

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

[Redacted]

Acting Chief, Information Services Staff
5B2830 Headquarters

EXTENSION

NO.

DATE

10 September 1979

STAT

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.)

RECEIVED

FORWARDED

1. Director of Communications

2. Director of Data Processing

3. Director of Finance

4. Director of Logistics

5. Director of Medical Services

6. Director of Personnel

7. Director of Security

8. Director of Training

9.

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F.Y.I.

Attached is a copy of the results of the latest meeting between the Charters Working Group and members of the SSCI staff.

No action is required.

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[Redacted]

OGC Has Reviewed

AC/ISS: [Redacted] :mes (10 Sept 1979) STAT

Distribution:

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Attachment is memo re Results of 29 Aug 1979 Charters Working Group Mtg w/SSCI Staff from OGC dtd 9/6/79

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

OGC 79-08168

6 September 1979

MEMORANDUM FOR: Department of Defense
Attn: Deanne Siemer
Department of Justice
Attn: Kenneth C. Bass
Department of State
Attn: Jeffrey Smith
Department of Treasury
Attn: J. Foster Collins
Office of Management and Budget
Attn: Arnold E. Donahue
Federal Bureau of Investigation
Attn: James Sturgis
National Security Agency
Attn: [REDACTED]
National Security Council
Attn: Donald Gregg
Office of the Vice President
Attn: Dennis Clift

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STAT FROM:

[REDACTED]
Special Assistant to the
General Counsel for Intelligence
Community Affairs

SUBJECT: Results of 29 August 1979 Charters
Working Group Meeting with SSCI Staff

Attached for your information is a memorandum which summarizes the results of a 29 August 1979 meeting between representatives of the Charters Working Group and the SSCI staff concerning the staff's counterdrafts of Titles I and II.

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Attachment

6 September 1979

MEMORANDUM FOR THE RECORD

FROM: [REDACTED] Special Assistant
Intelligence Community Affairs

SUBJECT: Discussion of Title I and Title II Issues by
Representative of the Charter Working Group and
the SSCI Staff -- 29 August 1979

1. Attendees:

Working Group - Dan Silver



SSCI - John Elliff
Keith Raffel
Martha Talley

Unless otherwise indicated all section references are to the SSCI Title I draft of 17 July 1979 and the Title II draft of 18 July. The views and positions stated by the SSCI staff represent, according to them, the views of the Subcommittee on Charters and Guidelines and in some instances of other senators on the Committee.

Remaining Title I Issues

2. Section 131 - the SSCI was advised that this section is unacceptable to the Working Group (WG). Dan Silver stated that the question of the standard for special activities should be addressed in Sections 132 and 133. He stated that the WG was concerned that the section might at some future time in some way be construed to have a substantive effect. It was pointed out that the legislative history could discuss the circumstances in which special activities could be undertaken.

3. Section 132 -- there was a wide-ranging discussion. The SSCI staff was concerned about granting DoD authority to

conduct special activities "when military activities are involved" without a requirement for a finding or approval by the President that DoD should conduct the activity. This led to a short discussion of deception and quick agreement that a separate session with appropriate DoD representatives was needed to resolve this issue.

The SSCI agreed to drop the "in writing" requirement in 132(a).

Section 132(b) -- the SSCI agreed to consider changing the requirement for a written Presidential determination to an arrangement whereby the NSC or a committee thereof would approve provision of support for "low-risk" special activities. (Apparently they intend to continue to require Presidential approval (but not in writing) for support for such activities involving substantial resources or risks if the support will be provided by other than the department or agency conducting the activity.)

4. Section 133 -- the SSCI staff agreed that the standard in 133(a)(1) and (2) should be "important" instead of "essential."

Dan Silver stated that the WG position is that 133(a)(3) and 133(b) should be covered in Presidential guidelines under 133(c). John Elliff pointed out that the first sentence of 133(b) could hardly be objectionable since it comes from the Administration draft (232(a)). He stated that they would consider putting the second sentence (requiring the recording of the views of each member of the NSC) in legislative history. The remaining language in 133(b) requiring attendance of the SECDEF, SEC State, AG, and DNI, or their representatives, in order to reach a decision or make recommendation to the President concerning a special activity was identified as representing a KEY ISSUE for the SSCI. (Apparently the SSCI feels that without this language the review, recommendation, and approval functions of the NSC or a committee thereunder regarding special activities might be exercised by "stand-ins" or a routine basis.)

John Elliff stated that 133(a)(3) is also a KEY ISSUE for the SSCI. He argued that the requirements therein are the heart of explaining to the public what special activities are all about. Elliff saw the language as all the more crucial if Section 131, the purpose statement, is to be deleted, and suggested 133(a)(3) as a replacement. Dan Silver stated that the WG's quarrel is not so much with the substance of the requirement but rather with saddling the President with it by statute. Elliff suggested incorporating the language in 133(b) as something to be covered in NSC review and Dan Silver said that would be preferable to its current configuration.

John Elliff stated that the SSCI would add the Administration language which allows an NSC committee member to force a Presidential finding on a given special activity (Administration 232(c)).

Dan Silver pointed out that the SSCI neglected to repeal Hughes-Ryan. (John Elliff asked if the Administration expected the SSCI to ensure, prior to introduction to the bill, support by the other affected Senate Committees for repeal of Hughes-Ryan. Dan Silver expressed doubt that such was the Administration's expectation, but that vigorous support for repeal by the SSCI was expected at a minimum and that Hughes-Ryan repeal was such an important element of what the Administration wanted to get out of the legislation that he could not predict what would happen if repeal failed to remain in the bill as it moved forward in Congress. Keith Raffel stated that the quid pro quo for repeal of Hughes-Ryan was acceptance of "fully and currently informed" language for Section 142(a) and acceptance of Section 135, which states that activities requiring authorization or reaffirmation by the President shall be considered "significant anticipated activities" for the purpose of Section 152. It was agreed that further discussion of Section 152 would be postponed until Bill Miller could participate.)

5. Section 134 -- the SSCI staff is developing new language which will require only that the President establish procedures for the approval of sensitive collection activities, which procedures "may" require reviews and findings.

6. Section 141 -- it was agreed that there could be no useful substantive discussion because our respective positions are too far apart. Dan Silver suggested that the SSCI accept reliance on procedures to deal with the professions. Such procedures might be patterned after CIA regulations on the subject. Elliff suggested that this might be possible if CIA regulations dealt with the use of academics abroad. He admitted that there was no expectation of a total ban on the use of journalists and academics.

7. Section 142 -- the SSCI staff agreed to substitute "for the purpose of influencing public opinion" for "likely redistribution." The section would thus read something like this: "No entity of the Intelligence Community may pay for or otherwise knowingly cause or support distribution of any book, magazine, article, periodical, film, or video or audio tape for the purpose of influencing public opinion within the United States unless the involvement of the United States Government is acknowledged publicly."

8. Sections 143 and 144 -- the SSCI staff stated that the senators would be willing to drop assassination, but

that they wanted to retain the criminal prohibition on unconsented human experimentation. John Elliff acknowledged that inclusion of Section 144 would mean OMB would want to clear the language Executive Branch-wide and that this would delay the charter process further. Dan Silver pointed out that inclusion would lead to referral of the legislation to other committees and reminded the SSCI staff that this subject was beyond SSCI and IC expertise.

9. Section 146 -- the SSCI agreed to delete this section.

10. Section 147 -- the SSCI staff agreed to delete "to maintain essential cover and proprietary arrangements" in Section 147(2). This would mean AG procedures for all covert procurement not covered under Section 147(1). Dan Silver pointed out that we would need language in legislative history to the effect that the section does not cover CIA payment for educational training of employees under cover. That was agreeable to the SSCI staff.

11. Section 151 -- Dan Silver stated that the WG considers the language in this section non-negotiable, since it was arrived at only after a long, drawn-out process involving the IOB, DoJ and the IG entities. The SSCI staff agreed that the standard for reporting in 151(c)(4) is too low and stated they would be willing to modify it to require reports from the IOB to the AG only if the Board concludes that an intelligence activity has been conducted in an illegal manner. The SSCI will take this up with the IOB.

Section 151(d) -- the SSCI staff agreed to adopt our language on reporting (Administration 141(d)). However, they want to add language setting forth the duties of the general counsels and inspector generals similar to that contained in Titles IV-VI. They will also add language that will allow the designation of any official -- not just one from the IC entity -- to perform the functions of general counsel and inspector general. This would permit the Legal Adviser, State, for example, to perform the function of general counsel for INR.

12. Section 152 -- the SSCI staff agreed to consider adopting our language in 152(b) and accepted our 152(c). John Elliff argued for retaining the SSCI "notification of waiver" language in their 152(e). Dan Silver objected. The SSCI will take this under advisement.

13. Section 153 -- the SSCI staff agreed to delete the word "lawful" in 153(b) and to reinsert the words "or officer or employee" after "member."

14. In a discussion with Keith Raffel on 31 August, the following additional points and comments were made on behalf of the WG:

a. 151(e) - add "or his designee" after "Attorney General" in the stem.

b. 151(c)(1) - reinsert the word "serious."

c. 151(h) - change to reflect the Administration Section 141(f)(3) (see SSCI 151(f)(5)) so that it is the entity heads' responsibility to ensure employee cooperation with the IOB, General Counsel and IG.

d. 153(e) - in the item delete "and" before "(c)" and add "and (d)" after "(c)" so that the provision for select committee staff secrecy agreements and security clearances is enacted as an exercise of the rulemaking power of the House and Senate.

e. 154 - add "sources and methods" after "United States" in accordance with Administration section.

Title II Issues

15. We began with a general discussion of the SSCI's definition of "covert technique" in Section 202(b)(2). Dan Silver stated that the WG might recommend acceptance of the SSCI's scheme if the President were the one who determines what techniques are covert techniques. Dan Silver suggested the definition be rephrased to read "'Covert technique' means an extraordinary technique and any other technique to collect information that the President determines requires his approval." It was recognized that this might be one way to deal with the Administration's position that it will not go into detailed procedures in statute for other than Fourth Amendment techniques and "placing of agents" in U.S. organizations. John Elliff asked if the Administration would go beyond "placing of agents" in designating techniques as "covert techniques." Dan Silver stated that the Administration was probably not in a position at this time to commit itself on which techniques would be considered "covert." In addition, he pointed out that this approach to the problem would not work if the SSCI were to write a detailed legislative history establishing guidelines for the designation of techniques.

John Elliff stated that he was troubled most by the standard ("important") in the Administration draft (Section 216) as the basis for initiating directed collection of

foreign intelligence. Dan Silver stated that essentially there were three solutions: (1) no charter, (2) address Fourth Amendment techniques only and rely on vigorous oversight and (3) build in a "fudge factor" by allowing the Executive (President) to determine when the circumstances make a technique a "covert technique" requiring his approval. In this regard he said the WG did not object to the standard in Section 205 (providing that covert techniques can be used against U.S. persons for FI collection only in extraordinary circumstances where authorized by the President). He stated that what we need is an escape hatch to collect important FI in extraordinary circumstances and not blanket authority for FI collection.

16. Section 202 (b) (6) definition of "foreign electronic surveillance." Dan Silver asked what the SSCI was trying to accomplish by changing the language from "in circumstances in which a warrant would be required if undertaken for law enforcement purposes in the United States" to "in circumstances in which a court order would be required if undertaken within the United States." John Elliff indicated the change was intended to require a warrant for the use of pen registers, as in FISA. The SSCI staff agreed to insert the words "under the Foreign Intelligence Search and Surveillance Act in the United States" after "court order" and before "would be required," and to delete "if undertaken within the United States." It was agreed that the WG and SSCI would think further about this change. (It was also agreed that the discussion applied to the definition of "foreign physical search.")

17. Section 202 (b) (8) - the SSCI staff agreed to delete the word "publicly" from the definition of "foreign power" in 202 (b) (8) (c).

18. Section 202 (b) (10) - definition of "minimization procedures." The SSCI staff stated that the language providing that nonpublicly available information that is evidence of a crime can be disseminated "for law enforcement purposes" was intended to impose the same limitation as in FISA. John Elliff stated that the SSCI would put in legislative history that "for law enforcement purposes" means "for the purpose of preventing a crime or enforcing the criminal law," the language of the Administration definition. Dan Silver indicated this would be satisfactory.

19. Section 203 - general authority for activities that concern U.S. persons. The SSCI staff stated that Bill

Miller believes the section should be cast as a prohibition followed by exceptions. Dan Silver stated that the IC needs authorizing language (as in Administration Sections 211 and 213). John Elliff stated that Title I provides general authority. (If he was referring to Section 111, Authorization for Intelligence Activities, the section may not be sufficient since it provides that IC entities may conduct intelligence activities "only in accordance with the provision of this Act" and that Title I does not prohibit departments and agencies from collecting, retaining, and disseminating information if "otherwise authorized to do so.") The SSCI staff said they would consider phrasing Section 203 along the lines of "when conducted in accordance with this section (or title) activities may be directed against etc."

The SSCI staff agreed to change "lawfully authorized function" to "lawful function" in 203(a) and (d).

Section 203(b) - the SSCI staff agreed to consider the WG's language "for the purpose of interfering" to replace "in a manner which interferes."

Section 203(g) - the SSCI will consider adopting the Administration language regarding measures to protect the security of personnel, installations, activities, etc.

Section 203(h) - Dan Silver objected to the language applying Title II to all departments and agencies. John Elliff stated that there was no provision in Title I limiting the conduct of intelligence activities to entities of the intelligence community. He views this as a particularly large "loophole" for a "Plumbers" operation, citing the Ellsberg case as a specific example. Nevertheless, the SSCI staff agreed to consider deleting this language.

20. Section 204(a) - Dan Silver objected to the apparent intention that all activities involving U.S. persons would require AG procedures. The SSCI staff agreed to insert the word "intelligence" before "activities" in 204(a). (John Elliff stated that the section as worded would actually permit an operation like COINTELPRO, if authorized and conducted pursuant to AG procedures, but that the SSCI was prepared to "take the heat" if this issue were raised.

21. Other Issues (mentioned but not discussed at length)

a. Section 206 - Collection of CI and CTI.
Apparent higher standard for CI collection against

U.S. persons involving other techniques than for "extraordinary techniques."

b. Section 207 - Collection of information concerning potential sources. Absence of a provision for extension of time and limitation of techniques (the SSCI apparently has no problem with providing for an extension of time for conducting such collection. Also they said that "interview" was not intended to preclude pretext interviews. There was a brief discussion of possibly specifying the techniques to be either permitted or prohibited. One technique the SSCI would want to prohibit is access to records of financial institutions.)

22. On 31 August 1979 [redacted] and the undersigned informed Keith Raffel of the other WG positions on Title II up to Remedies and Sanctions. With respect to issues concerning remedies and sanctions, we conveyed the positions outlined in a 17 August 1979 memorandum from [redacted] [redacted] to the WG providing an analysis of the SSCI's Title II.

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[redacted]

Distribution:

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