REPORT

ON

THE GUATEMALA REVIEW

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INTELLIGENCE OVERSIGHT BOARD

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intelligence (D-2)--in areas such as reversing the "auto-coup" of 1993 and protecting US citizens at risk, including the 1994 rescue of a kidnapped American girl. Because the D-2 was widely considered to be the elite within the Guatemalan military and government, the station also often requested and received administrative and logistical assistance from the D-2 on behalf of the embassy.

The human rights records of the Guatemalan security services--the D-2 and the Department of Presidential Security (known informally as "Archivos," after one of its predecessor organizations)--were generally known to have been reprehensible by all who were familiar with Guatemala. US policy-makers knew of both the CIA's liaison with them and the services' unsavory reputations. The CIA endeavored to improve the behavior of the Guatemalan services through frequent and close contact and by stressing the importance of human rights--insisting, for example, that Guatemalan military intelligence training include human rights instruction. The station officers assigned to Guatemala and the CIA headquarters officials whom we interviewed believe that the CIA's contact with the Guatemalan services helped improve attitudes towards human rights. Several indices of human rights observance indeed reflected improvement--whether or not this was due to CIA efforts--but egregious violations continued, and some of the station's closest contacts in the security services remained a part of the problem.

The end of the Cold War gradually led to lower funding levels for the station, but had only a limited effect upon the mechanics of how the CIA carried out its business and upon the mind-set of the CIA officers dealing with Guatemala. Station officers continued to view the communist insurgents--who seemed to threaten a more democratic government--as the primary enemy, and they viewed the Guatemalan government and security services as partners in the fight against this common foe and against new threats such as narcotics and illegal alien smuggling.

Funding issues

The funds the CIA provided to the Guatemalan liaison services were vital to the D-2 and Archivos. This funding was seen as necessary to make these services more capable partners with the station, particularly in pursuing anti-communist and counternarcotics objectives. The CIA, with the knowledge of ambassadors and other State Department and National Security Council officials, as well as the Congress, continued this aid after the termination of overt military assistance in 1990.

There have been public allegations that CIA funds were increased to compensate for the cutoff of military aid in 1990. We did not find this to have been the case. Overall CIA funding levels to the Guatemalan services dropped consistently from about $3.5 million in FY 1989 to about $1 million in 1995.

ASSET INVOLVEMENT IN HUMAN RIGHTS VIOLATIONS

DO Guidance on Human Rights

The CIA's Directorate of Operations (DO) and Guatemala station were clearly aware of the potential for human rights violations by assets and liaison contacts. In November 1988, the DO's Latin America (LA) division provided a guidance cable to its Central American stations, in which it noted that human rights violations were being used politically by Washington opponents of CIA programs in Central America, but went on to state:

> Point we would like to make is that we must all become sensitized to the importance of respecting human rights, and we must ensure that those assets and resources we direct and/or fund are equally sensitive. The issue will only become more important, and we serve our objectives best if we remember that if we ignore the importance of the human rights issue in the final analysis we do great damage to our mission. We are under great scrutiny.
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> Finally, aside from the legal and policy considerations which are constant in any allegations concerning violation's [sic] of human rights we also recognize a basic moral obligation. We are Americans and we must reflect American values in the conduct of our business. We are all inherently opposed to the violation of human rights. Those who work with us in one capacity or another must also respect these values.

DO instructions on warning targets of assassination issued in September 1989 stated, "Participation of an asset in an assassination may constitute a violation of US law or regulations and is grounds for immediate termination of the Agency's relationship with the asset. Thus, complete information of any such incident should be sent to Headquarters as soon as possible."

In 1990, the LA division chief warned the Guatemala chief of station (COS) that human rights performance was high on the agenda for the executive and legislative branches, with Guatemala seen as second only to El Salvador among human rights violators in the region.

In August 1992, the Latin American division chief provided guidance to his stations to check all new liaison contacts carefully for possible human rights violations. The guidance cable also directed stations to follow up on all accusations of human rights violations in order to corroborate or refute them.

In May 1993, the Guatemala COS initiated a review of many of his assets "to ensure that no station unilateral asset is, or has been involved in human rights violations." The station started by questioning some of its assets and planned to polygraph them. No station personnel recall, however, what prompted this review or why it was apparently never

completed. It may have been overtaken by Serrano's "auto-coup" later that month and by the COS's departure soon thereafter.

In September 1994, because of a human rights issue unrelated to Guatemala, the LA division directed all of its stations to review their current assets for human rights violations. In Guatemala, this review ultimately identified a few asset relationships for termination. All but one of these terminations of relationship were carried out in early 1995--before this IOB review had been ordered--and the last occurred soon thereafter. Relationships with a few more assets identified as possible human rights abusers had already been ended prior to September 1994 for various reasons.

Apart from the guidance to Guatemala station and other Latin American stations that is described above, there was no CIA-wide policy before 1995 that spelled out in detail the danger of human rights abuse by assets and what specific actions were to be taken by the stations and at CIA headquarters in such circumstances.

Allegations of human rights abuse by assets

In the course of our review, we learned that in the period since 1984, several CIA assets were credibly alleged to have ordered, planned, or participated in serious human rights violations such as assassination, extrajudicial execution, torture, or kidnapping while they were assets--and that the CIA was contemporaneously aware of many of the allegations. A number of assets were alleged--though with varying degrees of reliability--to have been involved in similar abuses before their CIA asset relationships began. In several other cases, the alleged abuses occurred or came to light only after the CIA was no longer in contact with the asset. A few assets were reportedly present while non-assets engaged in acts of intimidation, and another engaged in such an act before becoming an asset. Another asset was the subject of an unspecified allegation of human rights abuse. Several of the above assets were also involved in covering up human rights abuses, as was one additional asset. In addition, a number of the station's liaison contacts--Guatemalan officials with whom the station worked in an official capacity--were also alleged to have been involved in human rights abuses or in covering them up.

In many of these cases, however, US intelligence learned of the allegations only by virtue of reports from other assets who were themselves alleged to have engaged in similar abuses. Some of these sources, though, had grudges against those about whom they reported and thus may have had an incentive to fabricate or exaggerate allegations.

The IOB notes that US national interests, with respect to Guatemala and elsewhere, can in some cases justify relationships with assets who have sordid or even criminal backgrounds, including human rights violations. In fact, it will often be the case that the best placed sources of information on nefarious activities are not entirely clean themselves. There should be, however, an effort explicitly to balance the value and uniqueness of an asset's contributions against the seriousness and reliability of any allegations against him. We

believe it critical that this balancing process take place in the context of broad US interests. It should be noted that, in carrying out domestic law enforcement activities, US authorities regularly weigh such considerations in entering into informant relationships with persons who have criminal backgrounds. Among the potential costs to be considered in establishing or continuing such relationships with foreign intelligence assets are: their moral implications, the damage to US objectives in promoting greater respect for human rights, the loss of confidence in the intelligence community among members of the Congress and the public, and the effect of such relationships on the ethical climate within US intelligence agencies. In February 1996, largely as a result of the inquiries related to Guatemala, the CIA did issue guidance for dealing with allegations of serious human rights violations or crimes of violence by assets and liaison services. We believe this new policy strikes an appropriate balance: it generally bars such relationships, but it permits senior CIA officials to authorize them in special cases when national interests so warrant. We are disturbed, however, that until the recent Guatemala inquiries, the CIA had failed to establish agency-wide written guidance on such an important issue.

Among the most serious examples of credible allegations against a then-active CIA asset were those involving an asset who was the subject of allegations that in multiple instances he ordered and planned assassinations of political opponents and extrajudicial killings of criminals, as well as other, less specific allegations of unlawful activities. Although some of these allegations were from sources of undetermined or suspect reliability, one was from a source considered credible by the station at the time. Another asset was alleged to have planned or to have had prior knowledge of multiple separate assassinations or assassination attempts before and during his asset relationship. A third asset has been alleged to have participated in assassination, extrajudicial killing, and kidnapping during and before his time as an asset.

The station informed DO headquarters through intelligence reports or operational cables of those allegations against its assets and liaison contacts of which it was aware. (In one significant instance, though, when the station requested authority to recruit a particular asset, it failed to remind headquarters of an assassination allegation previously made against him.) DO headquarters, however, appeared in practice to attach too little weight to human rights issues and reacted contemporaneously to human rights allegations against only a few of the assets. This conduct was probably the predictable result of an arrangement in which the necessary balancing, when done, was conducted informally and was done exclusively by CIA DO division-level managers and chiefs of station—whose performance and awards systems emphasized recruiting and maintaining productive intelligence assets.

Of great concern to the IOB is the apparent lack of sensitivity before September 1994 by DO headquarters or the station to the series of allegations against a particular asset, especially in light of a reliable report that he was directly involved in an assassination. No CIA officials we interviewed recalled this asset as having presented a human rights problem, nor could any officials provide an explanation for the absence of any reaction to the allegations. We found no cable traffic or other written record of deliberation concerning the

asset prior to late 1994. The CIA maintained its relationship with the asset despite his egregious record of human rights abuse allegations until the relationship was finally terminated as part of the September 1994 review.

Of those assets alleged to have committed serious human rights violations, relationships with all but a few were terminated prior to September 1994 for a variety of reasons; of these, only one relationship was ended principally because of a human rights allegation. After the September 1994 review of Latin American assets, relationships with the few remaining such assets were terminated because of allegations of human rights abuse such as assassinations and kidnapping.

ASSET VALIDATION SYSTEM

In analyzing the apparent breakdown of the process for identifying assets against whom allegations of human rights abuse had been made, we reviewed the functioning of the "asset validation system." CIA's Directorate of Operations instituted this system in 1989 in order to advance two primary objectives unrelated to human rights: to cut ties to assets believed to be counterintelligence risks and to end relationships with assets whose information production was not worth the payments they received. Stations were directed to test and to polygraph assets continually and to analyze their likely intelligence contributions. This process was to be completed for existing assets within two years of the system's implementation, but in practice the process usually took much longer or was never completed.

We found that the CIA showed an inadequate commitment to the asset validation system. Although we understand that validating assets will never take on the same cachet as recruiting new ones, we believe it requires greater emphasis in the field. Despite repeated statements by DO managers on the importance of asset validation, a 1994 survey by the CIA Inspector General found that only 9 percent of DO personnel surveyed believed that promotion panels rewarded quality work in asset validation. Even when one makes allowances for the amount of time it takes to validate new assets and the difficulties of validating tenuously controlled assets by excluding such assets from the pool of unvalidated assets, only two-thirds of the assets in Guatemala had been "validated" by late 1994.

Because the validation system's nearly exclusive focus, at that time, was upon counterintelligence concerns and the purging of non-performing assets, even more vigorous asset validation would not have identified those assets involved in human rights abuses. The asset validation system has recently been changed to take into consideration all derogatory allegations against assets, including allegations of human rights abuse. With this change, it will be important for the DO to review all sources of derogatory information, including reporting from the embassy, other agencies, the press, and human rights groups.

NOTIFICATION TO POLICY-MAKERS OF HUMAN RIGHTS ABUSES BY ASSETS

Although National Security Council officials and State Department officials at the embassy and in Washington were generally aware of the CIA's activities and liaison relationships in Guatemala, the CIA did not inform these officials until the end of 1994 and early 1995 that any of its assets or contacts were alleged to have committed human rights abuses. These policy officials were thus denied information relevant to their decision-making and lost any opportunity to express possible concerns that such asset relationships undermined US policy on human rights.

The rules for information-sharing between station and embassy are set forth in a 1977 State-CIA agreement, which states that chiefs of station should keep ambassadors "fully and currently informed about all CIA programs and activities," but also that the chief of station is responsible, at the same time, "for protecting intelligence sources and methods from unauthorized disclosure." Concerning the disclosure of asset identities in particular, the agreement states that the COS will "identify to the chief of mission individuals and organizations within the host country with which CIA maintains covert relationships and with which he and senior embassy officers that he may designate have official contacts." CIA officers we interviewed, from former DDOs down to case officers in Guatemala, uniformly expressed the view that the 1977 agreement called upon them to inform ambassadors of asset identities only when assets were cabinet level officials or otherwise in frequent contact with the ambassador. State Department officials have told us, however, that they understood ambassadors would be informed of asset identities in cases of frequent contact or if the asset relationship was of "policy" or "political" significance.

In the case of Guatemala, based on the CIA's understanding of the 1977 agreement and despite knowing about the high emphasis policy-making officials placed on human rights, the COS chose not to inform the ambassador or other policy makers of relationships with assets alleged to have been involved in significant human rights abuses. Given ambassadors' positions as the President's personal representatives and their need to be aware of US government activities that have significant policy ramifications, the IOB strongly believes that the State-CIA agreement should be amended to state explicitly that ambassadors will be informed of intelligence activities, including asset and liaison relationships (including, when appropriate, the names of the assets or contacts in question) that have significant policy implications. The determination of policy significance will require judgment by CIA officials, but at a minimum notification should be made in instances of reasonably credible allegations of involvement by CIA assets in the death or abuse of US citizens or in incidents of assassination, kidnapping, or torture. If there is concern over an ambassador's handling of intelligence information, the CIA should convey the information to the appropriate senior officials at the Department of State. Policy officials in Washington, such as representatives of the National Security Council, the Department of State (and when appropriate) the Department of Justice, should be similarly notified.

Although ambassadors and other senior policy-makers are often pressed by heavy workloads, it must be their responsibility to devote appropriate time to receiving intelligence briefings. Prior to and during their postings, all ambassadors should receive mandatory briefings on intelligence programs in their countries. The IOB believes that high level State Department emphasis will be required to ensure that all ambassadors attend such briefings and receive adequate initial and recurring training on intelligence activities and on the importance of safeguarding intelligence sources and methods. At the same time, CIA must ensure that ambassadors receive in these briefings all appropriate information on CIA activities and relationships in their countries.

The system for collecting and disseminating intelligence information can function properly, however, only if US executive and legislative branch officials are held accountable should they compromise or improperly handle classified information. A lack of accountability puts sources of intelligence at risk. The effect is to discourage the proper provision of information by intelligence agencies to intelligence consumers and the oversight community, and ultimately to jeopardize the ability of the United States to recruit sources and to collect intelligence in the furtherance of its national interests around the world. Ample avenues exist by which well-intentioned officials can raise grievances concerning intelligence activities--either through the executive branch to the National Security Advisor or the President, or through the Congressional oversight committees to the Congressional leadership--without publicly revealing sensitive intelligence information.

CONGRESSIONAL OVERSIGHT

Conclusions concerning CIA Congressional notification

The IOB found the CIA's performance in notifying Congress to have been inadequate. Specifically, the IOB concluded that the CIA leadership violated its statutory obligation to keep the Congressional oversight committees "fully and currently informed" under Section 413 of Title 50 of the U.S. Code. Though this statute is not criminal and the standard is too broad to be fulfilled to the letter, CIA officers, particularly senior leaders at CIA headquarters, were derelict in failing to provide information they should have provided under even the narrowest reading of the statute. In examining specific instances in which information was not provided to Congress, the IOB considered the available evidence and, on balance, judged that CIA officials did not act with intent to mislead Congress--though they did intentionally withhold some information, in substantial part due to concerns for the protection of sources.

We found the primary causes of this failure in Congressional notification to have been the absence of a systematic notification process and inadequate emphasis from the CIA's leadership. The ad hoc manner in which Congressional notifications were handled--combined with the DO's general disinclination to volunteer sensitive information even to authorized recipients--created an environment that bred notification failures. For this we fault the CIA and DO leadership back to the enactment of the oversight statute in 1980. The CIA has

recently instituted a new system to review its activities for issues that should be briefed to Congress. Such information is now usually provided to Congress in written memoranda, and a record is made of such notifications. This new system should improve performance and accountability in Congressional notification.

The IOB also found that semi-annual reports from the CIA to Congress on what the CIA was doing to improve respect for human rights in Guatemala created a misleading impression on the status of human rights by focusing exclusively on positive contributions. The IOB believes CIA headquarters managers should have recognized this effect and ensured, whether through the reports or through other means, that Congress received an accurate portrayal of the human rights situation.

With respect to criminal liability concerning these CIA nondisclosures, we have found no adequate basis to conclude that the conduct of any of the relevant CIA officials violated any criminal statute. First, the statute requiring "full and current" disclosure is not a criminal statute.

Second, it appears that section 1505 of Title 18 of the US Code, the statute that criminalizes the obstruction of a Congressional "inquiry or investigation," was not violated. It is doubtful that an "inquiry or investigation" within the meaning of the statute was underway during the period of time at issue.. It also appears that, at least within the D.C. Circuit, this statute is violated only if an official encouraged, influenced, or conspired with another to mislead Congress, see United States v. Poindexter, 951 F.2d 369, 385 (D.C. Cir. 1991); we have found no persuasive evidence of this element and believe none can be found.

Third, the false statement statute, section 1001 of Title 18, is likely inapplicable because a recent Supreme Court decision strongly suggests that statements to Congress are outside the statute's coverage, see Hubbard v. United States, 115 S. Ct. 1754, 1765 (1995). In addition, we note that, as a general proposition, "knowingly" withholding information from a congressional committee is not sufficient to establish the mental state necessary to constitute the criminal offense of misleading Congress. Rather, the action must also be "willful." Thus, even if the false statement and obstruction of Congress statutes were available in this context, both would require that the defendant acted "knowingly"--that is, voluntarily and purposely and not because of mistake, inadvertence, or accident. Both would also require that the defendant acted "willfully"--that is, with the intent to bring about a particular result or to do something that the law forbids. The Board does not believe that the available facts are sufficient to constitute a violation of either of these statutes.

Fourth, we have concluded that there is an insufficient basis to believe that a violation of section 371 of Title 18 occurred. Section 371, as construed by the federal courts, proscribes, among other things, conspiracies to interfere with a governmental function by dishonest means. An agreement to defeat or interfere with the congressional intelligence oversight process by lying to or misleading the Congress, or by withholding information without statutory justification, could, under certain circumstances, amount to a criminal

conspiracy. Under the circumstances we examined, however, we do not believe it likely that an offense occurred. In particular, there is no evidence that information was withheld from the Congress as a result of the concerted effort or agreement to interfere with the congressional oversight process. Even though there was an affirmative obligation to disclose the particular information not provided to Congress, and the incomplete briefings and reports provided to committee staffs over the years had the effect of misleading them and interfering with the oversight process, we do not believe that there is sufficient evidence to establish that this conduct was the result of any agreement.

For these reasons, the IOB has not found sufficient basis for a criminal referral to the Attorney General of this failure in disclosure to the Congress. The Department of Justice also considered this issue at the request of the Senate Select Committee on Intelligence (SSCI) and found that the facts posited by the SSCI did not constitute a sufficient basis upon which to premise a criminal prosecution. However, pursuant to Executive Order 12863, which governs the IOB, the Board has notified DOJ of its belief that in the past the CIA has violated Title 50 of the U.S. Code by failing to keep the Congress "fully and currently informed." The Board notes, however, that this violation was not criminal, that the CIA has taken remedial action, and that there appears to be no threat of a continuing violation.

Failure to notify Congress on receipt of the Alpirez allegation

Although we now consider the allegation to have been inaccurate, the significance of the October 1991 claim of Colonel Alpirez's presence at the death of US citizen Michael DeVine leaves no doubt that the oversight committees should have been notified at the time. Indeed, none of the CIA officials involved dispute that this allegation should have been briefed to Congress. There is no record that the CIA notified Congress of the allegation of Alpirez's involvement in DeVine's death until after the January 1995 allegation that Alpirez killed guerrilla leader Efrain Bamaca Velasquez; none of the officials with whom responsibility lay can recall any earlier notification. Thus the issue becomes: was this failure to notify intentional or was it unintentional? Unfortunately, we have found no record that definitively answers this question, and there are facts that support both possibilities.

Among the evidence that the CIA intended to notify Congress was the inclusion of a note on a question and answer (Q&A) page in the acting DCI's October 1991 briefing book indicating that CIA was trying to brief the House Permanent Select Committee on Intelligence (HPSCI) regarding the Alpirez allegation. The acting DCI believes he saw the Q&A, but that, given the assertion in the Q&A that arrangements to brief the HPSCI were then under way, he probably assumed that they were already being carried out. The Deputy Director for Operations (DDO) recalls that he too saw the Q&A and that the allegation of Alpirez's involvement in the death of a US citizen was the reason for the DO's action to notify DOJ and the basis upon which the DO intended to notify Congress. The CIA's decision to refer the allegation to DOJ, while not directly indicating an intent to notify Congress, does indicate that there was no intent to try to keep the allegation within the CIA. Moreover, a lawyer from the CIA Office of General Counsel assigned to the Latin America division ended his

notes on a November 18, 1991 meeting with DOJ on this subject with "Brief committees on this." The lawyer does not recall, however, whether this reflected the discussion or merely his own thoughts. Finally, we found no evidence of any instructions or conspiracy to withhold the Alpirez information.

On the other hand, the LA Central America branch chief recalled that he and others in the division realized in November or December 1991 that Congress had not yet been notified of the Alpirez allegation. (The General Counsel official's November 18 note to "Brief committees on this" suggests that he too believed in mid-November that the matter had not yet been briefed.) The lack of action upon this realization leaves open the possibility that these officials may have consciously delayed notification. Numerous events brought the Alpirez allegation to the attention of relevant CIA branch, group, and division managers over the next several months. Significant among these are: the referral of the matter to DOJ (including a November 18 meeting with DOJ officials to discuss the report, which was attended by the deputy Central America branch chief); two or three instances recalled by the group chief at which he asked the lawyer assigned to LA division to check on the status of DOJ's deliberations; the April 15, 1992 CIA semi-annual human rights report to Congress on Guatemala, which mentioned the DeVine case, was edited by the deputy branch chief, and was reviewed by the rest of branch, group, division, and directorate management; the May 19, 1992 meeting with SSCI staff at which the Guatemala chief of station discussed the DeVine case; and the discussion of the DeVine case that occurred during a June 26 meeting with the SSCI staff attended by the Assistant Deputy Director for Operations (ADDO), LA division chief, and Guatemala COS. Each of these events brought the Alpirez-DeVine issue to the minds of CIA officials, though these events may not necessarily have reminded them that Congress had not yet been notified.

Because of the contradictory indicators of intent, conflicting and vague recollections, and a paucity of documentary evidence, no one, we believe, can conclude with certainty whether the failure to notify Congress of Alpirez's alleged presence at DeVine's murder was intentional or unintentional. After careful consideration, however, we have concluded that the failure was most likely unintentional. We believe that, among other things, the decision to refer the allegation to DOJ and the inclusion of the above-mentioned note in the acting Director's Congressional briefing materials stating that CIA officers were attempting to notify Congress of the allegation against Alpirez make it unlikely that the failure to provide the information to Congress in 1991 was intentional.

The question of intent aside, however, the CIA's performance in this area reflects a dereliction of responsibility and a violation of its statutory obligation to keep its oversight committees "fully and currently informed" of all intelligence activities as required under Title 50 of the U.S. Code. The failure to notify Congress of Alpirez's alleged presence at DeVine's death would not have occurred had CIA managers and officers attached the required importance to Congressional notification. Proper attention to notification responsibilities by the DCI, DDO, and ADDO should have resulted in the establishment of a systematic process by which notification decisions were considered, made, carried out, and recorded.

Semi-annual CIA human rights reports to Congress

Between 1989 and 1994, the DCI was required to report to the intelligence and appropriations committees on how programs in Guatemala had been used "to further the objective of greater respect for human rights and what specific action will be taken in the ensuing period to further that objective." The requirement's language did not call explicitly for reporting on human rights abuses by the Guatemalan security services, nor did it call for a comprehensive report on the status of human rights in the country--in contrast, for example, to the requirement for the annual State Department human rights report.

The CIA's semi-annual reports appear to have satisfied the letter of the requirement to report on how the program had been used "to further the objectives of greater respect for human rights." For CIA officials, the emphasis was clearly to be on the positive contributions of their activities. As several CIA officers have noted, in fact, the requirement to report was perceived to be an opportunity for the CIA to put its best foot forward. The officers preparing the reports believed, and still believe, that the program was a positive force for human rights in Guatemala and that the human rights situation had improved. The reports offered examples to support both convictions, such as the new human rights instruction offered at the Guatemalan intelligence school and the D-2's investigatory role in the unprecedented arrest of a senior naval officer for human rights violations.

The semi-annual reports did not include information in the possession of the CIA concerning significant allegations of human rights abuses by the D-2 and Archivos. The omission of some of this information in reports that repeatedly referred to the security services' roles in protecting human rights painted an incomplete picture of the Guatemalan security services. Although several of the reports, particularly before 1992, acknowledged significant continuing human rights violations, there was only one explicit reference in all the reports to an alleged violation by the D-2 or Archivos--and this reference dismissed the allegation in question. The station and DO were aware of a number of other allegations against the D-2 and Archivos from 1989 to 1994 that were not mentioned in the semi-annual reports.

We conclude that the semi-annual reports' emphasis upon the program's positive contributions and their exclusion of much negative information were intentional and resulted from a number of factors. Principal among these were: the narrow language of the reporting requirement, the DO officers' perception that the requirement was an opportunity to emphasize the positive, the DO's general predisposition to supply only specifically-requested information, and the erroneous belief expressed by station officers that the oversight committees were receiving the full picture through other channels. These factors were exacerbated by the station's faulty discounting of some allegations out of a loss of objectivity towards its liaison services, a human inclination to focus upon the positive, and the lack of priority the CIA gave its semi-annual reports. (One of the cables from DO headquarters to the station demonstrated this lack of priority by stating, "We regret to inform you that it is once again time for the update for the SSCI on the effect of the . . . program on the human rights attitudes of the . . .

[government of Guatemala]. . . . Apparently since there was no 'ending date' in the FY 90 budget approval that started this requirement, we are forced to carry it on forever.")

We believe that, through a pattern of omissions and hyperbole, those responsible for the reports did present Congress with reports that were not comprehensive and balanced--and that were therefore misleading. However, given the narrow requirement from the Congress, we do not find an adequate basis to conclude that CIA officials intentionally sought to mislead Congress. Those drafting and reviewing the reports believed the program was a positive force for human rights in Guatemala, and they saw that as the issue raised by the requirement. We would view this issue differently if the Congressional requirement had asked for reporting on activities of or allegations against the Guatemalan security services, or if we had found CIA officials to have knowingly lied in the reports. (Although the SSCI staff appeared to have had different expectations, one of the principal recipients and readers of the reports then on the House Permanent Select Committee on Intelligence (HPSCI) staff has told us that he understood at the time that these reports were to focus on the positive contributions and were not expected to present a balanced picture of human rights in Guatemala.) We fault CIA managers, specifically including former DCIs, DDOs, and ADDOs, for not recognizing the misleading impression their reports gave, for not ensuring that this impression was balanced by other reporting, and for not giving the reports the attention they warranted.

1992 Briefings to oversight committee staff on human rights in Guatemala

A series of meetings occurred between CIA officers and the oversight committees in 1992 concerning Guatemalan human rights. In the course of these meetings, CIA briefers failed to provide some clearly relevant information. In some cases we believe the withholding was unintentional; in others we believe it was intentional. In at least one of the intentional cases notification subsequently occurred, but in others it did not.

One instance of intentional withholding that was followed by timely notification resulted from meetings between CIA officers and HPSCI staff on August 5 and SSCI staff on August 7, 1992. Briefers from the DO (the branch chief and division chief, respectively) deliberately declined to identify an asset despite specific requests by the staff directors. The briefers did so because CIA policy (which we consider appropriate) limited authority for such disclosures to the DCI and DDO. The briefers did, however, alert their superiors, and ADDO Price then notified at least the SSCI.

A probable example of intentional withholding that was not followed by notification occurred when the Guatemala COS intentionally, we believe, did not mention Colonel Alpirez's alleged involvement in the death of Michael DeVine when he discussed the DeVine case with the SSCI staff in a May 19 meeting (and possibly also in a June 26 meeting). We believe it improbable that he could have forgotten the Alpirez-DeVine linkage, since his headquarters had reminded him of it in a cable he received only a week earlier. He apparently did not alert his superiors to the omission from his briefing and did not feel it his responsibility to do so. Although responsibility for notifying the committees rests with

headquarters--not chiefs of station--we believe that, by participating in the meeting, he incurred an obligation to inform his superiors.

In the other instances we examined in which information was not provided to committee staff during the meetings, we believe that the failures were likely unintentional. Intent, however, is not required for the withholding of information to have been a violation of the CIA's obligation to keep the oversight committees "fully and currently informed" under Section 413 of Title 50 of the U.S. Code.

DOD Congressional notification

In the course of our review, we uncovered no significant developments related to the Department of Defense's intelligence collection in Guatemala that were not briefed to the Congressional oversight committees. Congress was also notified of the 1991 discovery by DOD that the School of the Americas and Southern Command had used improper instruction materials in training Latin American officers, including Guatemalans, from 1982 to 1991. These materials had never received proper DOD review, and certain passages appeared to condone (or could have been interpreted to condone) practices such as executions of guerrillas, extortion, physical abuse, coercion, and false imprisonment. On discovery of the error, DOD replaced and modified the materials, and instructed its representatives in the affected countries to retrieve all copies of the materials from their foreign counterparts and to explain that some of the contents violated US policy.

CRIMES REPORT TO DOJ

Upon learning of the allegation of Colonel Alpirez's involvement in the death of Michael DeVine, CIA officials within the DO and the Office of General Counsel agreed that the matter should be referred to DOJ. This was done on November 18, 1991. Although the CIA initially conveyed the crimes report in a manner designed to set it apart from the routine, the report apparently was considered routine by the Department of Justice. DOJ investigated the allegation, but did not uncover all of the relevant background information. DOJ did not find the matter to fall within US jurisdiction, though it never formally closed the case. We find the performance of both the CIA and DOJ to have been less thorough than warranted. In particular, we believe that the CIA failed to communicate information that would have led to a more vigorous DOJ investigation, though we believe that this failure did not violate a legal obligation, nor do we believe that it affected DOJ's ultimate determination in the case. As a result of its Inspector General's investigation, DOJ has implemented new internal procedures to track crimes reports better and has entered into a new Memorandum of Understanding with the intelligence agencies to ensure that significant crimes reports receive special attention in the future. DOJ has also thoroughly reinvestigated the DeVine case and found no basis for US jurisdiction.