

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

OGC 76-4942
31 August 1976

MEMORANDUM FOR: Ralph Goldenberg, ERDA
Joseph Davis, FBI
[redacted] DIA
Russell Munk, Treasury
[redacted] NSA
Jeffrey Smith, State

FROM : [redacted]
Associate General Counsel

SUBJECT : Possible Restrictions on Unofficial Travel

1. This is by way of the followup to our meeting at CIA Headquarters Building last month on this subject.

2. I am forwarding with this memorandum a memorandum on the subject based on the conversations at that meeting. The memorandum is directed only to answering the specific questions addressed to me by the Deputy to the DCI for the Intelligence Community (D/DCI/IC), and which led to that conference in the CIA Building. The memorandum is in general terms and does not go into the matter of precisely what administrative remedies are available in each agency, but indicates that there might well be a variety of options available.

3. If this memorandum is satisfactory to you, I would propose to forward it to the D/DCI/IC and advise that representatives of the legal offices of the Intelligence Community addressed this matter in response to the request to us and that the memorandum represents the views of those offices. I certainly do not need a formal concurrence in writing. Please advise by telephone [redacted] if this memorandum and approach is satisfactory or suggest any needed changes.

Attachment

OGC: RHL: dmh

Distribution:

Original - OGC SUBJ: TRAVEL (ni)

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MEMORANDUM

SUBJECT: Possible Restrictions on Unofficial Travel

1. What restrictions can be legally placed on unofficial travel of employees having access to certain categories of extremely sensitive information on sources and methods of Sensitive Compartmented Information? In particular, may restrictions be placed on the unofficial travel of such persons to countries or areas where there is danger of compromise of the information?

2. By way of general background to the questions, it may be noted that there is Supreme Court law upholding the authority of the Government to restrict travel on national security grounds. It is clear, again from Supreme Court decisions, that United States citizens have a constitutional right to travel abroad--freedom to travel is an element of the liberty of which citizens cannot be denied without due process of law. But the due process requirements do not mean that no restrictions may be imposed on foreign travel. For example, and relevant to these questions, the court has upheld the authority of the Secretary of State to refuse to validate passports for travel to certain areas when he has concluded that such travel "might involve the Nation in dangerous international incidents."

3. It would appear legally permissible therefore for agencies to adopt regulations prohibiting travel to hazardous areas by employees who possess Sensitive Compartmented Information or other national security information. That is, it would not be beyond the authority of agencies to adopt such regulations. Clearly there is a direct relationship between the functions and missions of the agencies and any such regulations--the need to protect the information.

4. The enforceability of any such regulation would vary in different situations, and perhaps among the agencies, but there would be no need to refrain from adopting regulations merely because the means and authority

for enforcement might not be uniform. In some instances, agencies could request compliance; in some cases, employees could be reassigned to other duties where access to Sensitive Compartmented Information is no longer needed. A department's regulations could provide for administrative sanctions, such as suspension or dismissal. In some cases, suspension or dismissal might be in order even without express provision to that effect in the departmental travel regulations. Regulations could provide for a Travel Agreement, modeled on the secrecy agreements and founded on the Marchetti decisions.

5. As a practical matter, therefore, any of various administrative approaches could be utilized to enforce compliance.

6. Ultimate enforceability in the courts of course cannot be certain. But with a strong factual situation--such as well-known current practices of a country of detaining such persons and forcibly extracting information from them, in a period of tense relations between that country and the United States--it would seem quite possible that the courts would uphold the regulations and the sanctions enforcing them.

7. In sum, it is believed that agencies may restrict the unofficial travel of employees who possess extremely Sensitive Compartmented Information, that administrative sanctions may be imposed and that there is basis to believe such sanctions would be upheld by the courts.

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<p>Remarks:</p> <p style="text-align: center;">Attached is the proposed position on duty and travel restrictions that is in coordination now among the lawyers.</p>			
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FROM: NAME, ADDRESS AND PHONE NO.			DATE
Security Committee, 7C35 CIA Hqs			10/12/76
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