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DCI/ICS 83-3858
19 September 1983

TERMS OF REFERENCE

CIPC Narcotics Working Group's

Panel on the Use of Classified Intelligence Information by Drug Enforcement Agencies

1. Background:

The production, trafficking, and abuse of drugs have become problems of national proportions. The Vice President has called for the full cooperation and coordination of US departments and agencies in supporting the US drug interdiction program. Increasingly the resources of the Intelligence Community are being called upon to assist US law enforcement efforts. The Director of Central Intelligence has convened a working group under the auspices of the Critical Intelligence Problems Committee (CIPC) to consider the adequacy of intelligence support to US international narcotics control efforts. Throughout the working group's deliberations, questions have recurred regarding the constraints which classification may impose on the effective utilization of intelligence by drug enforcement agencies. In general the problem is how to maximize dissemination to and use of intelligence by law enforcement agencies while maintaining appropriate security standards for that intelligence. The complexity of that problem in the drug enforcement context has dictated that a separate panel--this panel--be established to focus on it exclusively.

2. Mission:

- A. This Panel will recommend policies for the Intelligence Community that will enhance the flow of intelligence concerning narcotics to designated US law enforcement agencies for the purposes of interdiction and prosecution while maintaining the security of that information and the protection of intelligence sources and methods.
- B. The Panel will focus on three aspects of that overall mission:
 - Security standards used by drug enforcement agencies.
 - Protection of sources and methods against indirect compromise.
 - Use of intelligence and intelligence-derived information in preparing for trial.

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3. Security Standards:

- A. The first aspect of this problem arises with respect to the quality of physical and personnel security standards required to protect classified intelligence information, as opposed to those required for privileged (but unclassified) information held by law enforcement agencies. Standards observed by the Intelligence Community are much more stringent. Law enforcement agencies appear to be reluctant to accept the greater burden which the standards for classified material involve, and have resisted pressures to observe them. Hence, agencies in the Intelligence Community are concerned that material they provide law enforcement agencies may not be adequately protected.
- B. A corollary concern is that information developed by law enforcement agencies is not being classified at all. E.O. 12356 allows information to be classified only if its unauthorized disclosure "could reasonably be expected to cause damage to our national defense or foreign relations." On that basis privileged information developed by law enforcement agencies, such as that obtained from informants, has heretofore not been classified. Its confidentiality has been protected by administrative procedure and evidentiary privilege. Now, however, law enforcement agencies are beginning to develop information through established intelligence means, which may have implications for national security. Also they are producing increasing amounts of information derived from classified material provided them directly by national intelligence elements. A question has therefore arisen as to whether such "derivative intelligence," i.e., derived through either established intelligence methods or from original intelligence sources, should be interpreted to meet E.O. 12356 classification standards.

4. Protection Against:

- A. This second issue applies in both HUMINT and SIGINT. In HUMINT it stems from concern that sources may be divulged by law enforcement agencies aggressively pursuing leads provided by US intelligence. The danger arises from the fact that law enforcement agencies employ US intelligence to develop additional sources. Intelligence however is much more zealous with respect to protection of its sources than law enforcement elements. Intelligence is therefore concerned that law enforcement agencies, in their zeal to make arrests, may divulge information that could indirectly reveal to intelligence sources.
- B. In SIGINT, the concern is that law enforcement agencies are developing collection programs which use established national intelligence collection techniques. As those techniques become more sophisticated, it is possible that an adversary power could use them to infer parallel national intelligence capabilities. Hence intelligence has a vested interest in maintaining the security of these techniques, even when used outside the national intelligence realm.

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5. Use of Intelligence in Trials:

- A. The third aspect of the problem stems from federal criminal procedures which enable a defendant to seek through a discovery motion relevant information regarding any evidence presented by the prosecution. A GAO report to the Congress on Federal Drug Interdiction Efforts (GAO/GGD-83-52, June 13, 1983) offers the following example:

". . . if a secret military system were used to detect an aircraft which culminated in the arrest of the pilot for drug trafficking, the defendant might be able to show a need to know that he was detected by the military system. Depending on the case, there was concern that a judge could require disclosure of the technical specifications of the system that resulted in the detection. This concern is expressed in view of the principle that the judiciary controls the evidence in a criminal trial and on the possibility that a defendant could successfully demonstrate a need for such evidence."

- B. The same report goes on to explain that classified information is provided certain protections:

". . . Congress has addressed these concerns involving cases where national security secrets are likely to arise in the course of criminal prosecutions. On October 15, 1980, Congress passed Public Law 95-456, the Classified Information Procedures Act. This law provides certain pretrial, trial, and appellate procedures for criminal cases involving classified information. For example, it provides pretrial procedures that permit a trial judge to rule on questions of admissibility involving classified information before introduction of the evidence in open court. The purpose of this particular procedure is to permit the Government to ascertain before trial the potential damage to national security. Under this procedure, the judge determines whether and the manner in which the information in issue may be used in a trial or pretrial proceeding."

The Classified Information Procedures Act therefore reduces the jeopardy to classified material in judicial proceeding. The Act does not, however, alter the final possibility that classified material may indeed be essential to the defendant's case. If so, the Government will be faced with deciding whether to present the evidence in court, proceed without the evidence, or drop the prosecution altogether.

6. Objectives:

- A. Recommend appropriate policies to govern the security of classified narcotics intelligence information while enhancing the use of that information to support the US drug enforcement program.
- B. Recommend procedures to minimize the possibility of indirect compromise of sources and methods thru narcotics intelligence provided to drug enforcement agencies.

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- C. Recommend intelligence support processes for drug enforcement that will enable drug agencies to develop evidence independently and reduce the likelihood that intelligence sources and methods will be regarded essential to a criminal defendant's case; in effect, build a firebreak in the evidentiary trial leading to sources and methods.

7. Study Tasks:

- Examine Community procedures for the dissemination of narcotics intelligence to law enforcement agencies.
- Examine Community requirements for the security of narcotics intelligence information, including physical, personnel, and document security.
- Examine the ability of the law enforcement community to protect intelligence in accordance with Intelligence Community requirements.
- Examine law enforcement needs and determine whether Community security requirements inhibit the ability to respond fully.
- Determine appropriate policies and procedures on dissemination and security of intelligence.
- Determine the need for restrictions on use of intelligence information, sources, and methods at the analytical, investigatory, interdiction and prosecutorial stages.
- Determine how drug agencies can establish independent evidence to build a "firebreak" to protect intelligence equities at the trial stage.

8. Additional Tasks:

- Review and, as appropriate, advise on:
 - Use of classification to protect law enforcement equities.
 - Need for explicit classification authority by drug agencies.
 - Extent to which revelation of law enforcement sources and methods can jeopardize intelligence sources and methods.
 - Extent to which uniform procedures are needed within the Intelligence Community to govern provision of information to the drug enforcement agencies.

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9. Meetings:

This panel will assemble each Friday morning at 1000 hours, or more frequently as required.

10. Report Schedule:

An interim report is due to the Narcotics Working Group by 21 September. A final report to the CIPC will be due 17 October.



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APPROVED:



Chairman, Critical Intelligence Problems Committee

9/23/83

Date

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DISAPPROVED:

Chairman, Critical Intelligence Problems Committee

Date



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