

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

8554

October 25, 1989

INFORMATION

MEMORANDUM FOR BRENT SCOWCROFT

FROM: NICHOLAS ROSTOW *NR*

SUBJECT: Draft Letters on Covert Action Notification

Attached at Tab I for your review and comment are draft letters from the President to the Attorney General regarding covert action notification and from you to Senators Boren and Cohen transmitting copies of the President's letter.

I have not yet coordinated these drafts with Boyden Gray, although he and other senior government counsel can live with the language in the second paragraph of the letter to the Attorney General. I recommend that I do so before you discuss them with Senators Boren and Cohen.

Concurrence by: *By VA* Virginia A. Lampley

Attachment

Tab I Letters to the Attorney General
and to Senators Boren and Cohen

DRAFT

Dear Dick:

The purpose of this letter is to state how I intend to provide notice to Congress of covert action under section 501 of the National Security Act of 1947, as amended. On December 17, 1986, the Assistant Attorney General, Office of Legal Counsel, provided the then Attorney General with an opinion as to the meaning as a matter of law of section 501(b) of the National Security Act. That provision requires the President to "fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given. . . ." The opinion, at page 24, stated that "a number of factors combine to support the conclusion that the 'timely fashion' language should be read to leave the President with a virtually unfettered discretion to choose the right moment for making the required notification."

I intend to provide notice in a fashion sensitive to congressional concerns. The statute requires prior notice or, when no prior notice is given, timely notice. I anticipate that in almost all instances, prior notice will be possible. In those rare instances where prior notice is not provided, I anticipate that notice will be provided within a few days. Any withholding beyond this period would be based upon my assertion of the authorities granted this office by the Constitution.

You are directed to share this letter with appropriate members of the Executive branch and to proceed accordingly in advising me and other Executive branch officials in connection with the provision of notice of covert actions.

Sincerely,

George Bush

The Honorable Dick Thornburgh
The Attorney General
Department of Justice
Washington, D.C. 20530

DRAFT

Dear Senator Boren/Cohen:

Enclosed is a copy of a letter from the President to the Attorney General setting forth the President's instructions concerning how he intends to provide notice of covert actions to Congress under the National Security Act. We appreciate your efforts at reaching a mutually acceptable compromise on this issue.

Sincerely,

Brent Scowcroft

The Honorable David L. Boren
United States Senate
Washington, D.C. 20510-3601

The Honorable William S. Cohen
United States Senate
Washington, D. C. 20510-1901

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