

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

February 16, 1989

INFORMATION

MEMORANDUM FOR BRENT SCOWCROFT

FROM: NICHOLAS ROSTOW *NR*.

SUBJECT: Meeting with Intelligence Committee Staff

Bill Working, Virginia Lampley, and I met on February 15, 1989, with Britt Snider, Mike O'Neil and Jim Dykstra. Snider is the Minority Counsel, Dykstra is the Minority Staff Director on SSCI, and O'Neil is Majority Counsel of the House Permanent Select Committee on Intelligence (HPSCI). A couple of weeks ago, we had met with Snider and O'Neil because Senator Cohen was interested in this Administration's position with respect to the language of NSDD 286 regarding periodic decisions to delay notification of covert actions to Congress and with respect to the memorandum dated December 17, 1986, by former Assistant Attorney General, Office of Legal Counsel, Charles Cooper, on the meaning of timely notification in section 501 of the National Security Act of 1947, as amended (Tab II). Senator Cohen is particularly concerned about the reference to "unfettered discretion" in the sentence following footnote 32 on page 24. In the previous meeting, we had agreed to reconvene in a month with, we hoped, more of the relevant Administration officials to be in their jobs. In the intervening period, Bill had suggested that the staff give us some written language expressing Senator Cohen's concerns. That language was supplied this morning (Tab I).

In the course of an hour's conversation, the issue outstanding was well articulated as being what it has always been: the limits on the President's constitutional discretion to act without prior notification to Congress and indeed without notifying Congress until the President deems it appropriate or "practicable" (the word used in the 1868 Hostage-Taking Statute (Tab III)). As Mike O'Neil said, he wants the President in a box, that is, an enumeration of the circumstances in which the President could delay notification.

O'Neil said an Administration policy position accommodating this concern would be helpful. He recognized that a new legal opinion might take months to do. Snider said Senator Cohen was impatient; if the Administration did not accommodate him, he would reintroduce his bill. In the course of discussion, Mike O'Neil noted that War Powers raised much the same issues.

We were told that you and Bob Gates had talked to Senator Cohen about these issues. We were told that Senator Cohen might well raise them in the meeting proposed for next Tuesday. I shall be sending you separately a summary of the constitutional issues raised by Senator Cohen's proposal. I also am sending his proposal to my colleagues whose views on the law are indispensable to the formation of an ultimate Administration view (Boyden Gray, Bill Barr (Assistant Attorney General, Office of Legal Counsel-designate), Abe Sofaer, [REDACTED], and Jack McNeill (DoD/GC)).

Bill Working and Virginia Lampley concur.

(b)(3)  
[50 U.S.C. 403g, Sec.6]

Attachments

- Tab I - Senator Cohen's Suggestions
- Tab II - Cooper Memorandum
- Tab III - Hostage-Taking Statute

**SUGGESTED COMPROMISE ON 48-HOUR ISSUE:**

1. Keep the existing phrase "in a timely fashion" in a revised bill, replacing the 48-hour provision. Define this phrase in report language as meaning as soon as possible but in no event later than "a few days" after a finding is approved, with White House concurrence.
  
2. Consistent with this formulation, (1) the Justice Department's "unfettered discretion" opinion would be withdrawn or superseded; and (2) the NSDD would be modified to remove the suggestion that the President may withhold notice indefinitely from the Committee.

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