

CENTRAL INTELLIGENCE AGENCY

OCA 87-5072



J.

Director of Congressional Affairs

30 SEP 1987

To: DDCI

Bob -

We will be struggling
with this in the months to come.
The final version, if any, is
apt to look very different.

Dave

cc. Clair George

MEMORANDUM FOR: Dave Gries

FROM:

STAT

SUBJECT: Analysis of New Oversight Legislation

1. The new oversight legislation introduced last week by Senator Cohen, and cosponsored by Senators Bensten, Deconcini and Murkowski, significantly changes the system of congressional oversight. We are told that the legislation is being introduced now to get ahead of any legislation that the Iran/Contra Select Committees may propose. The legislation has been referred to the Senate Intelligence Committee where we anticipate hearings will be held later this year. It is significant that Chairman Boren has not cosponsored the legislation; we understand that he entertains doubts about its constitutionality. Nevertheless, this bill should be taken seriously since its sponsors are all moderate Democrats or Republicans. Attached is a copy of the legislation.

2. While some of the changes in the oversight system proposed in the bill raise to the level of statute that which will be adopted in the new NSDD on covert action, there are many changes we and the White House would consider detrimental. Major changes include the following:

--Findings must be reported to the oversight committees within 48 hours after the President signs the Finding. The bill eliminates the recognition in current law of the President's constitutional authority to delay notice till after the initiation of the special activity.

--Presidential Findings must be in writing, cannot be made retroactive, and cannot authorize violation of existing laws. In addition, a Finding must specify any U.S. Government department or agency, or any third party, including any foreign country, which will be used to fund or otherwise participate in the special activity. This will require a departure from current practice in which the names of foreign countries assisting this Government in the conduct of a special activity are not set forth in the Finding.

--The President is given explicit authority to conduct special activities. Under current law, that authority is derived implicitly from an interpretation of the National Security of 1947.

--The President is required to consult with the intelligence committees prior to implementation of intelligence activities. The authors of the legislation have interpreted this provision to include consulting with the intelligence committees on proposed Findings prior to Presidential approval of the Finding.



--The obligation to inform the intelligence committees on special activities is no longer subject to the proviso that notification shall be carried out with due regard for the protection of intelligence sources and methods. That proviso is only retained for reporting on intelligence collection activities. There is thus no statutory basis to withhold from Congress any information, no matter how sensitive, on special activities.

--The legislation explicitly raises the possibility that the Agency must report certain intelligence collection activities prior to the initiation of the activity.

--An obligation is put on the President through his representatives to keep the intelligence committees fully and currently informed of intelligence activities. Current law specifies that the DCI, and other agency heads, shall keep the committees informed. With respect to special activities, the President, DCI and heads of other agencies participating in a special activity must keep the intelligence committees informed of the special activity.

--A prohibition would be put on the expenditure of appropriated funds by any agency of the U.S. government to conduct special activities without a Presidential Finding. Current law only restricts the expenditure of appropriated funds by CIA without a Presidential Finding. The law would also prohibit the expenditure of funds available to a government agency without a Presidential Finding. This would include funds donated by third countries to the U.S. Government to finance a special activity. The authors of the legislation interpret this prohibition to cover funds donated by a third country at the request of the U.S. Government whether or not the funds actually come into the possession of a U.S. government agency.

--The term "Special Activities" is defined for the first time in law. Currently, the term is only defined in the Executive Order. The bill defines special activities to explicitly exclude intelligence collection activities, military operations conducted by the armed forces of the U.S. and subject to the War Powers Resolution, diplomatic activities of the Department of State or persons acting on authority of the President, and activities of law enforcement agencies in providing assistance to law enforcement authorities of foreign governments.