

## Chapter 5

# *The Sources of CIA Authority*

The National Security Act of 1947 charges the CIA with the duty of coordinating the intelligence activities of the federal government and correlating, evaluating and disseminating intelligence which affects national security. In addition, the Agency is to perform such other functions and duties related to intelligence as the National Security Council may direct. The statute makes the Director of Central Intelligence responsible for protecting intelligence sources and methods.

Congress contemplated that the CIA would be involved in all aspects of foreign intelligence, including collection. It understood that the Agency would engage in some activities, including some overt collection, within the United States.<sup>1</sup>

The statute expressly provides that the Agency shall have no law enforcement powers or internal security functions. This prohibition is an integral part of the definition of the CIA's authority. It reflects Congress' general understanding that CIA activities in the United States would be justified only to the extent they supported the CIA's basic foreign intelligence mission.

This understanding has been reflected in the National Security Council Intelligence Directives and the other documents which further define the Agency's jurisdiction.

Determining the scope of the Agency's authority within the United States is primarily a matter of drawing the line between the responsibility of the CIA and that of the FBI, while ensuring adequate coordination to avoid gaps in coverage. The areas posing the most substantial problems in this respect have involved counterintelligence and the preservation of the security of intelligence sources and methods.

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<sup>1</sup> Three terms used in this report require definition :

(1) overt collection—intelligence collection activities which disclose the identity of the collecting agency to the source of the information.

(2) clandestine collection—secret collection activities where the source of the information is unaware of the identity or existence of the collector.

(3) covert activities—activities, including collection, that are secret, and deniable as having links to the United States government.

## A. The Statutes

The National Security Act of 1947 replaced the National Intelligence Authority with the National Security Council, composed of the President, the Secretary of State, the Secretary of Defense, and other Secretaries and Under Secretaries when appointed by the President with the advice and consent of the Senate.<sup>3</sup> Subsequent legislation added the Vice President as a member. The Act also created the Central Intelligence Agency and placed it under the direction of the National Security Council.

The Agency's statutory authority is contained in Title 50 U.S.C. Sections 403 (d) and (e) :

(d) For the purpose of coordinating the intelligence activities of the several government departments and agencies in the interest of national security, it shall be the duty of the [Central Intelligence] Agency, under the direction of the National Security Council—

(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 :

*Provided*, That the Agency shall have no police, subpoena, law-enforcement powers, or internal security functions :

*Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence :

*And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure :

(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.

(e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination :

*Provided, however*, That upon the written request of the Director of Central

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<sup>3</sup> Under the original statute, the Director for Mutual Security and the Chairman of the National Security Resources Board were included as members. Both these positions have since been abolished.

Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

The Director of Central Intelligence, who heads the CIA, is appointed by the President with the advice and consent of the Senate. The position of Deputy Director of Central Intelligence, added to the statute in 1953, is subject to similar appointment provisions. At no time may both positions be filled by military officers.

Other provisions of the 1947 Act give the Director of Central Intelligence complete authority over the employment of CIA personnel. He may, in his discretion, dismiss any employee whenever "he shall deem such termination necessary or advisable in the interests of the United States." His decision is not subject to judicial or Civil Service review.

In the 1949 CIA Act, Congress enacted additional provisions permitting the Agency to use confidential fiscal and administrative procedures. This Act exempts the CIA from all usual limitations on the expenditure of federal funds. It provides that CIA funds may be included in the budgets of other departments and then transferred to the Agency without regard to the restrictions placed on the initial appropriation. This Act is the statutory authority for the secrecy of the Agency's budget.

The 1949 Act also authorizes the Director to make expenditures for "objects of a confidential, extraordinary, or emergency nature" on his personal voucher and without further accounting. In order to protect intelligence sources and methods from disclosure, the 1949 Act further exempts the CIA from having to disclose its "organization, functions, names, official titles, salaries, or number of personnel employed."

## B. The Legislative History

The 1947 Congressional hearings and debates reflect a dual concern. Congress accepted the need for a centralized intelligence agency that would supply the President with a complete and accurate picture of the capabilities, intentions, and activities of foreign countries. On the other hand, there was considerable congressional concern over possible misuses of this new agency. The comments of Representative Clarence Brown (Republican-Ohio) are illustrative:

I am very much interested in seeing the United States have as fine a foreign military and naval intelligence as they can possibly have, but I am not interested in setting up here in the United States any particular central policy[sic] agency under any President, and I do not care what his name may be, and just allow him to have a gestapo of his own if he wants to have it.

Every now and then you get a man that comes up in power and that has an imperialist idea.

The House, in the course of its deliberations, added language to the bill submitted to Congress by President Truman which detailed the specific functions given to the CIA. In doing so, it generally followed the language of the Presidential directive which had established the Central Intelligence Group, the CIA's predecessor. The inclusion in the 1947 Act of specific functions and prohibitions, therefore, was to ensure that a President could not alter the CIA's basic functions without first obtaining the approval of Congress.

### ***1. Authority To Collect Intelligence***

The statutory functions of the Agency include coordinating intelligence activities and correlating and evaluating intelligence. The statute itself does not expressly authorize the Agency to engage in intelligence collection. Congress left this matter to the National Security Council, which was authorized to direct the Agency to perform "other functions and duties related to intelligence" and "additional services of common concern," which are "for the benefit of the existing intelligence agencies."

It is clear from the legislative history that Congress expected the National Security Council to give the CIA responsibility and authority for overseas espionage. The National Intelligence Authority had given this responsibility to the predecessor Central Intelligence Group in 1946. Witnesses and congressmen were reluctant to discuss such matters publicly, but General Hoyt Vandenberg, Director of the CIG, told the Senate committee in secret session:

If the United States is to be forced by conditions in the world today to enter clandestine operations abroad, then such operations should be centralized in one agency to avoid the mistakes indicated, and we should follow the experience of the intelligence organizations of other countries which have proven successful in this field.

Some witnesses during the congressional hearings opposed giving the CIA any responsibilities for collection of intelligence and urged that the authority of the National Security Council to assign additional functions to the CIA be deleted so that the CIA could not collect intelligence. Congress did not agree. Although two congressmen expressed disapproval of any CIA collection, the general provisions were not challenged during the floor debates. They remain in the statute as authority for the CIA to collect intelligence at the direction of the National Security Council.

### ***2. The Meaning of "Intelligence"***

The 1946 Presidential Directive expressly restricted the Central Intelligence Group to activities connected with foreign intelligence. Although the 1947 National Security Act does not contain this ex-

press restriction, there was a general understanding in and out of Congress that the CIA's activities would be similarly confined.

An exchange between General Vandenberg and Congressman Chet Holifield (Democrat-California), later the floor manager of the CIA statute, is indicative:

GENERAL VANDENBERG. The National Intelligence Authority and the Central Intelligence Group have nothing whatsoever to do with anything domestic; so when we talk about the Central Intelligence Group or the NIA, it always means foreign intelligence, because we have nothing to do with domestic intelligence.

Representative HOLIFIELD. That was my understanding, and I wanted it confirmed.

In testifying before a House committee, Navy Secretary James Forrestal said:

The purposes of the Central Intelligence Authority [*sic*] are limited definitely to purposes outside of this country, except the collation of information gathered by other government agencies.

Regarding domestic operations, the Federal Bureau of Investigation is working at all times in collaboration with General Vandenberg. He relies upon them for domestic activities.

When Representative Brown asked whether additional limitations should be attached because the CIA "might possibly affect the rights and privileges of the people of the United States," General Vandenberg responded:

No, sir; I do not think there is anything in the bill, since it is all foreign intelligence, that can possibly affect any of the privileges of the people of the United States. . . . I can see no real reason for limiting it at this time.

The agency has never disputed that its authority is restricted to foreign intelligence.

### ***3. Activities Within the United States***

The fact that the CIA is restricted to activities relating to "foreign intelligence" does not, of course, tell us what those activities are and whether they may be conducted within the United States. Allen Dulles, testifying before a House committee, made the point:

They would have to exercise certain functions in the United States. They would have their headquarters in the United States.

More importantly, an exchange between Dulles and Congressman Manasco (Democrat-Alabama) during the closed House hearings indicates that Congress understood the Agency would have authority to collect foreign intelligence in this country from knowing sources:

Representative MANASCO. Limit it [collection] to foreign countries, of course.

Mr. DULLES. There is one little problem there. It is a very important section of the thing, the point I raised there. In New York and Chicago and all through the country where we have these business organizations and philanthropic and

other organizations who send their people throughout the world. They collect a tremendous amount of information. There ought to be a way of collecting that in the United States, and I imagine that would not be excluded by any terms of your bill.

Representative MANASCO. The fear of the committee as to collecting information on our own nationals, we do not want that done, but I do not think the committee has any objection to their going to any source of information that our nationals might have on foreign operations. Is that your understanding?

Representative WADSWORTH. (Republican-New York) Yes.

Representative MANASCO. They could go to Chicago and talk to the presidents of some of the machinery firms that have offices all over the world.

Mr. DULLES. That must be done.

Less clear from the legislative history is whether Congress contemplated that the CIA would collect foreign intelligence within the United States by clandestine means, so that the source of the intelligence would be unaware that information was being provided to the CIA. As stated above, there was a general reluctance to discuss openly the subject of clandestine collection. Accordingly, the absence of discussion of the subject provides little guidance.

The 1946 Presidential directive to the predecessor CIG contained express authority only for clandestine collection "outside of the United States and its possessions," but there is no corresponding provision in the 1947 National Security Act.

Neither Dulles nor Vandenberg in their testimony (quoted in part above) referred to clandestine collection as an activity the Agency might be assigned within the United States. On the other hand, Congress failed to include this activity among the prohibitions expressly incorporated in the statute.

#### ***4. Protecting Intelligence Sources and Methods***

The responsibility of the Director of Central Intelligence "for protecting intelligence sources and methods from unauthorized disclosure" reflects congressional recognition that the intelligence function necessarily involves sensitive materials and that secrecy is critical.

This language was originally inserted in the early drafts of the Act in response to the expressed concern of some military officials that a civilian agency might not properly respect the need for secrecy. Congress was also aware of the concern that United States espionage laws were ineffective in preventing unauthorized disclosure of classified information.

The statute does not provide the Director of Central Intelligence with guidance on the scope of this responsibility or on how it is to be performed; nor does it grant him additional authority to discharge this responsibility. The legislative debates did not focus on these issues.

### **5. *Prohibition Against the Exercise of Police and Law Enforcement Powers and Internal Security Functions***

The 1947 Act explicitly limits the CIA's domestic role by prohibiting the Agency from exercising law enforcement or police powers or undertaking internal security functions. This prohibition was taken almost verbatim from the 1946 Presidential directive.

Although the wording of the prohibition was not specifically discussed in congressional hearings or debates, several congressmen and witnesses expressed their concern that the CIA neither invade the FBI's jurisdiction nor become a secret police.

Dr. Vannevar Bush, the Chairman of the Joint Research and Development Board, responding to a question about the CIA's exercise of domestic police and related activities, stated:

I think there is no danger of that. The bill provides clearly that it is not concerned with intelligence on internal affairs, and I think this is a safeguard against its becoming an empire.

We already have, of course, the FBI in this country, concerned with internal matters, and the collection of intelligence in connection with law enforcement internally. We have had that for a good many years. I think there are very few citizens who believe this arrangement will get beyond control so that it will be an improper affair.

Representative Brown questioned Secretary Forrestal closely about possible domestic activities of the CIA:

Representative BROWN. This Chief of the Central Intelligence Agency, the Director, should he decide he wants to go into my income tax records, I presume he could do so, could he not?

Secretary FORRESTAL. I do not assume he could.

I think he would have a very short life—I am not referring to you, Mr. Brown, but I think he would have a very short life.

General Vandenberg spoke for many when he said:

I very strongly advocate that it [the CIA] have no police, subpoena, law enforcement powers or internal security functions.

### **6. *“Services of Common Concern” and “Other Functions and Duties Related to Intelligence”***

The statute grants broad authority to the National Security Council to assign the CIA other responsibilities in the intelligence field, subject to the prohibition on law enforcement powers or internal security functions. The preceding discussion shows that Congress specifically expected that collection of intelligence would be among those responsibilities. Other such services of common concern were mentioned by General Vandenberg before the Senate Committee on the Armed Services:

[I]t is necessary for a central intelligence agency to perform other [functions] of common concern to two or more agencies. These are projects which it is be-

lieved can be most efficiently or economically performed centrally. An example of such a service is the monitoring of foreign voice broadcasts. . . . Similarly, we have centralized the activities of the various foreign document branches which were operated by some of the services individually or jointly during the war.

Neither the congressional hearings nor the floor debates discussed the limits on the power of the NSC to assign particular activities to the CIA as "other functions and duties related to intelligence." The broad language reflected concerns that American experience with peacetime intelligence needs and requirements was extremely limited.

Several witnesses—cabinet officers, military leaders and intelligence experts—testified before Congress that the NSC should be allowed flexibility in its direction if the CIA was to be responsive to changing conditions and if the United States was to develop an effective intelligence service.

Under the authority of this "other functions" proviso, the National Security Council has assigned the CIA responsibility for foreign covert operations of a political or paramilitary nature.

### **C. Practice Under the National Security Act**

The National Security Council provides the CIA and other intelligence agencies with guidance and direction through National Security Council Intelligence Directives (NSCID's) and other official memoranda.

By means of these documents, the NSC exercises its statutory authority to assign the CIA services of common concern and other functions and duties related to intelligence. The NSC has also given some greater specificity to the duties of correlation, evaluation, and dissemination which are specifically assigned in the statute. Only those directives which are pertinent to the Commission's inquiry are discussed below.

Since 1947, the CIA has had, under NSC directive, the responsibility for all espionage (that is, clandestine collection of foreign intelligence) and clandestine counterintelligence activities conducted outside the United States and its possessions. In 1948, the National Security Council added the responsibility for overt collection of foreign intelligence within the United States. However, the NSC has not assigned the CIA responsibility for clandestine collection of foreign intelligence in the United States.

The CIA has a number of miscellaneous responsibilities of an intelligence-gathering nature. Perhaps the most important for purposes of this Commission is the responsibility assigned it by the NSC for dealing with persons who defect to the United States overseas. (Defections within this country are the responsibility of the FBI.) The Director of



Central Intelligence has implemented this assignment by issuing directives which set forth the details for the defector program.

Under the National Security Council directives, the Director of Central Intelligence has primary responsibility for the identification of impending crises and the transmission of relevant intelligence to the appropriate officials. The Director also has the responsibility for national intelligence—information required for the formulation of security policy which transcends the exclusive competence of any one department. The CIA is responsible for the regular production of current intelligence to meet the day-to-day needs of the President and other high-level officials. While these directives do not expressly prohibit the production of intelligence on purely domestic matters, it is clear that their focus is on overseas events.

In connection with the statutory responsibility of the Director of Central Intelligence for the protection of intelligence sources and methods from unauthorized disclosure, the National Security Council has directed that each agency or department be responsible for the protection of its own sources and methods, and that the Director call upon these other bodies as appropriate to investigate any unauthorized disclosures and report to him. The Director, has in turn, delegated these responsibilities to the Security Committee of the United States Intelligence Board, a board composed of the heads of the various intelligence agencies.

A particularly difficult security problem is presented by “leaks” of classified information to the news media. Usually there is no way of determining which agency is the source for any particular disclosure. At present all “leak” cases are referred to the Security Committee for discussion and appropriate action. The Security Committee has been given the authority to consider the problems caused by the “leak,” including the degree of harm to the national interest, and to make reports and recommendations for corrective action as appropriate. The Committee, however, has no authority to direct either the FBI or any member agency to investigate “leaks.”

The position of the FBI during the 1960's and early 1970's was firm: the FBI would not handle “leak” cases unless directed to do so by the Attorney General. This was a reflection of the attitude of Director J. Edgar Hoover. He felt that investigation of news “leaks” was an inappropriate use of FBI resources, because, most of the time, the source of such a “leak” could not be discovered, and often when the source was discovered, it turned out to be a high-ranking official against whom no action would be taken. As a result, the CIA, under Presidential pressure, has occasionally investigated such “leaks” itself, relying on the “sources and methods” proviso for authority.

The FBI's internal security authority and the CIA's foreign intelli-

gence responsibilities result in frequent contact, particularly in the area of counterintelligence. The FBI has responsibility for "investigative work in matters relating to espionage, sabotage, subversive activities and related matters" regarding the security of the United States. The CIA has the corresponding authority overseas. It also maintains central records and indices of foreign counterintelligence information. The NSC has assigned to the Director of Central Intelligence responsibility for establishing procedures to ensure the centralized direction and prior coordination of foreign and domestic counterintelligence activities.

Close coordination between the two agencies is required in many situations such as a visit by a foreign intelligence officer to this country to engage in espionage. The "transfer" of responsibility for counterintelligence requires constant cooperation between the CIA and FBI. Such coordination has not always existed, but the Commission was informed by representatives of both the CIA and the FBI that good relations and efficient liaison presently exist between the two agencies.

A formal memorandum between the CIA and the FBI in February 1966 provides the most detailed statement of the understanding by the two agencies of their respective authorities. For example, the FBI must be kept advised of clandestine CIA personnel in the United States. Where CIA handling of agents in this country is inadequate to protect the FBI's internal security interest, the FBI has unrestricted access to them.

The 1966 memorandum does not solve all problems. It does not outline or indicate in any specific degree the limits on CIA's activities related to foreign intelligence. No reference is made to the CIA's role within the United States to protect intelligence sources and methods, or to its power to conduct investigations for this purpose. This has been a troublesome area, as the FBI has declined to investigate the personnel of CIA or any other government agency suspected of a breach of security unless there is substantial evidence of espionage. Within the last year, work has begun to supplement and rewrite this memorandum to improve coordination and avoid future conflicts or gaps of jurisdiction.