



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 3820.3E
NAVINSGEN-N2
21 Sep 2005

SECNAV INSTRUCTION 3820.3E

From: Secretary of the Navy

Subj: OVERSIGHT OF INTELLIGENCE ACTIVITIES WITHIN THE
DEPARTMENT OF THE NAVY (DON)

Ref: (a) Executive Order 12333
(b) DOD Directive 5240.1 of 25 Apr 88
(c) DOD Regulation 5240.1-R of Dec 82
(d) SECNAVINST 5000.34B
(e) DOD Directive 5148.11
(f) SECNAVINST 5510.30A
(g) US Navy Regulations, 1990
(h) SECNAVINST 5215.1D

Encl: (1) Naval Inspector General Intelligence Oversight
Inspection Checklist
(2) Naval Inspector General Intelligence Oversight
Report Format and Content
(3) Memorandum of Understanding: Reporting of Information
Concerning Federal Crimes, August 1995

1. Purpose. To implement policies, procedures, and governing regulations regarding the conduct of intelligence activities, and a system of program reviews, inspections, and reporting requirements of those activities. This instruction has been substantially revised and should be reviewed in its entirety. Highlights of significant changes from previous instruction are as follows:

a. Updated definition of DON intelligence components, to include new and reorganized DON intelligence organizations and describe revised responsibilities under this instruction,

b. Further definition of the term "Questionable intelligence activity" and resultant reporting requirements (i.e. Procedure 15 reporting),

c. Inclusion of a sample Intelligence Oversight inspection checklist, which may be used by components or elements as a guideline for administering an effective Intelligence Oversight program, (enclosure (1)), and

d. Inclusion of a standard format for quarterly reports from DON intelligence components to the Office of the Naval

Inspector General (NAVINSGEN) (enclosure (2)).

2. Cancellation. SECNAVINST 3820.3D.

3. Background.

a. Intelligence Oversight ensures that all tasks performed by intelligence, counterintelligence, and intelligence related activities are conducted in accordance with Federal law, Executive Orders, DOD directives, regulations and policies.

b. The collection, retention, and dissemination of information concerning U.S. persons and the conduct of intelligence activities by Department of the Navy (DON) intelligence components will be governed by the requirements set forth in references (a) through (c), enclosure (3), and this instruction.

c. The Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)) is responsible for developing Intelligence Oversight policy within the Department of Defense (DOD) consistent with references (a) through (c).

4. Scope and Applicability. This instruction applies to all DON intelligence components and governs all intelligence activities undertaken by personnel assigned to those components. This instruction also applies to non-intelligence personnel, engaged in any intelligence activity (e.g., collection, research, analysis, production, retention, dissemination), as well as all other DON components and personnel when that component conducts intelligence and/or intelligence-related activities. This instruction does not apply to law enforcement activities carried out by DON law enforcement agencies that also have an intelligence mission. It does not constitute authority for any DON intelligence component to conduct an activity not otherwise authorized by law. Questions of interpretation pertaining to references (a), (b), (c) or this instruction should be referred to the legal office responsible for advising the component concerned. If such questions are not resolved at that level, they should be taken up that component's legal chain of command for resolution and, if necessary, to the General Counsel of the Navy or to the Judge Advocate General, depending on which office would otherwise have cognizance over the issue. Alternatively, such questions may also be referred to the Office of the Naval Inspector General (NAVINSGEN), who may refer this matter to the General Counsel of the Navy (GC), the Judge Advocate General (JAG), or the General Counsel of the Department of Defense (DODGC) for resolution, as appropriate. If a question is

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referred to the component's legal chain of command for resolution, that office shall keep NAVINSGEN informed of the status of the review, and any conclusions reached or advice rendered in connection with such question(s). Likewise, if a question is referred to NAVINSGEN for resolution, that office shall keep the component's cognizant legal office informed of the status of the review, and any conclusions reached or advice rendered in connection with such question(s). Requests for exceptions or amendments to the policies or procedures issued by this instruction should be referred to NAVINSGEN.

5. Conduct of Intelligence Activities.

a. DON intelligence components and personnel shall carry out their authorized missions and functions per the policies and procedures contained in references (a), (b), (c), and this instruction. Moreover, they shall carry out their authorized functions in a manner that does not violate the constitutional rights and privacy of U.S. persons, and shall not request any other person or entity to undertake unauthorized activities. Use of the techniques prescribed by reference (c) to collect information about U.S. persons shall be accomplished by the least intrusive means practicable.

b. DON personnel shall not conduct, or provide support for the conduct of, special activities without proper authorization, and will comply with the reporting requirements of higher authority. Reference (d) provides guidance for the conduct and oversight of intelligence, intelligence-related, special, and sensitive activities within the DON.

c. Under no circumstances shall any DON personnel condone, support, encourage, engage in, or conspire to engage in the assassination of a specific individual or individuals.

6. Action.

a. NAVINSGEN shall submit to ATSD(IO), with a copy each to JAG, CNO (N2) GC, and UNSECNAV, a quarterly Intelligence Oversight report for the Department of the Navy describing:

(1) Any intelligence or counterintelligence activity that has come to the attention of NAVINSGEN during the quarter reasonably believed to be illegal, improper, or contrary to references (a), (b), (c), this instruction, or other applicable directives, and policies. The report may also include any corrective action taken, as appropriate.

(2) Any significant Intelligence Oversight activities

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undertaken during the quarter (i.e., inspections, training, published documents).

(3) Any recommendations for improvement to existing Intelligence Oversight regulations and the subject program.

(4) Status of any outstanding reports of confirmed or suspected questionable intelligence activity.

b. DON intelligence components, less USMC intelligence components, shall submit to NAVINSGEN a quarterly Intelligence Oversight report for their respective component (and claimancy) covering the information identified in paragraph 6.a. above. USMC elements shall submit to DNIGMC a quarterly Intelligence Oversight report similarly covering the information identified in paragraph 6.a. above. DNIGMC shall then submit a consolidated report to NAVINSGEN on behalf of all USMC elements.

(1) The format for DON intelligence component and DNIGMC quarterly Intelligence Oversight reports is provided in enclosure (2).

(2) Significant instances of fraud, waste, abuse, standards of conduct or ethics violations (less that described above), financial misconduct, or conflicts of interest that affect intelligence operations do not need to be included in the quarterly Intelligence Oversight reports. However, they shall be reported to NAVINSGEN, as appropriate, via a separate report, e-mail, or Hotline action.

c. Commanding Generals and Inspectors General of Fleet Marine Forces will comply with the above reporting requirements and submit their quarterly Intelligence Oversight report to DNIGMC, as directed.

d. Quarterly Intelligence Oversight reporting periods and report due dates are identified as follows:

<u>QUARTER</u>	<u>REPORT DUE TO NAVINSGEN</u>
First Quarter (JAN/FEB/MAR)	15 APR
Second Quarter (APR/MAY/JUN)	15 JUL
Third Quarter (JUL/AUG/SEP)	15 OCT
Fourth Quarter (OCT/NOV/DEC)	15 JAN

7. Definitions. The following terms are used throughout this instruction.

a. DON intelligence components include:

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- (1) The Office of the Director of Naval Intelligence (CNO (N2)),
- (2) The Office of Naval Intelligence (ONI),
- (3) Naval Security Group Command (NAVSECGRU),
- (4) Naval Criminal Investigative Service (NCIS) (specifically those select elements of NCIS conducting counterintelligence activities),
- (5) Marine Corps intelligence components,
- (6) Naval Reserve Intelligence Program (CNRIC),
- (7) Naval Security Group Command Reserve (CNSGR),
- (8) Other DON organizations, staffs, and offices, when used for foreign intelligence or counterintelligence activities, including command and subordinate intelligence staffs, activities, units, and elements of Commander, Fleet Forces Command (COMFLTFORCOM); Commander U.S. Pacific Fleet (COMPACFLT); Commander, U.S. Naval Forces Central Command (COMUSNAVCENT); Commander, U.S. Naval Forces Southern Command (COMUSNAVSO); Commander, U.S. Naval Forces Europe/Commander, U.S. Sixth Fleet (COMUSNAVEUR/COMSIXTHFLT); Commander, Naval Reserve Force (COMNAVRESFOR); Commander, Naval Special Warfare Command (COMNAVSPECWAR); and Echelon 2, 3, 4, 5, and 6 commands that do not report operationally or administratively for Intelligence Oversight reporting and inspection purposes to any of the other DON intelligence components defined in subparagraph 7a(1) through 7a(8). The heads of such organizations, staffs, and offices listed in this subparagraph shall not be considered heads of DOD intelligence components for the purposes of approving intelligence collection activities authorized by references (c) and (d).

b. Marine Corps Intelligence components, for purposes of Intelligence Oversight, include the Office of the Director of Intelligence, Headquarters U.S. Marine Corps (HQMC-I), Marine Corps Intelligence Activity (MCIA), Marine Corps intelligence units, G-2/S-2 staffs, intelligence battalions, radio battalions, reconnaissance battalions/companies, scout sniper platoons, unmanned aerial vehicle squadrons, and Marine Corps reserve counterparts.

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c. Intelligence activity is the collection, production and dissemination of foreign intelligence and counterintelligence by DON intelligence components.

d. Intelligence-related activities are activities normally considered to be linked directly or indirectly to the intelligence field.

e. Questionable intelligence activity is intelligence that may violate Federal law, an Executive Order (such as EO 12333), a Presidential Directive, DON policies, or this instruction.

Examples of questionable intelligence activity include, but are not limited to, the following:

(1) Tasking intelligence personnel to conduct intelligence activities that are not part of the organization's approved mission, even if they have the technical capability to do so.

(2) Providing intelligence services and/or products without proper authorization.

(3) Failing to file proper use statement for imagery collection associated with U.S. persons.

(4) Collecting information on U.S. persons, even through open source, when it is not part of the unit's mission.

f. Special activities as defined by reference (a) are activities conducted in support of national foreign policy objectives abroad which are planned and executed so the role of the U.S. Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence U.S. political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

g. Other terms used in this instruction are defined in references (b) through (d).

8. Violations. This instruction at paragraphs 5.b. and 5.c., reference (a) at parts 2.3, 2.4, and 2.9 through 2.12, and reference (c) at chapters 1 through 15 constitute and shall apply as general regulatory orders. They apply to all eligible DON

personnel individually and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel and may be the basis for appropriate administrative disciplinary procedures with

respect to civilian employees.

9. Intelligence Oversight Responsibilities.

a. The Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and the General Counsel of the Navy for NCIS shall:

(1) Implement the policies and procedures contained in references (a), (b), (c), and this instruction.

(2) Ensure the Under Secretary of the Navy (UNSECNAV), GC, JAG, NAVINSGEN, and the Senior Review Board (SRB), are kept fully and currently informed of significant and/or sensitive DON intelligence activities, questionable intelligence activities, and intelligence-related activities using any DON non-intelligence component assets, including personnel and equipment. In those instances where DON intelligence components support National Security Agency (NSA) activities, those activities need not be reported under the provisions of this subparagraph when they are subject to the current Intelligence Oversight activities of NSA. Nothing in this subparagraph is intended to exempt DON intelligence activities from complying with any separate non-Intelligence Oversight related, reporting requirement.

(3) Ensure NAVINSGEN is notified each time any Navy or Marine Corps organization, staff, or office not specifically identified as a DON intelligence component in paragraphs 7.a. and 7.b. of this instruction is tasked to collect, retain, or disseminate information for intelligence or counterintelligence purposes.

b. Heads of DON intelligence components and elements thereof, as appropriate, shall:

(1) Ensure that all subordinate intelligence components, activities, units, and elements in or under their command comply with the requirements of references (a), (b), (c), and this instruction.

(2) Report to NAVINSGEN within 48 hours confirmed or suspected questionable intelligence activities conducted by or on behalf of their respective component (reference (c), chapter 15, germane).

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(3) Report to NCIS any possible federal crimes by employees of DON intelligence organizations, or violations of specified federal criminal laws by any other person when collected as part of intelligence activities as required in enclosure (3).

(4) Ensure that all intelligence activities, in whole or in part, which raise issues of legality, consistency with applicable policy, or propriety in general are submitted for legal review prior to implementation or as soon as identified. Navy and Marine Corps command or staff judge advocates or Office of the General Counsel attorneys of the component concerned, who possess the requisite security clearances, shall participate actively in the operational planning and review of intelligence activities. Activities or legal issues of significance should be referred to the legal office responsible for advising the component concerned. If such issues are not resolved at that level, they should be taken up that component's legal chain of command for resolution and, if necessary, to the General Counsel of the Navy or to the Judge Advocate General, depending on which office would otherwise have cognizance over the issue. Alternatively, such issues may also be referred for review to NAVINSGEN, who may refer the matter to and confer with the GC, JAG, or DODGC, as appropriate. Marine Corps issues shall be referred via the Counsel for the Commandant, Staff Judge Advocate to the Commandant, and Deputy Naval Inspector General for Marine Corps Matters (DNIGMC), as appropriate. If an issue or question is referred to the component's legal chain of command for resolution, that office shall keep NAVINSGEN informed of the status of the review, and any conclusions reached or advice rendered in connection with such issue(s) or question(s). Likewise, if an issue or question is referred to NAVINSGEN for resolution, that office shall keep the component's cognizant legal office informed of the status of the review, and any conclusions reached or advice rendered in connection with such issue(s) or question(s).

(5) Ensure Intelligence Oversight refresher training of all staff and subordinate DON personnel is conducted and documented on an annual basis. Intelligence components are not required to train personnel who are not involved in the intelligence mission of the command (e.g., Morale, Welfare, and Recreation employees, groundskeepers, etc.). At a minimum,

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annual refresher training shall familiarize employees with the provisions of references (a), (b), (c), and this instruction that apply to the operations and activities of their component, and of their responsibilities under this instruction to report suspected or confirmed questionable intelligence activities.

(6) Ensure that no adverse or retaliatory action is taken

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against any personnel who reports confirmed or suspected questionable intelligence activities under this instruction.

(7) Ensure that employees and contractors assigned to a DON intelligence component and who are aware of the intelligence mission of the component, shall:

(a) Familiarize themselves with the policies and procedures required by this instruction and references (a), (b), and (c).

(b) Report suspected or confirmed questionable intelligence activities to the Inspector General of the command or intelligence component concerned, NAVINSGEN, GC, JAG, DNIGMC, Staff Judge Advocate to the Commandant, Counsel for the Commandant (for Marine Corps matters), DODGC, or ATSD(IO), as appropriate. If it is not practical to report through the chain of command, an employee may report questionable intelligence activity directly to the office of the NAVINSGEN.

(8) Impose such sanctions as may be appropriate on any employee who violates the provisions of references (a), (b), (c), and this instruction.

(9) Ensure NAVINSGEN, GC, JAG, DNIGMC, Counsel for the Commandant, Staff Judge Advocate to the Commandant (for Marine Corps Matters), DODGC, and ATSD(IO), as appropriate and after proper security clearance is verified, have access to all information concerning intelligence activities in the conduct of Intelligence Oversight responsibilities, and that employees of their components cooperate fully with such officials.

(10) Provide to NAVINSGEN annually, no later than (NLT) 15 September, an updated list of all intelligence component activities, units and elements in or under their command. The list shall include the full address for each command/activity/unit/element, as well as the date of the most recent Intelligence Oversight inspection by the lead echelon. A summary of modifications identifying any commands/activities/units/elements to be added or deleted

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(compared to previous year's list) shall also be included along with a brief justification for the change(s). Marine Corps Intelligence components will provide their input to DNIGMC.

(11) Provide to NAVINSGEN annually, (NLT) 15 September, a schedule of Intelligence Oversight inspections to be conducted during the upcoming fiscal year for all components, activities, units, and elements under their command.

(12) Conduct Intelligence Oversight inspections on all subordinate shore intelligence components, activities, units, and elements in or under their command at an interval of no greater than once every 36 months, with appropriate follow-up/"spot checks" or assistance between inspections as deemed necessary.

(13) Provide a quarterly Intelligence Oversight report to NAVINSGEN as directed in paragraph 6. DNIGMC will consolidate report inputs from Marine Corps intelligence components and provide a single Marine Corps quarterly Intelligence Oversight report input to NAVINSGEN for incorporation into subsequent reporting to ATSD(IO).

(14) Intelligence oversight inspections are not required for afloat activities (e.g. squadrons, ships, and submarines). Nonetheless, Commanding Officers remain accountable for annual Intelligence Oversight training, reporting of that training to appropriate higher authority (identified subparagraph 7.a. above), and active enforcement of intelligence oversight matters. As well, should an Intelligence Oversight infraction or a suspected questionable activity occur while afloat, it must be reported to higher authority.

c. NAVINSGEN shall be responsible for:

(1) Inspecting DON intelligence components to ensure compliance with references (a), (b), (c), and this instruction. Of note, although COMSIXTHFLT would normally be exempt, subject merger of duties and responsibilities with COMUSNAVEUR staff mandate that the combined staff is fully accountable for all Intelligence Oversight program requirements, including periodic inspection. (Enclosure (1) will be used by NAVINSGEN as a baseline checklist during inspection of component Intelligence Oversight programs.)

(2) Investigating reports of confirmed or suspected questionable intelligence activities. Suspected criminal activities will be referred to NCIS for investigation.

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(3) Investigating any alleged failures of DON intelligence components to report confirmed or suspected questionable intelligence activities. In the event that questionable intelligence activities are conducted by, or on behalf of, a DON intelligence component but not reported, NAVINSGEN will recommend appropriate corrective action.

(4) Ensuring procedures exist within all DON intelligence

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components for the reporting of questionable intelligence activities, and for documenting that employees of DON intelligence components are familiar with the provisions of references (a), (b), and (c), and are aware of their responsibilities to report questionable intelligence activities.

(5) Referring reports of confirmed or suspected questionable intelligence activities to the GC, or JAG, as appropriate, to determine whether the activity is legal and consistent with applicable policy.

(6) Immediately reporting to the DODGC and ATSD(IO) questionable intelligence activities of a serious nature.

(7) Carrying out other Intelligence Oversight responsibilities set forth in references (a) through (e), and this instruction.

d. The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) shall be responsible for carrying out the functions outlined in subparagraph 9.c., with respect to Marine Corps intelligence component activities, units, and elements and report subject results to NAVINSGEN.

e. The General Counsel of the Navy, in coordination with the Judge Advocate General, shall be responsible for:

(1) Determining whether activities, as defined in paragraph 7 of this instruction, conducted by DON intelligence components, are in compliance with applicable law and regulations.

(2) Referring reports of suspected or confirmed questionable intelligence activities conducted by or on behalf of DON intelligence components to NAVINSGEN for investigation.

(3) Carrying out any applicable responsibilities as set forth in references (a) through (c) and enclosure (3).

10. Reports. Reports required by this instruction are exempt from reports control per SECNAVINST 5214.2B.

11. Authority. References (g) and (h) authorize the Naval Inspector General to issue this instruction and publish changes to it.

SECNAVINST 3820.3E
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R. A. ROUTE
Vice Admiral, U.S. Navy
Naval Inspector General

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<http://neds.daps.dla.mil//>

Naval Inspector General
Intelligence Oversight Inspection Checklist

ACTIVITY/DETACHMENT: _____

POINT(S) OF CONTACT: _____

TODAY'S DATE: _____

INSPECTOR(S): _____

Definition of terms: For purposes of this checklist, the term **Executive Order 12333 compliance** shall include compliance/noncompliance with, or violations of, **Executive Order 12333 and DOD Regulation 5240.1-R of December 1982 (NOTAL)** as well as **unauthorized intelligence missions and functions.**

1. **Intelligence Oversight Policy**

a. Does the Commanding Officer, Executive Officer, Officer in Charge and Senior Intelligence Officer receive annual training on Executive Order 12333 and its DOD and Navy implementing directives/regulations/instructions?

b. Describe the command's Intelligence Oversight program.

c. What are the training, inspection, and reporting mechanisms?

d. Have any violations occurred? If so, when and how reported? What corrective actions were taken?

e. What is the impact of Intelligence Oversight restrictions on the command's mission?

f. Is the official responsible for administering the command's Intelligence Oversight program designated by command instruction (Intelligence Oversight instruction, Standards Operations Regulations Manual, collateral duty list) or designation letter?

g. Does this official have access to all the intelligence collection, retention (databases, files), and dissemination programs within the command for oversight purposes?

h. If not, what mechanism is in place to ensure compliance with Executive Order 12333?

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i. Who certifies compliance with Executive Order 12333 for all command programs? How is compliance for all programs certified to this official?

NOTE: Reports will be sent/forwarded to Echelon 2 if inspecting Echelon 3 or below. Is the quarterly report to NAVINSGEN signed by direction? Who signs? What is the command relationship to the official who certifies compliance?

j. Has the command received any tasking from higher authority that could actually or potentially (or perceived to be) contrary to intelligence restrictions? How was it handled? What was the outcome? How was it documented?

2. Training and Compliance Elements

a. Does the command hold SECNAVINST 3820.3E? DOD Directive 5240.1? DOD Regulation 5240.1-R? Executive Order 12333?

b. Does the command have its own instruction on Intelligence Oversight?

c. Does the command instruction or directive designate the official responsible for conducting/coordinating Intelligence Oversight training?

d. Does the command have NAVINSGEN-N2 (or the appropriate Echelon 2) POC's phone numbers, e-mail addresses and Internet home page address (as applicable)? Do they have the Navy Hotline number? DODIG phone number? ATSD(IO) phone number?

e. How is required annual training conducted and documented? (Review training records for the last 3 years)

f. How does the command review its programs for compliance with Executive Order 12333? How are the results documented? How frequently are programs reviewed?

g. Are contracting activities reviewed for Executive Order 12333 compliance?

h. Are espionage cases reported to NAVINSGEN quarterly per SECNAVINST 3820.3E?

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i. Are significant instances of fraud, waste, abuse, standards of conduct or ethics violations, financial misconduct, or conflicts of interest that impact upon intelligence operations reported to senior echelon or NAVINSGEN quarterly (per SECNAVINST 3820.3E)?

j. What databases does the command have access to that contain information on U.S. persons? How is compliance with Executive Order 12333 ensured? Are there directives or SOPs for preventing Executive Order 12333 violations when accessing these databases?

k. What is the reporting procedure for personnel to report questionable activities?

l. Is the proper channel for reporting Executive Order 12333 violations well publicized within the Command?

NOTE: Are Plan of the Day notes run periodically? Are notices posted on bulletin boards? Are the Executive Officer, Command Master Chief, military Division Officers, and senior civilians conversant with the procedures for reporting Executive Order 12333 violations?

m. Are there any command personnel assigned independent duty or serving in outlying areas? If so, how is Intelligence Oversight training administered? How is Executive Order 12333 compliance monitored and documented?

n. How do personnel receive Intelligence Oversight training when they report aboard? Is it part of the check-in process?

o. How does the command ensure subcomponents are inspected per the timelines established in SECNAVINST 3820.3E? Is an oversight inspection schedule submitted to NAVINSGEN each September per SECNAVINST 3820.3E? Are inspection records current?

3. Potential Problem Areas

- a. Are there any indications of:
1. Potential oversight violations?
 2. Standards of Conduct problems?
 3. Fraud/waste/abuse
 4. Financial misconduct?
 5. Conflict of interest?
 6. Espionage?
 7. Violation of law, directives, policy, or procedures?

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b. Have any of the following special collection techniques been used by the command:

1. Concealed monitoring?
2. Physical searches?
3. Searches and examinations of mail?
4. Physical surveillance?
5. Undisclosed participation in organizations to gain intelligence information?

4. **Personnel and Records Review**

a. Visit operating spaces and randomly question personnel to evaluate their knowledge of intelligence activities.

b. Examine intelligence files for compliance with collection and retention criteria.

c. Is the annual training required by SECNAVINST 3820.3E reported in a timely manner by subordinate commands? How are they monitored by the Echelon 2 command?

5. **Command Feedback.** Does the command have any recommendations for improving the Intelligence Oversight process?

Naval Inspector General
Intelligence Oversight Report (Format and Content)

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Ser/

From: Reporting Command
To: Naval Inspector General (ATTN: N2)
Subj: QUARTERLY INTELLIGENCE OVERSIGHT REPORT FOR ___ QUARTER/
FISCAL YEAR ___
(e.g. *QUARTERLY INTELLIGENCE OVERSIGHT REPORT FOR*
4RD QUARTER/FISCAL YEAR 2005)
Ref: (a) SECNAVINST 3820.3E

1. Per reference (a), the following report is provided.
2. (In paragraph 2, identify any subordinate commands that were inspected during the quarter in the following format.)

e.g. The following Intelligence Oversight inspections were conducted during this quarter:

<u>COMMAND</u>	<u>INSPECTION DATE</u>
Command Alfa	12 AUG 05
Command Bravo Det One	15 AUG 05

3. (In paragraph 3, discuss any significant Intelligence Oversight program-related activities that occurred during this quarter - e.g. training initiatives, awareness, indoctrination, familiarization, published documents, new instructions or policy.)
4. (In paragraph 4, identify/discuss any recommendations (if any) as to how the Intelligence Oversight system or overall program may be improved.)
5. (In paragraph 5, provide a statement describing those activities (if any) that have come to the attention of the command during subject quarter, which are reasonably believed to be illegal or contrary to Executive Order or Presidential directive, or applicable DOD policy. Be sure to include an explanation of all action(s) taken at all levels, as applicable, with respect to such activities.)

Enclosure (2)

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6. (In paragraph 6, provide a statement describing the status of any earlier (outstanding) reports of confirmed or suspected questionable intelligence activity that have already been reported during a previous quarter.)

7. (In paragraph 7, identify your command Intelligence Oversight point of contact - to include command representative/name, phone number, fax number and e-mail address, if available.)

Y.R. SIGNATURE

**MEMORANDUM OF UNDERSTANDING:
REPORTING OF INFORMATION CONCERNING FEDERAL CRIMES**

I. Introduction

Section 1.7(a) of Executive Order (E.O.) 12333 requires senior officials of the Intelligence Community to -

report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures.

Title 28, United States Code, Section 535(b) requires that

[a]ny information, allegation, or complaint received in a department or agency of the executive branch of the Government relating to violations of title 18 involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, unless -

(1) the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law; or

(2) as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.

This Memorandum of Understanding (MOU) sets forth the procedures by which each agency and organization within the Intelligence Community shall report to the Attorney General and to federal investigative agencies information concerning possible federal crimes by employees of an intelligence agency or organization, or violations of specified federal criminal laws by any other person, which information was collected by it during the performance of its designated intelligence activities, as those activities are defined in E.O. 12333, §§ 1.8-1.13.

II. Definitions

A. "Agency," as that term is used herein, refers to those agencies and organizations within the Intelligence Community as defined in E.O. 12333, § 3.4(f), but excluding the intelligence elements of the Federal Bureau of Investigation and the Department of the Treasury.

B. "Employee," as that term is used herein, means:

1. a staff employee, contract employee, asset, or other person or entity providing service to or acting on behalf of any agency within the intelligence community;
2. a former officer or employee of any agency within the

intelligence community for purposes of an offense committed during such person's employment, and for purposes of an offense involving a violation of 18 U.S.C. § 207 (Conflict of interest); and

3. any other Government employee on detail to the Agency.
- C. "General Counsel" means the general counsel of the Agency or of the Department of which it is a component or an oversight person designated by such person to act on his/her behalf, and for purposes of these procedures may include an Inspector General or equivalent official if agency or departmental procedures so require or if designated by the agency or department head.
- D. "Inspector General" or "IG" means the inspector general of the Agency or of the department of which the Agency is a component.
- E. "Reasonable basis" exists when there are facts and circumstances, either personally known or of which knowledge is acquired from a source believed to be reasonably trustworthy, that would cause a person of reasonable caution to believe that a crime has been, is being, or will be committed. The question of which federal law enforcement or judicial entity has jurisdiction over the alleged criminal acts shall have no bearing upon the issue of whether a reasonable basis exists.

III. Scope

- A. This MOU shall not be construed to authorize or require the Agency, or any person or entity acting on behalf of the Agency, to conduct any investigation not otherwise authorized by law, or to collect any information in a manner not authorized by law.
- B. This MOU ordinarily does not require an intelligence agency or organization to report crimes information that was collected and disseminated to it by another department, agency, or organization. Where, however, the receiving agency is the primary or sole recipient of that information, or if analysis by the receiving agency reveals additional crimes information, the receiving agency shall be responsible for reporting all such crimes information in accordance with the provisions of this MOU.
- C. This MOU does not in any way alter or supersede the obligation of an employee of an intelligence agency to report potential criminal behavior by other employees of that agency to an IG, as required either by statute or by agency regulations, nor affect any protections afforded any persons reporting such behavior to an IG. Nor does this MOU affect any crimes reporting procedures between the IG Offices and the Department of Justice.
- D. This MOU does not in any way alter or supersede any obligation of a department or agency to report to the Attorney General criminal behavior by Government employees not employed by the intelligence community, as required by 28 USC §535.

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- E. This MOU does not affect the obligation to report to the Federal Bureau of Investigation alleged or suspected espionage activities as required under Section 811(c) of the Intelligence Authorization Act of 1995.
- F. The following crimes information is exempted from the application of this memorandum if the specified conditions are met:
1. Crimes information that has been reported to an IG;¹
 2. Crimes information received by a Department of Defense intelligence component concerning a Defense intelligence component employee who either is subject to the Uniform Code of Military Justice or is a civilian and has been accused of criminal behavior related to his/her assigned duties or position, if (a) the information is submitted to and investigated by the appropriate Defense Criminal Investigative Organization, and (b) in cases involving crimes committed during the performance of intelligence activities, the General Counsel provides to the Department of Justice a report reflecting the nature of the charges and the disposition thereof;
 3. Information regarding non-employee crimes listed in Section VII that is collected by the intelligence component of a Department also having within it a law enforcement organization where (a) the crime is of the type that the Department's law enforcement organization has jurisdiction to investigate; and (b) the Department's intelligence organization submits that crimes information to the Department's law enforcement organization for investigation and further handling in accordance with Department policies and procedures.²
 4. Crimes information regarding persons who are not employees of the Agency, as those terms are defined in Section II, that involve crimes against property in an amount of \$1,000 or less, or, in the case of Agency employees, crimes against property in an amount of \$500 or less. As to other relatively minor offenses to which this MOU would ordinarily apply, but which, in the General Counsel's opinion, do not warrant reporting pursuant to this MOU, the General Counsel may

¹ If, however, the IG determines that the reported information is not properly subject to that office's jurisdiction, but that such information may be reportable pursuant to this MOU, the IG may forward the information to the DOJ in compliance with these procedures. Alternatively, the IG may transmit the information to the Agency's General Counsel for a determination of what response, if any, is required by this MOU.

² This MOU does not affect the crimes reporting obligations of any law enforcement and other non-intelligence components of a department, agency, or organization.

orally contact the Assistant Attorney General, Criminal Division, or his/her designee. If the Department of Justice concurs with that opinion, no further reporting under these procedures is required. The General Counsel shall maintain an appropriate record of such contacts with the Department. If deemed appropriate by the General Counsel, he/she may take necessary steps to pass such information to the appropriate law enforcement authorities; or

5. Information, other than that relating to homicide or espionage, regarding crimes that were completed more than ten years prior to the date such allegations became known to the Agency. If, however, the Agency has a reasonable basis to believe that the alleged criminal activities occurring ten or more years previously relate to, or are a part of, a pattern of criminal activities that continued within that ten year interval, the reporting procedures herein will apply to those activities.
- F. The procedures set forth herein are not intended to affect whether an intelligence agency reports to state or local authorities activity that appears to constitute a crime under state law. In the event that an intelligence agency considers it appropriate to report to state or local authorities possible criminal activity that may implicate classified information or intelligence sources or methods, it should inform the AAG, or the designated Deputy AAG, Criminal Division, in accordance with paragraph VIII.C, below; the Criminal Division will consult with the intelligence agency regarding appropriate methods for conveying the information to state or local authorities. In the event that an intelligence agency considers it appropriate to report to state or local authorities possible criminal activity that is not expected to implicate classified information or intelligence sources or methods, it should nevertheless provide a copy of such report to the AAG, or to the designated Deputy AAG, Criminal Division.

IV. General Considerations: Allegations of Criminal Acts Committed By Agency Employees

- A. This Agreement requires each employee of the Agency to report to the General Counsel or IG facts or circumstances that reasonably indicate to the employee that an employee of an intelligence agency has committed, is committing, or will commit a violation of federal criminal law.³

³ When a General Counsel or IG has received information concerning alleged violations of federal law by an employee of another intelligence community agency, and those violations are not exempted under section III.E.4, hereof, the General Counsel shall notify in writing the General Counsel of the accused employee's agency. The latter General Counsel must then determine whether this MOU requires the allegations to be reported to the Department of Justice.

B. Except as exempted in Section III, when the General Counsel has received allegations, complaints or information (hereinafter allegations) that an employee of the Agency may have violated, may be violating, or may violate a federal criminal statute, that General Counsel should within a reasonable period of time determine whether there is a reasonable basis to believe that a federal crime has been, is being, or will be committed and that it is a crime which, under this memorandum, must be reported. The General Counsel may, as set forth in Section V, below, conduct a preliminary inquiry for this purpose. If a preliminary inquiry reveals that there is a reasonable basis for the allegations, the General Counsel will follow the reporting procedures set forth in Section VIII, below. If a preliminary inquiry reveals that the allegations are without a reasonable basis, the General Counsel will make a record, as appropriate, of that finding and no reporting under these procedures is required.

V. Preliminary Inquiry Into Allegations Against an Agency Employee

A. The General Counsel's preliminary inquiry regarding allegations against an Agency employee will ordinarily be limited to the following:

1. review of materials submitted in support of the allegations;
2. review of Agency indices, records, documents, and files;
3. examination of premises occupied by the Agency;
4. examination of publicly available federal, state, and local government records and other publicly available records and information;
5. interview of the complainant; and
6. interview of any Agency employee, other than the accused, who, in the opinion of the General Counsel, may be able to corroborate or refute the allegations.

B. Where criminal allegations against an Agency employee are subject to this MOU, an interview of that employee may only be undertaken in compliance with the following conditions:

1. Where the crime alleged against an Agency employee does not pertain to a serious felony offense,⁴ a responsible Agency

⁴ A "serious felony offense" includes any offense listed in Section VII, hereof, violent crimes, and other offenses which, if committed in the presence of a reasonably prudent and law-abiding person, would cause that person immediately to report that conduct directly to the police. For purposes of this MOU, crimes against government property that do not exceed \$5,000 and are not part of a pattern of continuing behavior or of a criminal conspiracy shall not be considered serious felony offenses.

official may interview the accused employee; however, such interview shall only be conducted with the approval of the General Counsel, the IG, or, as to Defense and military employees, the responsible military Judge Advocate General or the responsible Defense Criminal Investigative Organization.

2. Where the crime alleged against an Agency employee is a serious felony offense, the Agency shall ordinarily not interview the accused employee, except where, in the opinion of the General Counsel, there are exigent circumstances⁵ which require that the employee be interviewed. If such exigent circumstances exist, the General Counsel or other attorney in the General Counsel's office may interview the accused employee to the extent reasonably necessary to eliminate or substantially reduce the exigency.
3. In all other cases of alleged serious felonies, the General Counsel, or the General Counsel's designee, may interview the accused employee only after consultation with the Agency's IG, a Defense Criminal Investigative Organization (for Defense and military employees), or with the Department of Justice regarding the procedures to be used during an interview with the accused employee.

Any interview of an accused employee that is undertaken shall be conducted in a manner that does not cause the loss, concealment, destruction, damage or alteration of evidence of the alleged crime, nor result in the immunization of any statements made by the accused employee during that interview. The Agency shall not otherwise be limited by this MOU either as to the techniques it is otherwise authorized to use, or as to its responsibility to provide for its security functions pursuant to E.O. 12333.

VI. General Considerations: Allegations Of Criminal Acts Committed By Non-Employees

- A. This MOU requires each employee of the Agency to report, to the General Counsel or as otherwise directed by the Department or Agency head, facts or circumstances that reasonably indicate to the employee that a non-employee has committed, is committing, or will commit one or more of the specified crimes in Section VII, below.
- B. When an Agency has received information concerning alleged violations of federal law by a person other than an employee of an intelligence agency, and has determined that the reported information provides a reasonable basis to conclude that a violation of one of the specified crimes in Section VII has occurred, is

⁵ "Exigent circumstances" are circumstances requiring prompt action by the Agency in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; or to prevent the compromise, loss, concealment, destruction, or alteration of evidence of a crime.

occurring, or may occur, the Agency shall report that information to the Department of Justice in accordance with Sections VIII or IX, below.

VII. Reportable Offenses by Non-Employees

- A. Unless exempted under Section III, above, allegations concerning criminal activities by non-employees are reportable if they pertain to one or more of the following specified violations of federal criminal law:
1. Crimes involving intentional infliction or threat of death or serious physical harm. These include but are not limited to homicide, kidnapping, hostage taking, assault (including sexual assault), or threats or attempts to commit such offenses, against any person in the United States or a U.S. national or internationally protected person (as defined in 18 U.S.C. § 1116(b)(4)), whether in the United States or abroad.
 2. Crimes, including acts of terrorism, that are likely to affect the national security, defense or foreign relations of the United States. These may include but are not limited to:
 - a. Espionage; sabotage; unauthorized disclosure of classified information; seditious conspiracies to overthrow the government of the United States; fund transfers violating the International Emergency Economic Powers Act; providing material or financial support to terrorists; unauthorized traffic in controlled munitions or technology; or unauthorized traffic in, use of, or contamination by nuclear materials, chemical or biological weapons, or chemical or biological agents; whether in the United States or abroad;
 - b. Fraudulent entry of persons into the United States, the violation of immigration restrictions or the failure to register as a foreign agent or an intelligence trained agent;
 - c. Offenses involving interference with foreign governments or interference with the foreign policy of the United States whether occurring in the United States or abroad;
 - d. Acts of terrorism anywhere in the world which target the U. S. government or its property, U.S. persons, or any property in the United States, or in which the perpetrator is a U.S. person; aircraft hijacking; attacks on aircraft or international aviation facilities; or maritime piracy;
 - e. The unauthorized transportation or use of firearms or explosives in interstate or foreign commerce.
 3. Crimes involving foreign interference with the integrity of U.S. governmental institutions or processes. Such crimes may include:

- a. Activities to defraud the U.S. government or any federally protected financial institution, whether occurring in the United States or abroad;
 - b. Obstruction of justice or bribery of U.S. officials or witnesses in U.S. proceedings, whether occurring in the United States or abroad;
 - c. Interference with U.S. election proceedings or illegal contributions by foreign persons to U.S. candidates or election committees;
 - d. Perjury in connection with U.S. proceedings, or false statements made in connection with formal reports or applications to the U.S. government, or in connection with a formal criminal or administrative investigation, whether committed in the United States or abroad;
 - e. Counterfeiting U.S. obligations or any other governmental currency, security or identification documents used in the United States, whether committed in the United States or abroad; transactions involving stolen governmental securities or identification documents or stolen or counterfeit non-governmental securities.
4. Crimes related to unauthorized electronic surveillance in the United States or to tampering with, or unauthorized access to, computer systems.
 5. Violations of U.S. drug laws including: the cultivation, production, transportation, importation, sale, or possession (other than possession of user quantities) of controlled substances; the production, transportation, importation, and sale of precursor or essential chemicals.
 6. The transmittal, investment and/or laundering of the proceeds of any of the unlawful activities listed in this Section, whether committed in the United States or abroad.
- B. Any conspiracy or attempt to commit a crime reportable under this section shall be reported if the conspiracy or attempt itself meets the applicable reporting criteria.
- C. The Attorney General also encourages the Agency to notify the Department of Justice when the Agency's otherwise routine collection of intelligence in accordance with its authorities results in its acquisition of information about the commission of other serious felony offenses by non-employees, e.g., violations of U.S. environmental laws relating to ocean and inland water discharging or dumping, drinking water contamination, or hazardous waste disposal, and crimes involving interference with the integrity of U.S. governmental institutions or processes that would not otherwise be reportable under Section VII.A.3.

VIII. Procedures for Submitting Special Crimes Reports

- A. Where the Agency determines that a matter must be the subject of a special report to the Department of Justice, it may, consistent with paragraphs VIII.B and VIII.C, below, make such a report (1) by letter or other, similar communication from the General Counsel, or (2) by electronic or courier dissemination of information from operational or analytic units, provided that in all cases, the subject line and the text of such communication or dissemination clearly reflects that it is a report of possible criminal activity. The Department of Justice shall maintain a record of all special crimes reports received from the Agency.
- B. Where the Agency determines that a matter must be the subject of a special report to the Department of Justice, and where the Agency further determines that no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence operations would not be jeopardized thereby, the Agency will report the matter to the federal investigative agency having jurisdiction over the criminal matter. A copy of that report must also be provided to the AAG, or designated Deputy AAG, Criminal Division.
- C. Where the Agency determines that further investigation or prosecution of a matter that must be specially reported may result in a public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations, the Agency shall report the matter to the AAG or designated Deputy AAG, Criminal Division. A copy of that report must also be provided to the Assistant Director, Criminal Investigations or National Security Divisions, Federal Bureau of Investigation, or in the event that the principal investigative responsibility resides with a different federal investigative agency, to an appropriately cleared person of equivalent position in such agency. The Agency's report should explain the security or operational problems that would or might arise from a criminal investigation or prosecution.
- D. Written documents associated with the reports submitted pursuant to this section may refer to persons who are the subjects of the reports by non-identifying terms (such as "John Doe # _____"). The Agency shall advise the Department of Justice or relevant federal investigative agency of the true identities of such persons if so requested.
- E. It is agreed that, in acting upon information reported in accordance with these procedures, the Agency, the Department of Justice and the relevant federal investigative agencies will deal with classified information, including sources and methods, in a manner consistent with the provisions of relevant statutes and Executive Orders, including the Classified Information Procedures Act.

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IX. When Routine Dissemination May be Used in Lieu of A Special Crimes Report

A. Except as set forth in IX.B, below, the Agency may report crimes information regarding non-employees to the Department of Justice by routine dissemination, provided that:

1. the crimes information is of the type that is routinely disseminated by the Agency to headquarters elements of cognizant federal investigative agencies;
2. the criminal activity is of a kind that is normally collected and disseminated to law enforcement by the Agency (e.g., drug trafficking, money laundering, terrorism or sanctions violations); and
3. the persons or entities involved are members of a class that are routinely the targets or objects of such collection and dissemination.

If all three of these conditions are met, the Agency may satisfy its crimes reporting obligation through routine dissemination to the Department of Justice, Criminal Division, and to all cognizant federal law enforcement agencies, which shall retain primary responsibility for review of disseminated information for evidence of criminal activity. In all other cases, the special reporting procedures in Section VIII shall apply. As requested by the Department of Justice, the Agency will coordinate with the Department to facilitate the Department's analytical capabilities as to the Agency's routine dissemination of crimes information in compliance with this MOU.

B. Routine dissemination, as discussed in IX.A, above, may not be used in lieu of the special reporting requirements set forth herein as to the following categories of criminal activities:

1. Certain crimes involving the intentional infliction or threat of death or serious physical harm (VII.A.1, above);
2. Espionage; sabotage; unauthorized disclosure of classified information; and seditious conspiracies to overthrow the government of the United States (VII.A.2.a, above); and
3. Certain crimes involving foreign interference with the integrity of U.S. governmental institutions or processes (VII.A.3.b and c, above).

X. Other Agency Responsibilities

A. The Agency shall develop internal procedures in accordance with the provisions of Sections VIII and IX for the reporting of criminal information by its employees as required under Sections IV.A and VI.A.

B. The Agency shall also establish initial and continuing training to

ensure that its employees engaged in the review and analysis of collected intelligence are knowledgeable of and in compliance with the provisions of this MOU.

XI. Relation to Other Procedures and Agreements

- A. If the Agency desires, for administrative or security reasons, to conduct a more extensive investigation into the activities of an employee relating to any matter reported pursuant to this MOU, it will inform the Department of Justice and the federal investigative agency to which the matter was reported. The Agency may also take appropriate administrative, disciplinary, or other adverse action at any time against any employee whose activities are reported under these procedures. However, such investigations or adverse actions shall be coordinated with the proper investigative or prosecuting officials to avoid prejudice to any criminal investigation or prosecution.
- B. Nothing in these procedures shall be construed to restrict the exchange of information among the Agencies in the Intelligence Community or between those Agencies and law enforcement entities other than the Department of Justice.
- C. This MOU supersedes all prior crimes reporting memoranda of understanding executed pursuant to the requirements of E.O. 12333. To the extent that there exist any conflicts between other Agency policies or directives and the provisions herein, such conflicts shall be resolved in accordance with the provisions of this MOU. However, this MOU shall not be construed to modify in any way the August 1984 Memorandum of Understanding between the Department of Defense and the Department of Justice relating to the investigation and prosecution of certain crimes.
- D. The parties understand and agree that nothing herein shall be construed to alter in any way the current routine dissemination by the Agency of intelligence information, including information regarding alleged criminal activities by any person, to the Department of Justice or to federal law enforcement agencies.

XII. Miscellaneous

- A. This MOU shall become effective as to each agency below as of the date signed by the listed representative of that agency.
- B. The Intelligence-Law Enforcement Policy Board, within one year of the date of the effective date hereof, and as it deems appropriate thereafter, will appoint a working group consisting of an equal number of representatives from the intelligence and law enforcement communities, including the Criminal Division. That working group shall do the following:
 - 1. review the Agency's implementation of Sections III.F and IV.B, hereof;

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2. consider whether the crimes reporting requirements of E.O. 12333 and other authorities are being met through the operation of this MOU;
 3. review each of the provisions of this MOU and determine what, if any, modifications thereof should be recommended to the Policy Board, or its successor; and
 4. issue a report to the Policy Board of its findings and recommendations in each of the foregoing categories.
- C. The Policy Board in turn shall make recommendations to the Attorney General, the Director of Central Intelligence, and the heads of the affected agencies concerning any modifications to the MOU that it considers necessary.

James M. Reno
 Attorney General
 Date: August 3, 1995

William J. Perry
 Secretary of Defense
 Date: 11 AUG 1995

John Deutch
 Director of Central
 Intelligence
 Date: 3 August 1995

Thomas M. McConnell
 Director, National Security Agency
 Date: 22 AUG 95

Michael J. Munson
 Director, Defense
 Intelligence Agency
 Date: 2 Aug 95

John T. Gorb
 Assistant Secretary of State,
 Intelligence and Research
 Date: 8/14/95

Kenneth E. Baker
 Director, Office Of Non-Prolif-
 eration and National Security,
 Department of Energy
 Date: 15 Aug 95