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HSCA in Request*

SUBJECT: Senate Select Committee Requests for Witnesses on Operational Substance -- Issues Raised

1. The Senate Select Committee has not yet actually scheduled DDO staffers who are now on active duty, but a specific request has been made to talk with James Kelly of EA Division regarding the assassination plot against Chou en Lai. The SSC has also expressed interest in several DDO staffers, including Robert Owen and Nestor Sanchez of LA Division, [redacted] currently a Career Associate, and Bronson Tweedy, who is on short-term contract in Headquarters. We have been able to hold off actual scheduling of substantive operational conversations pending a resolution on how to handle covert action material. FR Division is standing by to appear for a non-operational briefing covering organization, mission, etc.

2. Attached hereto is a Senate Select Committee document entitled "Outline for Inquiry Procedures" which represents the Committee's own ground rules.

3. According to this attachment, witnesses or interviewees will fall into two categories:

- a. Those discussing information on the structure and functions of CIA plus substantive work, including the legal basis of DDO activity and the approval process; the capacities of CIA and its responsibility to provide information for other government entities. In this category, a CIA representative may be present at the interview.
- b. Those who will be asked questions regarding CIA or Executive Branch abuses or other controversial, specific matters where improprieties may have occurred. In this category, a CIA representative may not be present unless an exception is negotiated.

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4. Below are summarized the SSC procedures for calling witnesses before it:

- a. Prior to holding our interview with on-duty employees or alumni, CIA should provide "all information and materials on the subject", indicating that which is "extraordinarily" sensitive, so that it can get special handling.
- b. Witnesses may consult with the Agency before the interview. (They may be shown relevant documents to refresh their memories before testifying.)
- c. If not present (under category 3b, above) at an interview, an Agency representative should be available nearby for consultation regarding the handling of special security matters which may arise.
- d. Prior to an interview, CIA will check the employee's file and advise the Committee of any exceptionally sensitive aspects of subject's employment which require special handling.
- e. An Agency representative shall be available nearby in case a witness feels hesitant about answering a particular question and wants guidance "with respect to an appropriate response which will facilitate the provision of pertinent information and its protection".

5. Issues which arise as DDO personnel are called for interviews are discussed below:

a. Protection of Identities

Not covered in the SSC "Outline for Inquiry Procedures" is protection of true identities for personnel under cover.

- Officially covered personnel must be permitted to appear in alias or anonymously and the circumstances of the appearances should permit such anonymity. At a minimum their true identity should be kept out of the record.
- Non-officially covered personnel fall in an even more sensitive category. The issues are (1) need to appear at all? If so, (2) can their identity and cover be protected and kept out of the record?
- Foreign national agent personnel should not be called as witness out of deference to their special security problem and to avoid serious affect on their morale.

b. Legal Jeopardy of Interviewees

In category 3b, above, (abuses and improprieties) an important issue is: How can the legal rights of the individual be best protected in cases where U.S. law may have been violated. The problem of criminal jeopardy probably will not arise in the case of overseas operations, but the SSC could revive some of the domestic improprieties covered by the Rockefeller report, such as the LSD experiments or mail intercepts. The issues which this could raise concern:

- An employee's need to have prior consultation with the OGC regarding his legal rights and his legal jeopardy.
- An employee's right to engage legal counsel if he has reason to think U.S. law may have been broken.
- How can an Agency officer get financial help in hiring private counsel if it is necessary?

- How can the Agency protect the security of testimony given by a witness if a privately hired lawyer is present? Can cleared lawyers be found? Can uncleared lawyers quickly be cleared? If the lawyer takes notes of a classified nature, how can they be securely handled and stored?

Legal guidance should be sought from the OGC and clear and specific guidelines be available for those who seek it.

c. Secure Handling of Testimony

In both categories 3a and 3b, above, of these ground rules, documentary testimony must be protected from unsecure handling and storage. Moreover, steps must be taken to keep sensitive data out of any permanent record, not under CIA control. According to the attached ground rules (under paragraph B, "Procedures") the Committee assumes the responsibility for special handling of sensitive material and its ultimate disposition. The Committee also expresses its willingness to receive Agency guidance on this subject. We must be prepared to give it. Practically speaking, a great deal, if not most material, in category 3b and much of the substantive material in category 3a will be considered sensitive by the DDO and thus deserving of special handling.

d. Keeping Track of Testimony Given

Since the SSC, by its ground rules, intends to interview personnel without a CIA monitor being present in cases of abuses or improprieties, how can CIA keep track of testimony given in such cases?

- Provision is made by the SSC for exceptions to be made to the exclusion of a CIA monitor when particularly sensitive matters require it. The issue here raised is what should the DDO criteria be for requesting an exception so that an escort may be provided.

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-- It is not completely clear but the SSC ground rules in paragraph B-4, attached, suggest that it will be the SSC's judgment as to what testimony given during category 3b interviews -- where a CIA escort is excluded -- will be shown to CIA so that special, adequately secure handling methods can be agreed upon.

e. In-House CIA System for Handling Interview Process

As it now stands no clear cut responsibility has been assigned for handling of DDO interviewees and doing the necessary record collecting prior to the interview as specified by SSC ground rules.

It is my suggestion that witnesses, like paper, be the IG's responsibility, recognizing it will pass on much of the actual action to the directorate involved.

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