

The CHAIRMAN. Thank you very much.

Senator Baker?

Senator BAKER. Mr. Chairman, I'd like to renew my previous request. I would like very much to talk to Dr. Cowan, who may have been the contact between the CIA and Fort Detrick on the request for the toxins and on the recordkeeping. When the time is appropriate, I would like to interview him. And, if it seems pertinent and relevant to our inquiry, I would ask that he be called as a witness.

The CHAIRMAN. That will be arranged.

Thank you very much, Mr. Senseney, for your testimony.

Our next, and final, witness is Mr. Robert Andrews. Mr. Andrews, will you please come forward? Mr. Andrews, will you take the oath?

Do you solemnly swear that all the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ANDREWS. I do.

The CHAIRMAN. Mr. Smothers will commence the questioning.

TESTIMONY OF ROBERT T. ANDREWS, SENIOR ADVISOR TO THE GENERAL COUNSEL, OFFICE OF THE SECRETARY OF DEFENSE

Mr. SMOTHERS. Mr. Andrews, you are currently serving as a Senior Advisor to the General Counsel, Office of the Secretary of Defense. Is that correct?

Mr. ANDREWS. I am.

Mr. SMOTHERS. Did you have occasion to become familiar with Defense Department efforts to destroy shellfish toxin?

Mr. ANDREWS. Yes.

Mr. SMOTHERS. Would you explain the circumstances of your familiarity to the committee, please?

Mr. ANDREWS. By way of background, in June of this year, when the Defense Department learned of this exercise, we appointed investigators from the Defense Investigative Service to examine witnesses and review records. In the course of that investigation they uncovered a number of records which give us some indication of the scope of the destruction program and the inventory process.

Mr. SMOTHERS. It is that inventory process that I wish to address now, Mr. Andrews. I believe you have in your possession a copy of a memorandum dated February 17, 1970, entitled "Special Operations Division Toxin Inventory" [exhibit 13¹.] Mr. Andrews, you have previously seen this exhibit, have you not?

Mr. ANDREWS. I have.

Mr. SMOTHERS. What amount of toxin on hand does this inventory reflect?

Mr. ANDREWS. It reflects somewhat over 2 grams.

Mr. SMOTHERS. Was this the inventory prepared at Fort Detrick?

Mr. ANDREWS. It was.

Mr. SMOTHERS. Was this inventory prepared pursuant to discussions between Defense and Fort Detrick personnel requiring them to inventory the material on hand and to indicate which material should be either retained or disposed of by destruction?

¹ See p. 244.

Mr. ANDREWS. Yes, there is actually a directive issued January 9, 1970, to the six Fort Detrick laboratories requesting a complete inventory of biological agents and munitions, and the February 17, 1970, inventory is the first step in that process.

Mr. SMOTHERS. Was the spirit of this directive to identify any toxin which may have been in possession of Defense facilities and to be the groundwork for a basis for destruction or retention decisions?

Mr. ANDREWS. Initially the directive was devoted to biological agents. Subsequently there are messages requiring inclusion of toxins in the inventory process.

Mr. SMOTHERS. So that shellfish toxin would have been reported pursuant to this directive?

Mr. ANDREWS. That is correct.

Mr. SMOTHERS. Now, looking at the February 17, 1970, inventory, I ask you whether that inventory or any other inventory of which you have knowledge reflected an amount of shellfish toxin of 11 grams or more in the possession of the Department of Defense?

Mr. ANDREWS. It does not.

Mr. SMOTHERS. In your opinion, would some accounting for 11 grams of shellfish toxin have been called for by the Director?

Mr. ANDREWS. I would say that inasmuch as the original directive was issued in January and then later amended, that it should have been reported.

Mr. SMOTHERS. Mr. Smothers, do your records reveal any Defense guidance for the disposition of shellfish toxin or other substances that were distributed outside of the Department of Defense, any guidance regarding how a determination was to be made on disposition, how accounting was to be handled, or any guidance at all on that subject from Defense?

Mr. ANDREWS. We find no such records.

I might add to the committee that in the process of checking over our records we located 104 boxes of records in the Suitland, Md., repository. Four of these boxes were identified as coming from the Special Operations Division; 13 more boxes referred to the demilitarization program. We obtained this information from the inventory list, and our investigators did examine 17 boxes to determine to what extent records still were available to us.

Mr. SMOTHERS. Mr. Chairman, I have no further questions of this witness.

The CHAIRMAN. Do I understand, Mr. Andrews, that the DOD inventory that was supplied at the time that the President's orders to destroy these toxins were issued, that your records do not show any inventory in which about 11 grams of shellfish toxin appears?

Mr. ANDREWS. No. I think there is a—

The CHAIRMAN. Well, we know there is about 11 grams in the possession of the Defense Department. Why does not any inventory show the existence of that position which the President had ordered to be destroyed?

Mr. ANDREWS. Well, I think there is a question of dates, and I think it is very important. On January 9 the first directive was issued asking for an inventory of biological agents and munitions, and then on February 14 the Presidential order was handed down. Now, on Feb-

ruary 17, apparently the first inventory reports were completed and submitted to higher headquarters on the 18th.

The CHAIRMAN. And that was after the toxin had been slipped back to the CIA.

Mr. ANDREWS. That is correct. Your records indicate that on February 16 there was then an unsigned memorandum containing the bottom line, Mr. Karamessines; on February 17 our people went on record with a report. It is entirely possible that the toxins made a transfer somewhere between the 16th and the 17th, probably the 16th because the 17th, if they were still in the Defense Department possession, they should have been reported.

The CHAIRMAN. I would have to agree to that. I think that must have been what happened. But, it seems very strange to me that the inventory presented by the Defense Department should be made 1 day after these forbidden toxins had been slipped back to the CIA.

Mr. ANDREWS. I must say, as a lawyer examining a case, I find it very unusual, too.

The CHAIRMAN. Since the testimony shows that the CIA could lay legal claim only to 5 grams of this and witnesses have testified that the CIA agreed to take repossession of its 5 grams, can you account for why nearly 11 grams turned up in the CIA laboratory?

Mr. ANDREWS. I was not on the scene, and I cannot explain it. That is one version that the CIA witnesses and others have made.

I think you should bear in mind, however, that the containers containing the 11 grams also contained a notation P600.

The CHAIRMAN. What did that mean?

Mr. ANDREWS. I provided the Committee this morning with a statement as to what it does mean. It is not very sexy, not very much a James Bond matter. The Inspector General's Office, Department of the Army has confirmed that P600 stood for a research and development account number. Fort Detrick used this designation to describe the working funds used by the Special Operations Division at Fort Detrick which had been supplied by the CIA.

The CHAIRMAN. Does that mean, then, according to your interpretation or your understanding, that all of it, the whole 11 grams, belonged to the CIA?

Mr. ANDREWS. That is a reasonable inference.

The CHAIRMAN. Your inference runs contrary to previous testimony.

Mr. ANDREWS. You asked for my opinion, and I do suggest that the P600 appears on both containers.

The CHAIRMAN. And the reasonable inference to be drawn from that was that the whole 11 grams, not just 5 grams, belonged to the CIA, and that amount was returned to them?

Mr. ANDREWS. That is the way I would read it.

The CHAIRMAN. Thank you.

Are there further questions of this witness?

Senator Tower?

Senator TOWER. Mr. Andrews, was DOD aware of the transfer of shellfish toxin to more than 60 individual institutions, some located in foreign countries, including the defense establishments of some foreign countries?

Mr. ANDREWS. This is a matter that we discovered during the course of the investigation, although the extent of this dissemination just

Senator TOWER. From where did the authority for that dissemination come?

Mr. ANDREWS. I do not know of any express authority. As I understand it, the scientific community has a way of exchanging its specimens, and there is, apparently, quite an interchange.

Senator TOWER. Are you suggesting this is something that was left to the arbitrary will and discretion of perhaps a field-grade officer or civil servant?

Mr. ANDREWS. I do not have the answer as to where the level of authority resides. I could obtain that for the record.

Senator TOWER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Mathias?

Senator MATHIAS. Mr. Andrews, are you aware of the procedures that were established at Fort Detrick, and I assume at other Defense installations, for the destruction of toxins, toxic material of all kinds?

Mr. ANDREWS. Yes.

Senator MATHIAS. Could you describe those procedures?

Mr. ANDREWS. Well, there are really two kinds of material. There is the demilitarization program, which has been referred to here earlier in your hearings, which was conducted at Pine Bluff Arsenal. We have various documented records on that. However, the amounts of the disposal of the toxins in the laboratory is a matter that we have found no records of, and we do know, for example, that one of the early inventories shows that certain toxins were to be retained for defensive research purposes, and that certain other amounts were to be destroyed. The exact amount that was used in this case I do not know.

I did ask our investigators to check with the experts as to how this particular toxin could be destroyed, and I was told that any bunsen burner properly applied for the right period of time would destroy the toxin.

Senator MATHIAS. Now, with regard to the procedures that were established, was this by word of mouth, or were there carefully organized procedures and publication of orders which detailed them?

Mr. ANDREWS. Yes, Senator Mathias.

I think it might be well to go over some of the major actions that were taken by the Defense Department. Following the President's announcement on November 25, the Assistant Secretary of Defense for International Security Affairs issued a memorandum on November 28 announcing the President's determination. On December 17, 1969, the Secretary of Defense issued a memorandum assigning responsibilities for implementing each of the President's decisions. On January 7, 1970, an ad hoc task force on inventory matters was established. On January 9 the first orders were issued to make a complete inventory of biological weapons. Following the President's Valentine's Day order, as you referred to it, on February 14, the first of the inventory reports was prepared and submitted to the Director of the Commodity Development Engineering Laboratories on February 18. On February 17, a Department of the Army message was sent to Fort Detrick and the Army Materiel Command requiring the inclusion of bulk toxins in demilitarization plans of biological stockpiles.

On February 20, the NSDM-44 was issued regarding the destruction of toxin agents and weapons. On February 28, this order was relayed to the immediate offices in the Department of Defense concerned

with such matters. On March 18, 1970, the Assistant Scientific Director of Defense and Engineering referred to the plans for the inventory of toxin materials and directed disposal of all excess materials using standard laboratory procedures.

On June 15, a White House memorandum was sent to the Secretary of Defense requesting his recommendations for the destruction of biological agents and weapons and toxic agents and weapons. On July 6, 1970, the Secretary of Defense reported to the President, submitting his recommendations for carrying out the demilitarization program. On September 3, 1970, there was a White House memorandum to the Secretary of Defense directing an environmental impact statement in connection with the Pine Bluff project.

On December 15, 1970, there was a White House memorandum sent to the Secretary of Defense announcing the President's approval of the detailed plan. On November 10, 1972, the Assistant Chief of Staff for Force Development, Department of the Army, provided the Undersecretary of the Army with a report announcing the completion of the destruction of the entire U.S. stockpile, and also indicated, incidentally, at a cost of \$15 million.

On January 25, 1973, the National Security Council Undersecretary's committee provided the President a memorandum reporting its review on the U.S. chemical warfare and biological program, which had been laid on them by NSDM-35.

Senator MATHIAS. Now, Mr. Andrews, can you tell us what happened to those materials that you mentioned which were retained for defense research? Did they go to Dugway, or did they go to some other laboratory?

Mr. ANDREWS. We have just made a complete inventory of all of our facilities, and we have received reports from the Army, Navy, and Air Force. The only facility that now has any toxins for defensive research purposes is the Edgewood Arsenal.

Senator MATHIAS. Nothing at Dugway?

Mr. ANDREWS. There is nothing at Dugway; no, sir.

Senator MATHIAS. One final question. We have discussed several times during the hearings the materials that were sent out from Fort Detrick for research purposes to scientists in various parts of the world and all over the United States. Is it your understanding that this was a common practice at Fort Detrick?

Mr. ANDREWS. Based on the testimony today, it appears that it was.

Senator MATHIAS. I am asking if you have any independent knowledge or any records which would indicate it.

Mr. ANDREWS. In the course of our talking to a number of people we learned this is a rather common practice in the scientific community.

Senator MATHIAS. And it was not confined to shellfish toxin?

Mr. ANDREWS. No, sir. It applied to many items.

Senator MATHIAS. It applied to many items that were under study at Fort Detrick. Of course, when this pattern or practice of moving materials of this nature was established, that made it much easier actually to handle, disburse, and dispense these materials, because it was a recognized course of action. Is that not true?

Mr. ANDREWS. Yes, sir, that is correct.

Senator MATHIAS. That is all, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Huddleston?

Senator HUDDLESTON. Mr. Andrews, I think you mentioned that the estimated cost of disposing of these materials was \$15 million.

Mr. ANDREWS. Yes, sir.

Senator HUDDLESTON. In your investigation, did you get any indication as to whether the suggestion or idea that the CIA would take possession of its stock and it would be stored away originated with the CIA or with the Special Operations Division there at Fort Detrick?

Mr. ANDREWS. We received conflicting reports on that and I think the confusion as to what happened continues. I would be reluctant to speculate as to just how it happened.

Senator HUDDLESTON. Would you say that there is a tendency within the Army and maybe within other agencies of Government to treat requests from the CIA differently than you would treat requests from other agencies or other departments?

Mr. ANDREWS. I have been the recipient of very few CIA requests until recently. They are not known for their loquaciousness. Since the investigation has been conducted, I must say, they have been most helpful and there has been a full and frank exchange, I think, between this committee, between the CIA, and between the Defense Department. But I have some hesitancy in answering your question, because I just do not have enough experience as to what the response has been to CIA requests. I think the Pentagon is a pretty big department and I do not think we are easily impressed.

Senator HUDDLESTON. What do you think of the testimony by Mr. Senseney that while he had questions about not getting any feedback from the use of material that he had developed, he was never compelled to ask those questions. Is this typical of dealing with the CIA on the part of the Army?

Mr. ANDREWS. I do not know whether it is typical of the Army. I think the CIA has in the past conducted its operations in such a way that there be a minimal amount of information flow back from them. I think this is consistent with their strategy.

Senator HUDDLESTON. So that was to be expected. And even though a person may have questions, even though the request may be somewhat strange, the general procedure would be just to carry it out without going beyond the order itself?

Mr. ANDREWS. I can assure you in the Defense Department that we have examined very carefully into our working relationships with all Government agencies. We have reviewed this extensively in terms of detailing of people to us and detailing of people to the other agencies, and I think that we are very aware of our responsibilities.

Senator HUDDLESTON. This review and this examination has been recent.

Mr. ANDREWS. It has been before this particular investigation broke forth.

Senator HUDDLESTON. There was no hesitancy on the part of the Army to accept, for instance, a false name to identify CIA participation? Even on this particular project that we are talking about they were identified as being an officer support group.

Mr. ANDREWS. That is my understanding as it existed in 1970.

Senator HUDDLESTON. And this was no problem for the Army or for this particular division even though many of them knew that they were in fact dealing with the CIA?

Mr. ANDREWS. As the CIA reported to you, this was a most compartmented project, even under CIA standards. And in the course of our investigation we had a great deal of difficulty defining who the players were and where they belonged. So I can well understand the lack of certainty by the Detrick people as to who they were talking to.

Senator HUDDLESTON. But this was accepted practice? It was not a great concern of theirs apparently.

Mr. ANDREWS. I would just have to judge that apparently it was an accepted practice because it continued during that period.

Senator HUDDLESTON. They were operating in a highly sensitive, a highly secret, highly classified area, one demanding great security, and yet they were dealing with people who were there under false credentials, so to speak, and this was acceptable to them.

Mr. ANDREWS. I understand that is the nature of some of the operations.

Senator HUDDLESTON. Thank you, sir. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Schweiker?

Senator SCHWEIKER. Thank you, Mr. Chairman.

First of all, did you find any of the records of contracts besides the one of the \$194,000 from Army to the Taft Center?

Mr. ANDREWS. I have not yet, but I have laid on the requirement for the Inspector General's office to develop any additional information you need.

Senator SCHWEIKER. The other can or lid label would indicate that there is some arrangement, because it said on the label of the second can "Working Fund Investigation", which would indicate that would be nomenclature that your bookkeeping system just quoted in the original memo. Would that be correct or not?

Mr. ANDREWS. I would assume so; yes.

Senator SCHWEIKER. All right, now you said a moment ago that basically, Mr. Andrews, this transfer might have taken place on the 16th or 17th of February and that is why it did not show up?

Mr. ANDREWS. That is one possibility and I might add this and this might help the committee, although it may only compound the confusion. The memorandum which you have identified, the so-called unsigned Karamessines memo you have identified as being written on February 16. When we obtained our copy of that from the CIA it did not contain a date on it. Perhaps you got another copy. So we were in the dark, so to speak, as to when the memo was written. Assuming that February 16 is right, then my answer to you is yes; that it happened the 16th.

Senator SCHWEIKER. Now, the inventory that you took and the report shows, was taken by the Army on February 17, is that correct?

Mr. ANDREWS. Yes, sir.

Senator SCHWEIKER. The other day at the committee hearing, we looked at this picture of the labels together, and the can label shows an inventory date of February 18, 1970. Now that would certainly indicate to me that somebody missed a day in inventory and it was inventoried a day after the other materials and probably in building 200 in that case would. So it would indicate to me that the material

probably did not leave Fort Detrick at that point since the inventory date was a day after the inventory.

Mr. ANDREWS. Senator Schweiker, I had never seen that picture until the other day. I did not realize there was a February 18 date on it.

Senator SCHWEIKER. All right.

Mr. ANDREWS. I would agree that that just adds to the confusion again.

Senator SCHWEIKER. The other thing that adds to the confusion is that the Army has an annual report dated June 1969 in which they show an inventory of their stock items, and there is 5.193 grams on the Army's own inventory at that point. This is not 3 grams or 2.8 grams, but the exact amount of one of these cans. So I would hope that in your ensuing investigation you would take into account this summary report, the working fund investigation of some 5.19 grams. Can you shed any light on that?

Mr. ANDREWS. Let me consult with the investigator to try to shed some light on this.

We have noted that the figure in the 1969 report which you have just referred to also is the same figure that appears on the Karamessines unsigned memorandum. Now, we do not know the answer but there is the possibility that the Karamessines memorandum merely took the 1969 inventory report and put it in their memorandum. I am sure that the stockpile probably changed, may have changed, during the course of that period of time.

Senator SCHWEIKER. That might also indicate that only 5.19 was in fact, the CIA quantity. I think you can read that meaning two ways. It could indicate that that was the CIA amount and we still have not accounted for the other 6 grams, although I agree that is just speculation.

Mr. ANDREWS. I will admit that we have generally had people refer to the CIA stockpile. They have not referred to it as the CIA stockpiles, plural.

Senator SCHWEIKER. You have, as I understand it, an ongoing investigation in this matter, is that correct?

Mr. ANDREWS. Yes, we have.

Senator SCHWEIKER. I see also on the same cans that the inventory date is in a personal handwriting and it seems to me that one of your obvious checks is to find out who it was that inventoried both cans on February 18 and why he or she did not, in fact, put it on the 17th list and why he or she did not report it upon the chain of command. Whoever wrote that inventory date in personal handwriting would obviously know why the material was not disposed of in the proper channels. So I would like to suggest, for your investigation, that a check be run of who with that handwriting was in the lab and had access to the vault, because that person could certainly shed an awful lot of light on what happened in this regard.

Mr. ANDREWS. Senator Schweiker, we would be very happy to work with the committee staff in developing any further facts that will be of assistance to this committee.

Senator SCHWEIKER. Allegedly only two or three people had access to the safe, so it would not be very hard to find out whose handwriting it was.

That is all I have, Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator Schweiker.

I want to say that since this discovery the Defense Department has been very cooperative, as indeed the CIA has been, in trying to piece together what happened. And we will pursue these lines of investigation through the staff in hopes that we might complete the picture. And I want to thank you and others in the Defense Department for the cooperation that you have extended to the committee.

Senator HUDDLESTON. Mr. Chairman, I would like to ask for one clarification that I think ought to be on the record.

The CHAIRMAN. Senator Huddleston?

Senator HUDDLESTON. Mr. Andrews, you referred to your receiving the Karamessines unsigned memorandum and I presume you meant that you received it during the course of your current investigation, and not back in 1970 at the time it was purportedly written.

Mr. ANDREWS. That is correct. This is a very new ballgame for us.

Senator HUDDLESTON. I think that ought to be made clear.

The CHAIRMAN. I thank the Senator for clarifying that item.

Mr. ANDREWS. On the part of the Department of Defense, I want to say that I think this committee has operated in a very responsible manner and the Department of Defense, I hope, has been very responsive to your needs.

The CHAIRMAN. Thank you very much.

Now, earlier today I read into the record a letter by which the Committee would waive the ban that presently prevents the executive branch from disposing of these toxins. Members of the committee have suggested some changes which have been incorporated in the text of the letter, and I would like to read the revised letter and bring it to the vote of the committee.

As revised, the letter reads:

Dear Mr. Colby:

Last January when the Senate Select Committee was created, Senator Mansfield and Senator Scott asked that the Central Intelligence Agency not destroy any material that would relate to the committee's investigation. The toxins that are the subject of the committee's first public hearings are subject to the ban on destruction.

The purpose of this letter is to inform you that at the completion of the committee's investigation into the improper retention by the CIA of the deadly toxins, the committee voted to waive further interest in these toxic materials. However, before the CIA proceeds to destroy these toxins, we would direct your attention to the attached testimony.

If adequate safety and security cautions could be taken, and if it is consistent with our treaty obligations, the Committee believes that it might be appropriate for the CIA to consider donating these toxins to properly supervised research facilities which can use these poisons for benign uses such as curing such debilitating diseases as multiple sclerosis.

It is fitting that out of an admitted wrongdoing, some benefit might be had. It is hoped that in this particular instance the Committee and the Executive Branch reach a mutual solution for disposal of these lethal poisons that will be directed toward bettering the lives of our citizens.

Senator TOWER. Mr. Chairman, I move that the committee waive further interest in the toxic materials and that the letter be authorized.

The CHAIRMAN. Is there any objection?

[No response.]

The CHAIRMAN. I would ask for the vote of the committee. Those in favor of the motion, please indicate by raising your right hand.

[Show of hands.]

Senator TOWER. Senator Baker by proxy.

The CHAIRMAN. Other members have indicated that they concur with this vote and it is therefore the unanimous decision of the committee. The letter will be signed. Do you have a pen, Senator?

I would like to conclude the hearing this morning by noting that the committee's investigation into the 11 grams of shellfish toxin may have reminded some of H. G. Welles' comment on the American novelist Henry James. He described him as a hippopotamus rolling a pea. However, a more discerning look into the CIA vault of poisons opened this week brings to light a series of problems which go far beyond this single case.

Like other examples discovered in previous executive sessions, and which continue to emerge from the ongoing investigation of the committee, the case of the shellfish toxin illustrates how elusive the chain of command can be in the intelligence community. It underscores dramatically the necessity for tighter internal controls for better recordkeeping, for greater understanding of code words, compartmentation and the whole range of secrecy requirements. Above all, it emphasizes the necessity for improved mechanisms of accountability, all the way from the White House to the outer branches of the intelligence establishment.

The dilemmas which have surfaced in this week of hearings represent in miniature those which will confront us throughout these proceedings. Their resolution will surely test the ingenuity of those engaged in this undertaking. Our success will require diligent research, persistent investigation, a series of intensive hearings and the most careful study and reflection. This is our mandate and this is our purpose.

The hearings will now stand adjourned subject to the call of the Chair.

[Whereupon, at 1 p.m., the committee adjourned, subject to the call of the Chair.]

