

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	<i>Mr. Malanuk</i>	<i>18 JAN 1978</i>	<i>M</i>
2			
3	<i>AIDDA</i>		
4			
5			
6			

This document may contain Attorney-Client/Attorney Work-Product Privileged Information

<input type="checkbox"/>	ACTION	<input type="checkbox"/>	DIRECT REPLY	<input type="checkbox"/>	PREPARE REPLY
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DISPATCH	<input type="checkbox"/>	RECOMMENDATION
<input type="checkbox"/>	COMMENT	<input type="checkbox"/>	FILE	<input type="checkbox"/>	RETURN
<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	SIGNATURE

OGC Has Reviewed

DDA 98-6512

Remarks:
Both Tom Gale and I have reviewed. We did not burn out - since
a. The deadline was too short given all the leaves, etc and
b. DDA previous inputs appear to be included.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO. *Acting EO* DATE *12/30*

UNCLASSIFIED

INTERNAL USE ONLY

CONFIDENTIAL

SECRET

Approved For Release 2003/12/19 : CIA-RDP86-00101R000100030016-4

ROUTING AND RECORD SHEET

SUBJECT: (Optional) DD/A Registry
77-6512

FROM: EXTENSION NO.
 Legislative Counsel
 6D15 HQ DATE 20 December 1977 STAT

TO: (Officer designation, room number, and building) OFFICER'S INITIALS COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

	DATE			
	RECEIVED	FORWARDED		

	DATE			
	RECEIVED	FORWARDED		
1. <i>EO/</i> DDA 7D18 HQ	21 DEC 1977		<i>J</i>	Attached is an "issues paper" on Title I of the charter legislation which has been sent to the Director for his review.
2. <i>Mr. Janney</i>	21 DEC 1977		<i>J</i>	
3. <i>Mr. Malanick (Hold)</i>	19 JAN 1978		<i>ky</i>	
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

UNCLASSIFIED

INTERNAL USE ONLY

CONFIDENTIAL

SECRET

Approved For Release 2003/12/19 : CIA-RDP86-00101R000100030016-4

SUBJECT: (Optional)

Executive Registry

77-10865

FROM:

John Blake
ADDCI

EXTENSION

NO.

DATE

16 DEC 1977

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.

DCI

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

Attached for your review and guidance is an issues paper drafted by OLC in conjunction with OGC pursuant to our meeting on Title I last Monday. The paper lists 12 major issues concerning Title I and identifies how they are addressed in the draft Executive Order, the SSCI draft Title I, and DOD's draft. In addition a "DCI Position" on each of the issues is set forth. Various comments from Agency components and the IC staff are incorporated in this paper. A copy has been provided also to John McMahon for his review.

It is envisioned that this issues paper, in the nature of a "think piece," can be used to form the basis for your development of Administrative positions on Title I issues. In this regard then we would propose that we be able to present a paper such as this to the SCC.

[Redacted Signature]

John Blake

STAT

Approved For Release 2003/12/19 : CIA-RDP86-00101R000100030016-4

MAJOR ISSUES RELATING TO TITLE I OF THE CHARTER
LEGISLATION WHICH ARE IN CONFLICT WITH OR NOT
ADDRESSED IN THE DRAFT EXECUTIVE ORDER

(References are to the 18 November 1977 Senate Select Committee on Intelligence Draft Title I, DOD's 22 November 1977 Draft Title I, the DCI's 13 December 1977 Draft Title I and the draft revision of E. O. 11905.)

1. ISSUE: Statutory Director, Deputy Director and Assistant or Functional Deputy Directors.

a. E. O. --Not addressed; cannot change present "Director of Central Intelligence" designation.

b. SSCI--Establishes the positions of Director of National Intelligence (Level I) and Deputy Director (Level II); the President may appoint up to five Assistant Directors. All seven of these positions would be subject to Senate confirmation. The Deputy would assist the Director in carrying out his functions and would act for and exercise the powers of the Director in his absence or in the event of a vacancy. The President may transfer--subject to congressional approval--such of the Director's duties as head of CIA as he deems appropriate to the Deputy or to any Assistant(s). There would be a six-year term (with the possibility of one six-year reappointment) for the Director and Deputy, both of which positions could not be occupied simultaneously by military officers. The Director shall "act as director" of the CIA.

c. DOD--Similar to provisions in the SSCI draft except: one and only one of the two positions of Director and Deputy Director shall be occupied by a military officer; the President could appoint up to [only] four Assistant Directors; the Director would "serve as executive head" of the CIA; the Director would be Level II and the Deputy Level III.

d. DCI Position--The Director should be a Level I appointee and should be given clear authority to "head" the CIA. There should be a single Deputy Director at Level II as the Director's alter-ego, and four "functional Deputy Directors," at Level III, to assist the Director as he deems appropriate (i. e., no functions or titles specified in the statute). Since the Director is given certain statutory duties and authorities, with a Deputy and four functional Deputies, he should be able to assign and delegate, and re-assign and re-delegate, such of his duties and authorities to these subordinate officers as he deems appropriate in his discretion. It therefore would be inappropriate and unnecessary to require by statute a Presidential authorization--subject to congressional approval--for such "transfer" of duties and authorities. The title of the Director should be changed to "Director of National Intelligence."

2. ISSUE: Authorities of the Director.

a. E.O.--The Director is given 19 separate authorities and duties, with several specified included authorities and duties, to exercise under the direction of the NSC.

b. SSCI--The listing of the Director's "authority and duties" covers eight pages of the draft title. Included, for example, are provisions that direct the Director to review and report annually to the President, the NSC and the Congress on "relationships among the national intelligence activities and other intelligence and intelligence-related activities"; to review "on a continuing basis . . . all ongoing and proposed national intelligence activities . . . to assure that [they] are properly, efficiently and effectively directed, regulated, coordinated and administered" and that they provide the most cost-efficient intelligence; to "evaluate on a continuing basis the quality of national intelligence" and to report to the Congress thereon; and to ensure that "diverse points of view are . . . carefully considered and that differences of judgment . . . are fully expressed . . ." in the production of national intelligence. Moreover, the Director would be required to report to the Congress, among other things, on use of his termination authority, on proposed "intelligence" arrangements with foreign governments, and on proposed special activities or any "exceptionally sensitive or sensitive clandestine collection project," and he would have to certify that all national intelligence activities are being conducted properly and lawfully. The Director is granted "full and exclusive approval authority over the annual national intelligence budget," with a list of directives to implement this authority.

Approved For Release 2003/12/19 : CIA-RDP86-00101R000100030016-4

c. DOD--The Director is specifically directed to review national intelligence activities to ensure their proper and efficient coordination and administration, to ensure all three Branches of the Government are provided the national intelligence necessary to fulfill their responsibilities, to serve as executive head of the CIA, to coordinate collection of national intelligence (including three additional implementing authorities), to coordinate dissemination of national intelligence (with specified implementing directives) to ensure implementation of special activities, and to approve liaison arrangements. The Director is given responsibility for production of national intelligence analyses (with several specific further directives). The Director also "shall prepare and present to the Congress the unified budget for national intelligence activities."

d. DCI Position--The Director's duties and authorities should be clearly delineated in general terms; specific implementing directives and organizational considerations are more appropriately addressed in Executive Order. Excessive detail in statute mandates requirements that are unmanageable in practice, and tends to bring about results not intended by heightening the probability that activities that are not proscribed by either the letter or the intent of the law will be determined to be unauthorized for want of a specific statutory authority. The emphasis should be on defining and delimiting the Director's duties and authorities, the most important of which are that: (1) the Director shall be the principal intelligence officer and adviser; (2) the Director shall be responsible for coordinating national intelligence activities; (3) the Director shall head the CIA; (4) it shall be the duty of the Director to collect, produce, analyze and disseminate national intelligence and that, in carrying out this duty, among other things, he shall be able to levy analytical and collection tasks, promote and maintain services of common concern, and formulate policies on and coordinate liaison relationships with foreign governments; (5) the Director shall ensure implementation of special activities; (6) the Director shall retain his existing statutory termination authority without being required to report to the Congress within a specified time frame on the exercise thereof; (7) the Director shall be responsible for protecting intelligence sources and methods; (8) the Director shall have full and exclusive authority for approval of the NFIP budget submitted to the President through OMB; and (9) review and evaluate all national intelligence activities and special activities to ensure that such activities are carried out in accordance with the Constitution and laws of the U. S. and with Presidential directives. Insofar as these enumerated authorities and duties are addressed in the draft E.O., Title I need not and should not conflict substantively with the Order. However, since in many respects the charter and the E.O. serve different functions, or at least approach issues relating to intelligence activities from different perspectives, there will be differences. Thus, for example, much of the organizational detail in the E.O. need not and should not be in the charter, the language of which must be as tightly drawn and precise as possible.

3. ISSUE: Establishment of specialized committees within the NSC.

a. E.O.--Establishes the Special Coordinating Committee to review special activities and sensitive collection operations and to make recommendations thereon to the President. The SCC also is tasked with developing policy on national foreign counter-intelligence activities.

b. SSCI--Establishes the following committees within the NSC and specifies in detail the manner in which they will carry out their duties within the respective areas of concern: the Operations Coordinating Committee (special activities and sensitive collection operations), the Counterintelligence Committee and the Communications Security Committee.

c. DOD--Establishes the Intelligence Coordinating Committee to review and approve special activities, sensitive collection operations and sensitive counterintelligence activities.

d. DCI Position--The statute should not direct the establishment of any specific, named organizations to review and act on particular categories of authorized activities. This matter is appropriately addressed in Executive Order; to do so in law needlessly locks the Executive into a particular format and procedure. Rather, as in the DCI draft, responsibility for reviewing and acting on certain categories of activities (i. e., special activities and those collection operations determined by the President to be specially sensitive) should be placed with the NSC, leaving the mechanics to Executive Order. This establishes the appropriate authority and accountability but without interfering in the President's prerogatives to manage the Executive Branch within those statutory limits. Further, statutory directives as in the SSCI draft as to the material which the various members (e. g., the Director and the Attorney General) must provide the committees, and which the committees must utilize in carrying out their responsibilities, is unnecessary and would tend to be extremely burdensome if not unworkable in practice.

4. ISSUE: Restrictions and prohibitions on intelligence activities.

a. E.O.--Places specific restrictions on collection activities, special activities, experimentation, contracting, assistance to law enforcement authorities, personnel assigned to other agencies, indirect participation in prohibited activities, assassination and dissemination and storage of information.

b. SSCI--Places restrictions on relationships with foreign governments, use of individuals following religious vocations, Government grantees and journalists, use of persons as combatants in foreign countries, covert military assistance, certain forms of special activities, and assassination.

d. DCI Position--Restrictions and prohibitions should not be included in Title I, which concerns grants of authority and the structure for the Government's intelligence capability. In whichever title they are included, the restrictions and prohibitions should be clearly delineated, should not preclude voluntary relationships between the Government and other persons or entities, and should not attempt to deal with matters concerning the laws of other countries.

5. ISSUE: Appropriations for intelligence activities.

a. E.O. --Does not address.

b. SSCI--Requires that funds for national intelligence activities be authorized by legislation before appropriation. The Select Committees on Intelligence of the House and the Senate will recommend annually to their respective Houses what information regarding intelligence appropriations should be made public.

c. DOD--Requires that no funds for national intelligence activities may be appropriated unless authorized by legislation. The funds will be authorized "in a single specified amount, without further limitation." The President is directed to make public such "information regarding the total amount appropriated and expended ... to the extent required by the Constitution and laws of the United States."

d. DCI Position--The charter may provide that no funds for intelligence activities may be appropriated unless previously authorized. The legislation, however, should not direct that any portion of the funds so authorized shall be made public either specifically, subject to interpretation of any Constitutional or legal requirements, or as determined by the Congress.

6. ISSUE: Reprogramming of funds.

a. E.O. --Grants the Director "full and exclusive authority for reprogramming" NFIP funds, subject to OMB guidelines, appropriate consultation with the heads of affected agencies and the Congress, and Presidential review.

b. SSCI--Similar to provisions in the Executive Order.

c. DOD--Directs only that reprogramming "or a transfer of funds to or from" an agency within the IC in an amount over \$2 million must be "in accordance with law and on the approval of the Director and the head of the department or agency to which the funds were appropriated."

d. DCI Position--The Director should be authorized to reprogram and should be directed to establish guidelines under which proposed reprogramming require his prior approval. Heads of other agencies should be directed to advise the Director of proposed reprogramming within such guidelines and to obtain his approval.

7. ISSUE: Reserve for Contingencies.

a. E.O.--Does not address.

b. SSCI--Authorizes the Director to establish a "Contingency Reserve Fund" to which may be credited only such sums as are "specifically appropriated to the Director" for it. Expenditures of funds from the Reserve by the Director are subject to: prior approval by OMB; prior notification to the intelligence committees of Congress (with a "48-hour-after" exemption for "extraordinary circumstances"); being used only for requirements not anticipated at the time the budget was submitted to the Congress; being used solely for purposes requiring protection against disclosure; and being used only for lawful activities. There are additional limitations on returning monies to the fund and on post-expenditure budgeting.

c. DOD--Authorizes the Director to establish a "Contingency Reserve Fund," under guidelines similar to those in the SSCI draft, except there are no provisions for prior congressional notification or for prior OMB approval.

d. DCI Position--The Director should be authorized to maintain a "Reserve for Contingencies," to credit to it such newly appropriated funds as are so specifically appropriated, and to withdraw funds from the Reserve for emergency and extraordinary expenses relating to an intelligence or special activity. Such withdrawal should be subject only to: OMB approval; keeping the intelligence committees of the Congress "fully and currently informed"; unexpended funds remaining in or reverting to the Reserve; and subsequent budgetary process treatment for continuing activities.

8. ISSUE: Expenditure of funds for intelligence activities of an extraordinary or emergency nature accounted for solely on the certificate of the Director.

a. E.O.--Does not address.

b. SSCI--Contains such authority, subject to the proviso that such expenditures shall be expended only for lawful activities. The Director would report to the Congress quarterly on use of this authority.

c. DOD--Contains such an authorization, but limited to "amounts ... appropriated to the Director for such purpose." The authority could only be exercised to carry out lawful activities.

d. DCI Position--The Director's authority should be that currently provided in section 8(b) of the CIA Act of 1949 as regards sums made available to the Agency. The proviso that such expenditures shall be limited to lawful activities is not objectionable but is unnecessary. The intelligence committees of the Congress currently may, pursuant to their existing jurisdiction, obtain appropriate information regarding the Director's use of this authority, and a particular manner or time frame for such reporting should not be made a matter of statutory directive.

9. ISSUE: Comptroller General audit and review of national intelligence funds and activities.

a. E.O. --Not addressed.

b. SSCI--Provides that appropriated national intelligence funds and activities "shall be subject to financial and program management audit and review by the Comptroller General, " under "such security standards" as prescribed by the Director and the oversight committees. An exemption from such review would be available only upon determination by the Director that exemption is "essential to protect the security of the United States"; the Director would be required to report to the Congress as to each such exemption.

c. DOD--Provides that "all funds appropriated to the Director" (i. e., not agencies within the IC) for "national intelligence activities, and information relating thereto" shall be subject to Comptroller General audit and review, under joint Director-congressional security standards. The draft provides an exemption similar to that in the SSCI draft.

d. DCI Position--Intelligence funds and activities, necessarily involving as they do extremely sensitive intelligence information, should be subject to statutorily-directed outside audit and review only under directive of the intelligence oversight committees and subject to strict security standards as provided by the Director. There should be a proviso that certain funds or activities may be exempt from such review if necessary to protect specially sensitive intelligence activities.

10. ISSUE: Intelligence relationships with foreign governments and services.

a. E.O.--The Director is directed to formulate intelligence arrangements with foreign governments and to coordinate relationships between the IC and foreign services.

b. SSCI--The Director is directed to "formulate, as appropriate," policies on intelligence arrangements with foreign governments, and to "be responsible for all relationships between" the IC and foreign services. The Director, however, must transmit to the oversight committees of the Congress texts of any proposed arrangements prior to their being entered into.

c. DOD--Arrangements between the IC and foreign intelligence or security services are subject to approval by the Director.

d. DCI Position--The Director's responsibilities in the area of relationships with foreign governments and services should be provided as in the E.O. ; in other words, the Director should be charged with promoting and implementing services of common concern with foreign entities, and he should have a clear directive that he formulate and coordinate such arrangements. Reporting to the congressional oversight committees should not require, by statute, that texts of all such arrangements be so transmitted. The charter should provide that, in lieu of reporting to the Congress of international agreements pursuant to the Case-Zablocki Act, reporting of intelligence agreements should be only to the intelligence oversight committees. Requiring, by statute, reporting the texts of all arrangements, however, raises serious questions concerning the prerogatives of the Executive in this area, could have a serious negative impact on the willingness of foreign services or governments to deal with us, and, of course, would involve proliferation of sensitive intelligence sources and methods.

11. ISSUE: Reporting of Violations.

a. E.O.--The Intelligence Oversight Board is established to receive and consider reports on intelligence and counterintelligence activities that raise questions of legality of propriety. The Board's primary reporting responsibility is to the President and the Attorney General. Inspectors General and General Counsels of agencies within the IC are assigned responsibilities to receive and transmit to the IOB reports on possible illegal or improper activities. The Attorney General's responsibilities in this area run to receiving reports from the IOB and reporting to the President and the IOB.

b. SSCI--The principal Executive Branch entity responsible for reviewing and reporting on possible violations is the IOB, with responsibility to report to the President, the Attorney General, the Director and heads of agencies within the IC. The Director, the Attorney General and the heads of agencies within the Community are assigned responsibilities for ensuring that violations are discovered and reported on. Further, the Director is required to regularly (but at least annually) notify IC employees of their obligations to report on possible violations, and to report annually to the oversight committees a certification as to the lawfulness of national intelligence activities.

c. DOD--Establishes the IOB with general review and reporting responsibilities to the President on activities it finds to be violative of the Constitution or laws of the U. S. or of Presidential directive or order.

d. DCI Position--Establish the IOB to receive and review reports from the Attorney General, heads of agencies within the IC and Inspectors General and General Counsels of such agencies as to activities that may be unlawful or improper. The Attorney General and the IOB should be directed to inform the President of activities which they find to be unlawful or improper. The Board should keep the Director informed of its findings, and the Attorney General, with due regard for his investigative and prosecutorial responsibilities, should be directed to keep the oversight committees informed of findings reported to the President. Care should be taken so that any reporting to the Congress is not in conflict with Executive Branch investigative and prosecutorial authorities and duties. Generally, the mechanics whereby possible violations of law or Presidential directive or order are reviewed and reported on should be dealt with in Executive Order rather than statute. Moreover, there is no need to require by statute, as the SSCI draft would do, that the Director go through the motions of informing and reinforming IC employees of their duty to report violations. Nor is there a need to provide by statute that the Director certify each year that intelligence activities are lawful, since he and other agency heads would be made statutorily responsible for ensuring this, checked, of course, by the violations-reporting provisions.

12. ISSUE: Reporting to the Congress.

a. E.O.--The Director and heads of agencies within the IC are tasked with keeping the intelligence oversight committees fully and currently informed with respect to intelligence activities, and with reporting to the committees in a timely manner on violations. All reporting would be subject to the provisos that such reporting is not a condition precedent to implementation of intelligence activities, and that reporting will be consistent with the respective authorities and duties of the Executive and Legislative Branches.

b. SSCI--In addition to particular reporting requirements contained, for example, in those sections dealing with the Director's exercise of termination authority, with relationships with foreign governments and services and with violations (see paragraphs 2, 10 and 11 above), the Director is charged with keeping the oversight committees "fully and currently informed of all national intelligence activities." This duty is subject only to the proviso that such reporting does "not constitute a condition precedent . . ." The Director shall also provide annual reports to the Congress.

c. DOD--The Director's responsibility for keeping the oversight committees fully and currently informed is similar to that in the SSCI draft. The Director is required also to notify the committees 72 hours in advance of undertaking any special activity subject to Intelligence Coordination Committee approval, and in advance of Contingency Reserve expenditures (there is a "48-hour-after" exception based on Presidential certification). The Director is required further to notify the committees 60 days in advance of concluding arrangements with foreign services and in advance of destruction of records. The Director reports annually to the oversight committees on national intelligence activities so designated, on extraordinary or emergency expenditures, on activities exempted from Comptroller General audit or review, and on matters relating to advisory committees.

d. DCI Position--The general provision on keeping the Congress fully and currently informed on intelligence activities should be consistent with that in the Executive Order. As to reporting on particular exercises of authority, such as termination of employees, arrangements with foreign governments or services, and violations, it is generally preferred that these not be specified in statute. If they are, however, the provisions should be such that they do not require notification or reporting on a specified timetable. Moreover, such requirements should be consistent with the respective authorities and prerogatives of the two Branches of Government and with the practical needs of the Government's intelligence capability (e.g., the willingness of foreign governments and services to deal with the CIA in the face of a statute requiring prior congressional approval of the texts of any and all intelligence arrangements).