

#### IV. THE PRESIDENT'S OFFICE

Intelligence has been the province of the President. It has informed his decisions and furthered his purposes. Intelligence information has been seen as largely belonging to the President, as being his to classify or declassify, his to withhold or share. The instruments of U.S. intelligence have been the Presidents' to use and sometimes to abuse.

The President is the only elected official in the chain of command over the United States intelligence community. It is to him the Constitution and the Congress have granted authority to carry out intelligence activities. It is the President who is ultimately accountable to the Congress and the American people.

The Committee focused its investigation on the instruments available to the President to control, direct, and supervise the U.S. intelligence community. As the result of controversy as to whether the intelligence community has been "out of control," Senate Resolution 21 directed the Committee to determine the "nature and extent of executive branch oversight of all United States intelligence activities."

This involves three Presidential instrumentalities:<sup>1</sup>

- The National Security Council;
- The Office of Management and Budget;
- The President's Foreign Intelligence Advisory Board.

The Committee sought to establish whether these mechanisms, as they have evolved, provide effective control over the entire range of U.S. intelligence activities. Particular attention was given to the subject of covert action, in part because it has been a major object of presidential-level review. In addition, the Committee considered the adequacy of high-level supervision of espionage, counterintelligence, and the overall management of the U.S. intelligence community. For the first time in the history of congressional oversight, the Committee had access to records of the proceedings of the National Security Council and its subcommittees. It reviewed the NSC directives related to intelligence and the files of other agencies' participation in the NSC's intelligence-related activities. The Committee conducted extensive interviews with current and former White House, NSC, and cabinet-level officials dealing with intelligence matters. It took sworn testimony on these issues from a number of them, including the present Secretary of State. Officials of the Office of Management and Budget and former members and staff of the President's Foreign Intelligence Advisory Board were also interviewed.

This report presents the results of that investigation and the Committee's findings with respect to the central question of Presidential accountability and control of the foreign intelligence activities of the United States Government.

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<sup>1</sup> A fourth instrumentality has been established as a result of President Ford's February 17, 1976, reorganization of the foreign intelligence community. Executive Order 11905 created the Intelligence Oversight Board.

## A. THE NATIONAL SECURITY COUNCIL

## 1. Overview

The National Security Council was created by the National Security Act of 1947. According to the Act, the NSC is "to advise the President with respect to the integration of domestic, foreign, and military policies relating to national security" and "assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power." Over the years, the principal functions of the NSC have been in the field of policy formulation and the coordination and monitoring of overseas operations. Among its responsibilities, the NSC has provided policy guidance and direction for United States intelligence activities.

The National Security Council is an extremely flexible instrument. It has only four statutory members: the President, the Vice President, and the Secretaries of State and Defense. At the discretion of the President, others may be added to the list of attendees; NSC subcommittees may be created or abolished, and the NSC staff given great power or allowed to wither.

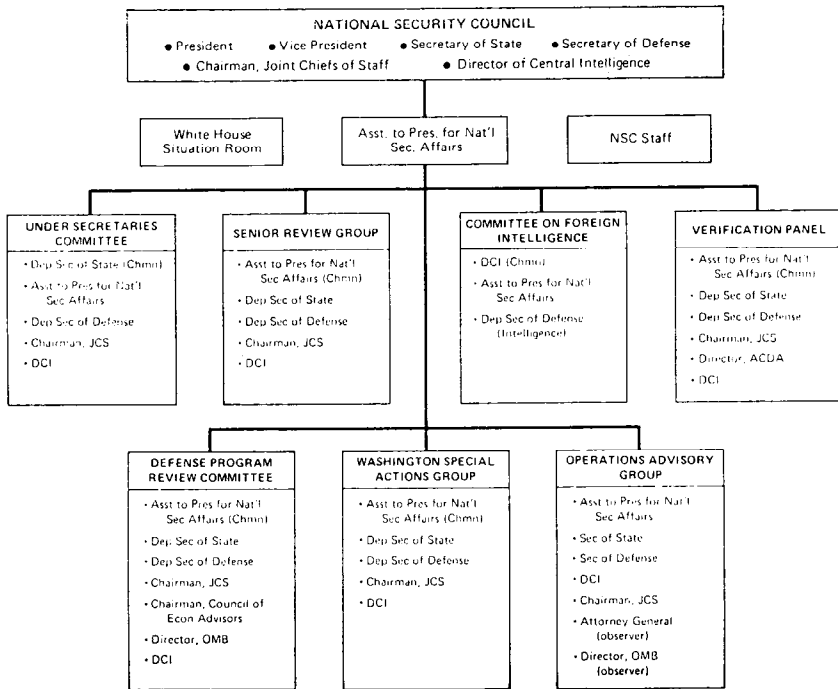
Thus, the operation of the NSC has reflected the personal style of each President. The Council's role and responsibilities have varied according to personalities, changing policies and special circumstances. Presidents Truman, Kennedy and Johnson found a loose and informal NSC structure to their liking. Others have set up more formal and elaborate structures—President Eisenhower's NSC system is the best example.<sup>2</sup> At times, particularly during crises, Presidents have bypassed the formal NSC mechanisms. President Kennedy set up an Executive Committee (EXCOM) to deal with the Cuban Missile Crisis; President Johnson had his Tuesday Lunch group to discuss Viet Nam and other high level concerns. As a result, over the years the NSC has undergone major changes, from the elaborate Planning Board/Operations Coordination Board structure under Eisenhower to its dismantlement by Kennedy and the creation of a centralized system of NSC subcommittees under President Nixon and his Assistant for National Security Affairs, Dr. Kissinger.

Today, in addition to the four statutory members, the National Security Council is attended by the Director of Central Intelligence (DCI) and the Chairman of the Joint Chiefs of Staff as advisers. From time to time, others, such as the Director of the Arms Control and Disarmament Agency, also attend.

Prior to President Ford's reorganization, the NSC was served by seven principal committees: the Senior Review Group, the Under Secretary's Committee, the Verification Panel, the Washington Special Actions Group (WSAG), the Defense Program Review Committee, the 40 Committee, and the National Security Council Intelligence

<sup>2</sup> For a full treatment of the evolution of the National Security Council and its place within the national security decisionmaking process, see Keith Clark and Laurence Legere, *The President and the Management of National Security* (1969); Stanley Falk and Theodore Bauer, *National Security Management: The National Security Structure* (1972); and Inquiries of the Subcommittee on National Policy Machinery for the Senate Committee on Government Operations, *Organizing for National Security* (1961).

Committee (NSCIC).<sup>3</sup> The latter two committees had direct intelligence responsibilities. The 40 Committee has now been replaced by the Operations Advisory Group. No successor for NSCIC has been designated. The current NSC structure is shown below.



Each of the current NSC subcommittees are “consumers” of the intelligence community product. The DCI sits on all of them. In most cases, the DCI briefs the subcommittees and the full NSC before agenda items are considered. CIA representatives sit on working and ad hoc groups of the various subcommittees. The CIA’s Area Division Chiefs are the Agency’s representatives on the NSC Interdepartmental Groups (IGs).<sup>4</sup> In all of these meetings there is a constant give and take. Policymakers are briefed on current intelligence and they, in turn, levy intelligence priorities on the CIA’s representatives.

<sup>3</sup> The Senior Review Group, under the direction of the President's Assistant for National Security Affairs defines NSC issues; determines whether alternatives, costs, and consequences have been fully considered; and forwards recommendations to the full Council and/or the President. The Under Secretaries Committee seeks to ensure effective implementation of NSC decisions. The Verification Panel monitors arms control agreements and advises on SALT and MBFR negotiations. WASG coordinates activities during times of crises, such as the Middle East and Southeast Asia. The Defense Program Review Committee, now nearly defunct, assesses the political, military and economic implications of defense policies and programs.

<sup>4</sup> NSC Interdepartmental Groups (IGs) are made up of representatives from State, Defense, CIA, the Joint Chiefs of Staff and the National Security Council. IGs are chaired by the State representative, an Assistant Secretary, and they prepare working papers for the Senior Review Group.

## 2. *The NSC and Intelligence*

The 1947 National Security Act established the CIA as well as the NSC. The Act provided that the CIA was "established under the National Security Council" and was to carry out its prescribed functions "under the direction of the National Security Council." Five broad functions were assigned to the CIA:

(1) *to advise* the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security.

(2) *to make recommendations* to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) *to correlate and evaluate* intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities.

(4) *to perform*, for the benefit of the existing intelligence agencies, *such additional services of common concern* as the National Security Council determines can be more efficiently accomplished centrally.

(5) *to perform such other functions and duties* related to intelligence affecting the national security as the National Security Council may from time to time direct.

The Director of Central Intelligence is responsible for seeing that these functions are performed, and is to serve as the President's principal foreign intelligence officer.

The NSC sets overall policy for the intelligence community. It does not, however, involve itself in day-to-day management activities. The task of coordinating intelligence community activities has been delegated to the DCI, who, until President Ford's reorganization, sought to accomplish it through the United States Intelligence Board (USIB). USIB was served by 15 inter-agency committees and a variety of ad hoc groups. It provided guidance to the intelligence community on requirements and priorities, coordinated community activities and issued, through the DCI, National Intelligence Estimates (NIEs). The DCI was also assisted by the Intelligence Resources Advisory Committee (IRAC). IRAC assisted the DCI in the preparation of a consolidated intelligence budget and sought to assure that intelligence resources were being used efficiently.

As a result of President Ford's Executive Order, management of the intelligence community will now be vested in the Committee on Foreign Intelligence (CFI). USIB and IRAC are abolished. Membership on the new committee will include the DCI, as Chairman, the Deputy Secretary of Defense for Intelligence and the Deputy Assistant to the President for National Security Affairs. Staff support will be provided by the DCI's Intelligence Community (IC) staff. The new committee will report directly to the NSC.

The CFI will have far-ranging responsibilities. It will oversee the budget and resources, as well as establish management policies, for the CIA, the National Security Agency, the Defense Intelligence Agency,

and United States reconnaissance programs. Further, it will establish policy priorities for the collection and production of national intelligence. The DCI will be responsible for producing national intelligence, including NIEs. To assist him in this task, the DCI will set up whatever boards and committees (similar to the now defunct USIB) are necessary.

The President's Executive Order also directed the NSC to review, on a semi-annual basis, certain foreign intelligence activities. Prepared by the President's Assistant for National Security Affairs, these reviews will focus on the quality, scope and timeliness of the intelligence product; the responsiveness of the intelligence community to policy-makers' needs; the allocation of intelligence collection resources; and the continued appropriateness of ongoing covert operations and sensitive intelligence collection missions.

One of the functions the NSC has assigned to the CIA is the conduct of foreign covert operations. These operations began in 1948 and have continued to the present, uninterrupted. Authority to conduct covert operations has usually been ascribed to the "such other functions and duties" provision of the 1947 Act.<sup>5</sup>

The NSC uses National Security Council Intelligence Directives (NSCIDs) to set policy for the CIA and the intelligence community. NSCIDs are broad delegations of responsibility, issued under the authority of the 1947 Act.<sup>6</sup> They may assign duties not explicitly stated in the 1947 Act to the CIA or other intelligence departments or agencies. NSCIDs, sometimes referred to by critics as the intelligence community's "secret charter," are executive directives and, therefore, not subject to congressional review. Until recently, Congress has not seen the various NSCIDs issued by the NSC.

### *3. Overview: 40 Committee and NSCIC*

Prior to President Ford's reorganization, two NSC committees, the 40 Committee and the National Security Council Intelligence Committee, had special intelligence duties. Their functions and responsibilities will be discussed in turn.

Throughout its history, the 40 Committee and its direct predecessors—the 303 Committee, the 5412 or Special Group, the 10/5 and 10/2 Panels—have been charged by various NSC directives with exercising political control over foreign covert operations.<sup>7</sup> Now this task will be the responsibility of the Operations Advisory Group. The Committees have considered the objectives of any proposed activity,

<sup>5</sup> Three possible legal bases for covert operations are most often cited: the National Security Act of 1947, the "inherent powers" of the President in foreign affairs and as Commander-in-Chief, and the Foreign Assistance Act of 1974. Congressional acquiescence and ratification through the appropriations process is a fourth possibility. See Appendix I of this report for a full discussion.

<sup>6</sup> For example, NSCIDs are used to spell out the duties and responsibilities of the DCI, the coordination of covert intelligence collection activities, and the production and dissemination of the intelligence community product.

<sup>7</sup> Covert operations encompass a wide range of programs. These include political and propaganda programs designed to influence or support foreign political parties, groups, and specific political and military leaders; economic action programs; paramilitary operations; and some counterinsurgency programs. Human intelligence collection, or spying, and counterespionage programs are not included under the rubric of covert operations.

whether the activity would accomplish those aims, how likely it would be to succeed, and in general whether the activity would be in the American interest. In addition, the Committees have attempted to insure that covert operations were framed in such a way that they later could be "disavowed" or "plausibly denied" by the United States Government. President Ford's Executive Order included the concept of "plausible denial." Using the euphemism "special activities" to describe covert operations, the Order stated:

Special activities in support of national foreign policy objectives [are those] activities . . . designed to further official United States programs and policies abroad which are planned and executed so that the role of the United States Government is not apparent or publicly acknowledged.<sup>7a</sup>

The concept of "plausible denial" is intended not only to hide the hand of the United States Government, but to protect the President from the embarrassment of a "blown" covert operation. In the words of former CIA Director Richard Helms:

. . . [the] Special Group was the mechanism . . . set up . . . to use as a circuit-breaker so that these things did not explode in the President's face and so that he was not held responsible for them.<sup>7b</sup>

In the past, it appears that one means of protecting the President from embarrassment was not to tell him about certain covert operations, at least formally. According to Bromley Smith, an official who served on the National Security Council staff from 1958 to 1969, the concept of "plausible denial" was taken in an almost literal sense: "The government was authorized to do certain things that the President was not advised of."<sup>7c</sup> According to Secretary of State Kissinger, however, this practice was not followed during the Nixon Administration and he doubted it ever was. In an exchange with a member of the House Select Committee on Intelligence, Secretary Kissinger stated:

Mr. KASTEN. Mr. Secretary, you said that the President personally, directly approved all of the covert operations during that period of time [1972 to 1974] and, in your knowledge, during all periods of time. Is that correct?

Secretary KISSINGER. I can say with certainty during the period of time that I have been in Washington and to my almost certain knowledge at every period of time, yes.<sup>8</sup>

Four senior officials who deal almost exclusively with foreign affairs have been central to each of the sequence of committees charged with considering covert operations: The President's Assistant for National Security Affairs, the Deputy Secretary of Defense, the Under Secretary of State for Political Affairs (formerly the Deputy Under Secretary), and the Director of Central Intelligence. These four officials, plus the Chairman of the Joint Chiefs of Staff, made up the 40 Com-

<sup>7a</sup> Executive Order No. 11905, 2/18/76.

<sup>7b</sup> Richard Helms testimony, 6/13/75, pp. 28-29.

<sup>7c</sup> Staff summary of Bromley Smith interview, 5/5/75.

<sup>8</sup> Henry Kissinger testimony, House Select Committee on Intelligence, Hearings, 10/31/75, p. 3341.

mittee. At certain times the Attorney General also sat on the Committee. President Ford's reorganization will significantly alter this membership. The new Operations Advisory Group will consist of the President's Assistant for National Security Affairs, the Secretaries of State and Defense, the Chairman of the JCS, and the DCI. The Attorney General and the Director of OMB will attend meetings as observers. The Chairman of the Group will be designated by the President. Staff support will be provided by the NSC staff.

The formal composition of the Operations Group breaks with tradition. The Secretaries of State and Defense will now be part of the approval process for covert operations, rather than the Under Secretary of State for Political Affairs and Deputy Secretary of Defense. The Operations Advisory Group appears to be, therefore, an up-graded 40 Committee. Whether this proves to be the case remains to be seen. President Ford's Executive Order contained a provision, Section 3(c) (3), which allows Group members to send a "designated representative" to meetings in "unusual circumstances."

The National Security Council Intelligence Committee (NSCIC) was established in November 1971 as part of a far-reaching reorganization of the intelligence community ordered by President Nixon.<sup>9</sup> The Presidential directive stated:

The Committee will give direction and guidance on national intelligence needs and provide for a continuing evaluation of intelligence products from the viewpoint of the intelligence user.

One reason cited for creating NSCIC was a desire to make the intelligence community more responsive to the needs of policy makers. According to a news report at the time:

"The President and Henry [Kissinger] have felt that the intelligence we were collecting wasn't always responsive to their needs," said one source. "They suspected that one reason was because the intelligence community had no way of knowing day to day what the President and Kissinger needed. This is a new link between producers and consumers. We'll have to wait and see if it works."<sup>10</sup>

Prior to NSCIC no formal structure existed for addressing the major questions concerning intelligence priorities rather than specific operations: Do "producers" in the intelligence community perform analyses which are useful to "consumers"—the policymakers at various levels of government; are intelligence resources allocated wisely

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<sup>9</sup> For over a year, the intelligence community had been under study by the Office of Management and Budget, then headed by James Schlesinger. In addition to NSCIC, the President's reorganization included an enhanced leadership role for the DCI, the establishment of a Net Assessment Group within the NSC staff, the creation of an Intelligence Resources Advisory Committee (IRAC), and a reconstitution of the United States Intelligence Board (USIB). The Net Assessment Group was headed by a senior NSC staff member and was responsible for reviewing and evaluating all intelligence products and for producing net assessments. When James Schlesinger was named Secretary of Defense in June, 1973, the NSC Net Assessment Group was abolished. Its staff member joined Schlesinger at the Defense Department and set up a similar office.

<sup>10</sup> "Helms Told to Cut Global Expenses," *New York Times*, 11/7/71, p. 55.

among agencies and types of collection? NSCIC was a structural response to these issues as well as part of the general tendency at that time to centralize a greater measure of control in the White House for national security affairs.

NSCIC's mission was to give direction and policy guidance to the intelligence community. It was not, and was not intended to be, a channel for transmitting substantive intelligence from the intelligence community to policymakers nor for levying specific requirements in the opposite direction. Neither was NSCIC involved in the process of allocating intelligence resources. Its membership included the Assistant to the President for National Security Affairs, who chaired the Committee, the DCI, the Deputy Secretaries of State and Defense, the Chairman of the JCS, and the Under Secretary of the Treasury for Monetary Affairs.

NSCIC was abolished by Executive Order 11905. No successor body was created. The task of providing policy guidance and direction to the intelligence community now falls to the Committee on Foreign Intelligence. According to the President's Executive Order, the CFI will "establish policy priorities for the collection and production of national intelligence." In addition, the full NSC is now required to conduct policy reviews twice a year on the quality, scope and timeliness of intelligence and on the responsiveness of the intelligence community to the needs of policymakers.

## B. AUTHORIZATION AND CONTROL OF COVERT ACTIVITIES

### *1. The NSC and Covert Activities: History*

President Ford's Operations Advisory Group is the most recent in a long line of executive committees set up to oversee CIA covert activities. These committees and CIA covert activities can be traced back to NSC-4-A, a National Security Council directive issued in December 1947.

In 1947 the United States was engaged in a new struggle, the Cold War. To resist Communist-backed civil war in Greece, the Truman Doctrine was proclaimed. The Marshall Plan was about to begin. Within three years China would "fall," the Korean War would begin, and the Soviet Union would acquire an atomic capability. The Cold War was being fought on two fronts—one overt, the other covert. The Soviet clandestine services, then known as the NKVD (now the KGB), were engaged in espionage and subversive activities throughout the world. France and Italy were beleaguered by a wave of Communist-inspired strikes. In February 1948, the Communists staged a successful coup in Czechoslovakia. The Philippines government was under attack by the Hukbalahaps, a Communist-led guerrilla group. In that climate, and in response to it, a broad range of United States covert activities were begun. They were intended to supplement not replace, overt U.S. activities, such as the Marshall Plan.

In December 1947, the Department of State advised the National Security Council that covert operations mounted by the Soviet Union threatened the defeat of American objectives and recommended that the United States supplement its own overt foreign policy activities with covert operations. At the Council's first meeting, on December 19, 1947, it approved NSC-4, entitled "Coordination of Foreign Intelli-



gence Information Measures.” This directive empowered the Secretary of State to coordinate overseas information activities designed to counter communism. A top secret annex to NSC-4—NSC-4-A—instructed the Director of Central Intelligence to undertake covert psychological activities in pursuit of the aims set forth in NSC-4. The initial authority given the CIA for covert operations under NSC-4-A did not establish formal procedures for either coordinating or approving these operations. It simply directed the DCI to undertake covert action and to ensure, through liaison with State and Defense, that the resulting operations were consistent with American policy. In 1948, an independent CIA office—the Office of Policy Coordination (OPC)—was established to carry out the covert mission assigned by the NSC. NSC-4-A was the President’s first formal authorization for covert operations in the postwar period,<sup>11</sup> and it was used to undertake covert attempts to influence the outcome of the 1948 Italian national elections.

Over the next seven years, from June 1948 to March 1955, a series of National Security Council directives was issued. Each was addressed, in part, to the review and control of CIA covert activities. NSC 10/2 superseded NSC-4-A on June 18, 1948, and a “10/2 Panel,” the first predecessor of today’s Operations Advisory Group, was established. The panel was to review, but not approve, covert action proposals. The 1948 directive was superseded by NSC 10/5 on October 23, 1951. This directive authorized an expansion of world-wide covert operations<sup>12</sup> and altered policy coordination procedures.<sup>13</sup>

Throughout this period, NSC directives provided for consultation with representatives of State and Defense, but these representatives had no approval function. There was no formal procedure or committee to consider and approve projects. Nor was a representative of the President consulted. From 1949 to 1952, the DCI approved CIA covert action projects on his own authority;<sup>14</sup> from 1953 to March 1955 the DCI coordinated project approvals with the Psychological

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<sup>11</sup> Covert operations were carried out by the Office of Strategic Services (OSS) during the Second World War. OSS was disbanded on October 1, 1945. Three months later, on January 22, 1946, President Truman issued an Executive Order creating the Central Intelligence Group (CIG). CIG was the direct predecessor of the CIA. It operated under an executive council, the National Intelligence Agency (NIA). Although a psychological warfare capability existed within CIG, it did not engage in any covert operations during its existence. CIG and NIA were dissolved with the passage of the 1947 National Security Act.

<sup>12</sup> Prior to this time CIA covert operations were largely confined to psychological warfare, and almost all were media-related. These activities included the use of false publications, “black” radio, and subsidies to publications. With the issuance of NSC 10/2, three other categories of covert activity were added to the psychological warfare mission: political warfare, economic warfare and preventive direct action (e.g., support for guerrillas, sabotage and front organizations).

<sup>13</sup> At this same time, the Office of Policy Coordination (OPC) was merged with the CIA’s Office of Special Operations which was responsible for espionage. The CIA’s Clandestine Service was now in place.

<sup>14</sup> The DCI did, however, undertake external coordination of covert action programs. Under NSC 10/2, the executive coordination group—the 10/2 Panel—met regularly with the CIA’s Assistant Director for Policy Coordination to plan and review covert action programs. This procedure continued under the 10/5 Panel.

Strategy Board or the Operations Coordination Board.<sup>15</sup> Certain covert activities were brought to the President's attention at the DCI's initiative.

By the mid-1950s covert action operations were no longer an ad hoc response to specific threats. They had become an institutional part of the "protracted conflict" with the Soviet Union and Communism. In September 1954, a Top Secret report on CIA covert activities, prepared in connection with the second Hoover Commission, was submitted to President Eisenhower. The introduction to that report is enlightening for what it said about how covert operations were viewed at that time, as well as the rationale for them.

As long as it remains national policy, another important requirement is an aggressive covert psychological, political and paramilitary organization more effective, more unique, and if necessary, more ruthless than that employed by the enemy. No one should be permitted to stand in the way of the prompt, efficient, and secure accomplishment of this mission.

It is now clear that we are facing an implacable enemy whose avowed objective is world domination by whatever means and at whatever cost. There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply. If the U.S. is to survive, longstanding American concepts of "fair play" must be reconsidered. We must develop effective espionage and counterespionage services and must learn to subvert, sabotage, and destroy our enemies by more clever, more sophisticated, and more effective methods than those used against us. It may become necessary that the American people be made acquainted with, understand and support this fundamentally repugnant philosophy.

Two significant NSC directives on covert activities were issued in 1955. The first, NSC 5412/1, made the Planning and Coordination Group (PCG), an OCB committee, the normal channel for policy approval of covert operations.<sup>16</sup> Approval by an executive committee was now the rule. The second NSC directive was issued later in 1955 and remained in force until NSDM 40, which created the 40 Committee, was issued in February, 1970. Because of the significance of this second directive—it covered policy objectives as well as approval and control procedures—and the fact that it stood as U.S. policy for fifteen years, it deserves detailed consideration.

The directive reiterated previous NSC statements that the overt

<sup>15</sup> The Psychological Strategy Board (PSB), an NSC subcommittee established April 4, 1951, was charged with determining the "desirability and feasibility" of proposed covert programs and major covert projects. A new and expanded "10/5 Panel" was established, comprising the members from the earlier 10/2 Panel, but adding staff representation of the PSB. The 10/5 Panel functioned much as the 10/2 Panel had, but the resulting procedures proved cumbersome and potentially insecure. Accordingly, when the PSB was replaced by the Operations Coordinating Board (OCB) on September 2, 1953, coordination of covert operations reverted to a smaller group identical to the former 10/2 Panel, without OCB staff participation. In March 1954, NSC 5412 was issued. It required the DCI to consult with the OCB.

<sup>16</sup> NSC 5412/1 was issued March 12, 1955. That same month the DCI briefed the PCG on all CIA covert operations previously approved under NSC-4-A, 10/2, 10/5, and 5412.

foreign activities of the U.S. Government should be supplemented by covert operations." It stated, in part, that the CIA was authorized to:

—Create and exploit problems for International Communism.

—Discredit International Communism, and reduce the strength of its parties and organization.

—Reduce International Communist control over any areas of the world.

—Strengthen the orientation toward the United States of the nations of the free world, accentuate, wherever possible, the identity of interest between such nations and the United States as well as favoring, where appropriate, those groups genuinely advocating or believing in the advancement of such mutual interests, and increase the capacity and will of such peoples and nations to resist International Communism.

—In accordance with established policies, and to the extent practicable in areas dominated or threatened by International Communism, develop underground resistance and facilitate covert and guerrilla operations. . . .

The directive dealt with means as well as ends:

—Specifically, such [covert action] operations shall include any covert activities related to: propaganda, political action, economic warfare, preventive direct action, including sabotage, anti-sabotage, demolition, escape and evasion and evacuation measures; subversion against hostile states or groups including assistance to underground resistance movements, guerrillas and refugee liberation groups; support of indigenous and anti-communist elements in threatened countries of the free world; deception plans and operations and all compatible activities necessary to accomplish the foregoing.

Control and approval procedures were significantly altered by this directive. The OCB's functions were transferred to "designated representatives" of the Secretaries of State and Defense and the President. This was the first time a "designated representative" of the President had been brought into the approval, or consultative, process. The Special Group, as this committee came to be known, was charged with reviewing and approving covert action programs initiated by the CIA.<sup>17</sup>

Even under the new directive, criteria governing the submission of covert action projects to the Special Group were never clearly defined.

As a 1967 CIA memorandum stated:

The procedures to be followed in determining which CA [covert action] operations required approval by the Special

<sup>17</sup> Coordination procedures were slightly modified on March 26, 1957. The Secretary of State was given sole approval authority for particularly sensitive projects that did not have military implications. Further, the CIA was now required to keep the Departments of State and Defense advised on the progress in implementing all approved covert action programs.

Group or by the Department of State and other arms of the U.S. Government were, during the period 1955 to March 1963, somewhat cloudy, and thus can probably best be described as having been based on value judgments by the DCI.

In the beginning, meetings of the Special Group were infrequent. This may be explained, in part, by the special relationship that existed among CIA Director Allen Dulles, his brother John Foster Dulles who was Secretary of State, and President Eisenhower. Early in 1959, regular weekly meetings of the Special Group were instituted, with one result that criteria for submission of projects to the Group were, in practice, considerably broadened. It was not until March 1963, however, that criteria for submission to the Special Group became more formal and precise. These submission criteria are the same as exist today. (See page 53.)

One other development during this period deserves mention. After a shoot-down of an American RB 47 aircraft in the Baltic region in June 1959, the Special Group adopted a new attitude toward reconnaissance in sensitive cases. They decided that review required for these missions had previously been inadequate, and established review on a routine basis. The Joint Chiefs of Staff set up a Joint Reconnaissance Center (JRC) to present monthly peripheral reconnaissance programs to the Special Group. The new procedures did not prevent the U-2 incident in 1960.

With the inauguration of President Kennedy in January 1961, Special Group meetings were transferred to the White House under the chairmanship of the President's Special Assistant for National Security Affairs, McGeorge Bundy. For a brief period, General Maxwell Taylor, President Kennedy's military adviser, chaired the group, but this role was again assumed by Bundy when Taylor became Chairman of the JCS. Prior to 1961, the State Department member of the Special Group had been the "informal" chairman.

As a result of the failure of the Bay of Pigs, control procedures for covert operations were tightened. The Special Group continued its once-a-week meeting format and President Kennedy was informed more frequently of covert action proposals. At the same time, however, the control mechanism for approving and monitoring covert operations was fragmented. In addition to the Special Group, two new executive bodies were created—the Special Group on Counter Insurgency (CI) and the Special Group (Augmented).

On January 18, 1963, NSAM 124 was issued. This directive established the Special Group (CI) to help insure effective interagency programs designed to prevent and resist insurgency in specified critical areas, such as Laos. Paramilitary operations were a central focus of this new group. NSAM 124 did not, however, supersede previous NSC directives on covert operations. Nevertheless, a certain number of operations that might have earlier been referred to the Special Group went to the Special Group (CI). General Maxwell Taylor chaired this group and McGeorge Bundy and Robert Kennedy served on it, among others.

In 1962 a third NSC subcommittee was established, the Special Group (Augmented). Its purpose was to oversee Operation MON-GOOSE, a major new CIA covert action program designed to overthrow Fidel Castro. Its membership included, in addition to the regular Special Group members, Attorney General Kennedy and General

Taylor. Secretary of State Rusk and Secretary of Defense McNamara occasionally attended meetings.<sup>18</sup>

During the Johnson Administration, the Special Group, which was renamed the 303 Committee,<sup>19</sup> continued to be chaired by the President's Assistant for National Security Affairs, first McGeorge Bundy, and, after 1966, Walt Rostow. The most important regular, high-level meeting in the national security process during the Johnson years was, however, the Tuesday Lunch group. The Tuesday Lunch began as an informal meeting of President Johnson, Secretary of State Rusk, Secretary of Defense McNamara, and Bundy. Gradually, the meetings became a regular occasion and participation was enlarged to include the President's press secretary, the Director of Central Intelligence, and the Chairman of the JCS. The agenda of the Tuesday Lunch was devoted primarily to operational decisions—mostly on Vietnam. Although the Tuesday Lunch was not meant to substitute for the 303 Committee, it probably did consider important matters involving covert operations directed at North Vietnam.

## *2. The 40 Committee and current procedures*

On February 17, 1970, NSDM 40 was issued. It created the 40 Committee. The directive superseded and rescinded past NSC covert action directives. It discussed both policy and procedure. With regard to policy, NSDM 40 stated that it was essential to the defense and security of the United States and its efforts for world peace that the overt foreign activities of the United States Government continue to be supplemented by covert action operations.

NSDM 40 assigned the DCI responsibility for coordinating and controlling covert operations. The Director was instructed to plan and conduct covert operations in a manner consistent with United States foreign and military policies and to consult with and obtain appropriate coordination from any other interested agencies or officers on a need-to-know basis.

The directive also spelled out the role of the 40 Committee. It stated that the DCI was responsible for obtaining policy approval for all major and/or politically sensitive covert action programs through the 40 Committee. In addition, NSDM 40 continued the Committee's responsibility for reviewing and approving overhead reconnaissance missions, a responsibility first acquired in 1959.

A new provision, not found in previous NSC directives, required the Committee to annually review covert operations previously approved, and made the DCI responsible for insuring that the review took place.

Guidelines for the submission of covert action proposals to the 40 Committee were spelled out in an internal CIA directive.<sup>20</sup> The Director of Central Intelligence decided whether an operational program

<sup>18</sup> For a detailed account of the workings of the Special Group (Augmented), see the Committee's Interim Report on "Alleged Assassination Plots Involving Foreign Leaders," pp. 139-148.

<sup>19</sup> In June 1964 NSAM 303 was issued. NSAM 303 left the composition, functions, and responsibilities of the Special Group unchanged. The effect of this directive was, quite simply, to change the name of the Special Group to the 303 Committee. The purpose of NSAM 303 was just as simple—the name of the Special Group had become public as a result of the publication of the book *The Invisible Government* and, therefore, it was felt that the name of the covert action approval committee should be changed.

<sup>20</sup> This directive will, at least initially, continue in effect for the new Operations Advisory Group.

or activity should be submitted to the 40 Committee for policy approval. The paramount consideration was political sensitivity, but it was also significant if a program involved large sums of money. In the past, a "large" project was one costing over \$25,000, but this guideline seems less clear today. As a general rule, the following types of programs or activities required 40 Committee action: political and propaganda action programs involving direct or indirect action to influence or support political parties, groups or specific political or military leaders (this included governmental and opposition elements); economic action programs; paramilitary programs; and counterinsurgency programs where CIA involvement is other than the support and improvement of the intelligence collection capabilities of the local services.

The internal CIA directive also stated that before proposals were presented to the DCI for submission to the 40 Committee, they *should* be coordinated with the Department of State. Further, paramilitary action programs *should* be coordinated with the Department of Defense, and, *ordinarily*, concurrence by the Ambassador to the country concerned would be required. [Emphasis added.]

"Should" and "ordinarily" were underscored for an important reason: major covert action proposals are not always coordinated among the various departments. Nor, for that matter, were they always discussed or approved by the 40 Committee. For example, the CIA's 1970 effort to promote a military coup d'etat in Chile, undertaken at the instruction of President Nixon, was never brought before the 40 Committee.

After a proposal was approved by the DCI, it was distributed in memorandum form to the 40 Committee principals.<sup>21</sup> Except in emergencies, distribution to the principals was to occur at least 72 hours in advance of a meeting. Normally, the written proposal, as contained in the 40 Committee memorandum, was formally considered following an oral presentation by the CIA. This presentation was usually given by the Agency Division Chief having action responsibility. In addition to the principals, participants at 40 Committee meetings included, on occasion, the CIA's Deputy Director for Operations, a representative from the State Department's Bureau of Intelligence and Research, and the Assistant Secretary of State for the region involved.

The 40 Committee could approve, modify, or reject any covert action proposal. Proposals involving continuing action—for example, a subsidy to a political group—were normally approved for a fixed period, one year or less, at the end of which the project was again reviewed by the Committee and either continued or eliminated. Reconnaissance programs were rarely dealt with at these meetings. They were usually cleared by telephone vote rather than at a formal meeting.

Prior to 1969 it does not appear that all 40 Committee approvals were routinely referred to the President. The President would become involved, formally, only if there was disagreement within the Committee, or if the Chairman or another member thought a proposal was

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<sup>21</sup> The memorandum described the proposal in summary form: what it was expected to accomplish, its cost and the availability of funds, whether there were alternative means for achieving the objectives sought, the risks involved, and the possible consequences of disclosure.

sufficiently important, or sensitive, to warrant the President's attention. However, as a result of the Hughes-Ryan Amendment to the 1974 Foreign Assistance Act, the President is notified once a covert action proposal has been approved by his executive committee. The President is then required to certify to Congress that the approved covert action proposal is "important to the national security interests of the United States." The DCI then informs the Congress of this "Presidential Finding" in a "timely manner." In practice, informing Congress means notifying six different committees—the Senate and House Committees on Armed Services, Foreign Relations and Appropriations.<sup>22</sup> The DCI does not, however, feel obligated to inform the six committees of approved covert action operations prior to their implementation, although in some cases he has done so. Once the "Presidential Finding" is in hand, the CIA's Directorate of Operations implements the proposal.

During the early years of the Nixon Administration, 40 Committee meetings were held regularly although, on occasion, proposals were approved by telephone vote. Over time, however, formal meetings became fewer and fewer. This was due, in part, to a decline in covert action projects. Most business was done by telephone after proposals had been circulated in advance by couriers. Business became routine. "Telephone concurrences," involving quick checks rather than intensive discussion, was the rule. However, for major new departures, the Committee met in person. For example, the 40 Committee met nine times between January 22 and December 11, 1975, to discuss Angola. The National Security Council met once, on June 27, 1975. In addition, an Interagency Working Group on Angola met 24 times between August 13, 1975, and January 14, 1976. The number and frequency of meetings on Angola appears to reflect a need on the part of policymakers to sit down and discuss the desirability and mechanics of undertaking a major new covert operation. When a new departure is not being considered, when policy and interests are not shifting, 40 Committee business remained routine, usually conducted by telephone.

Two additional points concerning 40 Committee procedures are important. First, covert action proposals were resubmitted by the DCI to the 40 Committee when there was a need to reassess or reaffirm previous policy decisions. Resubmission would occur if new developments warranted it, or if specifically required by the 40 Committee at the time of approval.

Second, status reports on covert action programs and activities were submitted when requested by the 40 Committee or at the discretion of the DCI. Status reports were presented at least annually to the 40 Committee for each continuing activity approved by the Committee. Apparently, however, these annual reviews were little more than pro forma exercises carried out by the DCI. They were not thorough examinations of on-going projects by the 40 Committee principals.<sup>23</sup>

<sup>22</sup> In addition, both the Senate and House Select Committees on Intelligence Activities were briefed on current covert operations.

<sup>23</sup> According to the CIA, prior to the review of these annual reports by the 40 Committee principals they were submitted in draft to the concerned agencies for comment. Thus, the staff of 40 Committee principals had an opportunity to examine on-going projects.

### 3. *Covert Action Approvals*

It is difficult to determine the number of covert operations approved over the years by the 40 Committee or its predecessors. Records for the early years are either not available or are incomplete. Also, there has been a steady refinement of "programs" into individual "projects," thus making comparisons difficult. Despite this, a rough determination can be made of projects approved for the period 1949 to 1967.<sup>24</sup>

Between 1949 and 1952, 81 projects were approved by the DCI on his own authority after coordination with either the 10/2 or 10/5 Panels. During the first two years of the Eisenhower administration, 1953-54, 66 projects were approved by the DCI in coordination with the Operations Coordination Board or the Psychological Strategy Board. Between March 1955 and February 1967, projects approved or reconfirmed by the Operations Coordination Board, the Special Group, or the 303 Committee were as follows:

Eisenhower administration—104

Kennedy administration—163

Johnson administration—142

These totals reflect two things: first, an increase in the number of projects approved and, second, a tightening up of approval procedures. Regarding procedures, a CIA memorandum, dated February 25, 1967, stated:

As the sophistication of the policy approval process developed so did the participation of the external approving authority. Since establishment of the Special Group (later 303 Committee), the policy arbiters have questioned CIA presentations, amended them and, on occasion, denied them outright. The record shows that the Group/Committee, in some instances, has overridden objections from the DCI and instructed the Agency to carry out certain activities. . . . Objections by State have resulted in amendment or rejection of election proposals, suggestions for air proprietaries and support plans for foreign governments. . . . The Committee has suggested areas where covert action is needed, has decided that another element of government should undertake a proposed action, imposed caveats and turned down specific proposals for CIA action from Ambassadors in the field.

Whereas the "sophistication of the policy approval process" and the "participation of the external approving authority" has increased significantly since the establishment of the Special Group in 1955, this has not meant that all, or even a majority, of covert action projects have been approved by the "external approving authority." Low-risk, low-cost covert action projects, such as a routine press placement or the development of an "agent of influence," do not receive this attention. In this regard, an Agency memorandum, dated February 21, 1967, stated:

It is obvious that a compilation of Special Group approvals in no way reflects the totality of significant CIA activities carried on over the past 15 years. With respect to overall

<sup>24</sup> These numbers may include reapprovals of projects initiated earlier.



DDP activity, it does not include any mention of FI/CI [Foreign Intelligence/Counterintelligence] actions or, of course, any decisions in the overt field. Even within the restricted framework of covert action alone, a 1963 study prepared by this office showed that of the 550 existing CIA projects of the DDP which were reviewed against the background of our own internal instruction on Special Group submission, only 86 were separately approved (or reapproved) by the Special Group between 1 January and 1 December 1962.

Using the figures cited above, this would mean that 16 percent of all covert action projects, large and small, received Special Group approval between January 1 and December 1, 1962. The Select Committee's own review indicates that of the several thousand covert action projects undertaken since 1961, only 14 percent were considered on a case-by-case basis by the 40 Committee or its predecessors.<sup>25</sup> Those not reviewed by the committee were the low-risk, low-cost type referred to above.

Another indication of the number of covert action proposals which eventually reached the 40 Committee is contained in the CIA's 1972 *Covert Action Manual*. According to this document, "the 40 Committee actually looks at about one-fourth of our covert action projects." The Manual continues:

. . . this proportion is a reflection on the nature of the project system, not on any lack of policy approval for our covert actions. For example, the Agency would have separate projects for each of a number of media assets that might be brought to bear on an overall program of persuasion, but the 40 Committee would focus on the program with its descriptions of the specific assets to be employed. . . . *Thus, the important point on policy is that the 40 Committee considers individually all major and critical projects providing broader program guidelines for the remainder of our covert activity.* [Emphasis added.]

#### 4. *The NSC and Covert Activities: Conclusions*

Several points stand out in the history of the committees charged with overseeing covert operations. The most obvious has less to do with procedures than with the substance of the projects approved. The justification for covert operations has changed sharply, from containing International (and presumably monolithic) Communism in the early 1950s to merely serving as an adjunct to American foreign policy in the 1970s. It should be noted that early NSC directives framed the purpose of covert operations entirely in terms of opposition to International Communism. By contrast, NSDM 40 described covert actions as those secret activities designed to further official United States programs and policies abroad.

<sup>25</sup> According to the CIA, since the Hughes-Ryan Amendment to the 1974 Foreign Assistance Act, all covert action projects not submitted on a case-by-case basis have been submitted to the President for approval and to the oversight committees of Congress for its information in collective, omnibus form.

As stated, procedural arrangements for considering and approving covert operations have been formalized and tightened over the years. NSC-4-A of 1947 established no formal procedures for coordinating or approving operations; the DCI, in liaison with State and Defense, was to ensure that operations were consistent with United States policy. Over time, procedures were developed and guidelines established to indicate which covert action proposals required 40 Committee approval. The requirement of a "Presidential Finding" in the 1974 Foreign Assistance Act not only requires the President to certify to Congress that an approved covert operation is important to the national security of the United States, but, in effect, compels him to become aware of actions approved by the 40 Committee.<sup>26</sup> The concept of plausible denial, at least as it applies to the President, is dead. Major new covert operations cannot be undertaken without the knowledge, and approval, of the Chief Executive. President Ford's Executive Order takes this one step further. The new Operations Advisory Group will not be responsible for policy approval of covert operations, as was the 40 Committee. According to the Executive Order, the Group will "consider and develop any policy recommendation, including any dissents, for the President prior to his decision" on each covert operation. The approval of covert operations now rests solely with the President.

However, recognition that procedural arrangements for considering and approving covert operations have become tighter does not necessarily imply that they are adequate. Significant issues regarding the control of covert operations remain. First, the criteria for determining which covert operations are brought before the Executive are still inadequate. Small covert action projects not deemed politically risky can be approved within the CIA. Although many of these are in support of projects already approved by the Executive, they nevertheless make up a majority of all CIA covert action projects. In addition, some of the low-risk projects approved within the CIA, such as the development of a foreign "asset," may prove to be extremely sensitive and risky. One CIA "asset," given the cryptonym QJ/WIN, was recruited to spot "individuals with criminal and underworld connections in Europe for possible multi-purpose use."<sup>27</sup> Later the CIA contemplated using QJ/WIN for its ZR/RIFLE project, a "general stand-by capability" to carry out assassination when required. Other CIA individual project "assets" used in connection with plots to assassinate foreign leaders were WI/ROGUE and AM/LASH.

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<sup>26</sup> President Ford has recommended that the "Presidential Finding" requirement be dropped. In his message to Congress outlining his intelligence reorganization, the President recommended that the 1974 Foreign Assistance Act (Public Law 93-559) be modified as proposed by the Commission on the Organization of the Government for the Conduct of Foreign Policy. That Commission, charged by Robert Murphy, recommended:

"We propose that Public Law 93-559 be amended to require reporting of covert actions to the proposed Joint Committee on National Security, and to omit any requirement for the personal certification of the President as to their necessity." (Commission on the Organization of the Government for the Conduct of Foreign Policy, 6/75, p. 101.)

<sup>27</sup> Senate Select Committee, "Alleged Assassination Plots Involving Foreign Leaders," p. 182. See this report for a full discussion of QJ/WIN, ZR/RIFLE, WI/ROGUE and AM/LASH.

Though none of these specific projects were apparently approved by the NSC, several ranking CIA officials testified that they were within the general policy approved at the NSC level.

Second, there were gaps in 40 Committee supervision, notably in the sensitive areas of human espionage and counterintelligence. Whether intended or not, espionage and counterintelligence operations may have the effect of political action. A former chairman of the Special Group, McGeorge Bundy, has testified that the distinction among these operations needs re-examination. According to Bundy:

Intelligence collection is often separated from covert operations in the thinking of intelligence administrators and other concerned officials. I think this distinction, like the parallel distinction in the field of counterintelligence, deserves re-examination. Both intelligence collection and counterintelligence have involved covert activity which goes well beyond conventional espionage and counterespionage, and such enlargements of activity often present many of the same dangers as covert actions of other sorts.<sup>28</sup>

Espionage operations can have the effect of political action. A payment to a dissident leader may be designed to collect intelligence on the leader's group, but it may also be regarded as support for the group's objectives. Counterintelligence operations can have a similar impact. Counterintelligence measures used to enlist the support of local intelligence and police, neutralize hostile intelligence services, and discredit local CIA opponents are sometimes indistinguishable from covert action. As such, the issue is whether these intelligence activities can, or should, be made subject to effective executive branch and congressional oversight. President Ford's Executive Order does not address this issue. The Operations Advisory Group will be responsible for approving certain "sensitive intelligence collection operations," but the Executive Order does not apparently include human as well as technical collection. Nor is there any reference to Operations Group review or approval of any counterintelligence activities.

Third, there is a basic conflict between sufficient consultation to ensure accountability and sound decisions on the one hand, and secure operations on the other. 40 Committee approval procedures for covert operations were, on occasion, by-passed by the President or his National Security Affairs adviser. For highly sensitive proposals the number of individuals or agencies consulted or informed is sometimes sharply limited on a "need to know" basis. Even the ambassador in the country where the operation is to be conducted may not be informed. Middle and lower level officials within the State Department or the CIA with expertise may not be consulted. The risk of inadequate consultation was aggravated by the informality of telephone clearances. President Ford's Executive Order attempts to remedy this deficiency, at least in part. The Executive Order states:

The Operations Group shall discharge the responsibilities assigned . . . only after consultation in a formal meeting at-

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<sup>28</sup> McGeorge Bundy testimony, House Select Committee on Intelligence, 12/10/75.

tended by all members and observers; or . . . when a designated representative of the member or observer attends.<sup>28a</sup>

Finally, the annual review of covert actions by the 40 Committee did not appear to be searching or thorough. Annual reviews were often handled in the same informal manner as approvals for new covert action proposals—by telephone concurrence. Some ongoing covert operations have been challenged over the years, most often by the State Department. Some die a natural death. Some linger on for as long as 20 to 25 years. It appears that some covert operations, such as those in Italy, may come to an end only when they are exposed. President Ford's Executive Order contains two provisions to increase the number of covert action reviews. First, the Operations Advisory Group will be required to "conduct periodic reviews of programs previously considered." There is no requirement, however, that these reviews must take place at a formal meeting. Second, the Executive Order requires the full National Security Council to review, twice a year, the "continued appropriateness" of ongoing covert operations.

### 5. *Role of OMB*

In order to meet unanticipated needs, the CIA maintains a Contingency Reserve Fund. The fund is replenished by annual appropriations as well as unobligated funds from previous CIA appropriations. More often than not, the unanticipated needs of the CIA relate to covert operations.

The Director of Central Intelligence has the authority, under the Central Intelligence Agency Act of 1949, to spend reserve funds without consulting OMB. However, due to an arrangement among OMB, the CIA, and the Appropriations Committees of Congress, the CIA has agreed not to use reserve funds without OMB approval. There is no evidence that the DCI has ever violated this agreement. In practice, OMB holds a double key to this reserve fund: first, it approves additions to the reserve fund and, second, it approves the amounts to be released from the fund, upon CIA request and justification. OMB holds a careful review of each proposed release. Turndowns are rare, but reductions in amounts requested occur often enough to prompt a careful CIA presentation of its case.

Despite these levers of control, OMB has faced several handicaps which render its control of the Contingency Reserve Fund less effective than it might be. First, OMB has not, in the past, been represented on the National Security Council or the 40 Committee.<sup>29</sup> Much of the dollar volume of reserve releases originates in 40 Committee action. Thus, OMB resistance to reserve release requests were often in the face of policy determinations already made. Second, although the chairmen of the appropriations subcommittees of Congress are notified of draw-downs from the fund, these notifications occur *after* the release action, even though the release is conceptually the same as a supplemental appropriation. Thus, OMB does not have the leverage in regard to

<sup>28a</sup> Executive Order 1905, Sec. 3(c)(3).

<sup>29</sup> Under President Ford's Executive Order, the Director of OMB will sit as an observer on the Operations Advisory Group, the successor to the 40 Committee.

Contingency Reserve Fund releases that it does in regard to supplemental appropriations requests (where OMB is a party to recommending supplementals to the President and Congress).

OMB suffers other limitations with respect to the use of CIA funds for covert operations. First, CIA's budget submission to OMB has, in the past, neglected some aspects of clandestine spending, notably proprietary activities. Second, current ground rules allow the reprogramming of CIA's regular appropriations to meet unanticipated needs; no OMB approval is required for this reprogramming. To the extent that the above funds are used for covert operations, OMB has no control over their use.

### C. PROVIDING THE INTELLIGENCE REQUIRED BY POLICYMAKERS

#### 1. *Work of NSCIC*

The National Security Council Intelligence Committee was formed in November 1971. At its first meeting, a Working Group, composed primarily of officials from the intelligence community, was established. That composition was soon seen as inappropriate for a committee whose main purpose was to make intelligence more responsive to the needs of policymaking "consumers." As a result, at its second—and last—meeting, NSCIC changed the composition of the Working Group to exactly parallel the parent body.<sup>30</sup>

The various representatives who sat on the Working Group were not the "intelligence" specialists from those agencies, but officials with policymaking responsibilities. For example, the State Department was represented by the Director of the Bureau of Politico-Military Affairs, not the Director of the Bureau of Intelligence and Research. Representatives were to seek the views of the operating bureaus of their agencies on major intelligence questions.

An August 1974 meeting of NSCIC produced two direct results. In response to a request for some mechanism to highlight critical intelligence memoranda, the DCI now puts out "alert memoranda"—brief notices in a form which cannot be overlooked. The meeting also resulted in the production of a National Intelligence Estimate (NIE) on Soviet perceptions of the United States.

Before it was abolished, NSCIC began reviewing the basic documents which levy requirements on the intelligence community—the DCI's Perspectives on Intelligence, Substantive Objectives, and especially, Key Intelligence Questions (KIQs). NSCIC also set up a Working Group panel to conduct surveys of intelligence community publications. There was also an NSCIC subcommittee which considered economic intelligence, chaired by the Assistant Secretary of the Treasury for International Affairs. The subcommittee was inactive.

<sup>30</sup> The Assistant to the President for National Security Affairs (Chairman), the DCI (Vice Chairman), the Deputy Secretaries of State and Defense, the Chairman, JCS, and the Under Secretary of Treasury for Monetary Affairs.

## *2. Limitations on Effectiveness*

NSCIC's work reflected the basic dilemma inherent in suiting intelligence to the needs of policymakers. The intelligence community must be close enough to policymakers to know what is desired, yet distant enough to preserve its objectivity. Within this framework, the differing demands of many kinds of policymakers must be balanced. For example, making the intelligence community more responsive to the needs of Cabinet-level officials might diminish the quality of the intelligence produced for middle-level officials.

The limited effectiveness of NSCIC was due to several factors:

—The apparent lack of interest of senior officials in making NSCIC work.

—The demands of other business on the sub-cabinet level officials who made up NSCIC.

—“Consumer” unfamiliarity with the intelligence community. Of necessity, NSCIC spent most of its time educating policymakers about the community and what it can do. Most officials in policymaking positions, especially those in senior positions, bring little intelligence experience to their jobs. One of NSCIC's first tasks was to produce a manual about the community for policymakers.

—Diversity among “consumers.” Cooperative arrangements and the tradition of working together are matters of long standing within the intelligence community. By contrast, NSCIC represented a first attempt to bring “consumers” together. The newness of the endeavor combined with the diversity of the “consumers” made it difficult for NSCIC to function effectively.

## *3. Conclusions*

The intelligence community has not always been responsive to the needs of policymakers. Some have argued that the intelligence product is more a reflection of what “producers,” rather than “consumers,” deem important. This is debatable. What is not at issue, however, is that “consumers” should drive the intelligence process. NSCIC was a disappointment in this regard. To say this is not to imply that the intelligence community has been unresponsive to the needs of policymakers. Just the opposite may be true. “Producers” and “consumers” get together almost daily at NSC subcommittee meetings (e.g., the Senior Review Group and the Washington Special Action Group.) Intelligence requirements are levied, informally, at these meetings. It can be assumed that the intelligence community has been responsive to these informal requirements and hence the need for a more formal NSC mechanism—NSCIC—was eliminated. The new Committee on Foreign Intelligence will now have the responsibility for seeing that policymakers are provided the intelligence they need.

## **D. ADVERTISING THE PRESIDENT ON INTELLIGENCE ISSUES**

### *1. Overview*

The President needs an independent body to assess the quality and effectiveness of our foreign intelligence effort. Since 1956 the President's Foreign Intelligence Advisory Board (PFIAB) has served this function. Numerous proposals have recently been made to make

PFIAB an executive "watchdog" over United States foreign intelligence activities. Some have suggested that a joint presidential/congressional intelligence board be established or, at the least, Senate confirmation of members of the President's board be required. The Rockefeller Commission recommended that the Board's functions be expanded to include oversight of the CIA with responsibility for assessing CIA compliance with its statutory authority. The Murphy Commission commented favorably on the Rockefeller Commission recommendations. Whether PFIAB should adopt this oversight or "watchdog" function, or whether Congress should be involved in the activities of the Board is open to question. President Ford, in his Executive Order, decided against transforming the Board into a CIA watchdog. Instead, he created a new three-member Intelligence Oversight Board to monitor the activities of the intelligence community.

## *2. History of PFIAB*

On February 6, 1956, President Eisenhower created, by Executive Order, the Board of Consultants on Foreign Intelligence Activities. The Board was established in response to a recommendation by the second Hoover Commission, calling for the President to appoint a committee of private citizens who would report to him on United States foreign intelligence activities. Creation of the Board was also intended to preempt a move in Congress at the time, led by Senator Mike Mansfield, to establish a Joint Congressional Committee on Intelligence.

The Board ceased functioning when President Eisenhower left office in 1961, but was reactivated by President Kennedy following the Bay of Pigs failure. It was renamed the President's Foreign Intelligence Advisory Board (PFIAB) and has functioned, uninterrupted, since that time.

## *3. PFIAB Today*

The Board currently operates under Executive Order 11460, issued by President Nixon on March 20, 1969. The Board is responsible for reviewing and assessing United States foreign intelligence activities. It reports to the President periodically on its findings and recommendations for improving the effectiveness of the nation's foreign intelligence effort.

The Board presently has seventeen members, all drawn from private life and all appointed by the President. It is chaired by Leo Cherne, and holds formal meetings two days every other month. It has a staff of two, headed by an executive secretary.

As its name indicates, the Board is advisory. Board reports and recommendations have contributed to the increased effectiveness and efficiency of our foreign intelligence effort. For example, the Board played a significant role in the development of our overhead reconnaissance program. It has made recommendations on coordinating American intelligence activities; reorganizing Defense intelligence; applying science and technology to the National Security Agency, and rewriting the National Security Council Intelligence Directives (NSCIDs). The Board has conducted post-mortems on alleged intelligence failures and, since 1969, made a yearly, independent assessment of the Soviet strategic threat, thereby supplementing regular community intelligence

assessments. Most recently, it has reported to the President on economic intelligence and human clandestine intelligence collection.

The Board has not served a "watchdog" function. As the Rockefeller Commission noted, the Board does not exercise control over the CIA, which is, in fact, the Board's only source of information about Agency activities. When the Board has occasionally inquired into areas of possible illegal or improper CIA activity, it has met resistance. For example, when the Board became aware of the so-called Huston Plan and asked the FBI and the Attorney General for a copy, the request was refused. The Board did not pursue the matter with the White House. In 1970, the Board was asked by Henry Kissinger, then the President's National Security Advisor, to examine Allende's election victory in Chile to determine whether the CIA had failed to foresee, and propose appropriate actions, to prevent Allende's taking office. The Board requested 40 Committee and NSC minutes to determine the facts. Its request was refused and its inquiry was dropped.

The President needs an independent body to assess the quality and effectiveness of our foreign intelligence effort. In the words of its Executive Secretary, the Board has "looked at intelligence through the eyes of the President." PFIAB has served, in effect, as an intelligence "Kitchen Cabinet." The Board has been useful, in part, because its advice and recommendations have been *for* the President. As such, the executive nature of this relationship should be maintained.

Over the years, many of PFIAB's recommendations have been adopted, and others have served as a basis for later reform or reorganization. The Board has not been an executive "watchdog" of the CIA. To make it so would be to place the Board in an untenable position: adviser to the President on the quality and effectiveness of intelligence on the one hand and "policeman" of the intelligence community on the other. These two roles conflict and should be performed separately.

#### *4. Intelligence Oversight Board*

To assist the President, the NSC, and the Attorney General in overseeing the intelligence community, President Ford has created an Intelligence Oversight Board. The Board will consist of three private citizens appointed by the President. They will also serve on PFIAB.

The Board will be, in effect, a community-wide Inspector General of last resort. It will review reports from the Inspectors General and General Counsels of the intelligence community and report periodically to the Attorney General and the President on any activities which appear to be illegal or improper. The Board will also review the practices, procedures, and internal guidelines of the various IGs and General Counsels to ensure that they are designed to bring questionable activities to light. Finally, the Board will see to it that intelligence community IGs and General Counsels have access to any information they require.

The President's Intelligence Oversight Board should serve a useful purpose. However, the ability of a small, part-time Board to monitor the activities of the entire intelligence community is questionable. Further, the Board is a creature of the Executive and, as such, may be unable or, at times, unwilling to probe certain sensitive areas. A



body independent of the Executive must also be responsible for monitoring the activities of the intelligence community, including those which may be either illegal or improper.

## E. ALLOCATING INTELLIGENCE RESOURCES

### 1. Role of OMB

The Office of Management and Budget (OMB) is the principal staff arm of the President for supervising the Federal budget. OMB is also a staff arm for management—a tool the President occasionally uses to reorganize or redirect the structure and activities of the Federal Government.

In managing U.S. intelligence activities, the President has used OMB to pull together his annual intelligence budget and also to monitor the expenditure of intelligence funds. For example, OMB annually reviews the intelligence community's appropriations requests and makes its recommendations to the President for amounts to be included in his budget. Further, OMB apportions<sup>31</sup> CIA's appropriation and has authority to approve releases from the CIA Contingency Reserve Fund.

The fiscal management responsibility of OMB has been especially critical in the field of intelligence. Intelligence activities comprise a large part of that small and shrinking portion of the federal budget which is "controllable."<sup>32</sup> About 75 percent of federal spending for fiscal 1976 was designated in the President's budget submission as "uncontrollable." The Committee has found that the direct cost of national intelligence spending is currently [deleted] and total intelligence spending is approximately twice that. Thus the total U.S. intelligence budget is about [deleted] percent of federal spending, but is [deleted] percent of *controllable* federal spending. Because the U.S. intelligence budget is fragmented and concealed, the relationship between controllable intelligence program and controllable federal spending has never been shown to Congress in the President's budget. OMB has been a principal point at which the President can identify and exert management leverage over this aggregate of controllable funds.

Over the years, OMB (and its predecessor, the Bureau of the Budget) has had the greatest management impact when:

- It has been used as an instrument of presidential reorganization;
- It has identified major issues for the President, usually involving bids by intelligence agencies to maintain or launch duplicative or marginally useful programs.

For example, in 1960 President Eisenhower commissioned the Budget Bureau to establish a Joint Study Group of the principal intel-

<sup>31</sup> "Apportionment" of funds is described by budgetary statutes as the OMB action, following congressional appropriations, whereby agencies receive formal notification of amounts appropriated and the distribution of spending by time period and program.

<sup>32</sup> Defined as spending that is not predetermined by statute, such as interest on the federal debt, veterans benefits, Social payments, et cetera.

ligence agencies to take a hard look at U.S. intelligence collection requirements and other problems. In its report, the Joint Study Group recommended to the President a variety of measures to strengthen intelligence management, including a more assertive role for the DCI, stronger control by NSA of the cryptologic agencies, and centralized management of collection requirements.

A decade later, President Nixon commissioned OMB to probe the management of the intelligence community, and to determine what changes, short of legislation, might be made. An ensuing report by Assistant OMB Director James Schlesinger concluded that the division of labor envisaged by the National Security Act of 1947 had been rendered obsolescent and meaningless by technology and the ambitions of U.S. intelligence agencies. The Schlesinger Report recommended nothing less than the basic reform of U.S. intelligence management, centering upon a strong DCI who could bring intelligence costs under control and bring intelligence production to an adequate level of quality and responsiveness. In addition, the OMB report pointed to nine specific mergers or shifts of intelligence programs estimated to save nearly one billion dollars annually.

OMB has also been an occasional lightning rod for the identification of specific budget or management issues. In the mid-sixties the Bureau of the Budget called the President's attention to the problems of better coordinating the costs and benefits of overhead reconnaissance. Further, the Bureau pressed hard for a reorganization of Defense mapping and charting activities emphasizing the issues of needless duplication of service mapping agencies. This was resolved following the Schlesinger Report.

## *2. Recent Trends and Programs*

OMB reportedly was given a major role in developing the recommendations presented to President Ford for overhauling intelligence budgeting and management. If this was the case, it would reverse a recent trend. Since 1971, OMB's day-to-day influence upon intelligence management has been at a low point. OMB has been confined to its cyclical, institutional role in the budget process. The strengths and weaknesses of this role will be discussed below.

## *3. OMB Role in Formulating the Budget*

OMB can always get the President's attention in recommending what should be included in his annual budget proposals to Congress. Associated with OMB budget recommendations is the identification of major resource allocation issues, with an analysis of options and a recommended course of action. However, OMB recommendations on intelligence have had less presidential acceptance than in other areas of the federal budget. This has been due to the difficulty of carrying any "military" budget issue opposed by the Secretary of Defense and the relative ineffectiveness of DCI support. Further, OMB is excluded from some of the early, formative stages of DOD program determinations for intelligence which cover eighty percent of the intelligence budget.

For the past three years, with OMB encouragement, the DCI has provided the President with his own recommendations for the national intelligence budget. Unfortunately, these have come too late in the process to have much impact. These recommendations have followed, not preceded, DOD submissions to OMB and OMB's own formative stages of analysis.

The President's annual and five-year planning targets are an integral part of the federal budget process. Federal agencies are adjured to fit their fiscal and staffing plans within the presidential targets, with special emphasis upon the nearest or "budget" year. Presidential targets are especially important in their potential for strengthening central management of the intelligence community. The DCI has recognized this. These targets can assist the DCI in getting more value for the intelligence dollar. However, OMB has issued the planning targets too late in the planning process and without any in-depth coordination of totals and major components with the DCI. By the time the DCI and CIA have received their target figures in June or July, most of the major decisions on budget request levels and future year implications have already been agreed to within Defense and CIA. This type of problem is widespread in the federal budget process but, because of the insulation of intelligence from external checks and balances, the problem is especially serious in intelligence budgeting.

The problem is exacerbated by OMB's issuance to the Department of Defense of a planning target which has the effect of constituting an alternative planning base for intelligence. This target has not been directly related to DOD's intelligence budget. The Secretary of Defense has been given, in effect, a choice between a level of intelligence spending consistent with the DCI's planning target and one which matches his own view of overall DOD priorities and claims. Not surprisingly, Secretaries of Defense have tended to opt for the latter. The result, therefore, of the two planning targets has made the DCI's management mandate all the harder to fulfill.

#### *4. Presidential Budget Decisionmaking*

OMB's budget recommendations to the President, which culminate OMB's annual budget review, have been the only comprehensive presentations of United States' intelligence spending. These serve to highlight major issues and are done by analysts independent of any intelligence agency. In contrast with the DCI's national intelligence budget presentation, which excludes future year figures and does not have the Secretary of Defense's recommended amounts, the OMB presentation is complete and based upon each agency's final positions. Moreover, the OMB presentation offers specific solutions to the President's problem of restraining intelligence spending without degrading intelligence operations.

These presentations and those related to the DCI's National Foreign Intelligence Budget are not shared with Congress. Therefore, except for selective briefings by the DCI and individual program managers, Congress has not been informed of the major options at stake in the President's budget.

### 5. *Apportionment and Budget Execution*

OMB apportionment of appropriated funds is the source of much of OMB's muscle in budget execution. By law (31 U.S.C. 665), federal agencies cannot use appropriated funds in the absence of an OMB apportionment. The apportionment can convey the funds in lump sum, distributed by quarter, or by major program. OMB can impose set-asides and can call special hearings. With regard to intelligence programs, however, OMB apportionment action is weak and fragmented. The only direct intelligence apportionment by OMB is to CIA—i.e., those earmarked amounts of the DOD appropriation which are transferred from Defense to CIA under authority of the Central Intelligence Agency Act of 1949. This apportionment is done in lump sum. The rest of the intelligence budget is scattered among, and apportioned by, some 20 DOD appropriations and an appropriation to State without a distinction made for intelligence funds. Thus, OMB apportionment is procedurally applied to less than 20 percent of the annual national intelligence budget and to less than 10 percent of total intelligence spending.

Another weakness of OMB's ability to monitor budget execution is its procedural blindness to advances, reprogramming, and management of intelligence proprietary activities. Other weaknesses include:

—A large proportion of funds spent for CIA covert action projects have come from Defense Department advances, under authority of the Economy Act, and therefore are outside OMB apportionment.

—OMB does not routinely receive notice of major reprogramming of CIA funds from activities shown and justified in the congressional budget. The premium upon exploitation of unforeseen intelligence opportunities puts a premium upon budgeting flexibility. Yet OMB lacks a set of benchmarks to determine routinely when CIA or other intelligence agencies have substantially departed from the approved budget.

It appears that more than half of all large-scale covert action projects initiated in the period 1961–76 did not come to OMB for review.

### 6. *Absence of GAO Audits*

The absence of GAO audits in the intelligence community affects OMB's ability to monitor intelligence performance. In other federal areas GAO audits often include an evaluation of performance effectiveness and economy, as well as compliance. OMB has a standing arrangement to follow up with agencies on GAO audits. GAO audits often provide launching points for OMB investigations or reinforce OMB interests in broader problems. The absence of such independent and critical GAO reports in the intelligence field weakens both OMB and congressional oversight.

### 7. *OMB Representation on Excom*<sup>33</sup>

The process of planning and budgeting for overhead reconnaissance is new enough to have escaped historic overlaps of jurisdiction afflict-

<sup>33</sup> This EXCOM was abolished as a result of President Ford's recent Executive Order. It is likely that a similar body will be re-established under the direction of the new Committee on Foreign Intelligence.

ing the rest of the intelligence community. An Executive Committee (EXCOM) was established to coordinate reconnaissance development and planning, chaired by the DCI with the Assistant Secretary of Defense for intelligence as the other member. While OMB was not a member of EXCOM, it had a representative at EXCOM meetings. EXCOM decisions often were a compromise between the DCI and the Department of Defense which may or may not have represented the most cost-effective solution. On occasion, the OMB representative took a role in defining options and insisting upon analysis of key points. Here is one area of intelligence budgeting where OMB was actively represented and therefore in a position to help the President identify and resolve large issues.

#### *8. Net Assessment of OMB Role in Intelligence Management*

OMB's cyclical role in the budget process has the strengths and weaknesses noted. Recognizing that OMB has statutory authority in budget preparation and apportionment of funds, it is nevertheless true that the key to OMB influence for management improvement is the extent to which the President chooses to use and back OMB for specific projects. OMB's role *ought* to be at its strongest in the intelligence community, given the absence of public scrutiny and checks and balances which operate in other federal program areas.

The Committee notes several trends in intelligence budgeting and management which indicate an increasing need for strong and objective OMB staff assistance to the President: first, intelligence spending has increased significantly in the last decade. There are pressures for further growth: second, as already noted, intelligence is one of the few "controllable" program areas of a federal budget; third, the results of intelligence spending do not seem to be commensurate with the increases in outlays. Inflation partly explains this. Since 1969 the real value of goods and services available to intelligence has been reduced by an estimated twenty percent. Inflation is not a full explanation, however. Rigidities in the intelligence budget protect each manager's share, at the cost of perpetuating less productive or duplicative programs. The result is that ceilings on the intelligence budget are permitted to drive out long-term improvements in economy and effectiveness. Fourth, there is a fragmentation of management authority in the intelligence community. The DCI has had successive presidential mandates to manage, but has been handicapped by the lack of control of intelligence dollars.

In the face of such a challenge, the nature of future presidential mandates to OMB could be important to both executive and congressional oversight. In any future determination to strengthen OMB's role, it will be necessary to enlarge the staff of the six-person OMB intelligence unit.

#### *9. OMB's Role as Affected by the President's Recent Executive Order*

In his Executive Order of February 18, President Ford strengthened OMB's role in intelligence management in two principal ways: First, OMB has been made an observer to the Operations Advisory Group, successor to the 40 Committee. This step will likely give OMB

a regular and timely scrutiny of all proposed covert action and other sensitive intelligence projects. OMB's review will, therefore, no longer be confined to a postdecision review of those projects requiring Contingency Reserve Fund financing. Another likely effect is to strengthen the *substantive* mandate of OMB's inquiry into CIA projects of *all* kinds.

Second, the President has given the DCI a more direct influence on the national intelligence budget by requiring that the new Committee on Foreign Intelligence (CFI), which is headed by the DCI, "shall control budget preparation and resource allocation for the National Foreign Intelligence Program." Further, the President requires that the CFI "shall, *prior to submission to the Office of Management and Budget*, review, and amend as it deems appropriate, the budget for the National Foreign Intelligence Program." [Emphasis added.]

The combined effect of these two changes would appear to strengthen OMB's review role. The directive appears to tackle the problem of the weak and ill-timed impact of DCI review; it also puts OMB in the position of evaluating the analyses and proposals of both the CFI and the intelligence agencies on the way to the President.

*The managerial flaws* in the President's Executive Order are these:

1. The President's directive that "neither the DCI nor the CFI shall have responsibility for tactical intelligence" exempts what may be one of the largest and managerially vulnerable areas of intelligence from national management and beneficial tradeoffs. It gives Defense a dodge that could defeat future DCI and OMB management efforts. By failing to make the distinction between *operational* control of intelligence organic to military units and *management overview* (i.e., maintenance of DCI/CFI data base, continuing overview, and occasional initiatives), the President's directive may have undercut much of the DCI/OMB managerial clout.<sup>34</sup>

2. The silence of the Executive Order on *execution* of the intelligence budget fails to mandate CFI and OMB apportionment of funds appropriated for intelligence and GAO audit. The Order does give the CFI authority to control "resource allocation." If this is interpreted to mean a system of centralized CFI apportionment via OMB, executive oversight of national intelligence programs could be strengthened. The meaning of these words in the Executive Order therefore deserves probing.

3. The *actual* authority of the DCI in the new Committee on Foreign Intelligence may not be very strong in practice because the Executive Order does nothing about the pattern of intelligence appropriations. Defense still receives eighty percent of the national intelligence budget. The Order recognizes the Secretary of Defense as responsible for directing, funding, and operating "NSA and national, defense, and military intelligence and reconnaissance activities as required." The Secretary of Defense remains the "executive agent of the U.S. Government" for signals intelligence. In view of these formidable DOD powers, the CFI may be dominated by—or at least subject to the veto of—the Department of Defense.

<sup>34</sup> See Congressional study, *Congressional Oversight of the Intelligence Budget*, Parts I and II.