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U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

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MINORITY STAFF DIRECTOR



February 1, 2006

Daniel P. Mulholland
Director
Congressional Research Service
Library of Congress
Washington, DC 20540

Dear Mr. Mulholland:

I previously wrote to you on January 9, 2006, regarding CRS's work on certain intelligence matters. Specifically, I expressed concern that CRS should not speculate on highly classified intelligence matters on which it could be erroneously viewed by the public as an authoritative source, and that its previous work was not conducted in a thorough and objective fashion. Subsequently, CRS has issued another memorandum with similar problems. I ask for immediate action on your part to ensure that CRS truly provides "comprehensive and reliable" legislative research that is "free of partisan or other bias."

As you know, on January 18, CRS Analyst Alfred Cumming completed a memorandum entitled "Statutory Procedures Under Which Congress Is To Be Informed of U.S. Intelligence Activities, Including Covert Actions." The memorandum subsequently was characterized in media headlines thusly: "Congressional Agency Questions Legality of Wiretaps."¹ The memorandum erroneously contended that certain intelligence reporting practices "would appear to be inconsistent with law, which requires

¹ Eggen, "Congressional Agency Questions Legality of Wiretaps," Washington Post, January 19, 2006 at A5. (Accessed via internet January 19, 2006). It is important to note that the headline did not accurately convey the substance of the memorandum, which addressed questions relating to reporting requirements applicable to certain intelligence programs rather than the legality of the activities of any specific program itself. Of course, CRS analysts previously were publicly reported to conclude that activities of a specific program "conflicts with existing law and hinges on weak legal arguments." Leommig, "Report Rebuts Bush on Spying," Washington Post, January 7, 2006, at A1 (Accessed via internet January 9, 2006). My concerns with the substance and process relating to that report were the subject of my January 9, 2006 letter to you.

that the 'congressional intelligence committees be kept fully and currently informed of all intelligence activities,' other than those involving covert actions."²

Once again, CRS has issued a memorandum on a highly sensitive intelligence issue on which it had no firsthand knowledge of the practices being followed by the Committee and the President and ignored highly relevant legal authorities and considerations.

Although I am not compelled to enter into a debate with CRS with respect to the practices of the Permanent Select Committee on Intelligence, I do want to point out three authorities highly relevant to the subject of the memorandum that were completely ignored by CRS. First, Section 501 of the National Security Act (50 U.S.C. § 413) expressly provides that "The President and the congressional intelligence committees shall establish such procedures as may be necessary to carry out the provisions of this title." These procedures apply to the reporting required under Section 502 of the National Security Act, which was improperly read by Mr. Cumming in isolation. As I have publicly indicated on many occasions, I and the Ranking Member were fully briefed on many occasions on the intelligence activities in question in a manner fully consistent with the practices that had been developed between the Committee and the President under the authority provided in Section 501.

Second, CRS completely ignored the most basic principles of statutory interpretation. Those principles clearly establish that terms not specifically included in the text of a statute generally will not be read into it. The plain text of Section 502 nowhere requires individual members of the Committee to be briefed with respect to all intelligence activities. Putting aside the important policy question of whether it is desirable to brief additional members of the Committee, it is clear that such reporting is not mandated by the law.³

Third, the Chairman (sometimes along with the Ranking Member) under longstanding practice customarily receives many statutorily mandated reports on behalf of the full Committee. It has never before been seriously argued that this practice is inconsistent with any of the statutes requiring these reports, even absent the type of clear guidance provided in Section 501.

Such a flawed and obviously incomplete analysis, seemingly intended to advocate the erroneous conclusion that the President did not comply with the relevant law, further reinforces my previously expressed concern that CRS's work on these matters has not

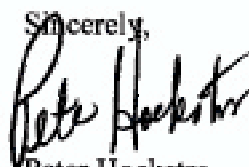
² Cumming, "Statutory Procedures Under Which Congress is to Be Informed of U.S. Intelligence Activities, Including Covert Actions," at 7 (January 18, 2006).

³ Mr. Cumming also suggested that Committee Rule 14(b), which provides that "[a]ll Members of the Committee shall at all times have access to all classified papers and other material received by the Committee from any source," is relevant. However, this rule clearly applies on its face only to tangible papers and materials. Moreover, the counterpart House Rule (clause 2(e) of Rule XI) "does not necessarily apply to records in the possession of the Executive Branch that members of the committee have been allowed to examine under limited conditions at the discretion of the agency." HOUSE PRACTICE, chapter 11 § 16 (108th Congress, 1st Session).

been "free of partisan or other bias." Media reports have further suggested the possibility of additional circumstances that could lead an objective observer to question whether the memorandum in question was truly nonpartisan.⁴

Once again, I would appreciate your assistance in ensuring that CRS refrain from speculating with respect to highly sensitive national security matters on which it has no authoritative knowledge, as well as ensuring that CRS allows the position of Congress on policy issues relating to intelligence to be determined by elected Members of Congress, Republican and Democrat, rather than by CRS staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Hoekstra". The signature is fluid and cursive, with the first name "Peter" and last name "Hoekstra" clearly distinguishable.

Peter Hoekstra
Chairman

cc: The Honorable J. Dennis Hastert
Speaker of the House

The Honorable Vern Ehlers
Committee on House Administration

The Honorable Jerry Lewis
Committee on Appropriations

⁴ Pierce, "Inside Politics," Washington Times, January 25, 2006. (Accessed via internet January 31, 2006). I note with interest that you responded to this item with a Letter to the Editor on January 27, 2006, but have not yet responded to my January 9 letter. In the future, I hope that press coverage will not be a higher priority for CRS than Members of Congress.