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United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510-6475

General Counsel
88-00711

February 25, 1988

Mr. Russell J. Bruemmer
General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear Russ:

We appreciate receiving a copy of the letter of February 1 that you sent to Mike O'Neil concerning which types of activities require Presidential findings under the Hughes-Ryan Amendment, and which do not. Please be advised, however, that the interpretations of law contained in your letter and the accompanying documents have not been fully accepted by this Committee. For example, your letter cites the Committee's report as being consistent with the Agency's interpretation of the Hughes-Ryan Amendment "as not requiring Presidential Findings for counterintelligence activities, logistical support to other United States departments or agencies, and other minor support or routine activities...." (page 5). This contrasts, however, with the actual language of the Committee's report which recognizes an exception to the finding requirement for "certain counterintelligence, routine assistance to the Department of State in performing certain diplomatic or overt initiatives, and certain routine assistance to the Department of Defense or other agencies under the Economy Act" (emphasis added).

More specifically, we are concerned about the attempt in your letter to use a subsequent Executive order to interpret a statute (e.g., footnotes 1 and 3 on page 3). For example, at the bottom of page 2 and top of page 3, you point to the provision in Executive Order 12333 which defines "special activities" as activities which support "national foreign policy objectives", and you conclude that since most day-to-day logistical and other support CIA provides other U.S. departments and agencies overseas is not substantial enough to rise to the level of support for "a national foreign policy objective", that it does not constitute a "special activity", and, therefore does not require a Presidential Finding under Hughes-Ryan. While we might agree with your ultimate conclusion, we have difficulty reaching this point through the language of the Executive Order itself. The fact that the Executive Order defines the term "special activity" as something that supports a "national foreign policy objective" cannot necessarily be engrafted as a qualification to Hughes-Ryan. Certainly there may be CIA activities overseas which do not support "national foreign policy objectives", but which should be reported under Hughes-Ryan.

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A similar concern is raised by the second sentence in the first full paragraph on page 3, as it relates to whether "counterintelligence activities" can be "special activities". You make the point that the Executive Order contains a separate definition for "counterintelligence" than it has for "special activities", and therefore counterintelligence activities are "outside the ambit of special activities." Again, the fact that the Executive Order has separate definitions of these terms does not necessarily translate into a diminishment of the Hughes-Ryan requirement. Indeed, the term "counterintelligence" was defined as it was largely to set jurisdictional boundaries within the Intelligence Community and not for purposes of excluding "counterintelligence activities" per se from the requirements for Presidential Findings. The Committee has consistently regarded CIA "counterintelligence activities" in foreign countries as primarily collection operations, and, so long as this was the case, there was no requirement for a Presidential Finding under Hughes-Ryan. However, if the purpose of such operations became to influence or affect other countries in support of other U.S. policy objectives, then they may require such Findings.

Moreover, we also found ourselves at some disagreement with the examples cited in the attachments to your letter. For example, it appears to us that the CIA counterintelligence program discussed in the memorandum from the Attorney General's Counsel for Intelligence Policy may require a finding because the relationships with foreign business firms and governments could have significant foreign policy implications. With respect to the last example at Tab C, the type of CIA assistance to a joint State/Defense Department evacuation of U.S. citizens also may require a finding because of the nonroutine nature of the CIA's covert role in the operation. Indeed, in the hearings on S.1721 the Executive branch, including Judge Webster, went to great lengths to emphasize that the reporting requirements associated with Findings authorizing such undertakings would potentially jeopardize them, citing specifically the exfiltration of American citizens from the Canadian embassy in Iran. In several other cases cited at Tab C, findings may not be needed, but in our view on the basis of a different rationale than is offered by the Agency.

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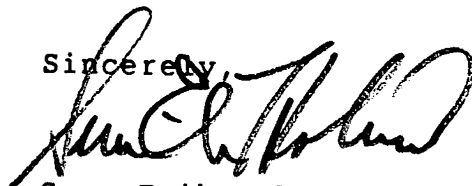
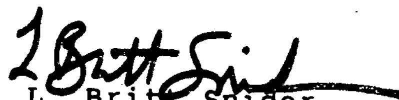
In order to avoid any future misunderstandings and to be sure the CIA is in compliance with the statute, we would appreciate your advising us of any other similar analyses of Hughes-Ryan and its relationship to Executive Order 12333 that have been made. It is imperative that the determinations regarding Hughes-Ryan made in the context of S.1721 be clear to all parties concerned.

Sincerely,



Sven Erik Holmes
Staff Director and
General Counsel



L. Britt Snider
Minority Counsel

cc: Mike O'Neil

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