

*JBC*

### ROUTING AND RECORD SHEET

**SUBJECT:** (Optional) Letter to Department of Justice regarding Protection for Certain High-Level Federal Officials

**FROM:**   
 Director of Security  
 4-E-60 Headquarters

EXTENSION

NO.

OS 2 1705/A

DATE

14 JUL 1982

25X1

25X1

**TO:** (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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 7-E-12 Hqs.

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82-5442

## CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

14 JUL 1982

Mr. D. Lowell Jensen  
 Assistant Attorney General  
 Criminal Division  
 U.S. Department of Justice  
 Main Justice Building  
 Room 2107  
 10th and Constitution Avenue, N.W.  
 Washington, D.C. 20530

Dear Mr. Jensen:

The Director of Central Intelligence (DCI) has asked me to respond to your letter of 29 June 1982 concerning the possibility of establishing a special protective unit within the U.S. Marshals Service to provide physical protection to certain federal officials.

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I appreciate your concern that no federal agency has been given the express authority to provide physical protection to certain federal officials. Establishment of a special protective unit within the U.S. Marshals Service may be a possible solution in selected instances.

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Our current authority to protect Central Intelligence Agency (CIA) personnel may be found in a recent amendment to section 5 of the CIA Act of 1949. This amendment authorizes the CIA to provide its personnel with armed protection. The amendment was enacted in December 1981 to clarify the CIA's authority in this area. Prior to the enactment of these provisions, the CIA protected its personnel as described in the enclosed hearing transcript (Hearing before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence of the House of Representatives, Ninety-sixth Congress, First Session, April 4, 1979).

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Historically, the highly sensitive nature of the classified information and activities attendant to the position of the DCI and the Deputy Director of Central Intelligence (DDCI) has dictated that they be provided physical protection and that the protective staff assigned to those individuals be composed of

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career CIA security officers. The duties of this staff go beyond the basic responsibility of physical protection and include administrative support tasks demanding comprehensive knowledge of CIA functions and disciplines. Since 1 January 1981, [redacted] [redacted] has been assigned this protective responsibility on a full-time basis. Additionally, officers stationed at domestic security field offices may be assigned temporary protective duties when the DCI or DDCI visit their respective locales.

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With respect to the remaining questions raised in your letter, the CIA has not undertaken to protect any federal officials other than the DCI and DDCI from 1 January 1981 to the present, nor has the CIA received a request for such protection. Moreover, no CIA employee has been granted Special Deputy Marshal status during this period; such status would be inappropriate in light of the provision of the National Security Act of 1947, as amended, which prohibits the CIA from having any police or law enforcement powers. [redacted]

25X1

I hope that you find this of some value in deciding how best to resolve the protection problem for other federal officials.

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Sincerely,

25X1

[redacted]  
Director of Security

Enclosure

Distribution:

- Orig - Adse
- 1 - DDA (w enc.)
- 1 - DCI Security Staff (w/o enc)
- 1 - General Counsel (w/o enc)
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Executive Secretary  
*7/2/82*  
 Date

3637 (10-81)



Criminal Division

82-5442

Assistant Attorney General

Washington, D.C. 20530

DD/A Registry  
82-1679

JUNE 29, 1982

REFERENCE

Honorable William J. Casey  
Director  
Central Intelligence Agency  
Washington, D. C. 20505

Dear Mr. Casey:

The Department of Justice currently is reviewing the problems associated with protecting the physical safety of certain Federal officials. Specifically, our review has focused on the fact that no Federal agency has express authority to provide physical protection to certain high-level Federal officials, including some Members of the Cabinet.

In some situations where physical protection of an official was deemed necessary, certain agencies have assigned their own employees to protect the official, and have arranged for the protecting employees to be designated as Special Deputy U. S. Marshals, thereby granting to these employees all of the general law enforcement powers of a Deputy U. S. Marshal, including authorization to carry firearms. In addition, various agencies have requested Special Deputation for employees having other security or investigative duties.

The Department of Justice is considering proposing legislation which would establish a special protective unit within the U. S. Marshals Service, for the purpose of providing physical protection to Federal officials, as an alternative to granting Special Deputy status to protective personnel. In our view, a protective unit, under the supervision and control of the U. S. Marshals Service, would have the capability of providing more effective protection to a significant number of high-level Federal officials.

In order to evaluate this problem and the need for such legislation, we are attempting to ascertain the number of Federal officials that have received physical protection since January 1, 1981, the number of employers assigned to furnish this protection, and the nature and extent of protection

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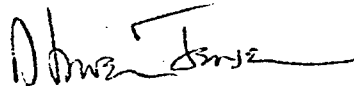
- 2 -

afforded. Accordingly, we would appreciate your assistance in this matter by furnishing your agency's responses to the following questions. In your responses, please consider Inspector General and contract employees if applicable to your agency. Please feel free to furnish any additional comments or observations pertinent to this matter.

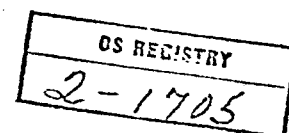
- (1) Since January 1, 1981, have any of your employees been assigned to provide physical protection to any Federal official? If so, please identify the protectees by title, the number of employees assigned to protective duties, the nature and extent of the protection afforded, and the legal authority for providing such protection.
- (2) Since January 1, 1981, has your agency declined the request of any Federal official for protective services? If so, how many such requests were received, and in each case, how was the perceived need for protection ultimately resolved?
- (3) Since January 1, 1981, has any employee of your agency been granted Special Deputy Marshal status? If so, what functions do these employees perform which require such authority?

Your cooperation in this matter is appreciated. Please contact Mr. Arthur Norton of the Criminal Division (724-7526) if you have any questions or comments concerning this matter.

Sincerely,



D. Lowell Jensen  
Assistant Attorney General  
Criminal Division



# CIA/FIREARMS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON LEGISLATION  
OF THE  
PERMANENT  
SELECT COMMITTEE ON INTELLIGENCE  
HOUSE OF REPRESENTATIVES  
NINETY-SIXTH CONGRESS  
FIRST SESSION

APRIL 4, 1979



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(iii)

## CIA/FIREARMS

WEDNESDAY, APRIL 4, 1979

U.S. HOUSE OF REPRESENTATIVES,  
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,  
SUBCOMMITTEE ON LEGISLATION,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 11:35 a.m., in room H-405, the Capitol, the Honorable Morgan F. Murphy (chairman of the subcommittee), presiding.

Present: Representative Murphy.

Also present: Michael J. O'Neil, chief counsel; Patrick G. Long, associate counsel; Bernard Raimo and Ira H. Goldman, committee counsel; James O. Bush and Herbert Romerstein, professional staff members.

Mr. MURPHY. The meeting of the Subcommittee on Legislation will come to order. The first order of business will be an apology from the chairman to our distinguished witnesses here today. I was down in the Ethics Committee into which I was, I think the proper term is "pressed into service," at the beginning of this session. It is an unpleasant task. We discipline Members of the House of Representatives, and today we were voting on whether to bring charges against one House Member or not.

So my apologies to the witnesses and to the audience.

This morning we meet to hear testimony from witnesses of the Central Intelligence Agency in support of legislation that would broaden current statutory authority for CIA personnel to carry firearms in the course of their official duties.

At present, the Central Intelligence Agency Act of 1949 provides that CIA couriers carrying classified documents may be authorized to carry arms.

The CIA seeks to expand that authority to permit designated CIA personnel to protect CIA facilities or property, the Director of CIA and other designated CIA personnel and defectors. This legislation has been advanced by the Director of the Central Intelligence Agency, Admiral Turner, with the support of the administration.

The committee appreciates the concern which motivates the advancement of this legislative proposal, and that is why we are here today.

Our witnesses today are Mr. Robert Gambino, Director of the CIA's Office of Security and Mr. John Morrison, Deputy General Counsel. I see our good friend Mr. Hitz here today.

Gentlemen, welcome and please proceed with your statement. Mr. Gambino.

**STATEMENT OF ROBERT W. GAMBINO, DIRECTOR OF SECURITY,  
CENTRAL INTELLIGENCE AGENCY**

Mr. GAMBINO. Thank you, sir.

Thank you, Mr. Chairman, for the opportunity to come before you on the matter of the Agency's proposed firearms legislation, title IV of the intelligence authorization bill, H.R. 2827. As Director of Security of the CIA, I am charged by the Director of Central Intelligence to insure that the Agency has a sound security program.

The CIA, no less than the National Aeronautics and Space Administration, the Department of Energy, and the Department of Defense, for example, has a need to protect certain of its installations and personnel with firearms. Yet the only explicit statutory authority which the Agency has for arming CIA personnel is as stated in section 5(d) of the Central Intelligence Agency Act of 1949, as amended. That authority provides that Agency "couriers and guards" are authorized to carry firearms "when engaged in transporting confidential documents." In contrast, the above-mentioned agencies enjoy a very broad authority, generally being empowered to arm their employees in the conduct of official business as deemed necessary by the Secretary or Agency head.

It is axiomatic that the statutory responsibility of the DCI to protect sources and methods extends to the protection of Agency facilities housing information dealing with such sources and methods, and to its personnel in possession of such information. Nevertheless, the authority to issue firearms to properly trained guard personnel at Agency facilities is not clear in existing statutes. Moreover, the Agency, particularly in this era of political terrorism, obviously has the need to protect certain CIA personnel whose personal safety may be threatened. There presently exists no explicit statutory authority to provide physical security protection to the persons of the Director or Deputy Director of Central Intelligence. Only in instances where these persons are carrying classified documents does the present statute permit armed protection. The irreparable damage that could accrue to the national security and prestige of the United States in a terrorist kidnaping operation cannot be permitted to remain unaddressed.

A similar situation is present in cases involving the personal safety of defectors placed in our custody for debriefing and resettlement. While these individuals are in our custody, their safety is always a serious consideration. If bodily harm were to come to a defector inadequately protected by our security officers, there would be a devastating impact on all potential defectors. The Agency assumes an awesome responsibility when it takes under its wing any defector and his family, and must have commensurate protective authority.

The Agency must occasionally move significant liquid assets in carrying out its operations. Security, cover, and operational considerations preclude the use of private protective services such as Brinks, Wells Fargo and so forth which are available for the protection of the conventional movement of moneys in the commercial world. Nevertheless, the possible loss of significant monetary assets exists in these situations. The Agency must have the authority to protect these assets with firearms.

There are presently only a limited number of Agency personnel authorized to carry firearms in connection with the movement of sensitive and classified materials. As a reflection of the Agency's con-

cern in this area, it is noted that firearms are issued only in selected instances involving the movement of such materials, and then only when the sensitivity and classification warrant such additional protection. Transportation of a large percentage of Agency classified material does not meet this criteria and therefore no firearms are carried in these situations.

Agency personnel issued firearms are given strict instructions regarding their use. In order to indoctrinate and to qualify those employees selected for tasks requiring the carrying of firearms, the Agency conducts a training program meeting the highest standards and also avails itself of established civil and military firearms range facilities. Agency personnel, moreover, are required to requalify on a semiannual basis.

The proposed firearms authority being sought by the Agency is viewed as correcting a serious and long-recognized deficiency in existing authority. It is not considered a license to place weapons in the hands of an inordinate number of Agency employees. This authorization will not result in a significant increase in the number of Agency employees carrying firearms. We would use the authority sparingly and judiciously as we now use our authority to arm couriers. But when the need arises, we wish to be able to provide adequate protection with assurance to both ourselves and our employees that they are acting within the law. This authority would be controlled and monitored at appropriate management levels within the Agency. The quality of training and standards for qualification would remain consistent with established norms. The procedural guidelines governing issuances and possible use would be clearly defined and restricted. Each issuance would be scrutinized on its own merits and any reported misuse of this authority would be immediately addressed and resolved.

In concluding, I would like to point out that the Church committee in its final report, "Intelligence Activities and the Rights of Americans, Book II, Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, U.S. Senate," page 299, footnote 15, stated,

As part of the CIA's responsibility for its own security, however, appropriate personnel should be permitted to carry firearms within the United States not only for courier protection of documents, but also to protect the Director and Deputy Director and defectors and to guard CIA installations.

Mr. Chairman, I thank you for your attention to this matter and welcome the opportunity to provide any additional comments you may desire.

I would like now to present Mr. John D. Morrison, Jr., Deputy General Counsel, who will provide additional details on the legal questions involved.

Mr. MURPHY. Now, before we get into Mr. Morrison's testimony, let me ask a question, if you can answer it in open session.

In the recent revolution in Iran, it was reported in the press that certain stations of ours, listening stations, were under seige, and that the equipment was destroyed, but there was some concern with regard to the personnel.

Did those men have arms at that time?

Mr. GAMBINO. No, sir, they were not armed.

Mr. MURPHY. Were they in danger other than what was reported in the press?

Mr. GAMBINO. I really can't—I can't respond to that, sir.

Mr. MURPHY. Might not the fact that they had sidearms, might not they have attempted to use them and thus brought calamity upon themselves? They got out of there all right this time without the use of arms. Had they had arms, might not a situation have occurred, a firefright ensued, and then some casualties?

Mr. GAMBINO. Sir, I think you would have to put that in the same category as the Marines at the embassy. They were armed. Their discipline was good. Under the direction of the Ambassador they did not use the arms. I think it was a proper move in that situation. I think the discipline we have over our employees would be precisely the same.

You are correct, in a situation such as that, I think the use of firearms would have been counterproductive.

Mr. MURPHY. Other than protection of classified material, would not a courier be transporting liquid assets?

Mr. GAMBINO. The present statute refers only to classified material.

Mr. MURPHY. You want to broaden that.

Mr. GAMBINO. Yes, sir.

Mr. MURPHY. And with whom would the discretion lie, the Director of the CIA?

Mr. GAMBINO. Yes, sir.

Mr. MURPHY. Or his designee?

Mr. GAMBINO. The Director or the designee, yes, sir.

Mr. MURPHY. And would there be applications filed for the use of a firearm. Assume I were an agent and I felt I was engaged in some hazardous covert action where I thought I needed protection. What would I do, put an application in, go through the system to the director for either his approval or disapproval?

Mr. GAMBINO. Sir, you are talking about an agent, I assume you mean an Agency employee who wanted to carry a firearm for some reason.

Mr. MURPHY. Right.

Mr. GAMBINO. Under the present regulations, the Director of Security has been delegated the authority in this narrow area that we have the authority today, and it would be—application would have to be made in writing. It would go through his own chain of command for approvals up through his chain of command to me, and depending on what the Director's delegation to me was, possibly back to the Director for his final approval.

Mr. MURPHY. OK, Mr. Morrison, you may proceed.

**STATEMENT OF JOHN D. MORRISON, JR., DEPUTY GENERAL  
COUNSEL, CENTRAL INTELLIGENCE AGENCY**

Mr. MORRISON. Thank you.

I appreciate the opportunity to appear before you to speak about section 401 of the Intelligence Authorization bill. Mr. Gambino has discussed CIA policy and practices in the use of firearms as well as some of the problems faced by the Agency because of the lack of clear authority to arm employees in some situations where that may be necessary if the Agency is to properly carry out its mandated responsibilities. I would like to complement his statement by discussing the state of the law in this area, since it is the uncertain nature of the present firearms authority utilized by CIA which has led us to the conclusion that we must seek statutory firearms authority.

For quite some time now there has been some concern within CIA as to the precise scope of its existing legal authority with regard to the use of firearms. For this reason we have recently been reconsidering the extent of that authority in order to insure that Agency activities are conducted on a firm legal basis. The urgency of such a task is evident in view of the sensitivity of the information and material warranting protection. Although we believe that legal authority exists for the activities of CIA in this area, we recognize that there are serious questions as to its limits, and we believe that an immediate clarification of such authority is necessary. Of particular concern to us is the uncertainty of this authority in the domestic context.

To begin this discussion, let me state that a fundamental attribute of sovereignty is the inherent ability of a government to take necessary action to protect its functions, personnel, and instrumentalities, and to protect the national security. The authority of the Federal Government to protect its property and personnel is firmly established, and it has been held consistently by the courts that the power is analogous to the police powers of the several States; that the Government has with respect to its lands the rights of an ordinary proprietor; and that the Government has complete power to exclude all persons therefrom and to issue special permits to go thereon. Furthermore, in terms of property rights, the courts have recognized that some Federal facilities may be unique because of their peculiar and significant importance to the defense of the United States.

It has been held that a facility of such peculiar and significant importance as the Pentagon could constitutionally be made a totally restricted area, and the government could deny public access to Pentagon grounds as it so desired.

Aside from this authority inherent in the sovereign is the additional, historically recognized right of individuals to take necessary action in self-defense up to and including the use of lethal force in extreme cases.

CIA does not possess explicit authority to authorize its employees to carry firearms except under section 403(f) of Title 50, United States Code, which provides that:

In the performance of its functions, the Central Intelligence Agency is authorized to \* \* \*

(d) Authorize couriers and guards designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security.

Despite this limited explicit authority, we believe that the inherent authority of the sovereign and the right of self-defense of the individual, along with several other sources, may be cited to support the implicit authority of the CIA to authorize its employees to carry firearms.

First, pursuant to the National Security Act, National Security Council directives and memorandums have generally authorized CIA to take necessary action in the interest of national security to protect CIA functions and personnel, and otherwise carry out its foreign intelligence responsibilities. In addition to these directives and memorandums, we believe that such authority further derives from 50 U.S.C. section 403(d)(3) which provides that: "\* \* \* the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The Agency's personnel authority would also appear to authorize the arming of CIA employees. This authority, at 50 U.S.C. 403(j), authorized CIA to expend sums notwithstanding other laws for purposes necessary to carry out its functions and particularly for personal services without regard to limitations on types of persons to be employed. More recently, however, the President in Executive Order 12036 assigned to the CIA the responsibility to "Protect the security of its installations, activities, information, and personnel by appropriate means \* \* \*"

Taking these authorities together, we maintain that CIA, as an instrumentality of the sovereign, may authorize its personnel to carry firearms in appropriate circumstances to protect its functions and personnel, and to carry out its responsibilities under law.

It can be argued, however, that the limited express statutory authority in 50 U.S.C. 403(f) restricts the CIA's ability to act in this area. We are concerned also with the effect of 50 U.S.C. 403(d)(3) to the extent protection of Federal property may be considered a law enforcement or police activity. That statute provides that ". . . the Agency shall have no police, subpena, law enforcement powers or internal security functions . . ."

It may be difficult to distinguish between protective and police powers in some cases, so that if a CIA employee discharges a firearm issued to him and injures someone, a court may look closely at the prohibition of 50 U.S.C. 403(d)(3). However, in our view, the legislative history of that provision suggests that the drafters were not focusing on CIA's authority to provide it facilities, grounds, and personnel with physical protection, but rather were attempting to insure that the CIA on the one hand would not take over the domestic security function of the FBI and Secret Service, and on the other hand, insure that CIA would not develop into a Gestapo-type organization operating clandestinely within the United States. The legislative history of the language in question makes it clear that such language was not inserted in the act to prevent CIA from performing a protective function that would provide CIA facilities, grounds, personnel with operational security which would include, as necessary, temporarily detaining trespassers or persons disturbing the peace until law enforcement officials could be summoned. Nevertheless, a statutory enactment would resolve any uncertainty about the scope of CIA firearms authority.

We believe legislative clarification of CIA's authority in this area is also necessary to resolve issues relating to the scope of authority of individual CIA personnel who may be forced to use firearms, and thereby risk exposure to possible civil and/or criminal liability. While the number of circumstances in which CIA personnel carry firearms is not great, those that do exist are extremely important. For example, the CIA operates a small number of training and other facilities that, for reasons of security, cannot be openly identified with the Agency. Without the security provided through the use of armed employees, these facilities cannot be appropriately protected.

The language of our proposal for statutory firearms authority does not purport to grant CIA any law enforcement or police power of any kind whatsoever. We anticipate no drastic changes in CIA practices. The only immediate change would be that certain facilities and personnel previously unprotected would now be protected.

The concerns arising from the lack of clear authority in CIA's use of firearms has led to a self-imposed moratorium on new authorizations for the domestic use of firearms. For this reason, immediate clarification is essential. We view a statute as the optimum solution to our dilemma. Though we may of necessity have to explore other ways of establishing our firearms authority more clearly in the event that our proposed firearms authority is not enacted into law, we would view anything other than statute as merely a stop-gap measure and less than satisfactory.

Before I conclude, I wish to remark upon the various provisions of our proposed language. It should be noted before I continue, however, that the general circumstances under which Agency personnel would be permitted to carry firearms pursuant to this language are more narrowly defined than those in statutes authorizing the Secretary of Defense [at 10 USC 1585], the Administrator of the National Aeronautics and Space Administration [at 42 USC 2456], and the Secretary of Energy [at 42 USC 2201], to authorize the use of firearms by their personnel.

The initial portion of our language would authorize CIA personnel to carry firearms while in the discharge of their official duties and pursuant to regulations promulgated by the Director of Central Intelligence. This provision would enable CIA to continue to fulfill its mission and functions both within the United States and overseas. The requirement that the DCI control the use of firearms by regulation would also serve to guarantee that the use of firearms by CIA personnel would remain under strict supervision. Moreover, CIA personnel would be authorized to carry firearms within the United States only for four purposes.

First, the Director may authorize CIA personnel to carry firearms when safeguarding confidential information, documents or materials. This partially corresponds with existing law, although the provision allows for the protection of information, documents and materials not in the process of being transported.

Second, CIA personnel may be authorized to carry firearms for the protection of CIA facilities, property and mediums of exchange. This portion of the proposed legislation recognizes the need to guard against the physical penetration of sensitive CIA facilities located within the United States. Such authority may also be necessary to protect large amounts of money or monetary equivalents intended for confidential operational purposes which therefore must be transported within the United States under secure cover procedures.

Third, CIA personnel may be authorized to carry firearms to protect CIA personnel who are exposed to the risks of extortion, abduction or even assassination.

Finally, CIA personnel may be authorized to carry firearms to protect defectors and foreign persons visiting the United States under Agency auspices. This may be necessary to prevent the assassination, terrorization, extortion or abduction of defectors or sensitive foreign guests. In this regard, I must stress to you that because the CIA makes a personal commitment to protect both defectors and certain foreign guests, because secrecy is of paramount importance in protection, and because other Federal or local law enforcement agencies cannot provide extensive or continuing security services to CIA, this authority is particularly necessary. Our language would also permit the



use of firearms for authorized training purposes so that CIA personnel will continue to meet the highest qualification standards, and so that the CIA may continue to avail itself of established military or civil firearms range facilities.

In conclusion, I would like to thank the committee for giving me the opportunity to speak regarding our proposal for statutory firearms authority.

Mr. MURPHY. Thank you, Mr. Morrison.  
Any of you three gentlemen can answer this question.

What is the relationship between the State Department and the CIA in connection with CIA employees carrying firearms overseas?

Mr. HIRTZ. Agency policy is that if the chief of station determines that firearms are required for the defense of the facilities or personnel and if time does not permit obtaining an authorization from headquarters, the chief of station may issue firearms under certain conditions. One of these conditions is that the Ambassador concurs in the issuance of the firearms and only if the Embassy does not possess a sufficient number of suitable weapons for issuance to Agency personnel.

Mr. MURPHY. Is State Department approval needed?

Mr. HIRTZ. No; only the Ambassador's approval.

Mr. MURPHY. Has there been a problem with the State/CIA relationship?

Mr. HIRTZ. No.

Mr. MURPHY. Does State endorse your proposal? The premise for these questions is that the Ambassador to a foreign nation is really the President when the President is not there.

Mr. HIRTZ. I think, Mr. Chairman, we would prefer to supply the committee with a statement for the record on the question of our overseas situation.

With respect to the proposal itself, the State Department does approve it.

Mr. MURPHY. They do approve it?

Mr. HIRTZ. Yes.

Mr. MURPHY. Could you generally describe what personnel are authorized to carry firearms, and under what circumstances firearms are carried now?

Mr. GAMBINO. Yes, sir. In the case of a courier, where we have specific statutory authority, the type of material which a courier must carry, the assessment of the threat is taken into consideration before a decision is made whether or not firearms are justified to protect that material. If we come to the conclusion that the material is extremely sensitive, our assessment of the threat is that it needs the protection of firearms, we look to the courier then himself to see whether or not he has qualified in the use of firearms, and if he has, we look to see if the qualification is less than 6 months old. Our regulations require requalification every 6 months. At that time, then, under our present regulations, I may issue a CIA firearms permit and issue the firearm. That is in the area of the couriers.

I might say, sir, that over the years we have taken a hard look at who is issued firearms for transporting classified material, and we have found a number of instances where we did not feel the risk justified the use of firearms, and in those instances we have in fact withdrawn the permission to these couriers to carry firearms.

Mr. MURPHY. Why are the GSA guards currently guarding the CIA building in Langley not adequate for this task. That is one of the installations you have in mind?

Mr. GAMBINO. No, sir, we would continue to ask GSA for the personnel to guard our headquarters buildings and the other installations we have here in the Washington area which are identified as CIA buildings. We feel that GSA has provided us with an outstanding group of officers, and speaking a little parochially, we feel that our GSA contingent is probably the best in Government.

However, there are other installations which, because of cover or because of operational contingencies, it would not be appropriate to have GSA guards, and it is those installations where we would like to use our own personnel rather than GSA.

Mr. MURPHY. What immediate necessity is there for a statute now, or could you possibly get by on Presidential authority?

Mr. GAMBINO. I would have to defer to my legal colleague on that.

Mr. MORRISON. It would not be, as I said, it would not be the optimum solution. The problem is that the authority now is in a very confused and arguable state, and even if we go to an Executive order to authorize firearms, there would still be questions whether some of the other statutes would permit the Executive order to issue and be valid.

Mr. MURPHY. How does Justice feel toward this, and the FBI?

Do you have an opinion from Justice?

Mr. HIRTZ. Yes, we do. We have received clearance from them, Mr. Chairman, and support from Justice and the Bureau for this provision.

Mr. MURPHY. Why couldn't Justice or FBI fulfill this function of protecting defectors who are brought to this country, or important personnel from overseas?

Mr. GAMBINO. Sir, the National Security Act of 1947 as you know authorizes the Agency to bring up to 100 defectors per year for intelligence purposes. These defectors are paroled to the Agency. We feel it is the Agency's responsibility to protect them. We certainly do work in very close coordination with the FBI, but they are neither staffed nor flexible enough for our requirements to handle the defector protection responsibility. In addition, as Mr. Morrison mentioned, there are foreign guests, mostly people in the category of senior intelligence officers of foreign countries, who are invited to this country. It is paramount that their travel to the country be kept secret and the minimum number of people possible know of their travel. We feel we have a responsibility to them to provide personal protection if our evaluation of the threat requires it.

The other Government agencies just are not equipped to handle that responsibility, and the FBI definitely is not.

Mr. MURPHY. They are not equipped to handle defectors, to bring them in?

Mr. GAMBINO. Yes, sir, I am sure—and we have in the past availed ourselves of some assistance from the FBI.

However, I don't want to speak for the FBI, but in dealing with them directly on this issue—

Mr. MURPHY. How about the Federal Protective Service? They handle informants in the criminal justice system, when we know that there are people out to kill them, there are contracts out to kill them. We have had individuals testify before our various committees when there are 15 or 20 fellows sitting around them.

Mr. GAMBINO. Yes, sir, but there is a significant amount of protection that accrues to these foreign officers because of the secrecy and the cover in which they travel. To get some other Government agency to provide their officers to protect these people—

Mr. MURPHY. In other words, the concern is security. You would have to send telegrams, make phone calls, et cetera?

Mr. GAMBINO. Cut an awful lot of people in, security and cover, primarily.

Mr. MURPHY. Besides defectors, and foreign intelligence experts, what other type of people are you talking about?

Mr. GAMBINO. In that category, defectors and it would in all probability be senior intelligence officers or perhaps an agent of great value to the Agency. That would be my view of the category of defectors and foreigners. Now, with regard to protecting personnel, there is the other category of our own employees.

Mr. MURPHY. What protective training is the CIA presently giving with regard to firearms, for those that are empowered to carry them?

Mr. GAMBINO. We have a very comprehensive training program, sir, which is adapted specifically to the type of firearm to be issued. The training is conducted by qualified firearms instructors. They have to pass a course which includes silhouette firing, firing from various positions, accuracy of fire, care and safety of using firearms, the typical firearms course that is utilized—very similar to that used by Treasury and FBI.

Mr. MURPHY. Why now, after all these years, from 1946 or 1947? Why now all of a sudden is the CIA coming in and asking for statutory authority?

Mr. GAMBINO. Sir, my response to that would have to be that up until the Church committee, we assumed the authority was there. It might not be explicit, but certainly it was implicit. It was only after some great scrutiny of the 1947 and 1949 statutes that some people began to feel that the authority did not extend to some of the things that we were doing, such as protecting defectors, protecting the DCI, and protecting some of our facilities, and in the effort to try to put it on a more firm and legal basis, we decided to go for correction.

Mr. MORRISON. I would endorse that and say, some of which I said in my statement, that we can make a very good legal brief for our authority to carry firearms, and in another day we might well have relied on that, but there is so much argument on the other side that we do not feel comfortable, and we feel that we must have the authority clarified, preferably by statute so there is no question that we are operating within the law.

Mr. MURPHY. You use the words "you must have." Are you saying that you don't want to wait for the charter, that you want this independent of the charter?

Mr. MORRISON. We would prefer, I assume, to go ahead with this bill where it is all set out.

Mr. HIRZ. We feel there are certain interests, Mr. Chairman, some of which have been sketched, that presently require protection, so that just as soon as possible or just as soon as we are able to achieve a legislative remedy, we feel the need.

Mr. MURPHY. Any questions from chief counsel?

Mr. O'NEIL. Just one.

What is meant by the phrase "information concerning intelligence sources and methods" in subsection (ii) of the proposal? Presumably

it does not include documents or material. Is it meant to include information in the head of some person and therefore the person as well?

Mr. MORRISON. It includes documents and material. It is a carry-over of well-established law, as you know, in the National Security Act of 1947, where the Director has the responsibility to protect intelligence sources and methods.

Mr. O'NEIL. But it seems from the wording of the statute to be exclusive of materials or documents because materials and documents are appended.

Mr. MORRISON. Yes; there can be sources, for example, that are not documents. An individual may be a source of intelligence. He is an intelligence source and he is not a document. Also, the section that you are referring to says "or classified intelligence documents or material" and the phrase "information concerning intelligence sources and methods" is not qualified by the word "classified." Now, there are situations where that might be necessary. For example, we may have documents that are classifiable and in the ordinary course of business would be so stamped, but because of the nature of the person or the place where they are to be used, it is necessary to have them unmarked, and you could get into a debate as to whether that document was protected if you said it had to be a classified document to protect it. But if it involved intelligence sources and methods, it would still be protected by this section.

Mr. MURPHY. Well, we want to thank you gentlemen. We will consider it.

Mr. GAMBINO. Thank you, Mr. Chairman.

Mr. MURPHY. Again my apologies for being late.

[Whereupon, at 12:12 p.m., the subcommittee recessed subject to the call of the Chair.]

## APPENDIX A

### CIA RESPONSES TO WRITTEN QUESTIONS

*Question 1.* Would the number of CIA employees overseas authorized to carry firearms increase if this legislation were enacted?

Answer. There is no expectation that this legislation will dictate changes in our overseas situation.

*Question 2(a).* Under what authority do CIA personnel overseas carry firearms? What—if anything—is inadequate about this authority?

*(b).* Large numbers of CIA personnel carried firearms during the secret war in Laos. Under what authority did they do so?

Answer. In the international arena, as well as on the domestic front, CIA relies upon the inherent authority of the sovereign, the right of self-defense of the individual, National Security Council directives and memorandums, and various provisions of the National Security Act, the CIA Act, and Executive Order 12036 as a basis for utilizing firearms to protect CIA functions and personnel, and to otherwise carry out its foreign intelligence responsibilities. Though the law-enforcement prohibition of the National Security Act and the limited firearms authority of the CIA Act do not militate against the use of firearms by CIA outside of the United States, the proposed statutory CIA firearms authority would make it clear that any use of firearms by CIA rests upon a firm legal basis and is strictly controlled by regulation of the Director.

*Question 3.* Shouldn't the question of this proposed authority to carry firearms be coupled with such charter issues as whether or not there ought to be a ban on assassinations and whether or not foreign governments may be overthrown by force?

Answer. No. Such issues are presently being considered in the context of the comprehensive Intelligence Charter Legislation Process. Although the firearms issue is also addressed in provisions of the proposed Charter legislation, legislative clarification of the CIA's firearms authority is of sufficient importance and urgency to warrant separate, prompt action. Further, the issues of a ban on assassination and whether a foreign government may be overthrown by force are not really germane to the Agency's proposal for statutory firearms authority. Such issues fall within the category of special activities and bear little relation to the legislative clarification the Agency is seeking in the firearms area.

*Question 4.* Why do CIA employees within the U.S. need to carry firearms?

Answer. To provide adequate protection for: sensitive classified materials and information concerning intelligence sources and methods; facilities, property and monies or other mediums of exchange; the person of the Director, Deputy Director or other persons so designated and the person/family of defectors or other foreign persons visiting the U.S. whose safety and well-being are entrusted to the Agency.

*Question 5.* What is the current authority under which CIA personnel in the U.S. may now carry guns?

Answer. Within the United States, CIA utilizes the statutory firearms authority contained in section 5(d) of the CIA Act when arming couriers and guards who will be engaged in the transport of certain national security documents or materials. For all other domestic protective purposes, CIA relies upon the inherent authority of the sovereign, the right of self-defense of the individual, National Security Council directives and memorandum, and various provisions of the National Security Act, the CIA Act, and Executive Order 12036.

*Question 6.* Are there guidelines or regulations which govern the use of firearms by CIA personnel? Could you generally describe how individuals are authorized to carry firearms and under what circumstances firearms may be used?

Answer. (Domestic). There are well-defined regulations governing the authorization and control of firearms issued to Agency personnel. Requests are approved by the Director of Security subject to completion of appropriate qualification training. Weapons are secured in approved safekeeping facilities until specific tasks warranting their issuance are received. Upon completion of such tasks all items are returned to safe storage.

Answer. (Overseas) Presently, the use of firearms overseas is stringently controlled; we anticipate no drastic change in CIA practices or procedures relating to the use of firearms overseas if our proposed firearms authority is enacted into law. What follows is a summary of CIA policy concerning the use of firearms outside of the United States. Bear in mind that the following summary does not apply to firearms authorized within the scope of lawfully approved paramilitary operations. The use of firearms in those operations is subject to separate, stringent controls.

With regard to the overseas placement and issuance of firearms the policy of the Agency is as follows: first, firearms will be placed at overseas stations or bases only in extraordinary situations when it is necessary for the protection of classified information or facilities, or for the protection of employees or their dependents; and, secondly, since the Chief of Station (COS) relies primarily on host government authorities and the cover organization for the protection of facilities and personnel, firearms are not issued to Agency personnel abroad except in extraordinary circumstances.

In each case, firearms placement and issuance are subject to the approval of the Deputy Director for Operations (DDO); events, such as the unforeseen outbreak of violence in areas of political instability, may preclude prior/DDO approval in which case the decision may be made by the COS with Chief of Mission (or Chief of the official cover installation if other than the Department of State) concurrence and immediate notification of the DDO of the facts and circumstances surrounding the issuance.

Extraordinary circumstances which may dictate the issuance of firearms to CIA personnel abroad include the imminent possibility of mob violence or terrorist activity targeted against station facilities or the reasonable belief that the lives of specific employees or their dependents are threatened by assassination or other terrorist activity. It is to be noted that for purposes of firearms issuance when extraordinary circumstances exist, CIA firearms are issued only after it becomes apparent that the Embassy or official cover installation (if other than the Embassy) does not possess a sufficient number of weapons to issue to CIA personnel.

In addition, each COS, having firearms placed at his station, must establish written firearms control procedures which are reviewed and revised annually as necessary and forwarded to Headquarters.

*Question 7.* How many CIA employees in the U.S. now carry firearms?

Answer. Approximately 70, all of which, of course, are not on duty at any one time.

*Question 8.* How many more CIA employees in the U.S. would be carrying firearms if the requested legislation were enacted?

Answer. Approximately 40 more, all of which, of course, will not be on duty at any one time.

*Question 9.* Are there CIA facilities in the U.S. that need increased protection?

Answer. Yes. At present a sensitive intelligence facility lacks the degree of protection deemed appropriate by all standards of measurement.

*Question 10.* Why are alternatives other than CIA guards not feasible?

Answer. Cover and sensitive sources and methods considerations preclude using other than CIA direct hire employees for guard duties in these few domestic instances. Further, with other than CIA personnel, there may be questions of clearances and lack of continuity on the job. For example, with military personnel as well as with contract guards, there is a constant turnover which allows for further proliferation of the numbers of people who are allowed access to highly sensitive intelligence information and facilities.

*Question 11.* If this legislation were enacted, would CIA employees take over all guard duties at facilities in the U.S. now performed by other armed guards?

Answer. No. GSA FPO's would continue to provide the majority of guard duties for Agency facilities in the U.S.

*Question 12.* Are you seeking extended authority only for CIA security officers or will it cover any CIA employee designated by the Director?

Answer. The proposed firearms authority would cover all CIA personnel, but the actual carrying of firearms would be restricted by regulation of the Director to only those CIA personnel who have been properly designated.

*Question 13(a).* What immediate necessity is there for a statute now? Can't you get by on Presidential authorization in the meantime?

(b) Have you asked the President for it?

(c) Is there any express statutory prohibition that you would be violating by relying on Presidential authorization?

Answer. We are not sure that our existing authority to authorize the carrying of firearms is indisputable in all the situations in which we think arming personnel would be appropriate. In view of this uncertainty, enactment of new statutory authority is the best way to settle the question. We have considered handling the issue by Executive Order but in view of the fact that some of the questions about our authority result from conflicting or unclear statutory provisions, we do not believe that the issuance of an Executive Order is as satisfactory a solution as would be new statutory authority.

*Question 14.* Describe what is meant by "information concerning intelligence sources and methods" in subsection (ii) of the proposed legislation. Since classified "intelligence documents or materials" are also included in this category, "information concerning intelligence sources and methods" seems intended to embrace other than classified documents or material.

Answer. The Director is responsible for the protection of intelligence sources and methods from unauthorized disclosure under the provisions of the National Security Act. The term is used in our proposed firearms authority to track the National Security Act. Moreover, it may not always be appropriate to classify all information concerning intelligence sources and methods which requires protection.

Classification dictates that access to properly classified documents and materials be strictly controlled and that the documents or materials be conspicuously marked to indicate their level of classification. Classification would be inappropriate, though protection might be required, in instances where the subject matter of particular documents or materials involves information concerning intelligence sources or methods, which, although classifiable, cannot be marked due to the covert nature of CIA's relationship with the person who must handle the documents or materials or the place where they must be used. The classification markings or the highly visible security access controls required by the formal classification of any documents or materials in such a case could easily result in the compromise of the sources or methods involved.

Similarly, classification would be inappropriate in instances where the subject matter of particular documents or materials does not involve information which is classifiable per se, but where the fact of CIA's association with that subject matter does concern intelligence sources and methods thus requiring protection. In order to prevent the compromise of such information, the documents or materials themselves, which represent the tangible evidence of CIA's association with the subject matter involved, may have to be protected. For example, a copy of a contract executed by an Agency proprietary would not be marked as classified; nonetheless, when it is in the possession of an Agency employee it needs to be protected from disclosure because disclosure would reveal the fact of the Agency's association with the proprietary.

*Question 15.* How do you guard information in someone's head except by guarding the person? Isn't this authority contained in subsection (iii)?

Answer. The authority to protect Agency personnel contained in subsection (iii) of our proposal would be sufficient to protect the information in someone's head when protection is required.

*Question 16.* How frequently is the authority to guard a medium of exchange likely to be used?

Answer. Infrequent; otherwise, impossible to forecast.

*Question 17(a).* How many firearms, on the average, are being carried by CIA personnel within the U.S. today?

(b) Overseas?

(c) What kinds of firearms are used?

Answer. (a) At any given moment-in-time, under 20.

(b) It depends on the situation in the host country. See answer to question No. 6 for discussion of firearms issuance overseas.

(c) Conventional handguns and shotguns.

*Question 18.* What other agency personnel do you envision providing protection for, beyond the Director and Deputy Director? Will the DDO be requiring such protection?

Answer. The purpose of subsection (iii) of the proposed firearms authority is to provide CIA with the capability to protect the Director and Deputy Director at all times and to protect any of its personnel in the event of any specific exigency warranting protective action, such as threats of extortion, abduction, terrorism, or even assassination.

*Question 19.* Are you aware of any past serious incidents in the U.S. that would warrant protection of CIA personnel or classified material?

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Answer. Yes, there have been instances of serious threats to the Director, serious threats to defectors which we have become aware of through foreign sources, as well as instances of serious threats to other Agency personnel such as the General Counsel.

*Question 20.* Assuming passage of this legislation, would you provide a copy of the regulation dealing with firearms and a one time report on the increased numbers of personnel carrying firearms? What numbers of weapons will be concealed, rules for use etc.?

Answer. The set of headquarters regulations currently maintained by HPSCI would reflect any changes in the headquarters regulation concerning control of firearms. HPSCI would also be provided with a one time report on the increased number of CIA personnel that would carry firearms on a regular basis; such a report would also include information concerning the number of concealed weapons involved and rules for their use.

*Question 21.* Where do you plan to conduct firearms training for CIA personnel? Where is training accomplished today?

Answer. At selected Agency domestic training facilities and civilian or military ranges where such arrangements can be made.

*Question 22(a).* Can you conceive of a requirement to protect other non-Agency personnel beyond defectors and foreign persons?

(b) Have you requested the FBI or others to provide protection for CIA sponsored travelers in the U.S.?

Answer. (a) No.

(b) No.

*Question 23.* Has the Office of Legal Counsel of the Department of Justice issued a definitive legal opinion stating CIA's firearms authority is limited to what is contained in the CIA Act of 1949?

Answer. No. We believe that it is more appropriate to obtain statutory clarification of CIA firearms authority because such clarification would be more legally certain. Though we may, of necessity, have to explore other ways of establishing our firearms authority more clearly if our proposal for statutory firearms authority is not enacted into law, we would view anything other than statute as less than satisfactory.

*Question 24.* In the past, we have heard that electronic surveillance of American citizens, in the U.S. or abroad, could be conducted without a warrant pursuant to inherent Presidential power. Do you now question the existence of a similar power regarding the authorization of CIA employees to carry firearms?

Answer. We believe that CIA, as an instrumentality of the sovereign, has the inherent authority to protect its functions and personnel. However, it can be argued that the limited express firearms authority of the CIA Act and the law-enforcement prohibition of the National Security Act impair the ability of CIA to take action in this area. A statutory enactment would resolve any uncertainty about the scope of CIA firearms authority.

THE DIRECTOR OF CENTRAL INTELLIGENCE,  
Washington, D.C., December 28, 1979.

Mr. IRA H. GOLDMAN,  
Counsel, Subcommittee on Legislation, Permanent Select Committee on Intelligence,  
House of Representatives,  
Washington, D.C.

DEAR IRA: This is in response to your recent inquiry re Question No. 6 of the "Firearms" Q's and A's that were supplied to the Committee in May, 1979 following the Subcommittee's 4 April 1979 hearing.

As I recall, you asked that the answer to Question No. 6 be expanded to cover the use of firearms by CIA personnel domestically and overseas. It was your contention that the response provided in May speaks only to the question of the issuance and carrying of firearms, not their use. After reviewing the question and answer in light of your assessment I concurred with your conclusion and posed the following to appropriate components:

(1) Are there guidelines or regulations which govern the use of firearms by CIA personnel?

(a) Domestically; and

(b) Overseas.

(2) Generally describe under what circumstances firearms may be used.

(a) Domestically; and

(b) Overseas.



With regards to the domestic situation, "guard instructions" do exist to govern the use of firearms by CIA guards. I have attached a copy of the "guard instructions" which will serve to answer the question dealing with circumstances under which firearms may be used. The only other instances in which weapons are authorized to be used are during qualification and currency training exercises which are strictly controlled. As for the overseas situation, current regulations limit themselves to the questions of the issuance and carrying of firearms.

Should you need further classification, please feel free to call me directly.

Sincerely,

ROBERT J. WINCHESTER,  
*Assistant Legislative Counsel.*

GUARD INSTRUCTIONS ON THE USE OF FIREARMS

1. Guards who are qualified and authorized to carry firearms while on duty shall have the pistol fully loaded, carry the pistol only in the holster provided and carry no firearm other than the one provided for his use.

2. Aside from practice firing on the range, the pistol shall remain holstered and shall be fired only when it is necessary for the guard to protect himself or others from grievous bodily harm or death, when placed in great peril on U.S. Government property.

3. Firearms shall not be fired from or at a moving vehicle and shall not be fired when the lives of bystanders may be endangered. Firearms shall not be used to intimidate or threaten and shall not be used to fire warning shots.

4. In the event of either an accidental or intentional discharge of the firearm, the guard shall immediately notify his supervisor, who will impound both the ammunition and the pistol until an official investigation is completed.

I, \_\_\_\_\_, have read the above provisions and completely understand the responsibility placed upon me in the use of firearms by virtue of my position as a guard.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## APPENDIX B

### TITLE IV—CENTRAL INTELLIGENCE AGENCY FIREARMS AUTHORITY

SEC. 401. Subsection 5(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(d)) is amended by striking out subsection 5(d) in its entirety and inserting in lieu thereof the following:

“(d) Authorize, under such regulations as the Director shall prescribe, Agency personnel, while in the discharge of their official duties, to carry firearms: *Provided*, That within the United States, such official duties shall include only the protection of: (i) information concerning intelligence sources or methods, or classified intelligence documents or material; (ii) facilities, property, or any medium of exchange owned or utilized by the Agency; (iii) the Director and the Deputy Director, and other Agency personnel as may be designated by the Director or Deputy Director, such designations to be made only upon determination of the Director or Deputy Director that a specific stated exigency warrants such protective action, which is to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of one hundred and twenty days, whichever is sooner; and (iv) defectors and foreign persons visiting the United States under Agency auspices: *And provided further*, That such duties shall include the transportation and utilization of firearms for authorized training.”

(18)

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