Legal Dec

30 September 1947 SECRET

Traveling Expenses (Applic. of Foreign Service Regulations)

MEMORANDUM FOR ADSO

Subject: Integration of OSO Designee Employees Into State Department Personnel and Travel Procedures

1. Attached is memorandum from [redacted] to the Security Liaison Committee dated 30 September 1947, concerning the above subject. In that memorandum are discussed many of the problems arising out of the present policy of obtaining State Department designees for CIA personnel. In conclusion, there are stated three courses of action available to CIA.

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2. Since the Security Liaison Committee has recommended adoption of the third proposal, the first two proposals will not be considered here. Further, administrative approval of either of the first two proposals would require action only in OSO. On the other hand, to make effective the third proposal will in the opinion of this office require approval by the Director, CIA. The present Special Funds Regulations, issued by the Director, specifically provide travel expenses will be in accordance with Standardized Government Travel Regulations. The leave policy for employees of this Agency has been established in accordance with the normal Government procedure of granting twenty-six working days per year.

3. The adoption of the third proposal would in effect place the overseas personnel of OSO under the provisions of the Foreign Service Act of 1946, approved 13 August 1947, insofar as rates of pay, leave, travel expenses, and allowances. Since it was deemed necessary for the State Department to secure specific legislation from Congress in order to provide the benefits afforded by that Act which are different from that afforded regular Government employees, it would appear desirable, as well as necessary, to present such a proposal to the Director, CIA for his decision. There appears to be no legal objection to the approval of such a proposal by the Director, CIA, based on security and operational necessity. Your recommendation to the Director, CIA, based, in turn, upon a study of the problems involved, would be an appropriate basis for the Director's approval of such proposal.

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JOHN S. WARNER
Assistant General Counsel

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Working Fund with full powers in respect thereto as would otherwise have been exercised by us over the funds contributed to the Working Fund by our respective Departments, including the powers and authority granted by the Military Appropriation Act, 1947, and the Naval Appropriation Act, 1947, approved July 8, 1946 [Public Law 492 - 79th Congress], pertaining to certificates of expenditures and the determinations of propriety of expenditures."

That letter, granting such powers to the Director of Central Intelligence, was signed by the members of the National Intelligence Authority, including Dean Acheson, Acting Secretary of State; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy, and William D. Leahy, Personal Representative of the President on N.I.A. No question has been raised by the General Accounting Office, or any other Government Agency, concerning the authorities thus granted to the Director of Central Intelligence.

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4. In view of the authorizations granted to the Director of Central Intelligence by the three Secretaries and the acceptance

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of such grant of authority by the Comptroller General, it is the opinion of this office that the Director of Central Intelligence is in effect constituted a head of an independent agency or executive department, and, with respect to the funds granted under the section "Contingencies of the army", may execute the certificate required of the Secretary of War. Further, it is the opinion of this office that with respect to the funds made available to CIG from the Section "Atomic Service", the Director of Central Intelligence is authorized to expend sums for objects of a confidential nature, and execute the certificate specified therein and required of "the official in charge."

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I believe it is appropriate to cite these two subparagraphs (4) and (5) as the basic authority for the espionage function.

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To place the problem in perspective, the concept of the over-all governmental intelligence structure should be kept in mind. It has unique aspects in that the intelligence components outside of the Central Intelligence Agency are integral parts of their respective departments and agencies and yet in the field of intelligence they must function on a coordinated basis to form a close-knit team.

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[redacted]

The need for a flexible team concept in this area was recognized by the National Security Council in its Intelligence Directive No. 3, entitled "Coordination of Intelligence Production." In recognition of the Agency's statutory responsibility for correlation and evaluation of intelligence relating to national security, paragraph 1. d. puts the responsibility on the Central

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Power over the unvouchered funds available to the Agency. Since he must return each year to Congress for additional funds and must submit a detailed budget to the Bureau of the Budget and the committees of Congress, it is obvious that, if there were not complete confidence in his administration of unvouchered funds, no more would be forthcoming. His power, therefore,

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is limited by what is proper to support the authorized activities of the Agency.

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[redacted] STAT

They had before them the Presidential Directive of January 22, 1946 setting up the Central Intelligence Group and they had testimony that the Central Intelligence Group under this Directive performed

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espionabe and counterespionage functions. It was clearly the intent of the committees that CIA should continue to perform such functions, and at one

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point in their deliberations they considered using the words "espionage" and counterespionage" in the statute. [redacted]

Therefore,

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Intelligence Agency for coordinating production and maintenance and accomplishing the review, publication, and dissemination of the NIS. In further recognition of the statutory directive to use existing agencies and facilities where appropriate, the Directive provides in subparagraphs d. and e. of paragraph 1. that other departments and agencies of the Government may be called on for contributions.

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He then noted that their records indicated that when the bill establishing the position of the DDCI was first presented to the Congress, it authorized the DDCI to perform such duties and exercise such powers as shall be prescribed by the DCI or by law and to act for and exercise the powers of the DCI during his absence or disability. The language referring to performance of such duties as the DCI might prescribe does not appear in the law as drafted. Mr. Keller said he could find no reason for eliminating these words. I told him we would search our records to see if they shed any light on this point and whether the elimination appeared significant.

The legislative record as printed does not contain a clear-cut reason for the change in wording. However, there was a bill presented to and passed by the Senate committee which had the reference to performing such other duties as the Director may prescribe. This was a separate bill, and when

the House considered the problem it decided that it would be preferable to establish the Deputy's position by amending the National Security Act. The House, therefore, considered such an amendment, which as drafted contained no reference to the performance of duties prescribed by the DCI. However, John R. Blandford, Counsel, House Armed Services Committee, in the official report of that committee analyzed the need for legislation and pointed out that there was at that time no provision of law establishing a Deputy Director with statutory authority to act for the Director or to perform such functions as the Director may assign him. From this presentation it appears to be the clear intent of the law that was passed as the result of this hearing that the Deputy could perform such functions. In addition, Mr. Blandford has the personal recollection that one member of the House Armed Services Committee raised with him the question that the language in the Senate bill might be limiting as it might be interpreted to mean that the Deputy could exercise only those authorities that were specifically and officially assigned to him and that since in the creation of such a statutory position no such wording was required it should be eliminated from the House draft. This recollection of Mr. Blandford's is not part of the official record but is consistent with the official explanation he gave to the House committee as noted above.

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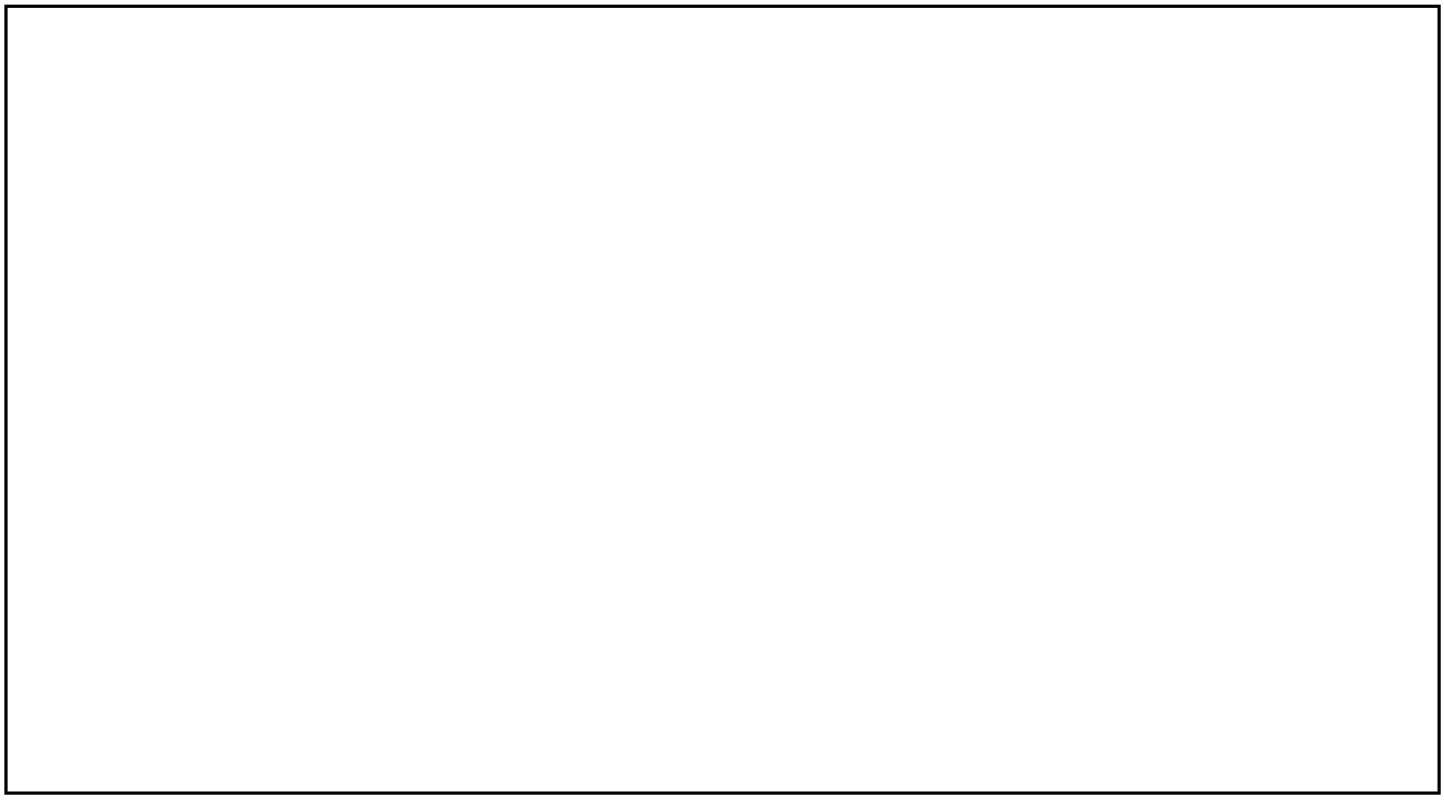

It can be said the Congress as a whole knows that money is appropriated to CIA and knows that generally a portion of it goes for clandestine activities. To this extent, we can say that we have congressional approval for these activities but we cannot say that we have general congressional approval for any specific activity as the knowledge is restricted to the group specified above and occasional other congressmen briefed for specific purposes. It is for the Executive Branch to determine the nature and extent of these activities and how they should be conducted. CIA has been directed by the National Security Council, of which the President is

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ex officio Chairman, to undertake such activities and the Congress has provided funds to CIA for their performance. Additional statutory authority is unnecessary and in view of the clandestine nature of the activities, undesirable.

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The Comptroller General is the official representative of Congress to review the expenditures of the executive departments and agencies and is responsible only to Congress. His ruling on the propriety of expenditures normally is final. He may only withhold any payments dur from the Government, other than normal Government salaries during the period of employment, to offset against amounts he determines are due to the Government. If collection from the individual is indicated, the General Accounting Office may demand payment but can enforce the demand against that individual only by reference of the case to the Department of Justice for collection through the courts.

The granting of unvouchered funds is a recognition by Congress that certain activities of the executive branch should not be scrutinized by GAO, their representative. The usual manner of making such a grant is to provide that the certification of the head of the agency concerned will be a sufficient voucher for the expenditures stated therein.

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In theory, therefore, the Director of Central Intelligence has absolute'

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2 OGC 19, 12 Feb 1948, Byrd Committee

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5 U.S.C.A. 947(b) requires the Director, BOB, to among other things, report to Congress each agency's net increase or decrease in employees. Failure to do so default his legal obligations and could be compelled to produce figures. Legal remedy is to exempt Director of BOB from furnishing figures of this Agency to Congress (similar problem with respect to CSC requirement (5 U.S.C.A. 654) to publish an official register showing for all administrative and supervisory psotions in Executive branch, names, official titles, salary, legal residence, place of employment and requires head of agency to supply such data.

The President, with his responsibility for the conduct of foreign relations, as Cammander in Chief of the Armed Forces, and with the powers inherent to the presidency, has authority to take such executive actions as he deems appropriate to protect the national interest which are not barred by the Constitution or other valid law of the land.

It appears to us that the language of the present Presidential Directive is clear and non-controversial, and it is assumed that the wording was well considered when written. Thus, Paragraph 2, states that a Central Intelligence Group shall, under the direction of a Director of Central Intelligence, assist the NIA, and that the Director shall be responsible to the NIA. Paragraph 3 (a and b) provides that subject to the direction and control of NIA, the Director shall accomplish the correlation and evaluation of intelligence relating to the national security, shall plan for the coordination of the activities of the Departments relating to national security and shall recommend to the National Intelligence Authority the establishment of policies and objectives to assure the most effective accomplishment of the national intelligence mission.

It seems clear that these paragraphs place in the Director, sole responsibility for correlation of intelligence, coordination of activities, and recommendations to the NIA. It is obvious that departmental members of NIA act in a dual capacity, and in their capacity of Department Heads, must give heed to the recommendations and wants of their respective departments. It seems equally obvious however, that when they sit as the NIA, their attention focuses on the Director alone, for his recommendations on central intelligence matters. Any other concept would appear to be incompatible with the theory of central intelligence developed in the last few years, and which Congress has recently approved. The heart of this theory is placing on one point the responsibility for foreign intelligence affecting the national security, in such

a way that responsibility could not be shifted from that spot to any other agency or group. To give a Board authority to compel recommendations over the Director's objection, would provide a basis for shifting responsibility from the Director to the Board. Since, as General Marshall pointed out recently, action by a Board is generally the action of compromise, the responsibility for such action falls nowhere.

the advice. People v. Horn, 70 Cal. 17, 11 P. 470. "Advise" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not. State v. Downing, 23 Idaho, 540, 130 P. 461, 462; Brown v. Brown, 180 N.C. 433, 104 S.E. 889, 890."

It seems clear therefore, that the IAB was to have no direct relationship, as a body, to the NIA, nor is the Director, in any way bound by their advice. He will, however, of course give due consideration to the merit of its content. Our conclusion is that establishment of the procedures in Paragraphs 2 and 3 of the IAB procedures, dated 25 July 1947, would be an unauthorized assumption by the IAB of responsibility vested in the Director by law. Conversely, agreement by the Director to exercise by the IAB of his recommending functions, would be an unwarranted divesting of assigned responsibility and, moreover, would not relieve him of accountability for results. He might, in such case, be the channel for policy recommendations with which he disagreed, but for which he would be held responsible.

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6. [redacted] The Head of the Agency is of course solely responsible for the performance of the Agency's duties. This is completely in accord with the intent of Congress, expressed so often in hearings and on the floor, that the Executive Branch, the Legislature, and through them the country, have one place to go for intelligence related to the National security, with no chance for evasion or excuse by the responsible officer.

7. There is no provision for the IAB in the Act and it is apparent that the protection of departmental intelligence called for in the proviso of sub-paragraph 105 (d) (3) is the responsibility of the N.S.C. By Paragraph 105 (f), the NIA and CIG cease to exist, and in effect the

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