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MEMORANDUM

NATIONAL SECURITY COUNCIL

INFORMATION

6849X

January 18, 1977

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: Jeanne W. Davi 

SUBJECT: Minutes of NSC Meeting,  
January 13

Herewith, for your approval, Sam Hoskinson's minutes of the NSC Meeting on January 13.

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MINUTES  
NATIONAL SECURITY COUNCIL MEETING

DATE: Thursday, January 13, 1977  
TIME: 10:30 a.m. - 11:30 a.m.  
PLACE: Cabinet Room, The White House  
SUBJECT: Semiannual Review of the Intelligence Community

Principals

The President  
The Vice President  
Secretary of State Henry A. Kissinger  
Secretary of Defense Donald Rumsfeld  
Director of Central Intelligence George Bush  
Chief of Naval Operations James L. Holloway  
(Acting for Chairman, Joint Chiefs of Staff)  
Assistant to the President for National Security Affairs Brent Scowcroft

Other Attendees

White House: Richard Cheney, Assistant to the President  
William G. Hyland, Deputy Assistant to the President  
for National Security Affairs  
NSC Staff: Samuel M. Hoskinson, Director for Intelligence Coordination  
DOD: William Clements, Deputy Secretary of Defense  
Robert Ellsworth, Deputy Secretary of Defense  
Intelligence  
Community Staff: Fritz Ermarth, Office of Performance, Evaluation &  
Improvement

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XGDS of E. O. 11652 by authority  
of Brent Scowcroft; Exemption  
Category Section 5 (B)(2)

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With PORTIONS EXEMPTED  
E.O. 12958 Sec. 3.4(b)(6)

MR 98-39, #106; NSC 62u 2/10/99

By Ut NARA, Date 5/25/99



President Ford: This is the last meeting of the National Security Council in this administration unless a crisis develops in the next week. I would, therefore, like to thank each of you individually and as a group for the assistance and quality of materials and views you have provided. You have collectively and individually made the system work the way it should. We are meeting today to fulfill the requirements of the Executive Order (11905) which provides for semi-annual reviews of foreign intelligence activities by the NSC. First, I would like for George (Bush) to give us his views on how the Executive Order has worked out in practice. Secondly, I would like to discuss the quality of intelligence production.

Director Bush: Mr. President, the Executive Order has proved to be a major contribution to reform by putting the Intelligence Community within the proper constitutional framework. It has not received the proper credit on the Hill, but there is some realization of its value and the basic concept will probably not be thrown out.

On the whole, your intentions have been fulfilled. The Committee on Foreign Intelligence has not been without its difficulties but generally it has worked well. First we established our procedures and then we systematized resource planning and looked for resource trade-offs. As a result the National Foreign Intelligence Plan budget came out well. We didn't get everything . . .

President Ford: Including your airplane. . .

Director Bush: I ride commercial alot! Seriously, the machinery has worked fairly well. We do, of course, still have some problems like counter-intelligence and manpower levels.

As for the quality of intelligence production my first observation is that there are an increasing number of users. An example is the economic intelligence area and I met recently with the Economic Intelligence Board. Generally, we do things fairly well on such diverse areas as political, military and economic developments throughout the world, although there are some exceptions like China. Sometimes intelligence users find that our production priorities don't suit their specific needs. Others think we should be more alert to short-run problems and do more multidisciplinary analysis. NIE's are frequently criticized for lack of relevancy. Unnecessary security compartmentation is another major criticism. For example downgrading satellite-derived materials.

The semiannual review causes us to examine ourselves and results in a major internal audit. We are no longer under fire for violating human rights. There has not been one allegation of wrongdoing proved under the Executive Order. CIA is today extremely sensitive to possible misdeeds, but at the same time not defensive. Rights are being safeguarded.



President Ford: Who will be your successors?

Mr. Hyland: They are going to do away with our committee structure.

President Ford: .....

Director Bush: .....

Secretary Kissinger: George Bush deserves a special commendation. The Justice Department's role today is a threat to national security. Why it is better for a foreign government to have its spies in the U.S. caught than free to operate since if they are prosecuted everything must be made public. Because of the Attorney General's rules, NSA reports where U.S. citizens conversations are involved are meaningless to the point of being absurd. You must know who the U.S. official is by name to get the intercept in the right context. We should make it a point for the record that the Attorney General's guidelines in this area be looked at again.

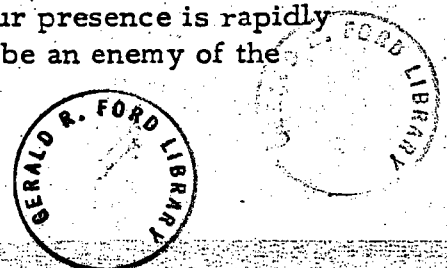
I find no degradation in the quality of intelligence analysis. The opposite is true, however, in the covert action area. We are unable to do it anymore. ....

Director Bush: Henry, you are right. We are both ineffective and scared in the covert action area.

Secretary Kissinger: Many things are not even proposed these days because we are afraid to even discuss them much less implement them.

Director Bush: .....

Secretary Kissinger: We should have done something but I was afraid to even make a recommendation. It's not the Agency's fault. Our presence is rapidly eroding in the Caribbean. It's just not risky enough to be an enemy of the U. S. these days.



Secretary Rumsfeld: I agree entirely with all that has been said. The backside of this problem is that we now have a request from the Justice Department for information from NSA to use in prosecuting one of their cases.

President Ford: How have things changed so much today? How did we prosecute and convict in the past?

Director Bush: Things have changed a lot at Justice and with the Court system. For example in the Rosenberg case years ago intelligence information was not regarded as admissible evidence. .... we are being forced to give up sensitive information in order to prosecute.

Secretary Kissinger: It's absurd!

Brent Scowcroft: Judges no longer are willing to do things in camera.

Director Bush: There are other problems as well. We have gone too far at this business. My greatest frustration--and I didn't intend to say this today--has been the Justice Department's prevention of my responsibility to protect sources and methods.

Secretary Kissinger: We should leave a memorandum for the record on this problem for guidance in the future.

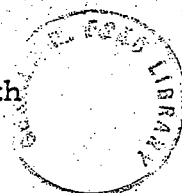
President Ford: George, would you summarize the problem in writing and send it to the NSC? I will pass it on to the new administration.

Director Bush: Yes I will. I am especially worried about things like disclosure of the SIGINT relationship .....

Secretary Rumsfeld: There is poor policy guidance in this area. The problem is that Justice takes the initiative against you in all these cases, rather than helping, and you are put on the defensive. You need them to help you but they work against you. The tension works both ways, but it's a question of who has the initiative.

Secretary Kissinger: The Justice Department does not understand that intelligence problems must be treated in a special category. Why it's an outrage what they are doing to Helms--now I got that off my chest! It has always been the case in history where vital interests are involved. Lincoln suspended certain rights, we have had emergency laws. There are many examples.

President Ford: Nelson what do you think? You had experience with the Commission.



Vice President Rockefeller: I had no idea that the situation had become this serious. Doesn't the NSC have the right and power to order a change?

President Ford: There is really no experience in the past with this kind of problem. What accounts for the change in the situation at this time? Is it the law, the mood in the country?

Vice President Rockefeller: It's the Attorney General himself, basically.

Secretary Clements: The Justice Department treats us like an adversary rather than a client.

Director Bush: Yes - we are dealing with an adversary in Justice.

Secretary Kissinger: There are two basic causes. First, there is the Attorney General himself, his personality. Secondly, the Justice Department bureaucracy is setting itself up like a Supreme Court to be the ultimate judge of what people do. They act like a supreme legal body. It won't end when Levi leaves.

Vice President Rockefeller: Can the NSC supersede Justice?

Director Bush: My problem is more with the institution than with the Attorney General, although he is a problem also. Their view of the role of intelligence is different. The Attorney General's departure won't make the problem go away.

Secretary Kissinger: They believe they have the right to demand total fulfillment on things like ..... Classification no longer means anything or is accepted in law. First you must be able to prove that information is really vital to national security and that is frequently not very easy to do. In the end it means we will not be able to prosecute espionage cases.

Director Bush: On both this aspect and the leak problem I will send a recommendation.

President Ford: What language in the Executive Order creates problems?

Vice President Rockefeller: The NSA name use problem could be changed by us. Ed Williams got the Solicitor General to admit that he personally didn't agree to this procedure but had been ordered to impose it.

Secretary Rumsfeld: Bob Ellsworth has had a lot of experience in this area. Bob, how do you view the problem?





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Secretary Ellsworth: When the guidelines were negotiated the Attorney General's attitude was that he was the President's legal advisor and had to protect him against any charges of tampering with the rights of U.S. citizens. But now the climate is changing and we must pass on our recommendations to the new team.

Vice President Rockefeller: I think the President has a responsibility to act now. We already know the orientation of the new administration. Do you think Carter will do it? We should deal with the problem now.

Secretary Kissinger: Right!

Secretary Clements: In the Navy claims problem the Attorney General told me he was representing the American people and taxpayers. In effect arrogating the public prosecutor role to himself when he was supposed to be defending the U.S. Navy's interests.

President Ford: Bill, you were trying to say something earlier.

Mr. Hyland: We do have a good damage assessment on the impact of the Attorney General's guidelines in the electronic surveillance field and that will be left behind with a good recommendation. Secondly, my observation is that the Justice Department usually says that it can't win in court without revealing all the sensitive intelligence involved but in those cases where we insisted--like the Glomar Explorer and the Moss subpoena--we won.

President Ford: I would very much like to see the report you mentioned as soon as possible this afternoon.

Mr. Hyland: The guidelines of course flow from the Executive Order.

President Ford: What would the Attorney General say about Henry's example?

General Scowcroft: He has also prevented us from learning most of what the Soviets are intercepting of U.S. communications in this country.

President Ford: I want to read the report right away.

Vice President Rockefeller: If I can I would like to propose an NSC resolution. It would say that the Attorney General's guidelines issued under the Executive Order are seriously impinging on national security and should be modified accordingly.

President Ford: In deference to the Attorney General, I should look at the report first. The specific steps can follow.

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President Ford: I have read the NIE and Team B assessment. George would you comment for us.

Director Bush: The competitive analysis idea seemed good at the time and I certainly did not think it would go public. But now I feel I have been had. A former general officer has gone public, even before the experiment is finished. I have to recommend that the approach not be institutionalized. The Estimate itself presents certain dissents of the Air Force and others whose views parallel those of Team B.

Basically this was an experiment to see if one viewpoint could stand up factually and it worked well in some areas like ICBM accuracy. There was no question of intelligence analysts knuckling under to Team B. The estimators stood their ground. In short the original concept was valid but failed in practice.

President Ford: I understand that Allen Dulles made a similar process work. But now the climate has changed and you get credit for leaks. This is damned discouraging to me. I endorsed the PFIAB experiment. The leaks are a disparagement of the quality of those people involved and are unforgivable.

Vice President Rockefeller: The good side is that the American people have been educated.

Secretary Kissinger: I have no real problems with the estimate. However, I think an across the board alternatives approach is very risky. I could find a board of Nobel Prize winners to construct any alternative analysis conceivable. Unless you construct both the hard and soft lines it can be used by someone for their own self-benefit. The real problem in the future is not the hardliners. it's the others.

Director Bush: I am against institutionalizing the alternative analysis approach. The issue has been caught up in a lot of polemics--some of which I don't understand--but I recommend that the NSC not institutionalize.

President Ford: The most discouraging aspect is the character of the people who leaked. Unforgivable.

Secretary Rumsfeld: Bush's idea of presenting differing views was good but like Henry says the scope must be more narrow. On some subjects it is useful to have differing views. The leaks must stop. They inhibit the whole intelligence process.

President Ford: In the present atmosphere leakers become martyrs. There isn't much you can do.

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Secretary Rumsfeld: The NIE is a good one. The only question I have is how we tie it to policy judgments or make it a basis for policy rather than using it as policy. There are some net assessment judgments involved and they should drive decisions. There should be a very serious live review of these matters in the future.

General Scowcroft: We have done a quick comparison with the 1972 estimate and it has turned out to be very accurate.

President Ford: Are there any other comments?

Vice President Rockefeller: Only to say again that you did a superb job last night. . .

Secretary Kissinger: The average person doesn't understand the turmoil you faced in the world when you took over. Now we have total tranquillity in the world and peace!

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