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78-0545/13

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File Personnel

MEMORANDUM FOR: Deputy Director for Administration

FROM :
Office of General Counsel

STATINTL

SUBJECT : The Civil Service Reform Bill

1. On 12 June 1978, of the Office of Legislative Counsel and myself met with staff members of the Senate Governmental Affairs Committee to discuss the sections of the working draft of the Civil Service Reform Bill which would have to be amended to completely exempt the Central Intelligence Agency. The Committee staff was represented by Richard Wegman, Chief Counsel and Staff Director; Paul Rosenthal, Counsel to the Committee; and Paul Hoff, Counsel to the Committee.

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2. From the start of the meeting, it was clear that the Committee staff was interested in providing the Agency with a complete exemption from the bill. The staffers appeared genuinely surprised when we pointed out that certain sections of the draft bill would be applicable to CIA. They indicated that it was their intent to completely exempt the Agency and they agreed to amend the draft bill as we suggested to reflect this intent. Further, they revealed that the whistleblower amendment introduced by Senator Chiles would revise the whistleblower provisions of the draft bill and exempt the Agency from the scope of such provisions.

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3. Prior to the Chiles amendment, the whistleblower provisions of the draft bill would have authorized the Special Counsel of the proposed Merit Systems Protection Board to receive any substantive allegations of illegality, wrongdoing, or gross waste. Upon receiving such an allegation, the Special Counsel would have referred the matter to the head of the agency concerned, who would have been required to conduct a complete investigation and to report detailed findings to the Special Counsel and the Comptroller General. The Special Counsel would then have been authorized to disseminate the report to any committees of Congress he would have deemed appropriate. Moreover, the Comptroller General would have been authorized to conduct his own investigation of the underlying allegations contained in the report.

4. The Chiles amendment eliminates the requirement that the agency head must report to the Special Counsel and the Comptroller General. Any substantive allegations received by the Special Counsel would merely be forwarded to the agency head and the Comptroller General for investigation. However, the Chiles amendment would limit the authority of the Special Counsel to receive substantive allegations. The Special Counsel would not be authorized to receive allegations concerning information protected from disclosure by Executive order or statute. If substantive allegations concerning protected information are made, the Special Counsel would have no authority to refer such allegations to the agency or the Comptroller General. Thus, any disclosures of protected information made to the Special Counsel would be "unauthorized disclosures," and CIA could treat them as such. Language in the Committee report would make this clear. Though the Committee staff does not want in any way to enhance the Agency's ability to protect its information, neither does the Committee staff want to impair that ability. Under the Chiles amendment, the status quo as regards the protection of Agency information would be maintained.

5. While the Chiles amendment would solve one problem, another problem remains. This problem requires a policy decision to be made concerning the extent of the jurisdiction that the Agency would be willing to concede to the Comptroller General, if any. The Committee staff indicated that if a CIA employee were to make a substantive allegation concerning unprotected information, then the Special Counsel could refer the matter to the Director of Central Intelligence and the Comptroller General. That raises the fundamental question of whether the Agency would want to allow the Comptroller General to have any jurisdiction over any Agency matters as a general principle. At this point in time, Agency policy concerning the General Accounting Office is being reassessed, so any position the Agency takes on this issue will be significant. The Agency has basically two options from which to choose.

6. The first option would be to accept the Chiles amendment as is. Under this option, the Comptroller General would be authorized to investigate substantive allegations made by CIA employees to the Special Counsel when the allegations concern unprotected information. But even if the allegations concerned unprotected information, the resulting investigation might require that the investigators be given access to protected information. The Committee's Chief Counsel gave as an example of an allegation concerning unprotected information the allegation that there were "rats in the CIA cafeteria." However, a Comptroller General investigation of this allegation could require GAO access to information which might be protected, such as blueprints of the Agency's headquarters building. To foreclose this possibility, OLC has indicated that it could be explicitly stated in the language of the Committee report that this statute would not authorize GAO to gain access to protected information in the course of any investigation into allegations concerning unprotected information.

7. Option one would appear to be the most politically acceptable option. If the Agency were to press for an exemption from the authority of GAO to investigate allegations concerning unprotected information, the Committee staff could easily consider the Agency's position to be unreasonable. Moreover, to take such a hard line position on this issue, in light of the Committee staff having bent over backwards to accommodate the Agency on other issues, could alienate the Committee staff and jeopardize our other exemptions.

8. The second option would be to seek a complete exemption from all GAO investigations that would be authorized by the Chiles amendment. It should be noted that the Agency would be setting a precedent if it were to agree to GAO investigations of any Agency matters, even if the allegations concerned unprotected information. If the Agency accepts GAO jurisdiction in this area, it might be more difficult for the Agency to prevent GAO from expanding its jurisdiction into other areas of Agency activity. It may be worth the political risks to preserve the general principle of non-interference by GAO in Agency matters.

9. The Committee staff has asked for a memorandum which would contain language suggested by the Agency for the Committee report. If you choose option one to resolve the GAO situation, we would also want to include in our suggested report language a clear statement indicating that this statute would not authorize GAO to gain access to protected information in the course of any investigation into allegations concerning unprotected information. It is recommended that you choose one of the above-mentioned options as soon as possible so that the appropriate steps can be taken to protect the CIA equities involved in this issue.

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