI would be a member of the 40 Committee, but not its Chairman, with his Agency Deputy as alternate. Clandestine collection and covert action would remain assigned to CIA, without change in present arrangements.

Oversight

Without administrative authority over the Community, it would be inappropriate for the DCI to have an IG responsibility except over CIA. This Option assumes Executive oversight at the NSC or White House level.

Congress

The DCI would continue to be the Community spokesman to Congress.

National/Tactical Problems

EXCOM(I) would handle matters relating to the relationship between tactical and national intelligence. The DCI would have no responsibility for the tactical intelligence budgets of the military services.

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Detailed Comments

A. "Abuses"

1. Guidelines on Propriety

An Executive Order which promulgates a code of standards for the conduct of intelligence activities, as proposed, could serve constructive purposes, both internally and publicly.

2. Executive Branch Oversight

a. I have already taken steps to strengthen the CIA Inspector-General, in accordance with the Rockefeller Commission recommendations. As to a Community-wide IG, this should depend on the degree of authority vested in the DCI. Under Option 1 he could exercise this responsibility. Under Option 2, 3, and 4 he clearly could not.

b. I believe that the current efforts of the Congress and the changed attitudes of the Executive will provide more than enough oversight over the Community. The problem of the future may be to protect the Community from being so over-overseen as to be hamstrung. If, however, the President feels that an additional body is needed, then I would only urge that this be made a responsibility of the National Security Council Intelligence Committee or of the PFIAB. My preferred course is Option 4 Modified, which would change markedly the character of NSCIC. Moreover, the missions of preventing abuses and improving product do not mix well. As to PFIAB, I have the same problem of mixing incompatible functions. Despite the findings of the Rockefeller and Murphy Commissions, it is doubtful that a part-time Board, even with a greatly expanded permanent staff, could effectively engage this problem.

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3. Intelligence Policy Coordination

Intelligence policy coordination should follow the same lines as Executive oversight, in view of the NSC's statutory duty of integrating domestic, foreign, and military policies relating to national security. This suggests that whatever new coordination arrangements are necessary should be made through the NSC structure, expanding it when and if needed. A second Intelligence Advisor to the President for this purpose does not appear politic or advisable. On the other hand, the DCI should not be involved in matters concerning domestic affairs. It is unfortunate that the Study Group's charter did not extend to counter-intelligence, because it is here that the problem of intelligence policy coordination is thorniest.

4. The 40 Committee

I believe the 40 Committee should be continued and strengthened to provide policy approval for covert action.

B. Intelligence Community Leadership

My position on these matters is contained in my basic letter and the Modified Option 4 appended thereto. The only other comment I have is that I strongly support the Study Group's recommendation that the DCI be relieved of the responsibility for the tactical intelligence budget assigned to him by the Presidential Letter of 1971. This is an unworkable arrangement. I believe the DCI should be responsible for ensuring the integration of tactical and national systems* but that the armed services should propose, defend, and execute their own budgets for their own tactical intelligence requirements.

*Including the responsibility to avoid duplication of national capabilities in tactical systems.

C. Covert Action

I believe it essential that responsibility for covert action remain in CIA and remain an integral function of CIA's Clandestine Service. For the reasons stated in the Study Group report, separation of clandestine collection and covert action is a recipe for operational disaster.

D. Management Improvements

1. Budgetary and Fiscal Controls

a. As I have stated on numerous occasions, I am opposed to the publication of any U.S. intelligence budget figures. I recognize, however, there is need to improve the flow of budget information to those members the Congress selects to review the intelligence budget, under appropriate security safeguards.

b. I believe that additional controls by OMB, particularly on reprogramming, would serve no purpose whatever in preventing "abuses" or reassuring the public. Rather, they would further reduce the ability of US intelligence to respond to new challenges. If the purpose is better intelligence, we are already going in the wrong direction. In the past flexibility in intelligence budget execution has been provided primarily through informal understandings between the Executive and key congressmen and senators. Changes in Congress have largely negated this flexibility and no adequate alternatives have been developed. It is particularly important that the intelligence budget not be subjected to all Defense appropriation expenditure rules. The FY-76 Appropriation Bill contains language moving strongly in that direction. I believe what is needed is legislation establishing rules uniquely tailored to intelligence programs.

2. Miscellaneous

a. In regard to compartmentation, I would note that there is no barrier to provision of any intelligence to the senior consumer who really needs to know. The problem is somewhat more complicated, and I have a study in progress on how to simplify and rationalize the present system.

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b. The Study's comments on consumer interaction with the Intelligence Community and needed improvements are valid.

c. With respect to a Performance Evaluation System, we are continuing to develop such a system, with the advice and cooperation of USIB and IRAC, through the mechanisms of the Key Intelligence Question Evaluation Program.

d. I would put rather more strongly the need for the NSC to address the problem of cover for CIA abroad. Without adequate cover, pious affirmations of the value of clandestine collection have no meaning.

e. Lastly, although it does not fall within the strict definition of the Study Group's responsibility, I would note yet again the necessity for better legislation to protect intelligence sources and methods.

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UNDER SECRETARY OF STATE
FOR POLITICAL AFFAIRS
WASHINGTON

December 18, 1975

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Memorandum

To: James T. Lynn
OMB

From: Joseph J. Sisco *JJS*

Subject: Preliminary Comments on Draft Report to the
President on Organization and Management of the
Foreign Intelligence Community

We have reviewed the final draft of the Intelligence Organization Group's (IOG) study of possible future reorganization of the Intelligence Community. As your staff knows, the State Department has commented in detail at each stage in the study's development.

Secretary Kissinger has been abroad and will have had no opportunity to review the report and familiarize himself with the issues it poses prior to the noon deadline December 18. Therefore, I am sure you will understand why the Department's comments on each of the specific issues could only be tentative and preliminary at this stage.

We believe that this report does a good job in raising and presenting the fundamental issues that have to be faced in any consideration of the future organization of the US Government's intelligence effort. It will provide a good basis for inter-Departmental discussion.

However, because any decisions taken could set the shape of the Community for many years and would have potentially major foreign policy implications, we believe that time must now be allowed for discussion at an inter-Departmental high level before the formulation of final Departmental views and specific recommendations for decision to the President. We intend to suggest this approach to the Secretary. It seems to us that handling of the report now that it has been completed could well be discussed in an appropriate Cabinet-level forum as soon as the report is turned over to it.

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E.O. 12958, Sec. 3.5

State Dept. Guidelines

By lit, NARA, Date 3/2000

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NATIONAL ARCHIVES AND RECORDS SERVICE

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
1. Book	Intelligence Community Decision Book (300 ²⁵⁰ pp.)	12/22/75	A
	<i>page count for each chapter and appendix on pink sheet in closed file.</i>		
	<i>opened in sanitized form CIA letter 1/6/99 let 4/2000 except for.</i>		
	<i>1a. letter, Albert Hall (OSD) to James Lynn 3pp.</i>	<i>12/18/75</i>	<i>A</i>
	<i>1b. memo, Stephen Gardner (Treasury) to James Lynn re: Study of the Organization and Management of the Foreign Intelligence Community 6pp.</i>	<i>12/18/75</i>	<i>A</i>

FILE LOCATION

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

RESTRICTION CODES

- (A) Closed by Executive Order 12356 governing access to national security information.
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WEM, 5/24/85

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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.

✓

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

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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.

to The Attorney General ought to be in a position ~~so that he can raise an~~ ^{question} ~~error~~ 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.

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Disregard, enclosed

Dick, the *JM*

President's copy

and Brent's copy

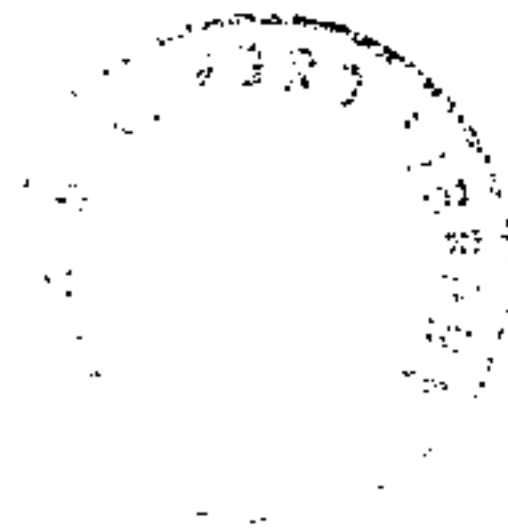
have an insert

containing agency

views of DOD, CIA,

Justice, et al. at this

point.



Jah

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.

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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

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E.O. 12958, Sec. 3.5
NSC Memo, 11/24/98, State Dept. Guidelines
By *lit* NARA Date *3/2000*

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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?

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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.

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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.

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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.

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- (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

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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

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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.

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(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

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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 exemptions 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

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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, DLA, 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.

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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.

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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 parameters 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.

SECRET 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 or other 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 Behavioral 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 intelligence 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.

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 elaborate 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 provision 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

AGENCY

Issue	DoD	CIA	Justice
<p>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))</p>	<p>Supports exception and would eliminate requirement that the information be collected abroad or from foreign sources.</p>	<p>Supports exception with the addition of the word "secretly" before the words "in collaboration with a foreign nation or organization".</p>	<p>Supports exception.</p>
<p>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)</p>	<p>Supports modified version permitting sharing only when receiving agency would have been permitted to collect information for itself.</p>	<p>Supports same modified version.</p>	<p>Supports same modified version.</p>

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 established 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.

- 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.