

15 January 1962

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Legal Basis for Cold-War Activities

1. This memorandum is for information.

2. I discussed with Nicholas deB. Katzenbach, Assistant Attorney General, Office of Legal Counsel, Department of Justice, the points raised by Senator Eugene J. McCarthy concerning the juridical or constitutional right of CIA to carry out covert activities directed towards

[REDACTED] a foreign country. The President, with his responsibility for the conduct of foreign relations, as Commander in Chief of the Armed Forces, and with the powers inherent in the Presidency, has authority to take such executive actions as he deems appropriate to protect the national interest which are not barred by the Constitution or other valid law of the land.

3. There are no general prohibitions in law on cold-war activities of a covert nature, although there are laws limiting such specific acts as mounting military expeditions within this country against a foreign sovereign. It would appear, therefore, that cold-war activities not involving an act of war and not within such legal limitations would be within the executive prerogative.

4. There is no specific statutory authorization to any agency for the conduct of such activities. When the National Security Act was enacted in 1947, the consideration of section 102, which established the Central Intelligence Agency, was restricted to the performance of intelligence functions. The language of paragraph (5) of section 102(d), "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, was intended to be a basis for giving the Agency a charter in the field of clandestine intelligence and counterintelligence.

5. [In 1947, Secretary of Defense Forrestal asked the Director of Central Intelligence if CIA would be able to conduct covert cold-war activities, such as black propaganda, commando-type raids, sabotage, and support of guerrilla warfare. Our position at that time was that if the National Security Council developed a policy that this country would engage in such covert activities and assigned their conduct to CIA we would have to go to the Congress for the funds to carry out such activities. The National Security Council did develop a Directive (NSC 16/2) setting forth a program of covert cold-war activities and assigned it to the Office of Policy Coordination under the Director of Central Intelligence with policy guidance from the Department of State. The Congress was asked for and did appropriate funds to support this program, although, of course, only a small number of congressmen in the Appropriations Committees knew the amount and purpose of the appropriation. The Office of Policy Coordination was subsequently combined with the clandestine intelligence activities in the Office of the Deputy Director (Plans), and the cold-war charter was assigned to CIA in coordination with the Departments of State and Defense by NSC Directive 5412.]

6. Some of the covert cold-war operations are related to intelligence within a broad interpretation of section 102(d)(5). [It would be stretching that section too far to include a Guatemala or a Cuba even though intelligence and counterintelligence are essential to such activities. In those operations, therefore, the Executive Branch under the direction of the President was acting without specific statutory authorization, and CIA was the agent selected for their conduct. It would, of course, be preferable to have that section read, "to perform such other functions and duties related to the national security as the National Security Council may from time to time direct," instead of having it restricted to "intelligence affecting the national security," but it is questionable whether such a change should be sought at this time. Congress has continued to appropriate funds for the conduct of these activities, but again only a small number of congressmen in our appropriations Subcommittees knew the nature and amount of these appropriations, and only another small group of the congressmen on our parent Subcommittees in the Armed Services Committees and other selected congressmen have known officially the nature of the activities.]

7. It can be said the Congress as a whole knows that money is appropriated to CIA and knows that generally a portion of it goes for clandestine activities. To this extent, we can say that we have congressional approval for these activities but we cannot say that we have general congressional approval for any specific activity as the knowledge is restricted to the group specified above and occasional other congressmen briefed for specific purposes. It is for the Executive Branch to determine the nature and extent of these activities and how they should be conducted. CIA has been directed by the National Security Council, of which the President is ex officio Chairman, to undertake such activities and the Congress has provided funds to CIA for their performance. Additional statutory authority is unnecessary and, in view of the clandestine nature of the activities, undesirable.

s/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

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