

OCA Request

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Central Intelligence Agency



Washington, D.C. 20505

17 March 2000

Mr. Al Cumming
Minority Staff Director
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Al:

(U) Pursuant to Peter Flory's request, this letter formally transmits my Memorandum for the Record dated 9 June 1998; a copy of Agency Regulation AR 7-2 (dated 27 March 1996), entitled "Reporting of Intelligence Activities to Congress"; and a CD-Rom on congressional notification. I also included the Director of Central Intelligence Directive on "Communications with Congressional Committees Regarding Intelligence Information Related to Law Enforcement Matters" (7 November 1995) for your information.

(U) Mr. Flory also asked whether my office is provided with copies of

[Redacted]

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(U) Please direct any questions the Committee may have on this matter to [Redacted] of my staff at [Redacted]. An original of this letter is also being sent to Staff Director Rostow.

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Sincerely,

[Handwritten signature]

John H. Roseman
Director of Congressional Affairs

(b)(6)

Enclosures

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from Enclosures

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Central Intelligence Agency



Washington, D.C. 20505

17 March 2000

Mr. Nicholas Rostow
Staff Director
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Nick:

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Sincerely,

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[Redacted Signature]
John H. Roseman
Director of Congressional Affairs

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9 June 1998

MEMORANDUM FOR THE RECORD

SUBJECT: Sensitive Notification of Pending Office of
Inspector General Investigation

On 2 June 1998, the DCI provided to Rep. Porter Goss the attached document, which the Congressman read and returned to the DCI.

Also on 2 June 1998, the DCI appeared before the SSCI at a formal hearing. His intention was to discuss the information in the attached document with Sens. Shelby and Kerrey after the hearing. However, D/OCA, realizing that Sen. Kerrey would leave the hearing prior to its conclusion, consulted with Staff Director Chris Straub and asked that Straub pass the attached document to Sen. Kerrey. That was done during the hearing and Sen. Kerrey returned the document to D/OCA via Straub.

Later in the hearing, D/OCA asked SSCI Security Officer to ask Staff Director Taylor Lawrence to provide the attached document to Sen. Shelby. Prior to that request, D/OCA wrote "Eyes Only Sen. Shelby, Sen. Kerrey" as it was being passed to Taylor Lawrence. Lawrence, however, opened the document, looked at it, and handed it to Sen. Shelby who read it during the hearing. Sen. Shelby returned it to Lawrence who again opened it and read it. Lawrence then passed it to Staff Director Straub. Straub approached D/OCA and asked if he could read it. Because Lawrence had read it, D/OCA determined that Straub should also read it. He did so and returned it to D/OCA.

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Towards the end of the hearing, Lawrence asked to meet in the private anteroom with D/OCA. He asked D/OCA whether the material noted in the attached memorandum was above the

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SUBJECT: Sensitive Notification of Pending Office of
Inspector General Investigation

SECRET level. D/OCA indicated that he was not familiar with the facts but understood the material was above the SECRET level and that Internet connectivity was involved.

On 3 June 1998, during the course of a formal hearing with the HPSCI, D/OCA conferred with COS/DCI [redacted] about showing the document to HPSCI Staff Directors John Millis and Mike Sheehy. D/OCA indicated that the normal practice is for Staff Directors of both committees to be equally informed. In addition, Staff Directors frequently discuss items and D/OCA did not want the HPSCI Staff Directors to learn about this matter through conversations with the SSCI Staff Directors. Therefore, he decided to permit the HPSCI Staff Directors to read the documents. D/OCA asked Staff Director Millis to read the document in the HPSCI conference room. He did so and returned it without comment. D/OCA then asked Staff Directors Sheehy to do the same and he read the document and returned it to D/OCA. Sheehy asked a number of questions about administrative handling of this matter versus investigation and D/OCA did not have answers to his questions. D/OCA then asked Staff Director Sheehy to show the document to Rep. Dicks during the hearing. That was accomplished and the document was returned to D/OCA.

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In sum, the following persons have read the attached document: Sen. Shelby, Sen. Kerrey, SSCI Staff Directors Lawrence and Straub, Rep. Goss, Rep. Dicks, and HPSCI Staff Directors Millis and Sheehy.

[redacted signature]

John Moseman
Director of Congressional Affairs

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Enclosure
3/1/99: Copy provided to OIG

D/OCA/JHMoseman [redacted]
[redacted]

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June 2, 1998

Inspector General

Talking Points Re: OIG Investigation

* The OIG has asked that I notify you of a pending criminal investigation regarding former Director John Deutch. DoJ has concurred in this notification.

* On March 10, 1998, the Office of Inspector General (OIG) opened an investigation concerning a possible violation of 18 U.S.C. §1924, a misdemeanor, by former Director John M. Deutch. OIG is also investigating the facts and circumstances surrounding the manner in which the matter was originally handled by CIA officials.

* At issue are classified documents that were found on Deutch's home computer at the time he was leaving office as DCI. Classified information should not have been processed on this computer. The matter was subject of an administrative inquiry at the time, but no referral was made to Justice.

* The IG investigation is continuing in coordination with the DoJ's Internal Security Section. It is estimated that it will require approximately three months to complete.

* This information is being closely held within the CIA out of respect for the former Director's privacy interests. The results of the investigation will be made known to the Committee.



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eyes only ↓

Provide only to Cong. Goss ✓ (read) Jun 2
Cong. Dicks ✓ (read) Jun 3
Jun 2 * [Sen. Shelby ✓ (read)
Sen. Harkin ✓ (read)
x [Taylor Lamm - read - Mills] Jun 3
 [Chris Smith Shady]

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Date: 03/27/96 (Regulations may contain various dates)

Category: 7 - Management

OPR: OCA

Title: AR 7-2 REPORTING OF INTELLIGENCE ACTIVITIES TO CONGRESS

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2. REPORTING OF INTELLIGENCE ACTIVITIES TO CONGRESS

SYNOPSIS. This regulation provides guidelines on the obligation to notify the Intelligence Committees of CIA intelligence activities pursuant to the National Security Act of 1947, as amended.

a. **AUTHORITY.** These guidelines are issued pursuant to sections 501 and 502 of the National Security Act of 1947, as amended (the "Act"), to assist the Director of Central Intelligence (DCI) in keeping the Congressional intelligence committees fully and currently informed of all intelligence activities, including "significant anticipated intelligence activities" and "significant intelligence failures," and to assist the President in fulfilling the obligation to report illegal intelligence activities to the Congressional intelligence committees.

b. **GENERAL**

- (1) The DCI shall carry out his or her statutory obligations to notify the Congressional intelligence committees in the manner specified in these guidelines.
- (2) These guidelines establish a means of identifying matters which the Office of General Counsel (OGC) and the Office of Congressional Affairs (OCA) must consider reporting to the Congressional intelligence committees under sections 501 and 502 of the Act; they do not constitute a comprehensive list of what must actually be reported to those committees.
- (3) These guidelines are intended to serve as the sole authoritative guidance on what may constitute a "significant anticipated intelligence activity" or a "significant intelligence failure" under the Act. They also provide authoritative guidance concerning the obligation to keep the intelligence committees fully and currently informed of all

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intelligence activities and to report illegal intelligence activities.

c. INITIAL REPORTING AND REVIEW PROCEDURES

- (1) All Deputy Directors and Heads of Independent Offices have a continuing responsibility to ensure that every proposed or ongoing intelligence activity which could fall under these guidelines is promptly reported by their respective components to OCA either directly or through OGC as outlined below.
- (2) An Agency component may satisfy its Congressional reporting responsibilities by referring a matter directly to OCA, rather than through OGC, if the matter is not considered a significant anticipated intelligence activity, a significant intelligence failure, or an illegal intelligence activity under these guidelines. Matters other than these three specific categories will normally involve notifications pursuant to the requirement to keep the intelligence committees fully and currently informed of all intelligence activities.
- (3) All matters considered a significant anticipated intelligence activity, a significant intelligence failure or an illegal intelligence activity must be reported to OCA only through OGC. In addition, as a general rule, Deputy Directors and Heads of Independent Offices will be expected to refer to OGC for consideration any proposed intelligence activity or failed intelligence activity that is, in their judgment, extraordinarily sensitive, unprecedented, or highly unusual in nature.
- (4) OGC shall review all such submissions and is responsible for determining whether, as a matter of law, any matter submitted qualifies as a significant anticipated intelligence activity, a significant intelligence failure, an illegal intelligence activity, or is otherwise reportable under the Act.
- (5) OGC shall report the matters it has determined are reportable under these guidelines, together with the materials on which each such determination is based, to OCA.
- (6) OCA shall report matters OGC has determined to be reportable. In addition, OCA shall review the materials OGC forwards with its reportability determinations. In consultation with OGC and the affected Agency component, OCA will determine whether any additional matters reflected in those materials should, for policy reasons under the prevailing circumstances, be notified to the Congressional intelligence committees pursuant to these guidelines. OCA shall report all such matters, including all pertinent details, to the Congressional intelligence committees in a manner consistent with the DCI's obligation to protect sensitive intelligence sources and methods or other exceptionally sensitive matters from unauthorized disclosure.
- (7) Prior to notifying the Congressional intelligence committees, or in exigent circumstances promptly thereafter, OCA shall ensure that the DCI, the Deputy Director of Central Intelligence, and the Executive Director are made aware of all such reportable activities.

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f. NOTIFICATION OF ILLEGAL INTELLIGENCE ACTIVITIES. To assist the President in meeting the obligation to report illegal intelligence activities to the Congressional intelligence committees pursuant to section 501 of the Act, the DCI is responsible for reporting CIA activities involving probable illegality. Internal reports on CIA activities involving potential illegality should be made in the manner outlined in paragraph c,

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above. OGC will apply the following guidelines in determining whether, how, and when to report a CIA activity involving possible illegality to the Congressional intelligence committees:

- (1) Any intelligence activity believed to be a probable violation of the U.S. Constitution, a U.S. statute, or an Executive order (including Executive Order 12333 and its implementing procedures) will be considered an "illegal intelligence activity" which will be reported promptly to the Congressional intelligence committees; and
- (2) A potentially illegal intelligence activity need not be reported to the Congressional intelligence committees until a preliminary internal review has confirmed that a probable violation of law (as described in paragraph f(1) above), has occurred.

g. OBLIGATION TO KEEP CONGRESSIONAL INTELLIGENCE COMMITTEES FULLY AND CURRENTLY INFORMED

- (1) The CIA will seek scrupulously to meet the obligation to keep the Congressional intelligence committees fully and currently informed of all intelligence activities beyond and apart from activities otherwise reportable under the above guidelines. This obligation requires, at a minimum, that CIA keep the Congressional intelligence committees informed of all major intelligence policies and activities on a timely basis, and that CIA provide the information requested by those committees in order to conduct their business.
- (2) Specific circumstances requiring reporting of CIA intelligence activities, which are not otherwise reportable under these guidelines, to the Congressional intelligence committees under the "fully and currently informed" standard fall into three general categories:
 - (a) Particular intelligence activities or categories of activities as to which either of the Congressional intelligence committees has expressed a continuing interest (for example, potentially serious violations of U.S. criminal law by Agency employees, sources, or contacts);
 - (b) Information relating to the continuation of intelligence activities or the resolution of matters previously reported under these guidelines; and
 - (c) Particular intelligence activities which are not otherwise reportable under these guidelines, but which are, for whatever reason, expected to appear in the public media other than as a result of official dissemination by CIAs Public Affairs Staff.
- (3) These provisions on the obligation to keep the Congressional intelligence committees fully and currently informed of all intelligence activities are intended to promote compliance with sections 501 and 502 of the Act. They should not be understood to limit, derogate from, or in any other way affect compliance with the reporting obligations contained in any other statutory provisions applicable to CIA.

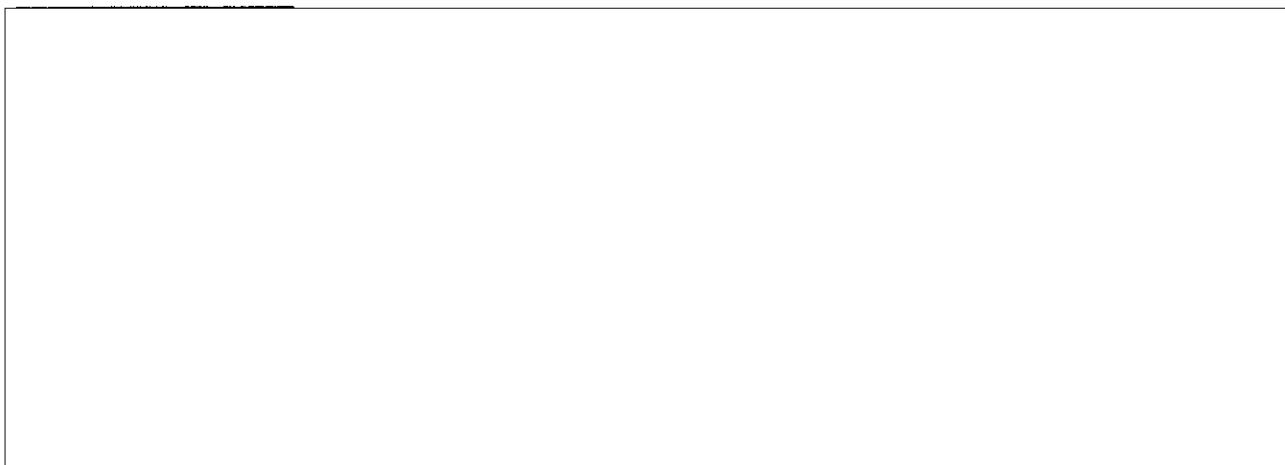
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h. INTERPRETATION

- (1) **Responsibility for Interpretation.** Questions regarding the proper interpretation or application of these guidelines shall be referred to OGC. OGC's determination shall be conclusive as to the scope of the DCI's legal obligation to keep the Congressional intelligence committees fully and currently informed of all intelligence activities, including notification of significant anticipated intelligence activities, significant intelligence failures, and illegal intelligence activities pursuant to these guidelines.

- (2) **Interpretive Policy.** The obligations outlined in these guidelines must be interpreted broadly in light of the DCI's overall statutory obligation to keep the Congressional intelligence committees fully and currently informed of all intelligence activities. Accordingly, when it is unclear under these guidelines whether a particular matter should be referred to OGC for possible reporting to the Congressional intelligence committees, OGC should be consulted.



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Director of Central Intelligence Directive

Type: 2 **Number:** 13

Subject: COMMUNICATIONS WITH CONGRESSIONAL COMMITTEES REGARDING INTELLIGENCE INFORMATION RELATED TO LAW ENFORCEMENT MATTERS

Category: 2-Selected Services of Common Concern

DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVE 2/13P

COMMUNICATIONS WITH CONGRESSIONAL COMMITTEES REGARDING INTELLIGENCE INFORMATION RELATED TO LAW ENFORCEMENT MATTERS

(Effective 7 November 1995)

Pursuant to the provisions of the National Security Act of 1947 and Executive Order 12333, policies and procedures are herewith established to ensure advance coordination between the intelligence and law enforcement communities regarding communications by the Intelligence Community (IC) with Congressional committees pertaining to ongoing law enforcement investigations or criminal prosecutions.

1. Purpose

Sections 501 and 502 of the National Security Act of 1947, as amended, require the President and the DCI to fully inform the House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) regarding "all intelligence activities." Further, Section 501 requires that the President report illegal intelligence activities and corrective action to these committees, while Section 502 requires the DCI to report any "significant intelligence failure."

2. Policies and Procedures

Where intelligence information to be provided to a Congressional committee relates to a possible crime or may impact upon ongoing criminal investigations or prosecutions, the IC must be mindful both of its reporting responsibilities under Sections 501 and 502 and the responsibility of the Executive Branch to ensure the integrity of the criminal process. In order to meet both responsibilities, IC elements must observe the following policies and procedures.

- a. IC elements, including intelligence components of the Department of Defense, shall notify the Assistant Attorney General, Criminal Division, or his/her designee, and the congressional affairs or General Counsel offices at the headquarters of any federal law enforcement agency involved in an ongoing criminal investigation or prosecution prior to providing to a Congressional oversight committee any information relating to an ongoing criminal investigation or prosecution. IC elements shall thereafter coordinate with the Assistant Attorney General, or his/her designee, and the affected law enforcement agencies in order to ensure that the information provided to the oversight committee does not adversely affect the criminal investigation or prosecution.
- b. IC elements, including intelligence components of the Department of Defense, shall immediately notify the Assistant Attorney General, Criminal Division, Department of Justice, or his/her designee, and the congressional affairs or General Counsel offices at the headquarters of any federal law enforcement agency involved in an ongoing criminal investigation or prosecution when requested by a non-oversight committee of Congress to provide any information relating to an ongoing criminal investigation or prosecution. Prior to any response to that request that includes information relating to that criminal matter, IC elements, in coordination with the Assistant Attorney General and the affected law enforcement agencies, shall notify the SSCI or HPSCI of the request by a non-oversight committee and request advice and assistance in responding to the request. IC elements shall thereafter continue to coordinate with the Assistant Attorney General, or his/her designee, and the affected law enforcement agencies in order to meet any obligation to a non-oversight committee without adversely affecting the criminal investigation or prosecution.
- c. Disagreements between an IC element and the Department of Justice regarding the appropriateness of providing specific information to Congress may be referred for resolution to the Attorney General and either the Director of Central Intelligence, or, in the case of Department of Defense components, to the Secretary of Defense. In the event that the affected law enforcement agency is a Department of Treasury agency, resolution of a disagreement regarding a response to a Congressional committee's request for information shall also include the Secretary of the Treasury. The party seeking any such resolution shall notify the other party in advance of its intent to do so.
- d. Nothing herein shall be interpreted as modifying in any way the requirements of the "third agency rule" pertaining to the disclosure of classified information.

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Mr. Nicholas Rostow
Mr. Al Cumming

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(10 Mar 2000)

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Distribution:

- Original 1 - Addressee (w/att)
- 1 - D/OCA (w/o att)
- 1 - OCA Records
- 1 - [Redacted] Signer

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