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THE WHITE HOUSE

WASHINGTON

INTELLIGENCE OVERSIGHT BOARD

May 7, 1976

Dear Dr. Cook:

We have determined some of the procedures by which the Intelligence Oversight Board will fulfill its responsibilities under Executive Order 11905. The purpose of this memorandum is to request your cooperation.

(1) Scope of the Board's Review

The Board is charged with reviewing activities of the Intelligence Community that raise questions of legality or propriety. The responsibilities of the Intelligence Community are covered by Section 4 of the Executive Order. If activities may reasonably be considered of either questionable legality or propriety, agency and department officials assigned to report such activities to the Board are not relieved of their responsibility to make reports solely because they determine the activities to be legal and proper.

The activities to be reviewed by the Board are those conducted by the Intelligence Community as part of Government business. The Board is not to review illegal or improper personal activities of Government employees.

The Order requires all Inspectors General and General Counsels in the Intelligence Community to "formulate practices and procedures designed to discover and report to the Oversight Board activities that raise questions of legality or propriety." This obligation relates to the foreign intelligence activities assigned in Section 4 of the Executive Order and is imposed on each inspector general and general counsel only with respect to the activities of his own agency. At the same time, however, inspectors general and general counsels are directed to report to the Oversight Board any questionable activities of any foreign intelligence agency that "come to their attention."

The term legality, as used in this Order, means the United States Constitution, statutes, Executive Orders, regulations (including internal agency regulations), and state common law and statutes. Issues of compliance with treaties or other international agreements should be referred to the Operations Advisory Group as part of its normal deliberations or be pursued through normal departmental actions.

Questions have been raised about the scope of the term "propriety" in the Executive Order. The Board's jurisdiction includes more than possible illegal activities for a number of reasons:

(i) All references to law in the Executive Order are to United States law. Activities of U.S. foreign intelligence agencies overseas may not violate U.S. law, but, because they may violate foreign law, may raise questions of propriety. This would be particularly true of activities which go beyond normal intelligence functions in allied countries. For instance, inducement of a person to embezzle funds from a Canadian bank would be of questionable propriety.

(ii) Some activities, although not illegal, may extend beyond the normally accepted role of U.S. foreign intelligence agencies. For instance, it may not be illegal for most U.S. foreign intelligence agencies to compile dossiers on the domestic activities of American citizens derived from public sources, but such an activity would be questionable.

(iii) Some activities, although not illegal under U.S. law, may be contrary to accepted norms of American society. For instance, under most circumstances torture of persons anywhere in the world to elicit information would raise questions of propriety.

No definitive explanation of propriety is possible. The term encompasses standards of conduct that derive from the shared moral values of the United States which form the basis of a free society, basic concepts of right and wrong, and general understandings of the role of intelligence.

(2) Reports to the Board

The Executive Order imposes several reporting requirements:

(a) Heads of intelligence agencies or departments are to report periodically to the Board any activities of their organizations that raise questions of legality or propriety. (Sec. 6(c)(1))

(b) Inspectors General and General Counsels are to transmit to the Board reports of any activities that come to their attention that raise questions of legality or propriety. (Sec. 6(b)(1))

(c) Inspectors General and General Counsels are to report periodically, at least quarterly, to the Oversight Board on their findings concerning questionable activities, if any. (Sec. 6(b)(2))

Although the Executive Order thus speaks of separate reports from heads of agencies, inspectors general and general counsels, single departmental or agency reports signed by all three officials will be adequate for Board purposes. Submission of such joint reports, however, is not required, nor will such submission relieve any of the three officials specified in the order of their individual obligations to report questionable activities not covered by the joint reports.

The Order also makes a distinction between periodic reports in Sections 6(c)(1) and 6(b)(2) and immediate reports in Section 6(b)(1). Activities that should be reported under Section 6(b)(1) would include any major or significant activities that raise serious questions of legality or propriety. In particular, ongoing activities or planned activities should be reported immediately, rather than only in periodic reports. Activities that have been completed or terminated can normally be reported in periodic reports. Periodic reports should also indicate the scope of investigative activities conducted by the responsible official since the previous periodic report.

The responsible officials need not report mere allegations of questionable activities. They are, however, obligated to investigate such allegations expeditiously and report them if their investigations determine that there is probable cause to believe the facts alleged and that these facts raise questions of legality or propriety.

In reporting to the Oversight Board, no particular format need be followed. Summaries of findings of the responsible officials will be adequate, provided that all relevant facts are included. The reporting officials will be responsible, however, for providing all background information requested by the Board or its staff.

True names of covert employees, sources, agents or other persons whose identities are considered sensitive need not be reported to the Board in initial reports. Should the Board request further information, however, the department or agency shall be prepared to furnish such names.

The first quarterly reports from Inspectors General and General Counsels should be submitted by the dates indicated on the attached schedule.

(3) Reports from Individuals

(a) Outside Government

The Oversight Board was not established to act as an investigator of citizen complaints. If, however, serious allegations are received by the Board from private citizens, it will in appropriate cases follow-up on the allegations to see if they lead to discovery of questionable activities. Intelligence agencies are obligated under the Executive Order to cooperate fully in response to any inquiries from the Board that are prompted by citizen complaints.

(b) Inside the Government

The Executive Order does not explicitly establish a system by which employees of the Intelligence Community will report to the Board. The Board was not established to substitute for the normal Inspector General functions of receiving complaints and allegations from employees. Nonetheless, the President has made it clear that he expects the Board to accept information from individual employees. Although the Board does not feel an obligation to investigate all allegations received, it will as it deems appropriate follow-up on serious allegations received from employees. Employees in each agency and

department of the Intelligence Community should be made aware that they have the ability to report directly to the Board.

Your cooperation in getting this important assignment underway will be appreciated.

Very truly yours,

Robert D. Murphy

Robert D. Murphy *per H.C.*
Chairman

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Enclosure