

File #:

62-112-116464

Serial Scope:

260-278

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Case#: NW 68262 Date: 09-22-2022

UNITED STATES GOVERNMENT

Memorandum

- 1 - Mr. J. B. Adams
- 1 - Mr. J. A. Mintz
- 1 - Mr. D. W. Moore
- 1 - Mr. W. R. Wannall

- Assoc. Dir. _____
- Dep. AD Adm. _____
- Dep. AD Inv. _____
- Asst. Dir.:
- Admin. _____
- Comp. Syst. _____
- Ext. Affairs _____
- Files & Com. _____
- Gen. Inv. _____
- Ident. _____
- Inspection _____
- Laboratory _____
- Legal Coun. _____
- Plan. & Eval. _____
- Spec. Inv. _____
- Training _____
- Telephone Rm. _____
- Director Sec'y _____

TO : Mr. W. R. Wannall *WRW*

DATE: 1/22/76

FROM : F. J. Cassidy *FJC*

- 1 - Mr. W. O. Cregar
- 1 - Mr. R. L. Shackelford
- 1 - Mr. F. J. Cassidy
- 1 - Mr. A. G. Pote

SUBJECT: HOUSTUDY

This is to set forth apparent inconsistencies in the logic used by the House Select Committee on Intelligence in its effort to castigate the FBI for its investigative effort in the domestic security field.

Quotes herein are extracted from the "Draft Final Report" dated 1/19/76 of the House Select Committee. The quotes are followed by the page number wherein they appear in the report.

The Committee maintains that "the FBI has been unable to prove any illegal or questionable relationship between the SWP and the Fourth International" (page 214); and that the FBI has failed "to uncover even one questionable activity by this political party" (215); and that "considerable resources have been allocated to compound the error of a continuing unproductive investigation" (217). This, it is alleged, has caused Americans to be concerned "about privacy invasions of domestic security investigations" (218).

As concerns the Counterintelligence Program (Cointelpro), the Committee states the program, though aimed at "identifying, penetrating and neutralizing subversive elements" (314), consisted of "myriad clandestine dirty tricks" (314). "The FBI justifies this aberration from traditional law enforcement programs by stating that it was dictated by the mood of the times" (315).

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1 - 62-116009 (Cointelpro)

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EX 104

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UNRECORDED COPY FILED IN 62-116009

Memorandum to Mr. W. R. Wannall
Re: Houstudy
62-116464

Not satisfied with the above types of sweeping condemnations, which in effect maintain that the FBI has set itself up as "the barometer of the country's mood" (315), which does not qualify it "to review peoples politics" (315), the Committee nevertheless feels free to condemn the FBI for not having done enough in the internal security area. The Committee states that "it is obvious that the FBI failed to anticipate groups dedicated to the overthrow of the existing government..." (218-219); and further "the FBI provided staff attorneys with a detailed after-the-fact history of the SLA. However, the FBI was apparently unable to anticipate the formation of the group or thwart its initial criminal activities" (underscoring added) (219, note 400).

The Committee's position therefore is this: if the Bureau, lacking statutory definition precisely outlining its authority, investigates a group (or individual) because of its potential for criminal, violent or subversive activity, or attempts to thwart that group's activity, that group had better be one the Committee agrees is violent or subversive. If, on the other hand, the Bureau fails to be prescient, it is to be criticized for its failure to take preventative action against a group which the Committee decides, based on the past record, is "committed to violence" (219).

Apparently this is another instance where we are damned if we do, and damned if we don't.

ACTION:

None. For information.

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FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

Asst. Dir.:	_____
Dep. A.D.-Adm.	_____
Dep. A.D.-Inv.	_____
Asst. Dir.:	_____
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Director Sec'y	_____

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Priority URGENT

JAN 0 8 1976

TELETYPE

To: DIRECTOR, FBI (ATTN: LEGAL COUNSEL) Date: 1/5/76

From: SAC, DALLAS DIV. OFFICE OF CONGRESSIONAL OFFICERS

Subject: U. S. REP. DALE MILFORD - HOUSE SELECT COMMITTEE ON INTELLIGENCE

- Fingerprint Card
- Fingerprint Record
- Map
- Newspaper clipping
- Photograph
- Artists Conception
- Other _____

Special handling instructions:

Attached is for information of Bureau and any action deemed appropriate.

Ted L. Gunderson, SAC, Dallas

Approved: T. L. Gunderson

Handwritten notes and signatures:
 Hoto
 [Signature]
 [Signature]
 [Signature]

SI 104

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ENCLOSURE

ENCLOSURE

84 JAN 30 1976

(Mount Clipping in Space Below)

CIA assassination plots part of war training

-Milford

(Indicate page, name of newspaper, city and state.)
 The Dallas Times Herald
 Dallas, Texas

Page: A-15

Date: 1/5/75

Editor: Kenneth P. Johnson

Character:
 or
 Classification:
 Submitting Office: Dallas

Being Investigated

By **RON CALHOUN**
Political Writer

Notching plots within the Central Intelligence Agency (CIA) to assassinate foreign leaders is no worse than training Army units to kill or Air Force wings to bomb, says U.S. Rep. Dale Milford.

Milford is in the process of drafting a "dissenting" report on what should be done about the CIA and the Federal Bureau of Investigation, as a member of the House Select Committee on Intelligence.

In an interview, Milford charged news accounts—particularly by the "eastern press"—on the assassination plots left a false impression about the plots themselves and distorted the present activities of the CIA.

He claimed newspaper stories he had read about testimony before the House committee gave the impression CIA agents were "actually trying" to carry out the assassination plots.

"That simply is not true," Milford said. "There is not a single shred of evidence that there has been an attempt to execute any of these plots. They were simply plans lying on the shelf to be used only in case of war, and to be executed only after being ordered by competent authority."

Milford's statements tended to contradict findings by the Senate committee investigating the CIA and FBI. According to the Nov. 22 Congressional

ENCLOSURE

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...terly, attempts were made to carry out plots against Fidel Castro's life, but they failed. Also, it said the CIA was "aware" of other assassination attempts which succeeded, but were not carried out directly by CIA agents.)

Millard was asked whether he would plotting to assassinate foreign leaders should be a part of CIA contingency planning, given the problems it had caused U.S. foreign policy.

"How does that differ, for example from what is taking place at Fort Hood where thousands of men are being trained to kill people, but no one is ordering them to kill anybody," Millard said.

"How does that differ with Caswell Air Force Base planes with maps in the cockpit to carry out bombing missions. Nobody is sending those planes to the targets."

Millard said some of the revelations from the intelligence hearings "have hurt this country in a way that it will take years to recover."

Millard said he and one other member of the committee, U.S. Rep. David C. Dixon, R-La., were planning to offer legislation which would be a "dissonant" from the majority recommendations of the committee.

He charged that 93 per cent of the committee's work had consisted of "digging up old dead cats and seeing how they would smell in the news" as

... appeared to studying present activities of the CIA and the Federal Bureau of Investigation.

There was plenty of evidence, Millard said, that the agencies themselves had corrected many old abuses.

But a majority of the committee, he said, was acting as if many old abuses were still taking place. "The indications I am getting from the staff is that the majority on the committee is going to recommend public revelation of intelligence budgets, open hearings on intelligence budgets and unilateral declassification of information. They also want to outlaw clandestine operations of the CIA."

Millard said he was against these actions and instead advocated the creation of a permanent intelligence oversight committee, made up of two members each from the Armed Services, Foreign Relations, Judiciary and Science & Technology committees, and one each from the Banking & Currency and Agriculture committees.

"This would give the committee the expertise it needed to oversee an intelligence agency," Millard said.

"There would be a strong set of rules wherein if a member leaked or released classified information, he would simply be booted out of Congress."

A dissenting member would be given an avenue of appeal, Millard said, to a special board made up of the House speaker and the majority and minority leaders and whips.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. W. R. Wannall

FROM : W. O. Cregar

SUBJECT: HOUSTUDY 75

- 1 - Mr. J. Adams
- 2 - Mr. J. A. Mintz
(1 - Mr. J. B. Hotis)
- 1 - Mr. W. V. Cleveland
(Route Through For Review)
- DATE: 1/16/76
- 1 - Mr. W. R. Wannall
- 1 - Mr. W. A. Branigan
(Route Through For Review)
- 1 - Mr. W. O. Cregar
- 1 - Mr. T. J. McNiff

Assoc. Dir. _____
 Dep. AD Adm. _____
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PURPOSE:

To advise that draft copy of HSC report setting forth results of HSC inquiry into operation of proprietaries by members of intelligence community cites Federal statute prohibiting formation of corporation (of which FBI has two) by any Federal agency without a specific Act of Congress and recommends that representatives of Legal Counsel, Special Investigative and Intelligence Divisions meet with appropriate Department officials to resolve (1) appropriate wording setting forth Bureau and/or Department's position in this matter and recommend inclusion of same in HSC report and (2) to decide course of action to be followed by Bureau should Department decide Bureau operation of incorporated proprietaries is illegal.

DETAILS:

In response to HSC inquiries and upon Department instructions, this Bureau furnished HSC Staff Members with briefing concerning operation of five proprietaries and subsequently made available for access limited financial data concerning three of these proprietaries. Of these three, two are included in the counterintelligence field and one in the criminal field. One proprietary in each of the counterintelligence and criminal fields has, with the knowledge of the Department, been incorporated in accordance

Enclosures

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Memorandum to Mr. W. R. Wannall
Re: Houstudy 75
62-116464

with existing ^{STATE} and/or district laws. The remaining proprietary in the counterintelligence field represents a partnership.

On 1/15/76, HSC Staff Member Charles Maddox made available to Special Agent Thomas J. McNiff a draft copy (attached) of material concerning FBI proprietaries prepared by him for inclusion in the final report setting forth the results of HSC inquiry into FBI operations. Mr. Maddox requested that this material, as it pertains to FBI operations, be reviewed to determine if such information requires classification. A separate communication has been prepared responsive to that request. In reviewing the above draft copy, it was noted that a section of the report was subtitled "Legal Aspects Concerning Proprietaries." This subsection quotes Section 869, Title 21, U.S.C., which in essence states no corporation shall be created (or Government funds used for that purpose) by any officer or agency of the Federal Government except by an Act of Congress, specifically authorizing such action. With regard to the FBI's justification for the use of incorporated proprietaries, the report stated that the matter had been referred to the Department of Justice for a decision and unofficially quotes an FBI spokesman as stating the question had never been raised in house and it was assumed that approval by the Department of Justice at the time such a proprietary was initiated was de facto proof that the operation was legal.

Exception was taken to the above statement not only because of its inaccuracy but because of the blackguardly tactic of making official an alleged unofficial remark. In response to a specific inquiry, Maddox admitted that the above statement was speculative and no Bureau spokesman told him that the legal authority of proprietary operations had not previously been considered. Maddox agreed to withdraw

CONTINUED - OVER

Memorandum to Mr. W. R. Wannall
Re: Houstudy 75
62-116464

the above statement but explained that since proprietaries were currently operating he would have to include in his report the legal position of the Department and/or the FBI concerning this type of operation. Maddox then prepared longhand a substitute statement (attached) which in effect stated that the legal authority for the operation of proprietaries is under Department consideration and his statement concluded that such a decision should have been made earlier and not after the fact and upon request of the HSC. Maddox indicated, in the absence of a specific decision from the Department, he would utilize the above statement. It was explained to Maddox at this point that a Bureau representative could not speak for the Department and a call was placed for Mr. Steven Blackhurst, Deputy Special Counsel for Intelligence Coordination, to come to the FBI Building to review the above longhand statement. Mr. Blackhurst, after reviewing the statement, advised that he could not speak for the Department's position in this matter and it was agreed that Maddox would withhold the draft copy of his report until approximately 1/21/76 at which time Blackhurst agreed to contact Maddox with the Department's position if such had been formulated.

OBSERVATIONS:

Legal Counsel Division is aware that the Department currently has under study the legal authority for use of incorporated proprietaries. It is noted that the Department, prior to the HSC inquiry, was cognizant that the two proprietaries in question involved corporations. If the Department on such short notice is unable to legally justify the operation of these proprietaries, it appears that two courses of action remain open to the Department. One would

CONTINUED - OVER

Memorandum to Mr. W. R. Wannall
Re: Houstudy 75
62-116464

be to maintain that the matter is currently under consideration while the second is a statement that the Department can find no legal justification for these operations. In the latter event it would appear the two operations would have to be discontinued in the immediate future. Either of the above two positions would appear to reflect unfavorably upon the Department as the former infers that the Department had not considered Section 869, Title 21, U.S.C., while the latter admits the Department had at the very least knowledge of an operation, which operation was in violation of a Federal statute. It would appear that the interest of this Bureau could best be served by the Department engaging in thorough research to determine whether the above-stated statute applies to operations approved by Government officials and designed to serve the best interests of the country by not disclosing Government participation in the operation or to the existence of another statute permitting these type operations.

RECOMMENDATIONS:

That representatives of Legal Counsel, Special Investigative and Intelligence Divisions meet with appropriate Department officials to resolve:

1) Appropriate wording setting forth the Bureau and/or Department's position in the above matter and recommend to Maddox inclusion of this wording in the HSC report being prepared by him.

CONTINUED - OVER

Memorandum to Mr. W. R. Wannall
Re: Houstudy 75
62-116464

2) To decide a course of action to be followed by the Bureau regarding the two currently operated incorporated proprietaries should the Department decide that these proprietaries, as they currently exist, are in violation of Federal statute.

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Legal Aspects Concerning Proprietaries

A major issue raised by the Committee at the time our investigation was started was addressed to each of the military services and the FBI. This issue was "what is your justification for establishing a proprietary, normally a corporation, as a front for carrying out an intelligence mission?"

The Committee raised this question because section 869 of Title 21, U.S. Code (1970) states in part as follows:

"(a) No corporation shall be created, organized or acquired on or after December 6, 1945, by any officer or agency of the Federal Government or by any Government corporation for the purpose of acting as an agency or instrumentality of the United States, except by Act of Congress specifically authorizing such action.

(b) No wholly owned Government corporation created by or under the laws of any State, Territory or possession of the United States or any political sub-division thereof, or under the laws of the District of Columbia, shall continue after June 30, 1948, as an agency or instrumentality of the United States, and no funds of, or obtained from, the United States or any agency thereof, including corporations, shall be invested in or employed by any such corporation after that date except for the purposes of liquidation. ***"

The General Accounting Office in a letter to the Committee Chairman dated December 10, 1975 (B-179296) which discussed the applicability of section 869 to the authority for CIA to establish proprietaries stated in reference to the legislative history of the act stated "we have found no indication in the legislative history that Congress considered the formation of corporations for clandestine purposes."

While it is recognized that the purpose of proprietaries is to conceal the role of the government in clandestine activities, the lack of legislative history concerning formation of clandestine corporations must be accepted. Thus, section 869 precludes the formation of proprietary corporations except by Act of Congress.

As discussed in the following paragraphs, the Military services disagreed strongly with the Committee position in this matter. As an example, the Army stated in essence that the provisions of section 869 should not be applied to corporations established for intelligence purposes by the Army because cover corporations do not, by their nature, represent themselves as agents of the U.S. government and do not engage in any business activity.

The Navy, with a somewhat different approach, stated that proprietaries are established for the sole purpose of facilitating the collection of intelligence. The Navy further stated that the purpose of establishing a proprietary is to provide a shield of non-attribution and that it would be impossible to act as a U.S. government representative without destroying the cover of non-attribution.

The Air Force justified the use of proprietaries by citing in-house approvals and approvals by the CIA and the Defense Intelligence Agency. The Air Force stated in part "Justification existed in the need for cover for clandestine foreign intelligence collection activities."

In summary, the military services have justified the use of proprietaries on a rather pragmatic basis which states in essence proprietaries are approved

in accordance with regulations, cleared by other agencies in the intelligence community, and could not exist for intelligence purposes if it were known that the U.S. government had an interest in the operation of the corporation.

The FBI has referred the legal question as to whether they can operate a proprietary to the Department of Justice for a decision. Unofficially an FBI spokesman stated the question has never been raised in-house and they assumed that approval by the Department of Justice at the time each proprietary was initiated was de facto proof that the operation was legal. The Department of Justice is still reviewing the legal basis for their past approvals.

Conclusion

The Committee agrees that a non-attributable method of providing cover for intelligence missions is a necessity and that a corporate structure is possibly the best way of obtaining this objective. The Committee does not take issue with the fact that regulations spell out policy guidelines and operating procedures and that there are apparently sufficient controls to protect the interests of the government. However, under present law, the formation of corporations without the consent of Congress is not lawful.

We believe therefore, if proprietaries are to

be continued, the Congress must enact legislation
to continue this form of covert operation.

The legal question as to whether the FBI can legally operate a proprietary under current laws is now being considered by the Department of Justice,

~~at the time~~
~~considered~~

Conclusion

The ~~pending~~ ^{pending} decision whether upholding or the legality of proprietaries or not should have been made as a matter of course at the time the formation of proprietaries were ~~approved~~ ^{considered and approved} by the Department of Justice ~~and~~ not after the fact and upon the request of the committee

