

2 December 1987

OCA 87-5927

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with SSCI Staff on S. 1721

STAT 1. On 30 November 1987, representatives of the Administration met with the SSCI staff to discuss S. 1721, the Intelligence Oversight Act of 1987. Representing the Administration were Dave Gries and [redacted] CIA; Barry Kelly, Alison Fortier, and Nick Rostow, NSC; John McGinnes, Rick Cinquegrana, and Mary Lawton, DoJ; Ed Cummings, State Department; Frank McNeil, DoD; and Ron Sable, White House Office of Legislative Affairs. Representing the SSCI were Sven Holmes, Jim Dykstra, Keith Hall, Brit Snider, Dave Holliday, Ed Levine, John Elliff, Charlie Bataglia, and Natalie Bocock. Mike O'Neil was also present as an observer for HPSCI.

2. The meeting began with Kelly and Holmes agreeing that this meeting was not for purposes of negotiation. Instead, the meeting would allow the Administration an opportunity to express particular concerns over the provisions of the bill. Kelly confirmed that Alison Fortier would be the main staff contact for the Administration on the bill. Ms. Fortier stated that Carlucci and Chuck Cooper would testify in open hearings on the bill. She informed the Committee staff that the State Department had not reached a decision on whether it would testify on the bill. The bill was then reviewed section-by-section, and everyone had an opportunity to comment on the individual sections. Stated below are the comments made on each section:

§501(a) Consultation: Mary Lawton asked Holmes several times what types of intelligence activities would fall within the scope of the consultation provision. Holmes refused to provide an answer. Lawton said it was impossible to analyze the provision without this information. Elliff suggested that legislative history could limit the scope of the provision to significant anticipated intelligence activities.

§501(b) Notification of Illegal Intelligence Activities: Snider stated that the provision would not require instant reporting of illegal intelligence activities even though the discretion to report such activities in "a timely fashion" had

been deleted. Snider suggested that procedures could be formulated by the President that would allow the President to gather the necessary facts before making a report.

§502 Collection of Intelligence: Elliff stated that the provision does not change current practice on reporting of intelligence collection activities prior to initiation of those activities. Elliff also stated that the requirement to furnish the Committee information was contingent on the proviso that reporting shall be carried out with due regard for the protection of classified information relating to sensitive intelligence sources and methods. Elliff also stated that notification could be limited for sensitive projects even though the legislation did not provide for this alternative. I expressed doubt on this point.

§503(a)(3) Participation of Other Government Agencies in Special Activities: I stated that the Agency should not be required to list other government agencies that provide routine support for a special activity. Only significant support should be listed. Holmes agreed that the Agency had a legitimate point and would consider modifying the section. Frank McNeil, DoD, also expressed concern that the provision would allow the DCI to supervise the use of DoD personnel to support a special activity. DoD did not want the DCI to have such power.

§ 503(a)(4) Participation of Third Parties in Special Activities: Holmes again provided assurances that the Agency would not be required to identify in the Finding foreign countries supporting a special activity. The identification could be provided in subsequent briefings. I reminded Holmes that CIA would still have concerns since the DCI needed the authority in certain instances to withhold from the Committee information identifying the foreign country supporting the special activity. I also pointed out that the provision should be amended to require the listing of only third parties providing significant support. Holmes agreed that this latter point was a legitimate concern. He did not budge on the need for the Committee to obtain the identity of third parties assisting in the Finding.

§503(a)(5) Requirement that Findings Cannot Authorize Action Contrary or Inconsistent with U.S. Law: We pointed out that it was not clear what the term "inconsistent with any statute of the U.S." is meant to cover. Snider agreed the term was ambiguous, but there was no commitment to drop the phrase.

§503(b) Reporting of Special Activities: Holmes noted the Director's concern about protection of sources and methods, and stated that in the view of the Director's testimony there was

no need to cover this area again. McNeil raised the concern that the reporting obligation was being placed on all agencies that participate in "any way" in the special activity. McNeil stated that DoD may participate in a minor way in the special activity and should not be on the "hook" to report because of this minor participation. Elliff stated that if CIA reported on DoD assistance, it would not be necessary for DoD to provide a separate report.

§503(c) Notification of Finding with 48 Hours: Holmes stated that the position of the White House was known on this provision. Holmes stated that the provision was not meant to punish the President for the Iran fiasco. Kelly again stated the Administration's strong opposition to the provision. Justice promised to address the constitutionality of the provision in its testimony before the Committee.

§503(e) Definition of Special Activities: Concern was noted by Justice and DoD over the definition of a special activity. Holmes stated that the Committee was looking for Administration help in coming up with a definition of special activities, and Ms. Fortier agreed to convene a special working group consisting of Justice, DoD and State to work with the Committee staff in re-working the definition. The group would focus on language excluding certain activities of these organizations from being considered special activities.

§504(d) Use of Non-Appropriated Income to Finance Special Activities: I raised the same concern as that stated in the Director's testimony. The Committee staff did not accept the argument that obtaining a Finding to authorize a request to solicit foreign countries to finance a special activity would make CIA responsible for ensuring that the foreign country's activities remained within the scope of the Finding. Kelly also stated that the Administration was inclined to obtain a Finding to authorize a request to solicit funds from a foreign country. Mike O'Neil noted that it was also the position of Frank Carlucci while he was at CIA that a Finding was necessary to authorize foreign solicitation.

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