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1 RPTS BOYUM

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5 HEARING ON H.R. 1013 AND OTHER PROPOSALS WHICH
6 ADDRESS THE ISSUE OF AFFORDING PRIOR NOTICE OF
7 COVERT ACTIONS TO THE CONGRESS

8

9 Wednesday, April 1, 1987

10

11 U.S. House of Representatives,
12 Permanent Select Committee on Intelligence,
13 Subcommittee on Legislation,
14 Washington, D.C.

15

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17 The Subcommittee met, pursuant to call, at 9:00 a.m., in
18 Room 2247, Rayburn House Office Building, Hon. Matt McHugh
19 [Chairman of the Subcommittee] presiding.

20 Present: Representatives McHugh [presiding], Stokes,
21 Kastenmeier, Kennelly and Livingston.

22 Also Present: Representatives Beilenson, Hyde, Wright and
23 Michel.

24 Staff Present: Michael J. O'Neil, Chief Counsel; Thomas
25 R. Smeeton, Associate Counsel; Bernard Raimo, Jr., Counsel;

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26 Robert J. Surette, Professional Staff Member; Jeanne M.
27 McNally, Clerk; Sharon Curcio, Assistant Clerk; Merritt R.
28 Clark, Chief, Registry/Security; Lawrence D. Covington,
29 Assistant, Registry/Security.

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30 Chairman MCHUGH. The Committee will please come to order.
31 Today the Subcommittee begins two days of hearings on the
32 subject of congressional oversight of covert operations.
33 More specifically, we will be examining whether existing
34 procedures governing the President's authorization of covert
35 operations, as well as his notification of and consultation
36 with Congress, are adequate to assure meaningful
37 congressional oversight of such operations.

38 Despite the fact that covert operations represent only a
39 small fraction of the intelligence community's work, they
40 tend to generate the most attention and controversy when
41 publicly revealed. We would all agree that such operations
42 are appropriate in certain cases. However, because of their
43 sensitivity and potential for controversy at home, it is
44 particularly important that covert operations be soundly
45 conceived and be seen as advancing the legitimate interests
46 of the United States if they become publicly known.

47 It is for this reason, as well as Congress' right to share
48 in the establishment of U.S. foreign policy, that the
49 intelligence committees are involved in the oversight of
50 covert operations.

51 The primary legislation governing congressional oversight
52 is the Hughes-Ryan amendment of 1974, as amended by the
53 Intelligence Oversight Act of 1980.

54 The statute then provides that the intelligence committees

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55 of the Congress must be kept "fully and currently informed
56 of all intelligence activities...including any significant
57 anticipated intelligence activity..." This provision
58 establishes the general requirement that the intelligence
59 committees must be given prior notice of any covert
60 operation.

61 However, the Oversight Act then goes on to create two
62 exceptions to the general rule. First, "if the President
63 determines it is essential...to meet extraordinary
64 circumstances affecting vital interests of the United
65 States," the President may restrict prior notice to the
66 House and Senate leadership and the chairman and ranking
67 minority members of the two intelligence committees--this
68 group of eight in the leadership is sometimes referred to as
69 the "Gang of Eight".

70 Second, the Act recognizes that in some cases the
71 President may not give prior notice to anyone, but in those
72 cases the Act requires the President to "fully inform the
73 intelligence committees in a timely fashion..."

74 This second exception to the general rule requiring prior
75 notice will be a main focus of these hearings. In the case
76 of the President's decision to covertly sell military arms
77 to Iran, he signed his Finding authorizing the operation in
78 January of 1986. The President not only failed to provide
79 anyone in Congress with notice of this operation prior to

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80 its inception, he never provided notice. It was not until
81 November of 1986 that anyone in Congress learned of this
82 covert operation, and then only because a magazine in the
83 Middle East disclosed it.

84 Our purpose in these hearings will not be to revisit the
85 entire Iran-contra episode. That is for other committees to
86 do. However, inasmuch as the President may decide to
87 initiate other covert operations, it is important for the
88 intelligence committees to determine whether existing law
89 contributed to the breakdown of congressional oversight in
90 the case of the Iran arms sales.

91 Of course, many of us in Congress believe that the
92 President should have given the intelligence committees
93 prior notice of his intent to covertly sell arms to Iran.
94 If he had done so, Members on both sides of the aisle surely
95 would have expressed strong objections. While these
96 objections would have been advisory only, they might have
97 helped the President avoid embarking on a policy which was
98 so deeply flawed in its conception and its implementation.
99 This is a classic example of why prior notification and
100 consultation with the intelligence committees are not only a
101 benefit for the committees, but a benefit for the President
102 as well.

103 However, as previously noted, current law does not require
104 the President to give prior notice in all cases. He may

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105 defer notice until after the operation has begun, but in
106 those cases he must provide notice "in a timely fashion."
107 The problem here is that appropriate cases for deferring
108 notice are not defined, nor is there a definition of what
109 constitutes timely notice after the fact.

110 The Subcommittee has before it today two bills that have
111 been introduced to deal with these questions. One is
112 H.R.1371, which was introduced by a former member of the
113 Intelligence Committee, Mr. Mineta of California. It would
114 require the President to provide prior notice of all covert
115 activities. The other bill is H.R.1013, which was
116 introduced by Mr. Stokes of Ohio, who is the Chairman of the
117 House Intelligence Committee, and Mr. Boland of
118 Massachusetts, its first Chairman. It has been cosponsored
119 by all of the Majority Members of this Committee and by 49
120 of our colleagues in the House.

121 H.R.1013 is designed to eliminate the ambiguities in
122 current law. It would retain the general requirement that
123 the two intelligence committees be given prior notice of all
124 covert activities, as well as two exceptions to this general
125 rule. The President would continue to have discretion to
126 restrict prior notice to the so-called Gang of Eight where
127 required by "extraordinary circumstance affecting vital
128 interests of the United States" However, the President
129 could withhold prior notice only where such extraordinary

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130 | circumstances exist and where 'time is of the essence';
131 | and in such cases notice would have to be given not more
132 | than 48 hours after the President has signed his finding or
133 | the intelligence activity has begun.

134 | Thus under this bill timely notice would be specifically
135 | defined. The bill would also strike the preambular clauses
136 | of the Oversight Act, which the authors maintain adds
137 | nothing to the statute's clarity.

138 | H.R. 1013 would also require that findings by the President
139 | be in writing, and that copies be provided to the two
140 | intelligence committees, and to the Vice President, the
141 | Director of Central Intelligence, and and the Secretaries of
142 | State and Defense.

143 | The Committee has a very distinguished group of witnesses
144 | to address these issues. We are very appreciative that they
145 | have taken time to be with us. We look forward to the
146 | testimony.

147 | Before calling our first distinguished witness, I would
148 | ask Mr. Livingston if he has any opening comments.

149 | [The full statement of Mr. McHugh follows:]

150

151 | ***** INSERT 1-1 *****

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152 Mr. LIVINGSTON. Thank you very much, Mr. Chairman.

153 I have no formal statement. While I sympathize with the
154 motivations of the Members who have authored these bills
155 that are before the Committee, and we agree that certain
156 facts uncovered in recent months might prompt such
157 legislation, I have grave reservations about the
158 implementation of legislation of this sort, and its
159 potential impact upon the powers of the President as
160 Commander-in-Chief.

161 So I am looking forward to hearing the witnesses. I look
162 forward to asking questions, and I hope that we will indeed
163 unveil some facts which might broaden our perspective of
164 what is a very serious matter. I appreciate your giving me
165 this opportunity.

166 Chairman MCHUGH. Thank you.

167 I would also like to ask our Chairman, Mr. Stokes, who is
168 the primary author of this bill, if he would like to make
169 any opening remarks.

170 Mr. STOKES. Mr. Chairman, I do have an opening statement
171 but I would yield if you would like to recognize the Speaker
172 of the House, and I can yield my statement at this time.

173 Chairman MCHUGH. Without objection, that would be made
174 part of the record.

175 [The statement of Mr. Stokes follows:]

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177

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178 Chairman MCHUGH. At this time, we would ask the
179 distinguished Speaker of the House, Jim Wright of Texas, to
180 lead off in our witnesses. The Speaker has been very
181 interested in a very capable intelligence capacity and in
182 the oversight function which Congress must necessarily
183 exercise.

184 As Majority Leader he served ex officio as a member of the
185 Intelligence Committee and took part in many of our
186 proceedings. So we are delighted, Mr. Speaker, that you are
187 here with us this morning.

188

189 STATEMENT OF THE HONORABLE JIM WRIGHT, SPEAKER OF THE HOUSE
190 OF REPRESENTATIVES

191

192 Mr. WRIGHT. Thank you. I appreciate the invitation to
193 come and talk with the committee in behalf of this
194 legislation which I think is vitally necessary. As I have
195 observed the operation of the National Security Act,
196 Sections 501 and 502, that it has become painfully apparent
197 to me that certain ambiguities have been exploited
198 permitting activity to occur which clearly was not intended
199 in the original legislation.

200 The bill before you makes two very simple changes, both of
201 them quite clearly consistent with the original intent of
202 Congress, in creating this committee and this procedure for

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203 consultation.

204 I recall very clearly when the procedure was created in
205 law. It was done so at the request of the Chief Executive
206 who felt that representatives of the Executive Branch of
207 government were being required to report to a proliferating
208 number of committees and subcommittees in Congress. The
209 President himself wanted one repository of this type of
210 information.

211 The Speaker, Speaker O'Neill, very assiduously interviewed
212 and selected Members to serve on this committee. One of the
213 qualifications for service on this committee was that a
214 person be capable of maintaining secrecy and silence, not of
215 leaking information given to the committee by the Executive
216 Branch of government with regard to classified activities.

217 At the same time, it was felt that the creation of the
218 committee itself very clearly implied that the members of
219 the committee should serve as one part of a two-way conduit
220 with the Executive Branch and that we could know of things
221 in advance in order that we might give our advice to the
222 Executive Branch of government, advice and consent being
223 part and parcel of the operation between the two branches.

224 Now, I am quite sure in my mind that if the provisions
225 intended in the law--and I think unambiguously contained in
226 the law--had been followed as Congress intended, most
227 assuredly members of the Legislative Branch of government

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228 would have expressed our reservations to the Chief Executive
229 about the appropriateness of this covert plan to sell arms
230 to Iran, and quite possibly the entire embarrassment which
231 has been visited upon our country might have been avoided.

232 It was that kind of thing that was anticipated in the
233 requirement that there be reports to some limited number of
234 people.

235 Now, this bill, the Stokes bill, would modify section 662
236 of the Foreign Assistance Act to require that all covert
237 action findings be in writing. These written finding would
238 have to be provided to the House and Senate Intelligence
239 Committees, the Director of Central Intelligence, and the
240 statutory members of the National Security Council prior to
241 initiation of the proposed covert action.

242 The bill would retain a provision in existing law which in
243 certain circumstances permits the required prior notice to
244 be given to 8 specified leaders of Congress, a bipartisan
245 group of people, rather than to the full membership of both
246 intelligence committees as prior notice.

247 I would contend from my reading of the law that what was
248 expressly anticipated was no situation at all in which prior
249 notice could be withheld from any congressional person. I
250 don't believe that the reading of section 501, or section
251 502 of our Act, anticipates any situation whatever in which
252 all Members of Congress may be excluded from knowledge,

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253 prior knowledge, of what is going on because section 501B in
254 reference to the requirement that a select committee on
255 intelligence of the Senate and the House be fully and
256 currently informed, is modified only to the extent that if
257 the President determines that it is essential to limit prior
258 notice, not to exclude prior notice, but to limit prior
259 notice, to meet extraordinary circumstances affecting vital
260 interests of the United States, then such notice shall be
261 limited to the Chairman and Ranking Minority Members of the
262 Intelligence Committees, the Speaker and Minority Leader of
263 the House of Representatives, and Majority and Minority
264 Leaders of the Senate.

265 It shall be limited to those people. Not shall be
266 excluded, not shall be withheld, but shall be limited to
267 those people if these exigencies require it to be limited
268 and time is such that members of the Committee cannot be
269 notified.

270 Now, there have been situations, two of which I can recite
271 to you, in which these leaders were informed in a prior way
272 when it clearly was not possible nor perhaps advisable to
273 notify the full Committee in advance.

274 One of them involved the invasion of Grenada, and on the
275 eve of that action the President sent representatives to the
276 Capitol and asked certain ones of us to follow certain
277 procedures by which we assembled in the White House that

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278 evening rather late, and discussed with the President and
279 the Secretary of Defense and Secretary of State and certain
280 others what was about to happen. What did happen occurred
281 at approximately 5 a.m. and we were learning of this about
282 10:30 p.m. or 10:00 p.m. when our conversations were going
283 on. That was prior notice, it complied with the law.

284 Surely in a matter of that kind prior notice could be and
285 properly was limited, but it wasn't excluded, it wasn't
286 withheld. It was given.

287 A second instance involved the bombing of Libya. I was
288 out of town, I was at Ft. Worth when this occurred. I
289 received a notification that I should find a secure
290 telephone so that at 4 o'clock in the afternoon I might talk
291 with people in the Central Intelligence Agency and
292 representatives of the White House.

293 I did so, the only secure telephone which I could
294 establish in my home community being at the FBI in one of
295 the Federal buildings and I did so and completed the
296 telephone call and was advised of what was getting ready to
297 happen. It happened within 2 hours of my being notified,
298 perhaps an hour-and-a-half.

299 But it did constitute prior notice. Prior notice was
300 given.

301 So it seems to me that this timely notice then was given
302 in each of those instances to the committee after the action.

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303 had begun. That was in keeping with the statute.

304 In the case of the Iran arms sales, however, there was no
305 prior notice given to anybody. Nobody was advised. No
306 consultation was held. No congressional party was notified.
307 Nobody knew anything about it until of course it was
308 printed some 10 months later in a Middle Eastern newspaper.
309 And then at that point the so-called timely notice began to
310 take place.

311 Obviously that is not what is intended by the statute, ten
312 months later after people find out about it through a leak
313 in the newspaper. That is not timely notice.

314 So I think it must become necessary that to avoid those
315 ambiguities or any contention on the part of anybody in the
316 Executive Branch, that timely notice is fulfilled by
317 withholding all information until after a leak establishes
318 public knowledge we must define what constitutes timely
319 notice. There has been a breach and I think this bill
320 properly defines timely notice as not more than 48 hours.
321 That would be reasonable and it seems to me that in the
322 interests of maintaining the right and proper balance of
323 powers between the Executive and Legislative Branches, we
324 must take this kind of action.

325 Even in those instances in which the statute has permitted
326 prior notice to be limited to certain few, even then it is
327 quite clear that the statute requires that timely notice be

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328 given and that it anticipates that timely notice would be
329 maybe a couple days, not months surely, not weeks, and most
330 assuredly not months.

331 The President shall fully inform the intelligence
332 committees. in a timely fashion of intelligence operations
333 in foreign countries for which prior notice was not given
334 under subsection A, and shall provide a statement of the
335 reasons for not giving prior notice. Well, this bill in my
336 opinion should not have been necessary, Mr. Chairman; as
337 someone who has served ex officio on this select committee
338 for nearly 10 years, I can state from experience that when
339 the present legislation was enacted the Congress intended it
340 be notified before any covert actions took place.

341 When we use this term "'timely fashion'" in the law with
342 regard to those extraordinary circumstances when time did
343 not permit prior notification, the Congress meant a couple
344 days, not months.

345 The colossal misjudgments made by some in the
346 Administration in the arms deal with Iran confirm the need
347 now I think for legislation tightening this law.

348 It is my honest belief that had the President notified the
349 Congress as to what was intended in Iran, he might have
350 gained a clearer understanding of the risks involved. Had
351 the Congress received prior notification, it is certain that
352 some of us would have advised against that unfortunate

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353 policy. The United States government might well have been
354 spared this embarrassing and costly episode which continues
355 to undermine our foreign policy.

356 So, Mr. Chairman, I commend your leadership in holding
357 these hearings on this important matter, and I know that you
358 are planning expeditious action which this issue warrants.

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359 Chairman MCHUGH. Thank you very much, Mr. Speaker, for
360 your testimony. We will proceed under the five-minute rule
361 with questions.

362 Mr. Speaker, I think some will argue that in certain
363 limited cases, particularly where life is at stake, that is
364 where agents are asked to undertake especially risky
365 operations, the President should have discretion not only to
366 withhold prior notice, but also to withhold notice beyond 48
367 hours.

368 That is to give the President some flexibility beyond that
369 limitation of time when he believes that there is an
370 especially risky situation for agents conducting the
371 operation.

372 Do you believe there is any justification for giving the
373 President that flexibility in that type of situation; or,
374 should the President be required as the bill suggests to
375 provide this kind of notification to Congress, either
376 through the intelligence committees or to the limited
377 leadership group of eight?

378 Mr. WRIGHT. I don't believe that the statute anticipates
379 that the lives of our agents or any other people would have
380 been adversely affected or endangered in any way by the
381 President's carrying out the provisions in the statute
382 giving prior notice to a limited number of people. I don't
383 think there is any suggestion that the lives of United

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384 States intelligence agents would have been endangered by the
385 President's giving notice as the law required him to do, to
386 the Chairman of this committee and the Ranking Minority
387 Member of this committee, their counterparts in the Senate,
388 the Speaker and the Minority Leader of the House and the
389 majority and minority leaders of the Senate.

390 I cannot imagine anybody suggesting or thinking that the
391 lives of American intelligence agents would be endangered by
392 the President's giving that information to that limited
393 number of people on a prior basis.

394 Chairman MCHUGH. Let's assume that everyone agrees that
395 in the case of the Iran arms sale, notice should have been
396 given and that certainly the President could have provided
397 notice on a prior basis or within 48 hours. But of course
398 this legislation will apply to all cases, and the question
399 is whether or not in other types of situations, let's say a
400 hostage rescue situation which plays out over a period of
401 some days, and in which covert activity is required and that
402 covert activity places the agents involved in the rescue
403 operation in jeopardy.

404 Should the President in that situation be required to
405 share that information with Members of Congress?

406 Mr. WRIGHT. Well, I think--

407 Chairman MCHUGH. I think that is the hard case that we
408 will be presented with.

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409 Mr. WRIGHT. Let's look to the case of what happened with
410 regard to our abortive attempt to rescue the hostages in
411 Iran during President Carter's administration.

412 In that instance I am not aware of whether prior notice
413 was or was not given to the Speaker and Minority Leader, or
414 to the Chairmen and Ranking Members of the House. I suspect
415 that it was not. I received a telephone call at
416 approximately 2 o'clock or 2:30 in the morning from
417 Secretary of State Vance telling me what had happened. At
418 that moment the disaster had occurred, the debacle of our
419 misfortune had just occurred and they were at that time
420 striving to extricate themselves, our Service personnel who
421 were attempting to return to safety of our ships.

422 I think in that particular instance prior notice probably
423 wasn't given but timely notice surely was. It may have been
424 that timely notice was given and had it not been given, we
425 learned of it anyway in the most egregious manner. I cannot
426 believe that if President Carter had followed the provisions
427 explicit in section 501 of the Act, the lives of the
428 rescuers would have been put in jeopardy. It is conceivable
429 that in the secretive mind which is part and parcel of
430 intelligence operatives--and I don't say that in a pejorative
431 sense, I am saying secretive mind not in the sense of being
432 critical but rather I am trying to be analytical--that they
433 would suppose that telling anybody in the Legislative Branch

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434 would put their plans in jeopardy.

435 That after all is the warp and woof of the makings of
436 executive arrogance--the idea that certain actions are two
437 precious, too risky, too important to be shared with the
438 Congress. That isn't what was in the minds of the people
439 who wrote the Constitution.

440 Chairman MCHUGH. Thank you.

441 Mr. Livingston.

442 Mr. LIVINGSTON. Thank you, Mr. Chairman.

443 Mr. Speaker, I appreciate your remarks and frankly, with
444 regard to your assessment of the current Iranian situation I
445 really don't find much to quarrel with. But I am reminded
446 of the old courtroom adage that bad facts make bad law, and
447 I am really concerned that we are rushing to judgment here
448 with a piece of legislation that is geared to prevent a
449 reoccurrence of the circumstances surrounding the Iranian
450 situation, and that we will ultimately cause great harm to
451 unknown individuals in the future by virtue of our somewhat
452 hasty action.

453 Specifically, I guess I am concerned about the 48 hour
454 provision. I am reminded that--you recall the bombing of
455 Libya, and I am reminded of the fact that Sam Donaldson
456 minutes, perhaps as many as 30 minutes or so prior to the
457 actual bombing, was on television talking about a projected
458 strike in Libya, and in fact we are not the best keepers of

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459 secrets in the United States Congress.

460 That is not an indictment of any single individual, but
461 when you deal with a body as large as ours with the Members,
462 with the staffs, in fact we just don't keep secrets well. I
463 am concerned that there would be or might be circumstances
464 that might arise that might necessitate the Commander-in-
465 Chief of Armed Services keeping the lid on an operation for
466 much longer than 48 hours, and I use as an example the
467 situation that involved the--again going back to the first
468 Iranian hostage situation--the folks who were hiding in the
469 Canadian Embassy.

470 In fact there were ongoing operations to try to free those
471 people over a prolonged period of time, many months if my
472 memory serves me correctly, and had it gotten out that those
473 folks were in the Canadian Embassy, Lord knows what would
474 have happened to them and to the Canadian people.

475 I think that--I just have grave concerns that we are
476 seeking to remedy a single situation which may have far
477 broader implications than our initial objectives. I will
478 just invite your comments.

479 Mr. WRIGHT. First, with regard to your apprehension that
480 we might be rushing to judgment, I would simply point out
481 that it has been more than four months since we learned of
482 what I believe to be a clear and unambiguous violation of
483 the statute. Most certainly all of us would agree, a

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484 violation of the intent of the statute, the spirit of the
485 statute, I believe a violation of the letter of the statute.

486 I don't believe that is a question of ambiguity at all.

487 We learned of that four months ago. Those of us who have
488 some responsibility to protect the integrity of the
489 Legislative Branch in the constitutional scheme of things
490 have felt quite strongly for all of these four months that
491 something must be done. For this committee in its
492 deliberate way to have studied and pondered and taken
493 testimony and have learned everything that can be learned
494 about what happened and why, to examine the rationale of
495 those who advised the President that he could and should do
496 as he did and not advise the Congress in keeping with the
497 statute, we have had four months.

498 Now, it seems to me that what is being done here is done
499 in a very deliberate way. I don't believe it is rushing to
500 judgment. I think this committee as an agent of the
501 Congress is fulfilling its responsibility in attempting to
502 guarantee for the benefit of the nation and for the
503 protection of the Executive Branch as well that misjudgments
504 of this kind shall not recur and that at least we will have
505 some means of attempting to dissuade people from this kind
506 of a misadventure in advance.

507 With regard to the contention that there may be
508 circumstances in which it would be wise for Congress to be

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509 kept entirely in the dark, and I don't know for how long a
510 period of time you think that is wise, but I believe the
511 entire Constitution and the spirit of this law does not wish
512 to leave that discretion entirely in the hands of the
513 Executive Branch.

514 If you just leave it wide open and allow the Executive
515 Branch to decide when the situation is sufficiently worthy
516 that it warrants violating this statute and not advising
517 Congress, is in effect to have no statute at all. You might
518 as well not have an intelligence committee if the Executive
519 Branch is simply expected to come when it wants to and when
520 it is convenient to their purpose and consult with Congress.

521 So unless there is some clear criterion which the
522 gentleman would establish, I don't think it would be wise
523 for us just to anticipate that circumstances could arise and
524 it is up to someone in the Executive Branch to decide if it
525 wants under those circumstances to advise the Congress. In
526 such case who is going to make the decision?

527 Is it going to be the President? The Secretary of State?

528 Is it going to be the Chairman of the Joint Chiefs of Staff?

529 Is it going to be the National Security Council? Is it
530 going to be some Lieutenant Colonel?

531 You know, if you leave it undefined you leave it up in the
532 air and invite this kind of thing again it seems to me.

533 Mr. LIVINGSTON. My time is up. Thank you.

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534 Chairman MCHUGH. Mr. Stokes.

535 Mr. STOKES. Thank you very much, Mr. Chairman.

536 Firstly, I would want to express my appreciation to the
537 distinguished Speaker for his appearance here this morning,
538 and for the excellent testimony he has given on behalf of
539 the Stokes--Boland legislation.

540 Mr. Speaker, it appears to me that in this legislation we
541 are attempting also to address a more grievous situation.
542 The gravamen of the offense is as I see it here, is that
543 from everything that we know in the public domain at this
544 point in time, the President of the United States decided
545 either upon his own or upon advice of someone that this was
546 an operation which could not be revealed to Congress because
547 Congress could not be trusted with this information, but it
548 is even broader than that, not only was Congress not
549 trusted, members of his own Cabinet were not trusted. So he
550 cannot just say it was his fear of leaks in the Congress.
551 But it seems even more grievous that he trusted in this
552 operation a foreign nation and principles in a foreign
553 nation.

554 The ultimate leak came from the Iranians themselves who
555 leaked the matter to a Beirut newspaper and as a consequence
556 of it this matter became known publicly.

557 I would just like to have you address that broad principle
558 in terms of any evidence that Congress in the case of this

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559 | sort ought not to be trusted.

560 | Mr. WRIGHT. Well, I think that comes to the heart of the
561 | balance of powers. Perhaps it is inherent in the Executive
562 | Branch to want to protect the prerogatives of that branch of
563 | government. If I were in that branch of government, perhaps
564 | I would see it that way.

565 | But I am certain in my mind that the people who wrote the
566 | Constitution intended that Congress could be trusted.
567 | Thomas Jefferson surely intended that the people themselves
568 | could be trusted. That was at the heart of the very central
569 | core philosophy of this government.

570 | Now, if we were to assume that Congress cannot be trusted
571 | with information, then we betray a lack of confidence in
572 | this fundamental system of ours. It rests upon the
573 | assumption that Congress can be trusted.

574 | With respect to the leak which found its way to Sam
575 | Donaldson--you know, I think I can certainly say to you that
576 | that didn't come from Congress. I don't believe anybody has
577 | suggested that it did. It must have come from some other
578 | source. I am quite absolutely sure in my mind that it did
579 | not come from Congress.

580 | This committee has been privy to information which has not
581 | been leaked until much later and then--much, much later than
582 | the time when it was made available to this committee on
583 | several instances, and members of this committee will recall

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584 | some of those instances.

585 | Now, I should like to say as Speaker, that if it ever were
586 | to come to my attention that any Member or staff person of
587 | this committee had in violation of his or her oath leaked
588 | information, then I would ask that person to resign from the
589 | committee. This is not the kind of a committee that the
590 | Speaker has nothing to say about. This is the kind of
591 | committee on which the Speaker does have something to say as
592 | to personnel.

593 | I think all of you would expect that. If there were any
594 | reason to believe that any member of this committee had
595 | violated the sacred oath which is concomitant with accepting
596 | membership on the committee, then that person should not
597 | expect to serve on this committee.

598 | I just don't believe that has happened. I don't think the
599 | House Committee has leaked information. We need to be very
600 | careful about personnel, people whom we hire on both sides
601 | to serve on this committee. We owe that obligation, not to
602 | the Executive Branch per se but to the United States and to
603 | our oath of office.

604 | I would recall an instance which Mr. Livingston may be as
605 | cognizant of as I am. I was not in the Congress at that
606 | time though I am sure some of you think I have been here
607 | that long, during World War II knowledge of the atomic
608 | arrangements, the tests, the experimentation was held by a

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609 very small number of people.

610 Sam Rayburn and the Chairman of the Appropriations
611 Committee knew of it, and they asked for the money quite
612 frankly saying that, to the committee, we cannot tell you
613 what this is for, but we think it may end the war sooner.
614 That is all they knew. They provided the money based upon
615 that information.

616 I think Congress can keep confidences. If we cannot, we
617 don't deserve to be here.

618 Mr. STOKES. Thank you, Mr. Chairman.

619 Chairman MCHUGH. Mr. Hyde.

620 Mr. HYDE. Thank you, Mr. Chairman, and I have so much to
621 ask and so little time it is an occupational hazard though.
622 But apropos of your last remarks, Mr. Speaker, let me quote
623 to you from November 14, 1985, Washington Post, an article
624 by Daniel Shore, "In 1975 the CIA support of the anti-
625 communist faction in Angola, also a Kissinger Project, was
626 disclosed after it became an issue in the House Foreign
627 Affairs Committee. The late Representative Leo Ryan, a
628 member of that committee, told me in an interview at that
629 time that he could condone such a leak if it was the only
630 way to block an ill-conceived operation.

631 Now, I suggest to you that was not unique with Mr. Ryan,
632 and citing chapter and verse the other day we had a briefing
633 and I don't, I won't tell you what the substance of the

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634 briefing was but March 23, immediately thereafter, page 7 of
635 the Newsweek Magazine, covert help for Corey Aquino. The
636 Agency will add about a dozen agents to its 115 member
637 station in Manilla, et cetera, et cetera, et cetera.

638 Now, the instances of dangerous leaks--and I don't say they
639 are from Congress but I say that this Congress has a problem
640 that it ought to consider at least equal to the problem of
641 inadequate dissemination of secret information, and that is
642 the leak. We cannot keep a secret, and a democracy is
643 indeed in peril in a dangerous world if we cannot keep a
644 secret.

645 There are many instances here of enormous violations. Let
646 me read to you from the Tower Commission report. The
647 obsession with secrecy and preoccupation with leaks threaten
648 to paralyze the government in its handling of covert
649 operations. Unfortunately, the concern is not misplaced.
650 The selective leak has become a principal means of waging
651 bureaucratic warfare. Opponents of an operation kill it
652 with a leak. Supporters seek to build support through the
653 same means.

654 We have witnessed over the past years a significant
655 deterioration in the integrity of process. Rather than a
656 means to obtain results more satisfactory, than the position
657 of any of the individual departments, it has frequently
658 become something to be manipulated, to reach a specific

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659 outcome. The leak becomes a primary instrument in that
660 process. Et cetera, et cetera.

661 Now, I asked Richard Helms, a former Director of Central
662 Intelligence, for comment on this bill. Let me read you one
663 thing he says and then I will ask for your comment and beg
664 your indulgence.

665 This bill proposes to tighten up certain reporting
666 requirements on new covert actions undertaken by the Central
667 Intelligence Agency. In so doing it demands that
668 Presidential findings be in writing and that a copy of the
669 written finding be furnished to certain Members of Congress
670 and to the Vice President, Secretaries of State and Defense,
671 and the Director of Central Intelligence.

672 At the rate written documents of the Executive Branch
673 appear in the newspapers these days, I would have thought
674 that this requirement almost constitutes a guarantee that no
675 action would long remain covert. When a written finding is
676 sent to a Senator, a Congressman or a Cabinet officer, how
677 many individuals on their staffs actually see this document?

678 Quite a few I would surmise. Put another way, this
679 legislation would further insure that with the inability of
680 the Executive and Legislative Branches to identify leakers,
681 covert action as an option in support of U.S. foreign policy
682 is doomed.

683 This is not necessarily because future presidents and

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684 directors would be unwilling to take the chance but because
685 the experienced officers who must carry out such operations
686 would not wish to become involved in what they would
687 inevitably regard as a no-win situation.

688 Then Mr. Speaker, he mentions a colleague of ours in the
689 other body who shall be nameless, former chairman of the
690 Senate Select Committee on Intelligence--

691 Mr. WRIGHT. I don't have the faintest idea who that would
692 be. I appreciate your keeping his identity secret.

693 Mr. HYDE. Good, I think we have--we will try to keep that
694 covert.

695 He was quoted in the Washington Post and many other media
696 including the Jerusalem Post as having exposed during a
697 speech in Florida an alleged American intelligence operation
698 in Israel.

699 Now, sure, we have a problem. Congress is entitled to
700 know. We cannot exercise oversight unless the Executive has
701 confidence in us and unless we have confidence in them, and
702 there is a problem.

703 I am not sure, in fact I am sure this is not the solution
704 to the problem, but we ought to address ourselves to
705 security, to punishing people who leak and devising ways to
706 find out what the leaks are and who the leakers are.

707 I would ask for your comment.

708 Mr. WRIGHT. Mr. Hyde, I think you raise a really very

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709 interesting question. There has to be a distinction between
710 policy on the one hand and the means employed to carry out
711 that policy on the other hand. As to the precise and
712 specific means of carrying out covert policy, I suppose
713 Congress would be foolish to expect that we should be told
714 in such minutia and detail as the identity of each of our
715 agents whom he is contacting and when he is going to take a
716 given course of action and where it will occur. That would
717 be ridiculous obviously.

718 But at the outset, at the inception of a policy creation,
719 I believe the law anticipates--and I think the Constitution
720 anticipates--that Congress needs to have a voice. I don't
721 believe either the law or the constitution ever has
722 suggested that it be a monolithic decision made in the White
723 House alone that gets us into a war, for example, but that
724 Congress should have the opportunity and does have the
725 responsibility to make a judgment as to whether we get
726 America into a war.

727 Now you make reference to an article by Daniel Shore in
728 the Washington Post in November of 1985 that involves what I
729 would suppose to be a policy determination with respect to
730 Angola.

731 Perhaps you and I might agree on that matter so far as
732 policy were concerned. I don't know whether we do or not,
733 but the point is that there is a right for Congress to know

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734 that a given policy is being carried out and the Congress
735 should have the opportunity to consult.

736 Now as to how it is carried out obviously Congress has no
737 reasonable expectation of being told of the matter of its
738 being carried out in detail. But let me offer a couple of
739 other suggestion, times in which people appointed in the
740 Executive Branch--not elected personnel, not people directly
741 responsible to the American public--have made judgments and
742 launched activities that would be unlawful, that would be
743 contrary to our treaty agreements with other nations, and
744 that quite probably would not be supported by the Congress
745 as a whole.

746 And in the mid-1950s, perhaps 1954, I am not certain what
747 year, I think my recollection would tell me 1953 or 1954,
748 the CIA conceived and carried out an assassination effort
749 involving a man named Jakabo Arbenz in Guatemala. Jakabo
750 Arbenz I guess was a Marxist, I don't know just how to
751 define his political philosophy. He was not a great friend
752 of the United States. It might have been in our best
753 interests that someone else be elected rather than he, but
754 an election was going on as I recall and we have no right to
755 go into another country in my judgment and certainly no
756 person in the Executive Branch has the unilateral right to
757 decide who in another country should be allowed to live and
758 who should be assassinated.

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759 In 1971 if memory serves, in that time frame, in that era,
760 a decision was made unilaterally in the covert sanctums of
761 the CIA that we should go into Chile where an elected
762 president was serving peacefully and not attempting to
763 consolidate his gain to my knowledge with the use of armed
764 militia nor attempting to call off regular or free
765 elections; he was I suppose Marxist, I don't know that he
766 was a Marxist, probably he was a socialist--

767 Mr. HYDE. A liberal anyway.

768 Mr. WRIGHT. Well, I think that is a mild description.

769 Mr. HYDE. Yes.

770 Mr. WRIGHT. In any event he was probably not the person
771 that the United States in general would have liked to see
772 president of Chile, but he had been elected president of
773 Chile. Chileans had voted for him and I am persuaded by
774 people who think they know what was going on down there that
775 if left alone, he would have been rejected at the poles and
776 someone more moderate would have been elected, if we would
777 have let it alone.

778 The CIA conceived a plot to destabilize--destabilize--the
779 government of Chile. Now there is a euphemism for you. We
780 decided that we--not we but someone in the sanctums of the
781 CIA, decided that he had the right to go down and
782 destabilize a government of an elected president in Chile.
783 That has created bad will for our country. It has confused

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784 | the clarity of our policy. It has contributed to criticism
785 | of the United States subsequently. And it ushered in a
786 | militaristic regime in Chile which still to this day
787 | prevails.

788 | It wasn't necessary for us to, in my judgment, to have
789 | undermined that elected government in Chile. Congress
790 | didn't decide to do that. Congress wasn't given any choice.

791 | Mr. HYDE. Is your point, Mr. Speaker, we should leak some
792 | things and some we shouldn't?

793 | Mr. WRIGHT. No, no.

794 | Mr. HYDE. I am asking you how to deal with the problem of
795 | leaks.

796 | Mr. WRIGHT. Henry, I think you know.

797 | Mr. HYDE. Not a listing of alleged sins which I say are
798 | very much in dispute, of the CIA. How do we deal with
799 | congressional leaks was really my question. I should have
800 | put it more directly.

801 | Mr. WRIGHT. Henry, I think you know the answer to that.
802 | Of course you know the answer is not that we who are privy
803 | to this classified information should presume any right to
804 | leak it. Did I not just say that we have no right to do
805 | that. Of course I said that.

806 | Mr. HYDE. Right.

807 | Mr. WRIGHT. Of course we don't.

808 | Mr. HYDE. We have no right to leak, but the question is

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809 | what are we going to do about it and are there any
810 | legislative suggestions that perhaps you have that would--

811 | Mr. WRIGHT. Henry, what I am suggesting is that the
812 | Congress does have a right and a responsibility through the
813 | exercise of its orderly procedures to know what is going on.

814 | Mr. HYDE. I stipulate that. I agree with that.

815 | Chairman MCHUGH. Mr. Kastenmeier.

816 | Mr. KASTENMEIER. Thank you, Mr. Chairman.

817 | I would like to congratulate the Speaker on his
818 | presentation as well, and his response to questions.

819 | I must say myself as far as the House Committee on
820 | Intelligence is concerned, I am not sure that there is any
821 | example we know of where the House has, where the House
822 | Committee has been proven to be the source of leaks. We
823 | have enormous numbers of leaks nationally and as a matter of
824 | fact, the Acting Director of Central Intelligence recently
825 | suggested to us that the principal source of leaks is not
826 | the Congress, is not the Congress--not the Congress--but Mr.
827 | Speaker, I would like to talk about a different question,
828 | and it is a larger question that is perhaps I think
829 | aggravated by the tension that has existed between the
830 | Administration and the Congress in the last few years.
831 | Particularly, although it could happen anytime, and it is a
832 | situation which you have related as producing a situation
833 | where the President in his own mind can elect to comply with

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834 the law or not comply with the law.

835 As a matter of fact, I think whether it is under the War
836 Powers Act or notification of covert action even, the two
837 cases you cite did not involve any prior consultation, maybe
838 minimal notice but certainly not the consultation; you were
839 not consulted in that sense; the leadership was not
840 consulted; and really there has been an erosion of the
841 relationship between the Executive Branch and the Congress
842 in terms of more serious activities done in this nation's
843 name.

844 Would you not agree that what is recommended here is
845 indeed modest. Ten years ago, for example, when some of the
846 actions you have just referred to were reviewed, there were
847 those who asked whether we ought to permit covert action,
848 whether we ought to forbid it or whether we ought to have
849 some mechanism for congressional approval or much more
850 stringent prior notification. So what this is, is it not
851 merely a restatement of existing law to make it more
852 efficacious and remove ambiguities so that we can proceed
853 with a sort of new understanding of the relationship between
854 the Congress and the White House?

855 Mr. WRIGHT. I have that feeling, of course, Mr.
856 Kastenmeier. I do believe that what is proposed in this
857 legislation is simply a tightening up of the statute in
858 order to carry out its original intent. I am aware of the

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859 apprehension that may have been expressed about putting it
860 in writing, putting in writing of a finding. Conceivably
861 you may want to think in terms of how broadly that is to be
862 interpreted or how widely disseminated any such writing
863 could be, but I think it is within the scope of this
864 committee to handle that kind of determination.

865 I can find nothing in this present proposed amendment to
866 the statute that violates the initial purpose of the
867 statute. It seems to me that it clarifies and carries it
868 out. Doesn't it? That is my interpretation of it.

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869 RPTS BRADFIELD

870 DCMN DONOCK

871 10:00 a.m.

872 Mr. KASTENMEIER. Thank you, Mr. Speaker.

873 Chairman MCHUGH. Mr. Beilenson?

874 Mr. BEILENSEN. I don't really have any questions of our

875 esteemed Speaker. As one of the co-sponsors of this

876 legislation, I, too, along with many of our colleagues,

877 found his comments very cogent, very compelling.

878 First of all, all of us agree with a couple of points that

879 our friend from Illinois, Mr. Hyde, made. We have got to

880 improve our security and do our very best to find out who

881 leaks information, and to punish those people.

882 But coming back to the bill which is before us, its

883 intention basically is to carry out the intention of the

884 existing law. If you worried about leaks, then you have

885 that exact problem, of course, as Mr. Hyde pointed out.

886 You have that exact problem to a certain extent under

887 existing law. A recent study by the Intelligence Committee

888 of the other House found out that 147 recent occasions of

889 information having been leaked, that the attributable

890 sources in all but 12 of those cases was the Administration,

891 someone in the Administration rather than someone in the

892 Congress.

893 There clearly is a problem, and the larger problem clearly

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894 | has to do with the Executive Branch of the Government, for
895 | all kinds of obvious reasons, most obvious is there are very
896 | few individuals, both staff and members, Senate and House,
897 | who know these secrets, and in most instances, there are
898 | many dozens, hundreds, sometimes thousands of people who
899 | know these self-same secrets which some of our colleagues
900 | are urging us to deny, even eight of the most trusted
901 | Members of the Congress, and there is a lot of competition
902 | between these Executive Branch Departments, some of whom
903 | don't believe that the CIA should be tasked with some
904 | particular operation or not.

905 | Often, people within the CIA itself think that they have
906 | been asked to do something foolish or dangerous, or
907 | counterproductive potentially, and if you ask any good media
908 | person if that person told you the truth, they would tell
909 | you in virtually every instance that person's source was
910 | somebody from the Executive Branch, not from the Congress of
911 | the United States.

912 | Mr. HYDE. Would the gentleman yield for just a brief
913 | question?

914 | You mentioned a study by the Senate Intelligence Committee
915 | that found 100-some leaks came from the Administration.

916 | Mr. BEILENSEN. In the articles themselves, the
917 | information was attributed to someone in the Executive
918 | Branch of the Government.

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919 Mr. HYDE. Who is the chairman of that Senate Select
920 Committee?

921 Mr. BEILENSEN. I can't remember his name, but he was a
922 former chairman. It may have even been the person that the
923 gentleman was speaking of earlier, I am not sure.

924 We are concerned about possible risks, loss of life. All
925 of the members of this committee are aware of certain
926 operations that are carried out that we cannot even speak
927 of, where there is continual potential risk to people's
928 lives.

929 Let me just say one more thing, if I may, Mr. Chairman,
930 there is a particular question which perhaps we could speak
931 at some greater length about. The hardest questions of all
932 were those which were raised by Mr. Hyde, Admiral Turner and
933 others, and hostage rescue situations, where you are trying
934 to save lives, so on, those are situations which tend to be
935 short-lived, you can't afford any kind of talking about it
936 whatsoever.

937 And at the same time, if I may be frank, from this
938 member's point of view, those may be the kinds of operations
939 where some of us feel that we don't really need to know.
940 They are not policy undertakings, cover operation in a
941 larger term, and it seems to me that in such kinds of cases,
942 perhaps there is no need for the Congress to know, even
943 under its right to know, to do oversight, some will

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944 eventually find out.

945 It may well be that we might perhaps think of making some
946 exception for those kinds of rescue operations. I do not
947 know as a policy matter that we need to know. At least
948 beforehand, anyway, and that might solve a lot of people's
949 problems with the most risky of these potential kinds of
950 situations.

951 It might not offend some of us to find out about those
952 things until after they are over, but they may be a useful
953 avenue for us to explore, Mr. Chairman.

954 Chairman MCHUGH. Thank you.

955 Mrs. Kennelly?

956 Mrs. KENNELLY. Thank you, Mr. Speaker, for being with us
957 this morning, and for your statements. I want to make my
958 comments as a new member, and thank you, Mr. Speaker, for
959 appointing me, but I found in my life, sometimes you say
960 things so often they become a truism.

961 Members can't keep secrets, Congress can't keep secrets.
962 I see people who can keep secrets to my left. Because this
963 was said so many times, it seems to me that now we have
964 private individuals, retired military members, unelected
965 officials, and Lieutenant Colonels running many things.

966 I appreciate your being here, because it shows the support
967 you have for this committee, for the oversight charge of
968 this Congress.

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969 Mr. Chairman, do you think individual Congressmen and
970 women can keep secrets?

971 Mr. WRIGHT. Women, of course, surely Congressmen and
972 Congresswomen can keep secrets. Perhaps some of us cannot.
973 We are like people. Those who cannot keep secrets have no
974 business on this committee.

975 Mrs. KENNELLY. As a new member, I am in a wonderful
976 position of a new beginning, and hopefully this bill will be
977 a new beginning. We went full circle, those that couldn't
978 keep a secret were given the charge of doing things, because
979 we couldn't keep a secret.

980 Hopefully, the oversight charge of the Congress will go
981 back to the place it should have been, the seriousness, and
982 to bring these things into being for taking all this time to
983 be with us, and I hope we can prove that we can keep a
984 secret.

985 Chairman MCHUGH. Mr. Speaker, we all appreciate your
986 being with us this morning.

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1987 Chairman MCHUGH. Our next witness is the distinguished
1988 Minority Leader from the House of Representatives, Robert
1989 Michel of Illinois.

1990 Mr. Michel, like the Speaker before him, has been an ex
1991 officio member of the Intelligence Committee and has added
1992 considerably to our deliberations, and functions, and we are
1993 very grateful for your presence here this morning.

1994

1995 STATEMENT OF HON. ROBERT H. MICHEL, A REPRESENTATIVE IN
1996 CONGRESS FROM THE STATE OF ILLINOIS

1997

1998 Mr. MICHEL. Well, thank you, Mr. Chairman, and my
1999 colleagues on the committee, as you indicated, I have been
1000 very privileged to serve as an ex officio member of the
1001 committee. My only regret is, because of our duties
1002 otherwise, we are limited in our attendance; but I would
1003 like to address myself, if I might, to the bill, H.R. 1013,
1004 introduced by the chairman, which would amend the National
1005 Security Act of 1947, and section 662 of the Foreign
1006 Assistance Act of 1961--the Hughes-Ryan amendment.

1007 When the chairman introduced his bill on February 4th of
1008 this year, he said, and I think it bears well to have it
1009 read here:

1010 'With these amendments, the scheme for covert action
1011 reporting will be quite clear. First, in almost all cases,

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1012 prior notice must be given to the Intelligence Committees;
1013 second, in rare cases, where the President believes there is
1014 an unusual degree of sensitivity, prior notice must be
1015 given, but it may be given to the leadership group set out
1016 in section 501; and third, in even rarer cases, where the
1017 President must react with speed because of an immediate
1018 threat to our national security, notice must be deferred for
1019 a maximum of 48 hours.''

1020 I am not a constitutional scholar. But I have been a
1021 Member of the Congress for over 30 years. I have seen the
1022 Legislative Branch and the Executive Branch come to
1023 loggerheads on constitutional prerogatives over and over
1024 again.

1025 But nowhere has the issue been more forcefully joined than
1026 in the language of the amendment I have just read. And
1027 nowhere has the issue been more serious. What we are
1028 dealing with here is a fundamental question of foreign
1029 policy.

1030 If I may judge from the remarks made by the chairman
1031 during that same Floor speech in February, his amendment has
1032 its origins in the controversy surrounding the Iran-contra
1033 arms affair and the notification issue.

1034 I will not comment on the facts of the Iran-contra affair
1035 because we already have two Congressional committees working
1036 full time to uncover those facts. And while I have read

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1037 with interest varying interpretations of the President's
1038 decision not to notify Congress, my appearance here today is
1039 not concerned with the legal and historical questions of
1040 that issue.

1041 I would rather talk about the future than the past, about
1042 the dangers I see to our Nation if the chairman's amendment
1043 ever becomes law. Legislation proposed in the heat of
1044 political passions, with long-range questions of national
1045 security overshadowed by short-term response to current
1046 controversies, is not Congress acting at its best.

1047 I fully understand the motivation that led to this
1048 proposed legislation. I understand the frustration that
1049 supporters of the legislation might feel given their
1050 perceptions of the events surrounding the Iran-contra
1051 affair. But a sense of frustration, justified or
1052 unjustified, is not a sufficient cause to create legislation
1053 like this.

1054 In dealing with intelligence oversight, the Congress has
1055 never intended to confront an American President with
1056 language that is the functional equivalent of a foreign
1057 policy strait-jacket.

1058 There is an old rule of thumb about problem-solving. It
1059 says that we should never try to seek more accuracy in our
1060 answers than the facts of the question permit. In short, we
1061 should never sacrifice the good to the best. We should

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1062 never try to find a perfect formula for states of affairs
1063 that do not, by their very nature, allow perfection.

1064 James Madison, in Federalist Paper No. 48, described the
1065 possibility of the Legislative Branch encroaching on the
1066 legitimate functions of the other Branches. Speaking of the
1067 Legislative Branch, he wrote:

1068 "Its constitutional powers being at once more extensive
1069 and less susceptible of precise limits, it can with the
1070 greater facility, mask under complicated and indirect
1071 measures, the encroachments which it makes on the coordinate
1072 Departments."

1073 To put the matter in the less eloquent but perhaps more
1074 emphatic language of our own time, Congress can pass
1075 legislation whose stated aim is doing good for all
1076 concerned, but whose effect will be encroachment on the
1077 rights of the order branches of government.

1078 The Constitution of the United States made it clear from
1079 the beginning that there could be no clear-cut, easy-answer,
1080 ready-made formulation to do away with the inherent tension
1081 between two Branches of Government, each with legitimate
1082 powers.

1083 They knew that sometimes we would have to live in that
1084 gray, fog-shrouded area of the political landscape between
1085 the Executive and the Legislative powers, where clarity
1086 isn't always possible.

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1087 If you feel, Mr. Chairman, as you said in your statement,
1088 that "the bond of mutual respect between the committee and
1089 the CIA has been broken," the worst way to reestablish that
1090 old bond of trust is by forging new chains of legislative
1091 language.

1092 We should not fool ourselves that we can solve these
1093 complex problems simply by writing new language. I wish it
1094 were that simple. But it is not. Under a system of
1095 government like ours, we have to take risks. Democracy
1096 itself is a risk. There are no guarantees.

1097 But one risk we cannot take: We cannot risk having our
1098 adversaries--and indeed, our friends--perceive an American
1099 President as not being able to move quickly and decisively
1100 because Congress has restricted his flexibility.

1101 I stress the word "perceive." There are learned
1102 counselors and expert witnesses on both sides of this issue.

1103 We who are not constitutional lawyers or experts can only
1104 listen and try to make judgments.

1105 But whatever the constitutional issues involved, if this
1106 legislation became law, the perception of a weakened
1107 Presidency would be universal. No amount of convoluted
1108 arguments about what the legislation means could erase the
1109 impression that the Congress intends to limit a President's
1110 flexibility.

1111 This may not be your intention. But it will be the

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1112 perception. And in politics, including geopolitics,
1113 perception is all-important.

1114 I can think of no worse scenario than one in which a
1115 Soviet leader meets with an American President--any American
1116 President--believing that our President has been stripped of
1117 the freedom to act swiftly and with flexibility.

1118 Again, I don't question the motivation behind this
1119 proposal. What I question is the wisdom of Congress, acting
1120 in the emotion of this Iran-contra affair, placing
1121 restrictions upon the very institution of the Presidency
1122 itself, restrictions that are, in my view, constitutionally
1123 dubious and strategically dangerous.

1124 Let me turn for a moment to another aspect of the issue.
1125 It may seem peripheral, but I believe it is important in the
1126 overall context of the debate over Congressional oversight.

1127 There are those who say no Administration can afford to
1128 trust the Congress with secret information for fear it will
1129 be leaked. The Tower Commission report addressed this point
1130 among its recommendations. What the report had to say about
1131 the problem of possible "'leaks'" is worth quoting in full:

1132 "'There is a natural tension between the desire for
1133 secrecy and the need to consult Congress on cover
1134 operations. Presidents seem to become increasingly
1135 concerned about leaks of classified information as their
1136 Administrations progress. They claim Congress

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1137 disproportionately. Various Cabinet officials from prior
1138 Administrations indicated to the Board that they believe
1139 Congress bears no more blame than the Executive Branch.

1140 "However, the numbers of Members and staff involved in
1141 reviewing covert activities is large; it provides cause for
1142 concern and a convenient excuse for Presidents to avoid
1143 Congressional consultation.

1144 "We recommend that Congress consider replacing the
1145 existing Intelligence Committees of the respective Houses
1146 with a new joint committee with a restricted staff to
1147 oversee the intelligence community, patterned after the
1148 Joint Committee on Atomic Energy that existed until the mid-
1149 1970s."

1150 I am glad to see that the Tower Commission did not engage
1151 in "Congress-bashing" when it came to discussing leaks of
1152 classified information.

1153 But it is worth repeating that the report did say the
1154 "number of Members and staff involved in reviewing covert
1155 activities is large; it provides for concern--"

1156 I think it is a very fair and accurate assessment of the
1157 situation.

1158 Our distinguished colleague, Mr. Hyde, has proposed
1159 legislation that there be one joint Congressional
1160 Intelligence Committee, a proposal I support. I think that
1161 we should embrace Mr. Hyde's proposal since it reflects the

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1162 concerns of many, including the members of the Tower
1163 Commission.

1164 In conclusion, my view is that intelligence oversight can
1165 work, as it has in the past, when there is the give-and-take
1166 of debate, the freedom for a President to maneuver, along
1167 with the acknowledgment, in deed as well as word, of the
1168 legitimate right of Congress to be properly informed in
1169 order to perform its oversight functions.

1170 I think the legislation we already have on the books
1171 reflects a wise, prudent compromise to a complex problem.
1172 The legislation ain't broke. So let's not fix it.

1173 Very briefly, on that 48-hour limitation, I am thinking of
1174 the difficulty involved there, depending upon who those
1175 members are that we want to be notifying, and how many,
1176 Congress is away on weekends all so frequently, and then
1177 when we are on break, whether it is Lincoln's birthday, the
1178 Fourth of July, or in August or whenever, the Congress
1179 adjourns, and we are spread to the four winds all around the
1180 globe, and you are going to require within 48 hours
1181 notification of individual members on a secure basis?

1182 We could be in Timbuktu, where even today, we are
1183 recognizing in the Soviet Union, we got a real serious
1184 problem for the Secretary of State getting back to his
1185 government.

1186 Now, that has got to be a very serious problem for us.

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1187 Then, the very fact of all that has developed by way of
1188 communication intercepts, yes, I have tried to be very, very
1189 careful about some of the sensitive information that I
1190 received, to make absolutely sure that I am on some secure
1191 line, but how, how accessible are those secure lines to
1192 those of us who may not be right in our offices where the
1193 facilities are there for us to use?

1194 Finally, in the deletion of part of the existing law
1195 there, that provision which has to do specifically, Mr.
1196 Chairman, with other than activities intended solely for
1197 obtaining necessary intelligence. Not even an exception for
1198 intelligence-gathering.

1199 Now, let's suppose we have got an agent or a couple or
1200 whatever, someplace abroad, and the President says now, we
1201 would like to plant a seed someplace, if you are given the
1202 opportunity. I am not altogether sure under the language of
1203 the chairman's bill here, whether or not the President at
1204 that point is supposed to be advising Members of Congress,
1205 this is what I am proposing out there, and when is the time?

1206 The agent may be behind the screen that we are all too
1207 familiar with today. He is given a commission to do a
1208 certain thing prospectively, depending upon some other act
1209 out there, and certainly within the President's right to
1210 maintain the security of our country to have those eyes and
1211 ears out there, to do certain things for intelligence-

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1212 gathering, I just don't see--you know, when you wipe out that
1213 exception again in your legislation, we have got a problem.

1214 I am reminded in this growing controversy here, you know,
1215 I remember, and no reflection at all upon our own individual
1216 Members of Congress, with respect to how we are given to
1217 leaking information, but I can remember several Speakers of
1218 the past who refrained from appointing certain members of
1219 the House of Representatives to certain committees because
1220 of those Speakers' doubts about those members' abilities,
1221 whatever, to serve on those committees.

1222 Now, they may very well, when we take the oath of office,
1223 support and defend the Constitution, but I will tell you,
1224 there is nothing in that oath under those circumstances that
1225 forecloses possible leaks of very sensitive information, and
1226 then this issue of covert versus overt operations, I dare
1227 say there are some members of the House of Representatives
1228 of the Congress who frankly have a personal bias against
1229 covert operations, period.

1230 I happen to think they are absolutely essential, even in a
1231 free society, and in my own responsibility as leader, would
1232 never, never appoint a member to this committee who frankly
1233 had that personal bias against covert operations, because I
1234 don't think that would serve the system well, or the House
1235 of Representatives well, so those are the thoughts I have.

1236 I would be happy to subject myself to questions.

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1237 Chairman MCHUGH. Thank you very much, Mr. Michel, for
1238 your statement.

1239 First, I think it is important to stress, as you did, that
1240 we should look at this issue dispassionately and not in any
1241 sense of frustration, and I hope that is the manner in which
1242 the committee will proceed.

1243 Secondly, it is important to distinguish between
1244 collection of intelligence on the one hand, and covert
1245 operations on the other, and I think that this bill clearly
1246 is directed to covert operations.

1247 I would point out that in President Reagan's Executive
1248 Order of December 1981, he defined covert operations as
1249 those "conducted in support of national foreign policy
1250 objectives abroad which are planned and executed so that the
1251 role of the United States is not approved or acknowledged
1252 publicly, but which are not intended to influence U.S.
1253 political processes, public opinion, policies or media,"
1254 and this is the part that is important, "and do not include
1255 diplomatic activity for the collection and production of
1256 intelligence for related support functions."

1257 Covert operations to which this bill is directed does not
1258 cover the collection of intelligence, which we all agree
1259 should not be subject to prior notification to Congress.

1260 Mr. MICHEL. If this, perchance, this legislation should
1261 get to the House Floor, and then in the legislative history,

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1262 that would be a very, very important point that would have
1263 to be arrogated and discussed because the language deleted,
1264 automatically wipes out that exception that we at this day
1265 have in the law specifically.

1266 Chairman MCHUGH. Well, I don't think that is correct, but
1267 we can certainly make it clear in the legislative history
1268 that we are not intending to influence or affect collection
1269 of intelligence.

1270 You indicated that you would like to look forward in terms
1271 of this proposal, and its impact. That is an important
1272 thing for us to do, but it is not irrelevant for us to
1273 consider the Iran arms transaction, because that is a real-
1274 life case.

1275 It reflected not just what happened in that particular
1276 instance, but it reflects what we perceive to be an attitude
1277 with this particular Administration with respect to
1278 Congressional oversight generally.

1279 We may be wrong, but nonetheless, the perception is there.

1280 As others will testify, there is an argument that you
1281 should not try to write something into law to cover
1282 Congressional oversight and notification, but rather, it
1283 should be based on trust and comity, and I agree with that
1284 so long as the trust exists, but as the Iran case
1285 demonstrates, at least to some of us, there is a perception
1286 in the Administration, on the part of some, that Congress

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1287 | can't be trusted, or it is an inconvenient or obstacle
1288 | rather than a help.

1289 | And I would ask you with respect to that case, whether or
1290 | not the President complied with existing law, which requires
1291 | in the case where prior notice is not given, that the
1292 | President shall notify the Intelligence Committees in a
1293 | timely fashion.

1294 | The President signed his finding authorizing this
1295 | operation on January 17, 1986. We did not learn of this at
1296 | any time from the White House or from anyone else in the
1297 | Administration, as was mentioned earlier; we learned about
1298 | it because it was disclosed in a Middle East magazine.

1299 | Well, does that comply with existing law, never mind the
1300 | proposal which is being made here today?

1301 | Mr. MICHEL. I am personally offended by the fact that I
1302 | was left out of the loop for so long, and I am certainly not
1303 | going to apologize for my own Administration for having
1304 | taken that tact, because as you indicate, there are those of
1305 | us who know how to keep a secret, can be trusted with this
1306 | country's security, and there is an obligation for a shared
1307 | role and responsibility between the Executive and
1308 | Legislative Branches, and so on, but what I am saying, and I
1309 | am not altogether sure the system is wrong, some of the
1310 | individuals involved are victims of their own individual
1311 | body chemistry, what their feelings were vis-a-vis an

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1312 Executive Branch versus Legislative.

1313 And so, I have a real reluctance to put that kind of, or
1314 to put some kind of a strait-jacket on some future
1315 President.

1316 I would like to think no matter who he or she may be, and
1317 those around them, that they will have learned certainly
1318 from this experience that that was not the appropriate way
1319 in which to conduct that operation, certainly.

1320 Chairman MCHUGH. I presume that if the President had
1321 notified you of his plans to sell arms to Iran controversy,
1322 that you would have expressed some reservation or objection
1323 to that?

1324 Mr. MICHEL. There would certainly have been those of us
1325 who would have reminded whomever at that time of some of the
1326 other commitments which were made to us for which we went
1327 out on the line as a matter of principle with respect to our
1328 absolute prohibition of dealing with terrorists, period, you
1329 know.

1330 And I must confess, that I had a very hard time
1331 assimilating what had gone on.

1332 Chairman MCHUGH. Don't you think the Iran case in this
1333 connection is a good example of why prior notification in
1334 most cases is a benefit to the President as well as a right
1335 of the Congress?

1336 Mr. MICHEL. I know we have left this rather ambiguous in

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1337 the past, by way of timely notification, and we have argued
1338 that point on the Floor of the House any number of times,
1339 and it is going to be open to various interpretations,
1340 depending upon who the individual is, I guess.

1341 And I would just--I am very reluctant to deny a President
1342 of the future that kind of flexibility, trusting hopefully
1343 that whoever he or she might be will have learned from this
1344 experience that that was not in the spirit of the law, to
1345 have that long a gap between the Act and the notification of
1346 those of us who deserved some heads-up on what was going on,
1347 because those of us who are really active on that political
1348 cutting edge out there on a day-to-day basis do have some
1349 good things to volunteer once in a while.

1350 Chairman MCHUGH. Thank you very much.

1351 Mr. Livingston?

1352 Mr. LIVINGSTON. I want to commend you on an outstanding
1353 statement, and thank you for your input. I just want to
1354 concentrate on your point about the amendment to section B
1355 of existing law.

1356 In reading that specific exception, the words "other than
1357 activities intended solely for obtaining necessary
1358 intelligence" would be struck, as I have pointed out, which
1359 would require that even the most mundane obtaining of
1360 necessarily intelligence, and all of the covert activities
1361 inherent in that activity, would be required to be shared by

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1362 the President and the Executive Department with various
1363 Members of Congress, and in most cases, in advance rather
1364 than 48 hours after the fact.

1365 Is that your understanding, Mr. Michel?

1366 Mr. MICHEL. Well, I always considered this to be a very
1367 important exception that we had currently written into the
1368 law, and that when we are about to wipe out very important
1369 exceptions, then I have to ask why.

1370 What is the reason for it?

1371 Mr. LIVINGSTON. I totally agree with you. Even if it
1372 were the most significant intelligence-gathering activities,
1373 it would seem that this is not the type of thing that should
1374 be shared, and could very well totally close down our
1375 capability to gather intelligence around the world.

1376 Mr. MICHEL. I am not the specialist here. We got a few
1377 behind us here, Bill Turner and Bill Colby, and there may be
1378 others that can probably speak more directly to that, but I
1379 have a real problem with that.

1380 Mr. LIVINGSTON. Well, I thank you for your statement. I
1381 have no further questions.

1382 Chairman MCHUGH. Thank you.

1383 Mr. Stokes?

1384 Mr. STOKES. Thank you very much, Mr. Chairman.

1385 Let me also commend our distinguished Minority Leader for
1386 his appearance here this morning, and the excellent

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1387 statement he has given in support of his views.

1388 On the statement that you made with reference to putting
1389 the President in a foreign policy strait-jacket, as the
1390 distinguished Minority Leader knows, the law already
1391 requires timely notice to the Congress, so we are not saying
1392 that the President has to do something he is not already
1393 required to do under law.

1394 Does the distinguished Minority Leader by any stretch of
1395 the imagination say to us that notice after 14 months, we
1396 take McFarlane's testimony in public domain, where he said
1397 it was August of 1985, when the President first gave
1398 approval for the sale of the arms by the Israelis to Iran,
1399 by any stretch of the imagination, would the distinguished
1400 Minority Leader say that was timely notice to the Congress?

1401 Mr. MICHEL. That was not.

1402 Mr. STOKES. I can say to you that in crafting this
1403 legislation, I don't think either I or Ed Boland, the
1404 distinguished former chairman of this committee, one of the
1405 most distinguished members of the House, and a gentleman who
1406 distinguished himself by chairing this committee for six
1407 years, co-sponsor of this legislation, intends in any way to
1408 tie the President's hands.

1409 We respect the fact that the President has to make certain
1410 exigent decisions, and must have latitude for that, but Ed
1411 Boland has stated on several occasions that when they

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1412 entered into the original language on timely notice, that it
1413 was based upon mutual trust between the Congress and the
1414 President, and it seems to me here now that you would
1415 probably agree with me that we are confronted with a
1416 situation where, because the President made a unilateral
1417 decision on his part without the involvement of the
1418 Congress, we are now in a situation where the President
1419 himself, as a consequence of this Act, has requested an
1420 Independent Prosecutor to conduct a criminal investigation
1421 of this Act.

1422 He has requested both Houses of the Congress to
1423 investigate the consequences of his Act, and I think that
1424 the distinguished Minority Leader would agree with me that
1425 had he complied with the law, say timely notice being
1426 somewhere within a 48-hour period, or if the law as proposed
1427 had been enacted, say 48 hours, and he had come over to the
1428 Congress and said to our committee which you have sat on now
1429 for 10 years, that he planned to do what he planned to do;
1430 isn't it conceivable that some of us on that committee would
1431 have had enough common sense to say to him, "Mr. President,
1432 this is bad. Go back to the drawing board and think about
1433 this one again, Mr. President."

1434 Don't you think that would have happened?

1435 Mr. MICHEL. I am not altogether sure it would have been
1436 the President himself who would have come up, but at least

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1437 someone speaking on his behalf personally responsible, and
1438 there would have been a significant reaction on our part, I
1439 think, maybe from both sides of the aisle.

1440 It would vary in degree, but as I said and indicated, that
1441 timely fashion is open to interpretation, and from my point
1442 of view, I felt offended that it took that long before we
1443 were notified, and bearing in mind, I guess, it was an
1444 operation that was somewhat far removed from the kind of
1445 normal things we think of here, and this whole hostage issue
1446 is one in more recent years that has come to the fore that
1447 we, a number of years ago, when I first came to the
1448 Congress, I don't think anything gave any serious thought to
1449 what the problem might be for us in respect to the hostage
1450 issue.

1451 But in more recent years, the Carter Administration, and
1452 this one, we have been caught up in things, and new
1453 developments probably require a reassessment of how to deal
1454 with it. That was part of the reason for the lengthy delay
1455 in notification, because it took so long through
1456 intermediates to get the kind of contacts that eventually
1457 were supposed to bear fruit, but as I said, I am troubled by
1458 that long delay.

1459 Mr. STOKES. Thank you, Mr. Chairman.

1460 Chairman MCHUGH. Thank you.

1461 Mr. Hyde?

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1462 Mr. HYDE. I want to congratulate you for a superb
1463 statement, analysis of a very thorny problem, and I want to
1464 associate myself with your sharp criticism of the
1465 Administration in not timely notifying Congress.

1466 The law is clear, and 14 months is not timely, and I think
1467 the law in that sense was not observed, and I think that the
1468 Administration is paying a political price for that, as
1469 every Administration will when they do not observe the
1470 letter or the spirit of the law, and I would personally like
1471 to see timely fashion stay in there, and we will define
1472 timely fashion, as we are doing now, by saying this surely
1473 wasn't, and the Administration is paying a price for that.

1474 In addition, by notifying Congress, you get some risk
1475 insurance when something is high-risk, and doesn't go right,
1476 but that said, and I firmly believe that, and I agree with
1477 the spirit of this legislation, but I sure don't agree with
1478 how it handles it, you all, except Mrs. Kennelly, who was
1479 not on the committee, remember perfectly well when the
1480 Secretary of State came into our committee and told us of a
1481 very sensitive operation, and those were his words, and the
1482 next day, it was in The Washington Post in detail.

1483 There are people who say a life was probably lost on that
1484 disclosure. Now, I can understand the White House and Mr.
1485 Casey being concerned that the leaks come from his own
1486 agency, from the State Department, from Capitol Hill where

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1487 we are besieged by media after every meeting, just for
1488 background, confirm what I have heard from somebody else,
1489 and I can understand the paranoia, the leaks are legion,
1490 and I have so many of them here, and I don't like to talk
1491 about them, because you give some legitimacy to the
1492 disclosure, but the 48 hours is hog-tying a President in
1493 matters where we ought to leave it at timely notice, and if
1494 they don't observe it, force that political price to be
1495 paid.

1496 Two more things, we are besieged by spy scandals, the
1497 Kampiles case where this employee sold a manual about a very
1498 highly sensitive satellite, the Morrison case, the Walker
1499 case, the three Marines, et cetera, et cetera, and we are
1500 spending our energies trying to disseminate more classified
1501 information instead of trying to address, at least in tandem
1502 with our concerns about notification, some of these serious
1503 problems.

1504 Permit me to digress to answer something that the Speaker
1505 said that really deserves an answer, and in all fairness, he
1506 assailed the CIA for conduct on two matters, one of which
1507 was Chile, and I just want to indulge the chairman by
1508 reading two paragraphs from a book written by Mr. Colby,
1509 that is an excellent book on the CIA.

1510 "Honorable Men, My Life in the CIA," by William Colby;
1511 and he discusses that Chilean myth that we have heard for

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1512 | time immemorial, how dirty the CIA was, and how we overthrew
1513 | this democratically-elected leftist Allende. Two points
1514 | need to be made about the CIA's assistance during this
1515 | period after 1970, and both are a contrast to the general
1516 | impressions abroad about it.

1517 | The first is that CIA's help was to center political
1518 | groups, not the right-wing extremists. Of the millions of
1519 | dollars spent in Chile by CIA, the most prominent right-wing
1520 | group received some 38,000 during the track-two effort in
1521 | 1970, and about 7,000 more during 1971 and none thereafter.

1522 | The second is that the 1973 coup was carried out by the
1523 | Chilean military with no participation by CIA. In fact, CIA
1524 | sent clear instructions to its station in Santiago in May
1525 | and June 1973 to separate itself from any contact with the
1526 | Chilean military, so that it would not be misunderstood to
1527 | have been involved in any coup action the military might
1528 | undertake.

1529 | The real thrust of CIA's program was to support the center
1530 | political forces so they could win the next elections and
1531 | thus remove Allende through peaceful means.

1532 | This is going out over C-SPAN, and the record ought to be
1533 | clear that the CIA performed adequately in Chile. They made
1534 | mistakes, being human, but they are not to be assigned guilt
1535 | for overthrowing the great democrat Allende, because they
1536 | didn't.

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1537 I thank the chairman for that time.

1538 Chairman MCHUGH. Mr. Kastenmeier?

1539 Mr. KASTENMEIER. Thank you, Mr. Chairman.

1540 I am glad to greet the Minority Leader here. On the point
1541 of 48 hours, I would think the committee would want to look
1542 at the time in terms of whether 48 hours has some peculiar
1543 validity as a time frame or something else.

1544 I think that and other issues were appropriately raised by
1545 Mr. Michel. I do take issue with him with the implication
1546 that somehow those appointed to the committee should be
1547 predisposed to support covert action.

1548 I think that that is a basic fundamental difference I
1549 perhaps have with the gentleman from Illinois. There are
1550 many who feel, in the agency and others, that frankly in
1551 terms of the agency that covert action has been sort of the
1552 bane, the thing that has damaged the agency over the years.

1553 Granted, there have been effective, useful covert action
1554 programs historically, and some that have been an
1555 embarrassment to this country. Therefore, I would
1556 suggest--and furthermore, the Intelligence Committee is
1557 concerned with intelligence-gathering, and analysis, much of
1558 it highly technical, in terms of, let's say, 96, 98 percent
1559 of our budget, and our efforts are in intelligence,
1560 intelligence-gathering, and the covert action is a small
1561 portion.

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1562 I would think that this is where we need critical review
1563 that is a sort of dispassionate view, second-guess, if you
1564 will, on the part of the Congress, and that should not
1565 imply, as my friend, Mr. Hyde, suggests, that those who
1566 might oppose certain initiatives are disposed to leak those
1567 initiatives.

1568 I don't think the connection is there. If I am disposed
1569 to oppose a program, I feel I must be purer than Caesar's
1570 wife on that with respect to possibly leaking anything about
1571 it.

1572 Mr. HYDE. Would the gentleman yield?

1573 I hope I did not imply that opposition predisposed someone
1574 to leaking. I don't believe that at all. I simply say
1575 there are isolated instances where people really think it is
1576 a higher duty to leak a program or a policy if they are
1577 against it, and I quoted one former member, whom we all knew
1578 and admired, as that was his duty, to leak a program, and
1579 there are others who feel that way, and we know why they
1580 are.

1581 Mr. KASTENMEIER. Those are members on other committees,
1582 but I accept the Speaker's premise that those appointed to
1583 this committee, above all, are absolutely bound to
1584 confidence, whether we like activities, support them or not.

1585 I hope that we can be effective in ensuring that the
1586 confidence in the committee is justified by the House.

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1587 Chairman MCHUGH. Mr. Beilenson?

1588 Mr. BEILENSON. Thank you, Mr. Chairman. I, too, enjoyed
1589 having our good friend from Illinois, Mr. Michel, here with
1590 us today. He has made some very useful points, and among
1591 them, the point you made with respect to where one of these
1592 eight folks might be when time for notification came around.

1593 That is something we should perhaps take a look at. We
1594 might, for example, limit it to require the notification
1595 only amongst those eight members are in the country or even
1596 in Washington, D.C., can be notified personally, certainly
1597 not when they are overseas, or there can be somebody else
1598 you might notify in their stead, or you don't have access to
1599 a secure line.

1600 The gentleman brings up some valid points. Maybe the
1601 Speaker might take some of his friends from Illinois
1602 overseas sometime, and being called a month from now,
1603 calling him up and trying to inform him of something the
1604 Soviet Union should not know about, well, perhaps we could
1605 address that more carefully.

1606 Mr. MICHEL. One other point, Tony, our adversaries know
1607 who the members are on this committee, and they know who the
1608 leaders are, and when, at one given time, all these members
1609 are given a simultaneous notification of something is up, if
1610 you don't believe that in itself is a key and a tip-off to
1611 your adversary, then that is another element in this thing,

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1612 and I just, from a point of being extraordinarily careful
1613 about how we tip our hand, that that ought to also be taken
1614 into account.

1615 Mr. BEILENSEN. Thank you.

1616 Let me go on for a moment, Mr. Chairman, and respond to a
1617 few things that Mr. Michel said. If you believe, and I
1618 think you used the word that legislation on the books that
1619 we have now is wise legislation, then one would have to ask
1620 what is wrong with spelling out the requirements a little
1621 bit, because as you and Mr. Hyde and everybody quite
1622 properly feel, that the timely notice requirements didn't
1623 work in this particular case, then perhaps 48 hours is not
1624 the cure-all, but somehow what we have got now is not quite
1625 adequate, although we all believe that it is wise
1626 legislation in general; so, let's struggle to find some way--

1627 Mr. HYDE. Would my friend yield to me on that point?

1628 Mr. BEILENSEN. Of course.

1629 Mr. HYDE. The observation of the law was inadequate, not
1630 the law. Every time the law is not obeyed, we don't need to
1631 change the law, but better observance of the law.

1632 These hearings are moving us in that direction, but when
1633 you start putting time limits on it, it gets to be
1634 micromanagement.

1635 Mr. MICHEL. It is a bit embarrassing, frankly, for Henry
1636 and myself, because it is our Administration that did not do

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1637 what we would have thought they should have been doing, but
1638 even with that, we would take the strong position, not
1639 knowing who ongoing Presidents might be, we want to be very
1640 careful.

1641 Mr. BEILENSEN. You want to lay down some explicit
1642 guidelines as to what is timely for them. It is not enough
1643 to hope that some future Administrations will remember, or
1644 will have learned, because in fact, we learned through
1645 history that people forget, and the folks who are carrying
1646 out the policy, they may be in their thirties, forties, and
1647 may not have been even around at the time of the next
1648 crisis.

1649 You talk to folks at home about the Second World War, the
1650 kids in high school were not even around when the Vietnam
1651 War was here. You got to keep reminding people, and to the
1652 extent that you can usefully put something in legislation,
1653 you should do so.

1654 With respect to a weekend Presidency, I don't think
1655 anybody is suggesting we strip the President of his ability
1656 to act. We are trying to require again, concentrating on
1657 our right to be informed, as a coordinating branch of the
1658 government, to be informed.

1659 In speaking about espionage cases, those in fact are cases
1660 which are far more costly, far more destructive and damaging
1661 to our national interests probably than anything we are

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1662 talking about.

1663 We are talking not about those sorts of things or even
1664 intelligence-gathering, but we are talking about policy
1665 matters, covert actions, and part of the problem--and I have
1666 probably exceeded my five minutes--part of the problem one
1667 must say frankly is that the main foreign policy initiatives
1668 of this particular Administration, the so-called Reagan
1669 Doctrine, are initiatives that are designed in such ways
1670 which are often funded or done through the Intelligence
1671 Committees which cannot be openly debated on the Floor.

1672 It leaves us all in a very difficult situation. The
1673 Congress has to be part of this in one respect or another,
1674 but we can't debate it on the Floor, talking about how much
1675 money we are spending, because it has all been given to us
1676 in this other form of covert action, not because the
1677 President or the Administration wants to avoid this kind of
1678 debate, but because he believes in these kinds of covert
1679 actions.

1680 It makes it difficult for us, because we have a part to
1681 play, and it is difficult for us to play that part, because
1682 we are not allowed to talk about any of these things, and
1683 they are in the paper, but we can't talk about them.

1684 Chairman MCHUGH. Mrs. Kennelly?

1685 Mrs. KENNELLY. Mr. Michel, I am just curious, I know some
1686 of the things that were set up for the Speaker, are you

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1687 | satisfied, that the statute as written now that you could be
1688 | adequately notified that at all times contact would be
1689 | gotten with you.

1690 | Is that mechanism set up presently under the statute as
1691 | written now?

1692 | Mr. MICHEL. There has to be a certain measure of trust,
1693 | and when the American people, and of course, we are in that
1694 | time when both parties are picking candidates to run for
1695 | President, a long, long tortuous trail to that end of the
1696 | line, we have to give a certain measure of trust and
1697 | confidence to whomever the American people at that time have
1698 | chosen to be their Commander-in-Chief, and I have to trust
1699 | in that judgment of the people from time to time.

1700 | It may be against my best wishes.

1701 | Mrs. KENNELLY. Since we do live in a time of possible
1702 | terrorism within this country, which is considered a real
1703 | possibility, are you always available to know, does the
1704 | White House know where you are?

1705 | Mr. MICHEL. I don't know that they have had any real
1706 | problem every running me down personally.

1707 | Mr. BEILENSEN. They knew where you were on the override.

1708 | Mr. MICHEL. Oh, yes, and I make a special point of
1709 | letting them know where we are going to be at any given
1710 | time.

1711 | Mrs. KENNELLY. Are you satisfied that this committee

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1712 | could contact you, if in fact this legislation passed,
1713 | within the 48-hour notice?

1714 | Mr. MICHEL. There may be--sometimes I might be
1715 | inaccessible for some limited period of time, but I tell
1716 | you, I guess my concern is, when you are doing it
1717 | simultaneously, a signal that is tipped on that, because
1718 | that can be, people can be aware of that, simultaneous
1719 | notification, there are ways and means by which that is
1720 | determined, and then the further away from this capital city
1721 | of Washington you are, the more of a problem that becomes.

1722 | Mrs. KENNELLY. Thank you, Mr. Chairman.

1723 | Chairman MCHUGH. Mr. Hyde?

1724 | Mr. HYDE. One more brief question.

1725 | What do you do, Mr. Michel, when another country that you
1726 | are dealing with in tandem on an operation conditions their
1727 | participation on non-disclosure? They have got their
1728 | citizens involved, their agents, their people, and they read
1729 | the papers, and they will help you and we may desperately
1730 | need their help, but they condition their participation on
1731 | non-disclosure.

1732 | What do you do then, if you are trapped into a 48-hour
1733 | notification?

1734 | Mr. MICHEL. That is an interesting question. The very
1735 | raising of the question by the distinguished gentleman begs
1736 | some kind of answer from the committee eventually.

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1737 Chairman MCHUGH. Thank you very much, Mr. Michel. I want
1738 to reassure you again on the question of whether or not what
1739 we are proposing here would affect the collection of
1740 intelligence, and I would point out that section 662 of the
1741 Foreign Assistance Act, which the Hughes-Ryan amendment,
1742 which is still in effect, and would be after this bill were
1743 enacted, covert operations and notice requirements are not
1744 intended to affect intelligence-gathering, so your
1745 understandable concern about that would be taken care of by
1746 this particular language.

1747 Mr. STOKES. Just one question.

1748 Since you agree that 14 months is not timely notification
1749 under the statute, and since he feels that 48 hours severely
1750 constricts the President, does the gentleman care to offer a
1751 time limit that he is agreeable to?

1752 Mr. HYDE. Split the difference.

1753 Mr. MICHEL. Well, I can tell by the gentleman's demeanor
1754 that he was about to pop that question, and I guess I have
1755 to say, it must be someplace in between, but as I said, I
1756 have a real problem when we get to finally delineating and
1757 specifically tying that down, that is a difficult one to
1758 call, but more than anything, to really--I think the
1759 committee has been made aware of the real serious problem,
1760 whereas in that type of frame, and I will leave it go at
1761 that.

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1762 Mr. STOKES. Thank you very much.

1763 Chairman MCHUGH. Thank you very much, Mr. Michel.

1764 Our next scheduled witness was to be Senator Moynihan of
1765 New York, but he is the Floor leader on the question of the
1766 highway bill override in the Senate, so he has submitted his
1767 statement, and will not be with us.

1768 There is one comment in his statement which I would,
1769 without objection, like to read at this point, because it
1770 gets to the heart of the question of whether Congress can be
1771 trusted, and Mr. Hyde has suggested that in certain cases,
1772 the intelligence community should be able to share
1773 information with other perhaps intelligence communities, and
1774 not be burdened with telling Congress.

1775 Mr. Moynihan says, "There is a nation that the Congress
1776 cannot be trusted. That the Congress is a national security
1777 risk. Wrong. Committees here take matters with great care.

1778 You treat matters before your committee with great care.
1779 We are not to be held responsible for the revelation of
1780 public belligerent acts such as the mining of Nicaraguan
1781 harbors, or revelations by adversaries such as happened in
1782 the Beirut newspaper, Al Shiraa.

1783 When you get to the point where you trust a Ghorbanifar, a
1784 man the career intelligence service did not trust, before
1785 you trust the Speaker of the House; or when you decide to
1786 pass on intelligence information to the Ayatollah but will

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1787 | not inform the Chairman of the Intelligence Committee of a
1788 | Presidential finding, then matters are confused. And it is
1789 | time to add some order with amendments such as these.

1790 | [The statement of Senator Moynihan follows:]

1791 |

1792 | ***** INSERT 2-1 *****

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1793 Chairman MCHUGH. I would like to invite our next
1794 witnesses to join us in a panel in an effort to save your
1795 time and ours.

1796 We are very grateful for your patience, as well as your
1797 presence here today.

1798 Our first panelist will be Admiral Stansfield Turner, who
1799 served as Director of the Central Intelligence Agency during
1800 the Carter Administration, graduated from the Naval Academy
1801 in 1946, spent two years at Oxford as a Rhodes scholar, and
1802 his naval experience included two years as Commander of the
1803 NATO Southern Command.

1804 Our second panelist will be Mr. William Colby, who also
1805 served as Director of Central Intelligence, and had a very
1806 long and distinguished career in the intelligence business
1807 before that. He has appeared before our committee, as
1808 Admiral Turner has, many times, and they have always
1809 contributed significantly to our discussion.

1810 Our third panelist will be Ray Cline. Dr. Cline is
1811 presently Chairman of the U.S. Global Strategy Council, and
1812 is a young Professor of International Law of Georgetown
1813 University School of Foreign Service, and previously served
1814 as a Deputy Director for Intelligence, CIA, and the
1815 Department of State, and Senior Advisor at the Center of
1816 Strategic International Studies.

1817 We appreciate all of you being here, and Admiral Turner,

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1818 | if we may start with you, please?

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1819 RPTS BOYUM

1820 DCMN SPRADLING

1821 [11:00 a.m.]

1822

1823 STATEMENTS OF ADMIRAL STANSFIELD TURNER, U.S. NAVY (RET.),

1824 FORMER DIRECTOR OF CENTRAL INTELLIGENCE; WILLIAM E. COLBY,

1825 ESQ., FORMER DIRECTOR OF CENTRAL INTELLIGENCE; and RAY

1826 CLINE, CHAIRMAN, U.S. GLOBAL STRATEGY COUNCIL AND FORMER

1827 DEPUTY DIRECTOR FOR INTELLIGENCE, CIA

1828

1829 STATEMENT OF ADMIRAL STANSFIELD TURNER

1830

1831 Admiral TURNER. Thank you, Mr. Chairman.

1832 In view of the time I have sat here I cut my presentation

1833 in half. I believe you have a written copy of it as well as

1834 a classified addendum to it.

1835 Chairman MCHUGH. Without objection, we will include that

1836 in the record.

1837 Admiral TURNER. Let me hit the highlights as quickly as I

1838 can for you, sir.

1839 With one exception which I will note below, I believe it

1840 is very desirable that the intelligence oversight committees

1841 of the Congress be informed of all covert activity within

1842 the 48 hour limit proposed by the bill. The question is is

1843 this provision of law the best way to ensure that the

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1844 Congress will in fact be informed within 48 hours of the
1845 signing of a covert action finding by the President.

1846 We have recently had an unfortunate example of the Finding
1847 of January 17, 1986 regarding CIA support in facilitating
1848 the delivery of arms to Iran. The fact the notification was
1849 not given to Congress of that Finding stands starkly in
1850 contrast with the written agreement made between the
1851 Director of Central Intelligence and the Senate Select
1852 Committee on Intelligence in the spring of 1984 in the wake
1853 of the controversy over whether the Congress was adequately
1854 informed about the mining of the Nicaraguan harbors.

1855 The Director of Central Intelligence purportedly pledged
1856 in a written document that had the approval of the President
1857 to ensure that the Congress was informed in the future of
1858 all significant intelligence activities. It would appear
1859 reasonable to consider that the CIA support for the sale of
1860 arms to Iran was a significant intelligence activity. In
1861 short, the written pledge of the Director in the spring of
1862 1984 was not sufficient to ensure that the Congress was
1863 informed in January of 1986.

1864 I would suggest then, Mr. Chairman, that the establishment
1865 of good will and cooperation between the Executive Branch
1866 and the two congressional committees on intelligence may be
1867 more important than written agreements or provisions of law.

1868 The essential question is how to restore mutual trust and

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1869 confidence. We are very fortunate on the 4th of March that
1870 the President, in his address to the Nation on TV, stated
1871 unequivocally that his Administration had come to a new view
1872 that there must be congressional oversight.

1873 I quote, "I am also determined to make the congressional
1874 oversight process work. Proper procedures for consultation
1875 with the Congress will be followed not only in the letter,
1876 but the spirit."

1877 Let me suggest that there might then be some advantage in
1878 allowing the Executive to prove itself in this regard
1879 without the Congress first tightening the legal screws. I
1880 am suggesting at this particular moment discretion on the
1881 part of Congress may be the better part of valor. When the
1882 intelligence community is adjusting to the new Presidential
1883 Directive, it may be best not to sound any more alarms than
1884 are necessary. Especially not with the provision of law
1885 that may well not be effective anyway if there is not good
1886 will in addition.

1887 Mr. Chairman, I cannot speak for the Administration, of
1888 course, but you do raise the specter that the Administration
1889 may find it necessary to veto this bill if it comes before
1890 it. I know that when a similar provision was discussed in
1891 1980 in connection with the Intelligence Oversight Act of
1892 that year, I recommended to President Carter that he veto
1893 such a bill if it did pass the Congress, and I believe the

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1894 | President was inclined to do so at that time.

1895 | I would hate to see at this particular juncture that kind
1896 | of adversarial relationship develop between the committees
1897 | and the Administration.

1898 | Now, as I mentioned at the beginning, I would suggest
1899 | there is one case in which notification to the Congress in
1900 | 48 hours poses a genuine concern to the intelligence
1901 | professionals. That is when a chief of intelligence finds
1902 | that it is desirable to ask an American employee, or a
1903 | foreign agent to put his or her life on the line in some
1904 | covert activity. I did this on three occasions.

1905 | I would have found it very difficult to look such an
1906 | individual in the eye and tell him or her that I was going
1907 | to discuss this life threatening mission with even half a
1908 | dozen people in the CIA who did not absolutely have to know,
1909 | that is, who were not necessarily and intimately involved in
1910 | supporting this activity.

1911 | Let me describe very briefly the three instances to which
1912 | I referred, all are efforts in connection with the attempt
1913 | to release our hostages from Tehran in 1979 to 1980.

1914 | I will only sketch them briefly. There are more details
1915 | in the classified appendix to my comments.

1916 | First, as you will recall and as has been mentioned
1917 | earlier this morning, six Americans escaped from the Embassy
1918 | compound and eventually took refuge in the residence of the

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1919 Canadian Ambassador. We in the CIA assumed responsibility
1920 for obtaining the release of those six Americans. We did
1921 that in part by sending in a CIA covert action professional
1922 into Tehran to engineer the departure of these six.

1923 Now, for this person voluntarily to step into that hostile
1924 environment at that time was an act of bravery and self-
1925 sacrifice. Only a bare handful of people in the CIA were
1926 privy to what was going on, and in my conscience I cannot
1927 inform anyone else who was not essential to the operation.
1928 We did proceed without informing the Congress. As you know,
1929 it was a highly successful undertaking.

1930 The second instance concerned what has come to be known as
1931 the Desert 1 operation. The military needed to refuel
1932 helicopters as they flew from an aircraft carrier in the
1933 Arabian Sea to Tehran. They were having great difficulty in
1934 finding any way to do this without risk of revealing that a
1935 rescue effort was in progress. I asked the CIA covert
1936 action experts to turn their minds loose on this problem.
1937 They came back to me in about a week with the thought that
1938 the desert floor in Eastern Iran might be sufficiently firm
1939 to take the fixed-wing aircraft carrying the fuel for the
1940 helicopters.

1941 What is more, they actually flew a light plane into the
1942 desert by the light of a full moon. They took core samples
1943 and proved that the desert floor was sufficiently firm.

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1944 Here again I was asking people to insert themselves into a
1945 hostile country at high risk, only a handful of CIA people
1946 knew of this venture and we did not inform the Congress.

1947 The third example concerned providing support for the
1948 rescue force once it reached the environs of Tehran by
1949 helicopter. CIA personnel went repeatedly into hostile
1950 Tehran to survey what the rescue force would find on its
1951 arrival, and to acquire trucks to transport the men from
1952 where the helicopter would drop them to the walls of the
1953 Embassy.

1954 Each such trip into Tehran was a highly risky venture and
1955 any hint we were doing such a thing right through Marabad
1956 airport would certainly have roused suspicions and raised
1957 the possibility that our people would have been caught in an
1958 Iranian noose.

1959 Again, very few individuals in the CIA knew of this
1960 activity and we did not notify the Congress.

1961 I believe instances like these three will be infrequent.
1962 I also believe the odds are high that these would be the
1963 kinds of operations with which the Congress would agree were
1964 they informed. There is no guarantee of that.

1965 Here though we come back to the question of mutual trust
1966 and confidence. I would hope that a President who endorsed
1967 congressional oversight as President Reagan has just done,
1968 would not undertake even a life threatening covert action

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1969 that was also a major change in foreign policy without
1970 informing the Congress.

1971 One other recent development will minimize the risk that
1972 there will not be such notification in cases like that.
1973 That is another new policy which President Reagan also
1974 enunciated in his speech on March 4th. He said, "I have
1975 also directed that any covert activity be in support of
1976 clear policy objectives and in compliance with American
1977 values. I expect a covert policy that if Americans saw it
1978 on the front page of the newspaper they would say "That
1979 makes sense."

1980 That pledge not only makes sense, I believe it gives
1981 greater assurance that almost all covert actions conceived
1982 by the Executive will be acceptable to the Congress.

1983 Finally, Mr. Chairman, let me offer one final suggestion.
1984 Oversight of intelligence has broken down but the fault is
1985 not entirely with the Executive. The Congress, the media,
1986 the public were all aware in August of 1985 that Lt. Colonel
1987 Oliver North was engaged in activities in support of the
1988 contras, whether or not these were legal or illegal
1989 activities was unclear, but there was little question in any
1990 of our minds that Colonel North was deliberately attempting
1991 to circumvent the spirit of the law governing support to the
1992 contras.

1993 Thus the oversight process did not work at the time the

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1994 President needed the advice of the Congress. Why he did not
1995 get that advice is something that you know far more better
1996 than I. I would only suggest that it is not adequate to say
1997 that Mr. McFarlane or others misled the Congress. If that
1998 is a sufficient excuse the very oversight process that we
1999 are working on so hard is not worth the attention we are
2000 giving it.

2001 There is then some danger in my view that the public and
2002 the Congress might look on this bill as all of the action
2003 necessary by the Congress to correct recently disclosed
2004 shortcomings in the oversight process.

2005 I would hope that Congress would concentrate instead on
2006 measures to improve its own conduct of oversight, to make it
2007 more rigorous and on steps to improve the relations between
2008 the intelligence community and the Congress. We need, Mr.
2009 Chairman, to return to conditions where we can conduct
2010 oversight in a cooperative and constructive manner.

2011 Thank you, sir.

2012 [The statement of Admiral Turner follows:]

2013

2014 ***** INSERT 3-1 *****

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2015 Chairman MCHUGH. Thank you very much, Admiral.

2016 Mr. Colby.

2017

2018 STATEMENT OF WILLIAM E. COLBY

2019

2020 Mr. COLBY. Mr. Chairman, thank you for the invitation. I

2021 have read over this proposed bill, Mr. Chairman, and I think

2022 it is perfectly understandable why the bill has come to be.

2023 The long delay of a timely fashion obviously was a

2024 violation of the concept of the law. I think in that

2025 situation one should first look to the proper execution of

2026 the law rather than necessarily changing it; every time we

2027 have a murder we don't necessarily change the laws against

2028 murder.

2029 We try to execute them better and more effectively.

2030 You have a situation where the Administration was dealing

2031 with a rag tag bunch of Middle East arms merchants and was

2032 not willing to share the same information with the

2033 responsibility leadership of the Congress. I mean,

2034 obviously there is a contradiction there, a total

2035 contradiction.

2036 Even an estimate as to whether that operation would have

2037 remained secret is really highly obvious that it couldn't

2038 possibly remain secret considering the people that the

2039 Administration was dealing with.

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2040 The fact is that the law as it existed was not really
2041 followed. That is all--we all know that. The problem of
2042 leaks is a very serious one and it is a very serious one to
2043 share the information with the Congress. We all know from
2044 our personal lives that if we have a secret we have a
2045 secret, but if we share it with someone, we have half a
2046 secret and if you apply the same proportionality to the
2047 kinds of secrets we have now, I think many of our very
2048 serious national secrets are in the category of a .00001 of
2049 a secret rather than any kind of a real secret, and it is a
2050 problem we are wrestling with.

2051 I have great respect for the Congress in its role of
2052 oversight. I think it is an essential part of our
2053 constitutional system. It is not a happenstance that this
2054 is a select committee, It was set up as a select committee
2055 so that the Speaker and the Minority Leader could be
2056 selective about who appears on this committee and they can
2057 keep the people that they do not have faith in off the
2058 committee.

2059 They will have a difference of opinion certainly, but they
2060 will have a faith that those people will be responsible in
2061 their activities.

2062 The fact should the Congress know everything, the fact is
2063 the answer to that is obviously no. There are things that
2064 the Congress does not need to know. When we got into our

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2065 first set of investigations of the Agency, I called upon the
2066 Chairman of the various committees that were investigating
2067 me and I said, look, I am not going to contest your
2068 constitutional right to know everything because that is a
2069 dead issue. I will never win that.

2070 We have decided that we are having a constitutional
2071 separation of powers.

2072 But I want to convince you of the same rule that we apply
2073 to ourselves in the intelligence community. It is called
2074 need to know. Do I need to know some item of information?
2075 Because if I don't I shouldn't know it. I said, I as
2076 Director do not need to know the names of individuals
2077 serving for us secretly in, for instance, Eastern Europe. I
2078 arrange my affairs so I don't know their names. I know
2079 there are people there, I know roughly how good the
2080 information is, all the rest of it, but I don't need to know
2081 their names.

2082 Today I don't know their names and I am glad I don't. I
2083 had one effort by somebody to be nice to one of these
2084 fellows and send him a letter with my signature at the
2085 bottom congratulating him on what a good job he had done,
2086 which I was quite willing to send my name, no problem, but
2087 it had his name there and I almost blew the roof off the
2088 place.

2089 The idea of putting his name and my name on the same piece

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2090 of paper was a death warrant for that individual, no
2091 question about it.

2092 The two chairmen I am delighted to say did agree with me
2093 that we would conduct that massive investigations into
2094 American intelligence without the names. I think that is
2095 the kind of arrangement that can be made. Leave the
2096 constitutional issue aside, make the arrangement based on
2097 sense.

2098 The law says that the Congress will be informed in a
2099 timely fashion and if the action is already taken and shall
2100 provide a statement of the reasons for not giving prior
2101 notice.

2102 I think Admiral Turner has just given us three reasons for
2103 not giving prior notice, and I don't think anybody in the
2104 Congress would take issue with the fact that that
2105 information was not passed to the Congress before or during
2106 that sensitive operation.

2107 The fact is the machinery is there. Now, whether the
2108 Congress wants to go ahead and counter a somewhat
2109 imaginative bit of legalese that a finding could be oral and
2110 not in writing, it is a kind of micromanagement of the
2111 President's office and I think we really have to let the
2112 President pretty well be responsible for how he runs his
2113 office. I find that a rather magical thing but I think that
2114 even this bill, I might add, has some loopholes in it.

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2115 For instance, it says at the very top, to the extent
2116 consistent with due regard for the protection of
2117 unauthorized disclosure of classified information--due regard
2118 for that in Admiral Turner's case I think would say, well, I
2119 had due regard for the importance of the protection of these
2120 sources, these individuals and thereafter I didn't follow
2121 the rest of the provision.

2122 It points out below, it says that nothing in the Act shall
2123 be construed as authority to withhold information from the
2124 intelligence committees on grounds that providing it to the
2125 committees would constitute unauthorized disclosure.

2126 We are not talking about whether giving it to the
2127 committee would be an unauthorized disclosure, we are
2128 counting upon the risk to the due regard for protection of
2129 our intelligence sources.

2130 So there is a loophole here. The Congress can pass this
2131 law and if some president doesn't want to follow the
2132 sensible rules of getting along with Congress, we are going
2133 to have another meeting just like this two, three, five
2134 years from now at which somebody will say well, he is not
2135 allowed to have due regard for that, he got to tell
2136 everything.

2137 Then that won't pass because it really doesn't make too
2138 much sense.

2139 So my conclusion, Mr. Chairman, is fairly simple, I think

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2140 | it does depend upon the relationship between the committee
2141 | and the Administration, that in this case there was a
2142 | failure of that relationship and that this should be
2143 | improved. To borrow a phrase from my neighbor the Admiral
2144 | here, I think the mere submission of this bill and holding
2145 | of these hearings is a shot across the bow or perhaps across
2146 | the stern of the Administration on this case, and that this
2147 | will certainly be taken due note.

2148 | I am a great believer in the case law system in which we
2149 | don't try to define every last detail of relationships, but
2150 | let developments determine how the law is to be interpreted
2151 | and applied over the years. That is how our judicial system
2152 | works, and I think it applies to this.

2153 | If I may as one point, Mr. Chairman, just take a moment, I
2154 | think the Speaker did misspeak himself a bit on a couple of
2155 | details and I deeply appreciate Mr. Hyde's correcting the
2156 | record on the alien decision. There was a CIA operation
2157 | there long before the coup, that was not a secret CIA
2158 | operation, it was directed by the President of the United
2159 | States, very, very precisely, to the then Director of
2160 | Intelligence. It was a legal order at that time.

2161 | It would not meet the Hughes-Ryan requirements at this
2162 | time but that even came long before it.

2163 | Secondly, the Speaker referred to the plan to destabilize
2164 | Chile. I must take a point of personal privilege on that

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2165 | because that word was put in my mouth by a former Member of
2166 | the Congress and it was proved to the satisfaction of the
2167 | committee at that time that I had never used that word. I
2168 | would not use that word because that was not our policy.

2169 | So that word has been improperly assigned to the CIA's
2170 | activities as Mr. Hyde points out.

2171 | And thirdly, the Arbenz case that the Speaker mentioned,
2172 | the CIA did not have a plan to assassinate Mr. Arbenz, it
2173 | had a plan to overthrow him. I think this is a difference
2174 | and I would just like to clarify that for the record. With
2175 | great respect to the Speaker, I am afraid he was somewhat
2176 | misinformed on that.

2177 | [The information follows:]

2178 |

2179 | ***** COMMITTEE INSERT *****

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2180 Chairman MCHUGH. Thank you very much, Mr. Colby.

2181 Dr. Cline.

2182

2183 STATEMENT OF RAY CLINE

2184

2185 Mr. CLINE. Thank you very much, Mr. Chairman.

2186 I can be fairly brief because I want to begin by

2187 associating myself with the views of my two former

2188 colleagues at the table with me. It gives me special

2189 pleasure because I have been worrying about intelligence

2190 operations and congressional oversight for more than 40

2191 years, and I was chief of the current intelligence staff for

2192 Bill Donovan in OSS when we dropped Bill Colby in France and

2193 he has been doing well ever since.

2194 And of course I was at Oxford almost ten years before Stan

2195 Turner, so I have links with these gentlemen for a long

2196 time, and I agree with everything they said today.

2197 My familiarity with the congressional oversight problem is

2198 particularly related to the earlier period of congressional

2199 oversight before these committees were established, when

2200 there were a variety of committees trying to observe what

2201 CIA was doing.

2202 I often briefed them, the then-committees in the 1960s

2203 when Senator Richard Russell and Representative Carl Vinson

2204 were the principal congressional representatives, and I can

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2205 assure you they ran their committees with a very firm hand
2206 and the briefings were very thorough, and as far as I know
2207 they learned everything that they needed in the way of
2208 understanding of covert operations and sensitive operations
2209 of all kinds, and I am happy to say in those days I am not
2210 aware of any leaks from congressional committees.

2211 It is a happy day in some ways compared to our present
2212 controversial position.

2213 It is for that reason, recalling those days, that I want
2214 to say that I feel obliged to make a single comment on
2215 H.R. 1013 much along the lines that Mr. Michel and
2216 Congressman Hyde have already made, so I can be brief about
2217 that.

2218 In my view these new amendments prescribe an unwarranted
2219 rigidity with respect to timing of notification. That is
2220 essentially what the critics have been saying. Forty-eight
2221 hours or 14 months or whatever is a rigidity however you
2222 define it.

2223 They also are counterproductive in the micromanagerial
2224 congressional intrusion into the executive authority of the
2225 President to conduct sensitive national security operations.

2226 I am sure that that is not the intention, but my belief
2227 based on running clandestine and covert operations, is that
2228 there would be a chilling effect from such close supervision
2229 by the Congress, and Stan Turner has given you an example of

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2230 how that might be, and how the present law allows exceptions
2231 to be made.

2232 I think the key is that Mr. Stokes and Mr. Boland are
2233 right in saying that, and I quote Mr. Stokes, 'a
2234 congressional committee's oversight efforts are largely
2235 dependent on the willingness of the Executive Branch to
2236 provide information.' And Boland said, there exists a
2237 serious and fundamental disagreement between the Executive
2238 Branch and the Congress over the requirements of the
2239 existing law. He is referring of course to this
2240 notification in a timely fashion.

2241 I submit that the answer to that as has been suggested by
2242 many people, is not a dictate from the Congress. It is an
2243 attempt to work out a reasonable cooperative relationship
2244 between the Executive Branch and these committees on the
2245 question of what the best meaning of prior notice and timely
2246 fashion is from the point of view of both of the interested
2247 parties, and an understanding that there may be an area of
2248 ambiguity and flexibility in the interpretation of that
2249 reasonable law.

2250 I believe this legislation departs from that principle.
2251 It smacks a little bit of an attempt at a congressional
2252 political coup to nail down its point of view which clearly
2253 will be opposed by the Executive Branch and I think
2254 correctly so.

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2255 It is certainly true and this is a footnote in the
2256 previous discussion, I can easily imagine operations where
2257 the President makes a finding and initiates a chain of
2258 events which may well not have any precise impact for many
2259 hours, many days or even many months. It was not totally,
2260 it is not totally impossible that there should be a very
2261 long lapse before the necessity of timing notification to
2262 Congress exists.

2263 That is a complex and often controversial subject. But I
2264 believe you should approach it with a view to the problems
2265 of the Executive Branch and particularly the intelligence
2266 officers in carrying out what you want to be carried out if
2267 there is such an operation to be taking place and, an
2268 efficient secret operation.

2269 Regrettably as has been pointed out, the likelihood that
2270 controversial covert action proposals on sensitive
2271 operations will leak to the press and the public in one way
2272 or another if prior notice is rigidly required means the
2273 Executive Branch will be hesitant, will be forthcoming, and
2274 may forego very important operations that would be useful to
2275 the United States. I think that is something the Congress
2276 ought to be concerned about.

2277 The worst outcome of course would be a prolonged dispute
2278 in adversarial climate between the Executive and Legislative
2279 Branches after notification is given. The damage will be as

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2280 | great from this as from the rather exceptional cases in
2281 | which delaying notification more than 48 hours might occur.

2282 | The President certainly ought to have the opportunity to
2283 | conduct high risk, high win activity in foreign policy and
2284 | national security field.

2285 | He should have the right to determine when there is a good
2286 | reason to delay notification because of extreme sensitivity
2287 | to leakage and failure. Timely fashion--that carefully
2288 | wrought phrase, seems to me to be the best phrase you can
2289 | use in the circumstances.

2290 | So I would say rather than passing H.R.1013, the House
2291 | committee would be well advised to promote a way of
2292 | improving security of information, provided by the oversight
2293 | committees and their staffs, and to reassure the Executive
2294 | Branch of their ability to do this and to invite a more
2295 | cooperative and informative attitude on that basis.

2296 | I would like just in passing to endorse the House Joint
2297 | Resolution 48 providing for an establishment of a joint
2298 | committee on intelligence sponsored by Congressman Hyde,
2299 | because that would be a move to soothe executive-
2300 | congressional relations, a step in the right direction
2301 | rather than one to exacerbate them.

2302 | In summary then, Mr. Chairman, I would just like to say
2303 | that I believe the Congressmen have the duty to represent
2304 | the views of their constituents in giving broad strategic

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2305 guidance to shape U.S. legislation and policy. There is no
2306 question about that. With respect to foreign policy and
2307 national security, the Chief Executive also is mainly
2308 responsible for decisionmaking and execution of laws and
2309 policies. The Congress should not try to legislate the
2310 specific modalities of the execution of policies in the
2311 foreign policy and national security field, particularly
2312 when the element of secrecy is involved.

2313 It does seem to me therefore that it is likely to reduce
2314 rather than increase the effectiveness and cooperative
2315 relationship between the Congress and the Chief Executive in
2316 dealing with covert operations if H.R. 1013 is passed, and
2317 therefore I would respectfully submit that discussion of
2318 this issue is better than passing a piece of legislation on
2319 this item.

2320 Thank you.

2321 [The statement of Mr. Cline follows:]

2322

2323 ***** INSERT 3-2 *****

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2324 Chairman MCHUGH. Thank you very much, Dr. Cline.

2325 You all represent a very significant amount of experience
2326 and that is something we should take into account in our
2327 consideration here of these bills, and so we appreciate your
2328 testimony.

2329 Admiral Turner, I guess I would start with you. You
2330 mentioned in your statement that the oversight process broke
2331 down in part because the congressional committees didn't
2332 exercise sufficient aggression, I suppose, in pursuing the
2333 reports which were in the press about Oliver North's
2334 activities in the White House.

2335 That may be true, but I think it is important to state for
2336 the record that when we read those reports, we invited Mr.
2337 McFarlane to visit with us in the committee room. We all
2338 had an opportunity to ask him questions specifically about
2339 those reports to determine whether or not indeed the White
2340 House was engaged in this type of activity.

2341 Mr. McFarlane assured us that he had investigated this
2342 thoroughly and that there was nothing to these reports
2343 whatsoever.

2344 On a subsequent occasion, we visited Mr. North himself in
2345 the Situation Room in the White House and we inquired of him
2346 very specifically whether or not he was involved in any of
2347 these activities which were reported. Mr. North assured us
2348 that that was not the case.

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2349 Now, it is quite possible that we should have not taken
2350 them at their word, but frankly we were relying upon the
2351 kind of trust and comity which you gentlemen are suggesting
2352 we rely upon in these cases. And we have learned from
2353 bitter experience that we were lied to.

2354 Indeed our congressional oversight responsibilities which
2355 is a serious one, was compromised and in some respects, we
2356 feel as you have suggested, some responsibility for that
2357 breakdown.

2358 Now the question of course is how to deal with it.
2359 Hopefully people will tell us the truth in the future. But
2360 the question here is whether or not we should rely upon that
2361 hope or whether or not there is some other framework which
2362 will give further encouragement to the White House in future
2363 cases.

2364 So I want to make that statement, because while I think it
2365 is fair to say that we might have been more aggressive and
2366 not accepted the word of Mr. McFarlane and Colonel North,
2367 the fact is we did try and we did rely upon those
2368 representations to us and we learned in hindsight that we
2369 were foolish to do so.

2370 Now, I think Admiral, you have presented us with hard
2371 cases. The ones you have outlined are difficult cases
2372 because as you say people's lives are in jeopardy, and you
2373 as the responsible director have to send people out to risk

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2374 their lives for the country in these cases.

2375 So I think those cases that you have described pose one
2376 set of examples which are important for us to consider, and
2377 the Iran case poses the other example, and they are both
2378 legitimate cases it seems to me.

2379 On the one hand, in your situations there were a handful
2380 of people in the Executive Branch who necessarily had to
2381 know. You say a handful and I am not sure how many that
2382 would be, but presumably there were at least a few others
2383 beside yourself who knew about this.

2384 The question for us is whether or not the key leaders of
2385 the Congress would not be as trust worthy to know that
2386 information as the handful in the Central Intelligence
2387 Agency or the Executive Branch? Naturally we are inclined
2388 to think that the Speaker of the House, the Minority Leader,
2389 the Chairman of the Intelligence Committee and the Ranking
2390 Member of the Intelligence Committee and their counterparts
2391 in the Senate are trustworthy people and can hold that kind
2392 of very sensitive information carefully.

2393 On the other hand, in the Iran case to the extent that it
2394 is an example and we have to consider it as one here, the
2395 fact that the President did not notify or consult with
2396 anyone in Congress in part at least contributed to not just
2397 the fact that Congress wasn't notified, but contributed to
2398 what I think most of us would consider a very substantial

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2399 amount of damage to American interests, our counterterrorism
2400 policy is in shreds as a result of this foolish policy of
2401 selling arms to Iran, as the Minority Leader and Speaker
2402 have both said they will have objected strongly if the
2403 President had shared this notion with them in advance.

2404 Presumably it might have helped avoid not just a failure
2405 to notify Congress, but would have avoided this very
2406 substantial damage. So these two cases, yours on the one
2407 hand which are compelling cases I admit, but the Iran
2408 situation on the other, pose these conflicting interests for
2409 us. The real question for us I think is whether or not,
2410 first in limited situations where there is a sensitivity
2411 such as you have described, the leadership, this handful of
2412 eight people, can be trusted with sensitive information and
2413 I guess my question is do you have anything in your
2414 experience to indicate that these leadership people cannot
2415 be trusted even with the most sensitive information?

2416 Admiral TURNER. No, sir. I certainly do not.

2417 Let me say though that I would not have told eight people
2418 in the CIA who were not involved in it. It is not a
2419 question of are they Members of Congress, it is a question
2420 of looking a person in the eye and saying I am going to tell
2421 even one person who isn't involved in this in a way that is
2422 necessary to support your activities.

2423 I would also point out that it can get much more

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2424 | complicated as it was in the three cases I cited. Had
2425 | we--first of all I didn't have the option of eight at that
2426 | time because the intelligence oversight of 1980 had not been
2427 | passed. So I would have taken my chances if I had gone to
2428 | the Members, the Chairman and Ranking Minority Members of
2429 | the two intelligence committees whether they would have kept
2430 | it to themselves, or limited the amount of disclosure,
2431 | whether they would have agreed that only they would have
2432 | responsibility for knowing that.

2433 | But in that case, we had another curious connection
2434 | because the President under the War Powers Act had not
2435 | informed the Armed Services Committees or the Foreign
2436 | Relations Committees that there was a rescue operation
2437 | contemplated. We were a subsidiary supporting part of it
2438 | and had we come to the intelligence committees or the eight
2439 | leaders of the Congress to inform them that intelligence was
2440 | participating in a supporting action, surely the other
2441 | committees would have had to have been included too, so the
2442 | number would have ballooned to at least 16 at that point.

2443 | Again certainly they are the 16 top people in these areas
2444 | of the Congress, they are reliable. But we are foolish if
2445 | we say the Congress cannot be trusted at all, it always
2446 | leaks. We are equally foolish to say that the Congress
2447 | never leaks. When you are dealing in a situation like this,
2448 | even though I think the Congress has a better record than

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2449 | the Executive Branch as far as leaks is concerned, the
2450 | Congress does leak. The Executive Branch leaks more. But
2451 | it isn't a question of a better record here when a man or
2452 | woman's life is at stake. Even if you are 10 times as
2453 | reliable as the Executive Branch, if the leak did happen to
2454 | come from one of the people notified in the Congress,
2455 | somebody may have lost his life unnecessarily.

2456 | Mr. KASTENMEIER. Thank you very much.

2457 | Mr. Livingston.

2458 | Mr. LIVINGSTON. I thank you.

2459 | There has been some discussion about the time limits and I
2460 | think Mr. Hyde said split the difference between 14 months
2461 | and 48 hours, I know you have said it facetiously.

2462 | Is this legislation any more palatable if you extend the
2463 | deadline for notice and actually set an arbitrary time
2464 | limit, be it 48 hours, a month, two months, six months, 10
2465 | months, a year, what have you? Does it become more
2466 | palatable or do your objections still lie?

2467 | Admiral TURNER. My objection still lies. I don't think
2468 | 14 months as illegal or unreasonable. I think taking that
2469 | loophole was wrong in the first place, but if the
2470 | President's reasons for not notifying the Congress in a
2471 | really instantaneous manner were correct, 14 months is not
2472 | to me untimely. The timely is not measured by a clock. The
2473 | timely is measured by this risk, and I waited three months

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2474 in one case, and we were three months getting the six people
2475 out from the Canadian Embassy, we were six months doing the
2476 other two operations I mentioned to you.

2477 So I don't think we should focus on hours and days. I
2478 think we should focus on the completion or the diminution of
2479 the risk. It could be that there is as an operation goes
2480 along the risk drops off to human life, but the operation
2481 under the Finding is still continuing. That would be the
2482 point that the Executive should come. When that risk to
2483 human life is diminished sufficiently is when it is timely
2484 to notify the Congress in my opinion, sir.

2485 Mr. LIVINGSTON. Mr. Colby.

2486 Mr. COLBY. I would basically concur. I would not limit
2487 it only to the human life problem. There are many other
2488 things. People take risks with their lives for various
2489 reasons and don't get very upset about it, but there are
2490 other things that are of more importance than the human life
2491 of some of our people, and they understand that when they go
2492 in the business. They know that.

2493 I do think that the one answer to the question is that the
2494 timely fashion is obviously a general word requiring a
2495 judgment, but to respond to the Chairman's example of the
2496 discussions with Colonel North and Mr. McFarlane and others
2497 about that, there is a statute that makes it a criminal
2498 offense not to fully inform the Congress.

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2499 This has been very rarely used but in the case of a direct
2500 contradiction of the truth I think that is something that
2501 the end counsels will be looking into and that that is the
2502 remedy, in other words the question is is there a remedy?
2503 The answer is yes, there is a remedy. It is for a violation
2504 of the law and there it is.

2505 Mr. LIVINGSTON. Mr. Cline.

2506 Mr. CLINE. I simply concur in the view that defining
2507 timely fashion in a number of hours or days or months is a
2508 Solomon's exercise, a paradox, it cannot be resolved by this
2509 committee or by anybody else. It depends on these complex
2510 factors that my colleagues have mentioned.

2511 I think discussing it is wise, I think trying to cut the
2512 Gordian knot with a slice of the sword is not a wise
2513 decision and I can definitely visualize operations where the
2514 success factor is prolonged.

2515 You don't know, it will be a long time to get blocks in
2516 place before you get the final result, and that the risk
2517 would be very great for many, many months.

2518 So I don't even agree with the 14 months. There would be
2519 cases in which that time was not the objectionable feature,
2520 and I think the objection to the handling of the Iran issue
2521 is not over the timeliness, it is over the fact that there
2522 was a difference of view about the operation itself.

2523 Mr. COLBY. Frankly I think in some cases you might get a

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2524 | situation where if you have the timely fashion requirement
2525 | and the eight individuals listed, that if the thing began to
2526 | get at the edge of the timely fashion I could envisage a
2527 | President talking to the Speaker and the Ranking Minority
2528 | Member only and trying to get their acceptance of not going
2529 | any further with it. I don't think you can write that in
2530 | the law, but it is clearly what Admiral Turner was referring
2531 | to that he didn't feel he could do at that early time.

2532 | Mr. LIVINGSTON. Mr. Colby, you mentioned you saw
2533 | situations that might mandate the withholding of information
2534 | from Congress in other than life-threatening situations.
2535 | Could you elaborate on that. Could you give us a couple of
2536 | examples?

2537 | Mr. COLBY. You could have a highly sensitive penetration
2538 | into some terribly important situation which took you months
2539 | and months to set up and which could have a major effect on
2540 | the political direction of another country, and an adversary
2541 | country possibly, and you just couldn't take any risk at all
2542 | with that operation. It would be a high stakes operation
2543 | and you just, not only if it didn't work you would lose a
2544 | great opportunity, but if it were revealed you would suffer
2545 | a great deal and your nation could suffer a great deal.

2546 | You might have a cause for war on your hands for all you
2547 | know.

2548 | Mr. LIVINGSTON. Does the gentleman share that view?

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2549 Mr. CLINE. Yes, I do. Could I add another refinement
2550 which--since we are really discussing this issue
2551 philosophically in an attempt to understand it rather than
2552 coming to a solution, a covert intelligence operation may
2553 well begin as an intelligence collection effort of
2554 penetration. If you get a source in a foreign country who
2555 will give you a lot of information and then you find out he
2556 can do something politically, that is terribly important to
2557 your country, he becomes a covert action source at that
2558 point and hen you lay on an operation it becomes rather
2559 ambiguous.

2560 so I feel we are trying to deal with a very fluid
2561 situation here as if it were a constitutional law. And it
2562 is not. It is a matter of executive judgment when a covert
2563 action begins.

2564 So I think we are just saying it is a very complicated
2565 thing, and there may well be good grounds to reserve
2566 judgment on when to notify the Congress.

2567 Mr. LIVINGSTON. If this legislation were passed as is,
2568 would any of you or all of you anticipate any instances in
2569 which you might refrain from undertaking some dangerous but
2570 very important intelligence activities because of concerns
2571 about participants' safety or for the other reasons you have
2572 cited?

2573 Mr. CLINE. I wanted to suggest there might be a chilling

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2574 effect on planners and decisionmakers thinking perhaps that
2575 they had a perfectly legitimate intelligence objective which
2576 might turn into a very great covert action opportunity but,
2577 say, oh, my God if we go down and explain this today it will
2578 be washed out or it will be blown, we shouldn't do it.

2579 Yes, I would think you might well miss opportunities with
2580 that kind of thinking. It is not so much the language you
2581 are putting across, but the attitude that, the watchdogging
2582 of the sensitive and difficult operations might cause people
2583 to refrain.

2584 Mr. COLBY. We would once again have to go around and hold
2585 a lot of hands of our agents, of our liaisons saying, well,
2586 now, wait a minute, the Congress is going to demand knowing
2587 everything you do within 48 hours, are you kidding? We are
2588 not going to get involved in that with you. Not a chance.

2589 We had quite a problem with that when the first thing of
2590 congressional review came up, and we sort of wobbled our way
2591 through it, but it is still there with some countries. Some
2592 countries still have a reservation because some of them
2593 don't have the same high respect for the membership of the
2594 committees that we do.

2595 Admiral TURNER. The problem will be we won't know which
2596 covert actions are not proposed by the professionals,
2597 because they have this concern inside and the people at the
2598 top won't hear about them I am afraid.

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2599 Mr. LIVINGSTON. Thank you.

2600 Chairman MCHUGH. Mr. Stokes.

2601 Mr. STOKES. Thank you, Mr. Chairman. Let me at the
2602 outset express my appreciation to all three of our
2603 panelists, three very distinguished gentlemen who appear
2604 here this morning.

2605 Mr. Colby, let me ask you, you made the statement there
2606 are things that Congress does not need to know. You do not
2607 include in that category, do you, illegal or criminal
2608 activity by Members?

2609 Mr. COLBY. Absolutely not, no.

2610 Mr. STOKES. Of the government?

2611 Mr. COLBY. No. That provision I think is clear that if
2612 anything illegal or improper comes up the requirement is to
2613 report it and there is no if's, and's or but's about that
2614 one.

2615 Mr. STOKES. In terms of Iran, and the Iran situation, how
2616 would you classify that? Something that Congress needed to
2617 know or should not have known?

2618 Mr. COLBY. I think that I would go back to the point that
2619 what Congress doesn't need to know is the details of a
2620 policy program, a policy operation. It should know about a
2621 general policy and I think the general policy of selling
2622 arms to the Iranians is something that the Congress should
2623 know about. They don't have to know who the intermediary

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2624 is. That is really a detail that is beyond them.

2625 Mr. STOKES. Sources and methods you mean?

2626 Mr. COLBY. Yes.

2627 Mr. STOKES. But the general policy they should be aware
2628 of.

2629 Mr. COLBY. The general policy that you are going to go
2630 right against your overtly expressed policy I would
2631 certainly say, you better check that one out. We have had
2632 covert actions in the past which have contradicted the
2633 impression we have given to different countries, but those
2634 you can explain to Congress and if they make sense, the
2635 Congress will buy it.

2636 If it doesn't make sense the Congress will object to it.

2637 Mr. STOKES. Well, basically I think that is what we are
2638 trying to keep intact and that is what all of you have
2639 addressed and that is the special relationship between the
2640 Executive Branch and the Congress, based upon some degree of
2641 mutual trust and forthrightness and candidness, and it is
2642 difficult for us to conceive of a situation where when we
2643 talk about the Gang of Eight, for instance, we are talking
2644 about the Speaker of the House, the Majority and Minority
2645 Leaders of the House, the Chairmen of the Intelligence
2646 Committees and similar officials on the other side.

2647 It would seem to us that these are highly responsible
2648 positions, people obviously concerned about the national

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2649 security of the United States, not irresponsible people. It
2650 would just seem that if the President, because of the high
2651 risk of some type of adventure, or high risk of human life,
2652 felt that he could not tell both intelligence committees
2653 that at least the Gang of Eight so to speak would be given
2654 this information, and I would think we would all look at
2655 them as being responsible individuals who would not be
2656 leaking highly sensitive information or data that would
2657 possibly cause the loss of human life.

2658 Let me ask you this, Admiral Turner. In your opinion in
2659 those three cases you cite--and they are three very classic
2660 cases, very difficult to argue with--as has been stated by
2661 Chairman McHugh, but what in your opinion would have been
2662 reasonable knowledge assuming we had timely notice in the
2663 law at that time. What in your opinion would have been
2664 timely in reference to those matters?

2665 Admiral TURNER. When my agents came out of risk, came out
2666 of Iran, when the people went in to support the Canadians,
2667 six were aboard the airplane and on their way home, for
2668 instance, Zurich.

2669 Mr. STOKES. The Canadian six matter you were able to
2670 accomplish within about 48 hours, weren't you?

2671 Admiral TURNER. No, the agent who went in stayed in
2672 Tehran about a week but we were all three months or three-
2673 and-a-half months before that actually took place preparing

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2674 | it, working with the Canadians, preparing the documentation,
2675 | the cover, the new personalities, new jobs, new identities
2676 | for these individuals, and getting that training done so the
2677 | six knew who they were and why they were in Iran, so they
2678 | could answer questions when they came out.

2679 | You know about the one who got quizzed on his passport,
2680 | Mr. Stokes. Customs inspector said, I notice your middle
2681 | initial is H, and you are on a West German passport, and I
2682 | have never seen a West German passport in which the middle
2683 | name wasn't spelled out. And this State Department employee
2684 | with great resourcefulness looked up and said, yes, you will
2685 | notice I was born in 1935. I am ashamed of my middle
2686 | name--Hitler.

2687 | That is a true story.

2688 | Mr. STOKES. That is a good one. My last question to the
2689 | three of you would be this: I am reluctant in terms of the
2690 | criteria or standard of risk to human life to accept that as
2691 | sole criteria. What we are talking about is subjective
2692 | evaluation made by the President, and it is very difficult
2693 | if we set that up as the criteria to be sure that that
2694 | criteria is always used in the sense that it is subjective,
2695 | because it could very well, the President could very well
2696 | substitute for it political risk as I am sure probably the
2697 | decision was made in terms of Iran more than in any terms of
2698 | any risk to human life.

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2699 It was more the political risk. How do you see that?
2700 Admiral TURNER. Oh, it is a danger, and the
2701 Administration, the present Administration went first
2702 justifying not notifying the Congress about the CIA role in
2703 the Iran affair, did claim human life. They claimed that
2704 the lives of the hostages held in Beirut might be
2705 jeopardized if it came out the United States was
2706 collaborating with Israel to get the hostages out and there
2707 is undeniably a shred of argumentation there. I think it is
2708 not more than a shred, sir, so, yes, but I think we are all
2709 three trying to say, I think, that there is no way to
2710 legislate these boundary lines without risking, pushing
2711 yourself up against an unreasonable position.

2712 You have to have reasonable men there as well as here to
2713 interpret them.

2714 Mr. COLBY. As I said, I think the human life is not the
2715 only judge, should not be, but the Congress' control on this
2716 is the requirement that the President explain why he
2717 delayed. Either that explanation will be accepted when it
2718 is given or you will have a challenge to it. It will be an
2719 after-the-fact challenge but it is nonetheless a requirement
2720 that he justify to the Congress the fact that he did not
2721 pass over that information.

2722 And that is why I suggest that a president will probably
2723 seek some middle ground between informing all 8 and yet not

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2724 | telling anybody. I think that the pressures on him will be,
2725 | well, eight people is a lot of people; and that you learn in
2726 | the Executive Branch when you find out how many people are
2727 | in on a secret it becomes such a small secret in the in-
2728 | group despite the loyalty of all the people in the group, it
2729 | becomes a general conversation among them and it begins to
2730 | slip out to secretaries and assistants and all that sort of
2731 | thing.

2732 | Just inevitably that happens. So the attempt would be
2733 | made to limit it to those eight.

2734 | Mr. STOKES. Mr. Cline.

2735 | Mr. CLINE. I would add two comments. I think the very
2736 | valuable role of these two committees is to keep the
2737 | Executive Branch advised of what seems sensible from a point
2738 | of view of strategic coherence and continuity. You should
2739 | be advising on broad issues, not exactly whether someone's
2740 | life is at risk or not because those are very professional
2741 | and subjective judgments.

2742 | I hope that there will be a greater receptivity to advise
2743 | back and forth on these matters. I believe it can happen as
2744 | I say. In earlier days I think we had a better
2745 | understanding between the Congress and the Executive people
2746 | and the intelligence people, and it worked pretty well.

2747 | The second thing though relates to the later comments.
2748 | With all respect I want to tell you that the Congress is a

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2749 tremendous target for the release of unauthorized
2750 information. Everybody in this city is trying to get you
2751 Members who have secrets to disclose them, and the more your
2752 heads are full of details about operations that should not
2753 be disclosed, the more in hazard you and your staff members
2754 and people who, even over here as guests on some of the
2755 subjects discussed, are likely to be tripped up or trapped,
2756 not only by foreign intelligence agents of which there are
2757 hundreds wandering around Capitol Hill all the time, but by
2758 the most expert espionage group in town, the U.S. Press.

2759 They do everything that intelligence agencies do to try to
2760 elicit and if necessary, in somewhat unusual irregular
2761 fashion, get someone to disclose things off the record that
2762 they should not disclose.

2763 So you are an important target and I think you ought not
2764 to look at suggestions that the congressional committees
2765 leak as a kind of moral and personal issue. That is
2766 certainly true of the eight men you were talking about.

2767 Everyone assumes they are extremely conscientious and
2768 patriotic and all that. But they probably should not have
2769 in their heads information that as my colleague suggested,
2770 that they don't really need to know to do this broader job,
2771 advise the President in a proper congressional role on the
2772 broad issues of our national policy.

2773 Mr. STOKES. Thank you very much.

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2774 Thank you, Mr. Chairman.

2775 Chairman MCHUGH. Mr. Hyde.

2776 Mr. HYDE. Thank you, Mr. Chairman.

2777 I think we can agree, too, that disclosure by Congress or
2778 Executive people sometimes is innocent. It cannot be,
2779 needn't be malicious but inadvertent. If you know
2780 something,--once, I confess I made a statement on the floor
2781 about a specific matter that was secret and I didn't realize
2782 what I had said or done until the press called me and asked
2783 me if I really meant what I said, and it suddenly dawned on
2784 me that I used a number, it would cost so much to accomplish
2785 a certain thing, and that was classified.

2786 So that is part of the problem.

2787 The Canadian Embassy, I dare say would just as soon this
2788 never got disclosed in many ways, at least the people that
2789 still have to be over there inside Iran.

2790 Mr. CLINE. That is right.

2791 Mr. HYDE. Although the people who are heroic I am sure
2792 had mixed feelings about having their heroism kept under a
2793 bushel. But I can understand where sometimes these things
2794 just as soon never get disclosed and everybody is the
2795 happier.

2796 Also on the Iran thing, Admiral, I would think that in
2797 addition to the lives or maybe it was you, Mr. Colby, the
2798 lives that the Administration used as justification of the

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2799 | hostages, the involvement of a third country participating
2800 | might have been another reason for keeping this quiet.

2801 | I think we can agree we need mutual trust between the
2802 | Executive and the Hill. There is a lack of mutual trust
2803 | between the Executive and the Hill. We have some
2804 | justification for questioning the forthrightness of some of
2805 | the things we have heard from the Administration as well as
2806 | some of the things we have not heard from the
2807 | Administration. But the Executive, too, has a lot of
2808 | justification for being skeptical about our ability to keep
2809 | a secret.

2810 | Once more, I sound like I am promoting your book, Mr.
2811 | Colby, and I am--

2812 | Mr. COLBY. Thank you.

2813 | Mr. HYDE. Page 423, "'Thus by mid-1975 appearances on the
2814 | Hill had become a pervasive aspect of my job as DCI. I was
2815 | going up there to report on every new step taken in the
2816 | Angolan issue, Kurdish issue and other current operations
2817 | underway as well as testifying on practically everything the
2818 | CIA had ever done during the last three decades to the
2819 | select committees investigating intelligence.'"

2820 | Here is the important part, "'sadly the experience
2821 | demonstrated that secrets if they are to remain secret
2822 | cannot be given to more than a few Congressmen. Every new
2823 | project subjected to this procedure during 1975 leaked and

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2824 the covert part of CIA covert action seemed almost gone.''

2825 I have been unfair somewhat, unintentionally, to Admiral
2826 Turner because you too have a great book, Secrecy and
2827 Democracy.

2828 Admiral TURNER. Thank you, sir.

2829 Mr. HYDE. I am chagrined that I don't have it with me
2830 today. I will have it next week.

2831 Mr. CLINE. Point of order, Mr. Congressman, I have
2832 several books and you haven't mentioned any of them.

2833 Mr. HYDE. The reason yours are not here, Ray, is they are
2834 too heavy to carry.

2835 But I would like to ask--I want to thank you, Admiral
2836 Turner, for your great testimony and I am sorry you left out
2837 the parts you did because I thought they were excellent as
2838 well and I hope every member of this subcommittee will read
2839 the classified annex as well.

2840 I thank you for your letter to me of January 27th last
2841 year supporting the concept of a joint intelligence
2842 committee and I would like to offer this letter in the
2843 record if I may to be a part of this record from Admiral
2844 Turner supporting that.

2845 Chairman MCHUGH. Without objection.

2846 [The letter referred to follows:]

2847

2848 ***** INSERT 3A-1 *****

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2849 Mr. HYDE. I have another letter from Richard Helms,
2850 commenting on H.R.1013, and also supporting the joint
2851 committee concept rather strongly. I would like to offer
2852 that for the record.

2853 Chairman MCHUGH. Without objection.

2854 [The letter referred to follows:]

2855

2856 ***** INSERT 3A-2 *****

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2857 Mr. HYDE. And I would like to ask you, Mr. Colby, if you
2858 also support the notion of a single select committee on
2859 intelligence, made up of Senators and House Members, smaller
2860 staff, smaller membership, select people, if that might not
2861 facilitate this development of mutual trust and confidence
2862 and disclosure that we all recognize we need.

2863 Mr. COLBY. I fully support it and I very much applaud you
2864 for the effort to launch it. Thank you.

2865 Mr. HYDE. Thank you. And Ray Cline, you have already
2866 fortunately initiated mentioning it and I take it you have
2867 not changed your mind in the last few minutes.

2868 Mr. CLINE. No, you have not dissuaded me. I think it is
2869 a good idea. I would also like to add this, though, I think
2870 the two separate committees can do a good job and that is
2871 why I feel it is so important to develop that better spirit
2872 of cooperation on the intelligence planning that we all
2873 spoke about.

2874 Mr. HYDE. Thank you.

2875 I thank you, Mr. Chairman. You have been most kind and
2876 indulgent. I am not a member of this subcommittee and you
2877 have permitted me to be here. I appreciate that.

2878 Chairman MCHUGH. It is always a pleasure to have you, Mr.
2879 Hyde, although I sense a campaign under way here for a joint
2880 committee.

2881 Mr. HYDE. Two years now. This is the third year.

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2882 Chairman MCHUGH. Mr. Kastenmeier.

2883 Mr. KASTENMEIER. Thank you, Mr. Chairman. You have all
2884 three been coopted by Mr. Hyde, I don't know what we can say
2885 other than to say this about the joint committee, it might
2886 be thinkable at some particular point in time, but I suggest
2887 that is not now thinkable. If two separate committees
2888 cannot render proper oversight, one surely won't. That has
2889 been the problem throughout, as a matter of fact, a joint
2890 committee is one step away from distinguishing all
2891 committees of the Congress in terms of intelligence, and I
2892 understand that as well as anybody else.

2893 But to the extent that we still do exercise statutory or
2894 constitutional authority with respect to these matters, I am
2895 a little discouraged by not only, say, the opposition or
2896 such highly qualified acceptance of any statutory change
2897 that I see very little grounds to pursue the matter. But I
2898 do think in the light of what has been said that, and
2899 Admiral Turner suggested he was interested in what steps to
2900 make oversight more vigorous and effective, and as the
2901 Chairman has pointed out far more sharply than the gentleman
2902 from Illinois, a couple of real instances, major instances
2903 in which we have been lied to and let us assume that these
2904 are not unique in the last year or two. Let's assume that.

2905 What is, Admiral Turner, is our alternative here?

2906 I suggest to seek some sort of mutual trust is not

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2907 effective. What action can we take to prevent that sort of
2908 destructive relationship in which we know we are lied to and
2909 have presumably no recourse. What recourse should we have
2910 other than, let us say other than to change this particular
2911 statute?

2912 Admiral TURNER. Mr. Kastenmeier, with all respect I
2913 think, and I use the word in my testimony, the committee can
2914 be more rigorous in pursuing whether the Executive Branch is
2915 telling them all and telling them honestly.

2916 In this instance, long before August 1985 when it came out
2917 that Colonel North was doing something in support of the
2918 contras, it seems to me there was great evidence that it was
2919 not a spirit of cooperation on the Executive Branch side
2920 with respect to oversight of intelligence. Therefore it
2921 seems to me you had cause to be suspicious when the
2922 President's own right hand men denied something that was
2923 obvious, what they were telling you is they were doing this
2924 within the law but it was obvious they were doing it against
2925 the spirit of the Congress of the United States, against the
2926 spirit of what the people of the United States through the
2927 Congress had mandated, no governmental support for the
2928 contras.

2929 Was there any question in anybody's mind that Colonel
2930 North was doing that? I don't think so. I remember being
2931 incensed at the time that nothing was being done in the

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2932 media or in the Congress to stop this. And I am sorry, Mr.
2933 Chairman, there is an old athletic saying that I learned one
2934 time when we ought Notre Dame from Navy to a 6-6 tie but
2935 ended up on the goal line with a goal line stand that we
2936 thought was heroic, we charged into the locker room very
2937 enthusiastic about our performance and the coach looked at
2938 us and said, gentlemen, long after the deeds have been
2939 forgotten, the score will be remembered you men tied. And
2940 with respect, sir, the answer was did you get to the bottom
2941 of the case and you didn't.

2942 The score is what we remember, and I think you have to be
2943 more rigorous. I would say with all candor that in my four
2944 years when I think we had a very cooperative relationship, I
2945 think the committees of the Congress could have been more
2946 rigorous with me and I would have appreciated it in many
2947 ways. Rigorous in paying less attention to the details of
2948 my budget, and \$50 here and \$100 there, and more in asking
2949 Turner are you going in the right direction? What are your
2950 plans for the future? What is your track record on how you
2951 used your resources over the last ten years, let's say in
2952 developing the recommendations on Iran.

2953 You ended up in a debacle on Iran, well, somebody should
2954 have come after that from the Congress and said let's go
2955 back 10 years, Turner, and trace what you said to people
2956 about this, what the whole Community said and trace whether

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2957 your sources were good, what were you relying on ten years
2958 ago, what are you relying on now, were you using this well?

2959 I think there is a lot more that you can do if you will
2960 take a longer range look at what our intelligence needs,
2961 sir, and it would be helpful if you are probing and
2962 rigorous.

2963 Mr. KASTENMEIER. I gather you wouldn't suggest a tighter
2964 reign with respect to the budget in the process?

2965 Admiral TURNER. No, I would suggest a looser reign in
2966 many ways, particularly in the R&D field where I think they
2967 need more freedom to go out and invent the U-2 again which
2968 was done in a skunk works with nobody looking over their
2969 shoulder. And I am worried today whether we have that
2970 inventiveness that is keeping us one step ahead of the
2971 opposition in the technical field.

2972 Mr. KASTENMEIER. Mr. Colby, what would you recommend?

2973 Mr. COLBY. I have already mentioned one, if you find a
2974 case where somebody actually lies to you there are
2975 provisions of law by which that person can be prosecuted.
2976 There are ways to do it. I think it is a matter for the
2977 committee to take a look at and see whether there is a
2978 recommendation that action be submitted to the Justice
2979 Department to follow up on such a case.

2980 Secondly, traditionally this is the house which has
2981 control of the purse and while I agree fully with Admiral

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2982 Turner that fooling around with \$50 here or there is not the
2983 point, the fact is that a Congressman once asked me exactly
2984 this question, you come up and tell us one of these things,
2985 what do we do about it? I said well, you have everything
2986 you can do about it. And if it gets back to--you can express
2987 opposition by individually, you can get a majority vote of
2988 the committee against it, if necessary you can do as
2989 Chairman Boland I think so brilliantly did, develop a
2990 resolution of the Congress which circumscribes without
2991 revealing the specifics, circumscribes the ability of the
2992 agency to the agent.

2993 That was done to me on Angola and it was done to Casey on
2994 Nicaragua. If you find people getting around that, I always
2995 thought that there was a way you could catch the attention
2996 of the Director's mind fairly quickly, just say, well, Mr.
2997 Director, you just keep on going on that but you put, take
2998 your little notebook out and put the figure \$10 million down
2999 on it because \$10 million is coming out of next year's
3000 budget, and I don't care where you distribute it but it is
3001 coming out. That will catch his attention.

3002 That is the power of the purse. It is part of the
3003 constitutional arrangement that the Congress is not
3004 helpless. It has power.

3005 Mr. KASTENMEIER. Thank you, Mr. Chairman.

3006 Chairman MCHUGH. Mr. Beilenson.

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3007 Mr. BEILENSEN. Thank you, Mr. Chairman.

3008 There has been a lot of comment about the 48 hour
3009 requirement, whether or not that is proper or adequate or
3010 useful, but let me go back to basics for just a moment. I
3011 am not sure at this point about the feelings of each of our
3012 three witnesses with respect to the current requirement of
3013 the law that the Congress or portions of the Congress be
3014 notified in a timely fashion.

3015 Are you supportive of that, of the existing law or are you
3016 arguing against extending it or making the requirement more
3017 specific than it is, the 48 hours? Or are you supporting
3018 the current law?

3019 Mr. COLBY. I support the current one, yes, sir.

3020 Admiral TURNER. Yes.

3021 Mr. CLINE. I do, too, and specifically because it has a
3022 certain flexibility.

3023 Mr. BEILENSEN. What are you all exorcized about? Is it
3024 the 48 hours? is that all we are talking about, 48 hours
3025 instead of timely fashion?

3026 Mr. COLBY. It is making the whole process rigid rather
3027 than reflective of the real world.

3028 Mr. CLINE. Right.

3029 Mr. BEILENSEN. But when you start talking and I am
3030 talking not to you so much, Mr. Colby, but to the other two,
3031 you don't want timely fashion or 48 hours or anything else.

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3032 I am not sure we are focusing on something that is useful.

3033 Mr. CLINE. The present law gives certain grounds we have
3034 established for withholding either permanently or
3035 temporarily notice. All intelligence operations for the
3036 purpose of collection of information are excluded. You
3037 pointed that out. So this is not a cut and dried
3038 proposition. The present law takes into account exceptions
3039 to notification, it mandates timely notification on covert
3040 action operations. It doesn't define timely.

3041 Mr. BEILENSEN. I think it is the posture of the authors
3042 of the bill they are not proposing anything terribly
3043 radical. They are in effect trying to require that the
3044 requirements of existing law are complied with by saying,
3045 all right, you folks don't seem to know what timely means,
3046 so we will tell you. It is 48 hours. We can agree maybe it
3047 is something other than 48 hours. I am trying to get a feel
3048 for if you are offended by the requirements of the existing
3049 law or whether it is the 48 hours?

3050 Mr. COLBY. It is the 48 hours because there are
3051 situations where we both mentioned which would be far beyond
3052 48 hours.

3053 Mr. BEILENSEN. Let me go on if I may, Mr. Chairman, I am
3054 just trying to--since this is the legislative subcommittee
3055 and like Mr. Hyde I apologize I am not a member of this
3056 distinguished subcommittee--I wish I were--I think the

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3057 question for us and for the full committee eventually, is
3058 whether we should be changing the law and if so, how we
3059 should change it.

3060 We have had useful suggestions, witnesses have tried to
3061 give us helpful suggestions. Admiral Turner spoke about
3062 this risk of life criteria and putting one's life on the
3063 line. Some have suggested that may not be a terribly useful
3064 criteria and certainly not as a sole criterion.

3065 As I mentioned earlier and I think perhaps others have, we
3066 are aware now of a number of intelligence operations which
3067 we cannot even describe of course in which people's lives
3068 are on the line right now. We all know about them. All of
3069 you on this committee. So that cannot be the sole
3070 criterion.

3071 We have discussed that it does not include under existing
3072 law intelligence gathering operations. If we were to be
3073 parachuting Mr. Colby into the Soviet Union perhaps instead
3074 of France--

3075 Mr. COLBY. I would rather not.

3076 Mr. BEILENSEN. I understand. We are not really talking
3077 about that either.

3078 Mr. Colby suggested something, a criteria which I
3079 personally found more useful and that is the need to know.
3080 It is not even so much need to know but I guess should we
3081 know, should Congress know about these sorts of things just

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3082 | in terms of the common sense approach to it.

3083 | We go back to the examples that the Admiral gave, all of
3084 | which were hostage rescue related, things that I again
3085 | personally suggested earlier I don't think we need to know,
3086 | don't particularly need to know or care about knowing, but
3087 | you can say under Mr. Colby's criteria should we know, no,
3088 | we don't need to know.

3089 | Mr. HYDE. Would the gentleman yield?

3090 | Mr. BEILENSEN. I yield to my colleague.

3091 | Mr. HYDE. The Iran thing was a hostage thing. Now you
3092 | may say it wasn't but you cannot have it both ways. Either
3093 | Reagan was interested in arms for the hostages or he was
3094 | not. So you cannot just say--

3095 | Mr. BEILENSEN. Henry--

3096 | Mr. HYDE. It is different.

3097 | Mr. BEILENSEN. Your earlier interruptions were useful.
3098 | This is not terribly useful. I am not talking about that.

3099 | Mr. HYDE. I feel an interruption of you is always useful.

3100 | Mr. BEILENSEN. I speak more kindly of you than you do of
3101 | me.

3102 | Mr. HYDE. I am just retaliating.

3103 | Mr. BEILENSEN. All right.

3104 | Mr. HYDE. Sorry I interrupted.

3105 | Mr. BEILENSEN. This is a bigger thing, we are not talking
3106 | about sending people into the desert and rescuing hostages,

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3107 and it will be all done in 48 hours. We are talking about
3108 big policy changes. Everybody has agreed to that. Under
3109 Mr. Colby's suggested criteria, should we know or need to
3110 know, I would agree in terms of applying it to the three
3111 examples, the only three the Admiral gave to us, we don't
3112 need to know. You guys don't need to tell us. Go ahead,
3113 good luck, we hope it turns out all right.

3114 But you get to other things, especially policy-related
3115 things, and I think we are talking about something else.
3116 What worries me, Mr. Colby, my friend, is the example you
3117 started giving that made me a little uneasy because you
3118 started talking about penetration for political purposes.
3119 Mr. Cline was talking about various opportunities which
3120 might be lost if the folks in CIA and elsewhere knew a
3121 certain number of folks had to be told.

3122 Now you are raising some warning flags it seems to me.
3123 You are talking about--I don't know what you are talking
3124 about. What are you talking about? Are you talking about
3125 getting someone involved in somebody's government who may
3126 have something to do with eventually overthrowing that
3127 government? Why shouldn't those policy-related things not
3128 be told to the eight Members under the existing law?

3129 Mr. COLBY. Mr. Beilenson, I think your points are well
3130 taken. I fully supported the effort by this committee some
3131 years ago to try to write a new charter for the Intelligence

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3132 Committee and I think we all kind of gave up on it. It was
3133 so complicated and so difficult that the thing just kind of
3134 disappeared and it has been replaced by these individual
3135 actions, all of which I fully agree, of amendments to the
3136 existing law correcting problems that have arisen from time
3137 to time.

3138 I think you get the same thing when you try to explain a
3139 need to know. If you try to define a need to know you get a
3140 very great difference of opinion by different onlookers as
3141 to what he needs to know and what he doesn't. And it
3142 immediately gets transferred into do you have faith in me,
3143 which is not the question. The question is does he have a
3144 need to know. Then how can you define that?

3145 Clearly one side of it is a clear policy change. The
3146 other side of it is the identity of the agent. Now,
3147 sometimes the mere insertion of an agent can create a policy
3148 problem. I went to Henry Kissinger one time and said that I
3149 knew he was engaged in a very delicate negotiation with a
3150 foreign country, at the same time we had hopes of recruiting
3151 an officer of that country, and I just wanted to make sure
3152 that if it blew up in our face as you have to anticipate,
3153 that he, that it wouldn't upset his thing. He said go
3154 ahead. You do your business, fine.

3155 But at least I was sensitive to the fact that he did need
3156 to know that there was a very substantial risk to his policy

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3157 being adopted in the actions I was taking. That was a mere
3158 agent recruitment issue and if you try to define it in
3159 words, I think you would have a very difficult time with it.

3160 Mr. BEILENSON. The more you talk about these things, the
3161 more you come to agreement even though one might start from
3162 a different side, pretty much exactly you come to what it is
3163 we ought to be told about.

3164 On the particular instance you were speaking, of course we
3165 shouldn't know. The hostage thing, I would say to my
3166 friend, Mr. Hyde, that we were talking about a vast change
3167 in policy obviously, not only with respect to supplying arms
3168 for hostages but quite different from the problems Admiral
3169 Turner faced where we had some Americans over there who were
3170 posted over there by their government who were serving us
3171 who we had every responsibility to do what we possibly could
3172 to help them out or get them out, even if it had to be by
3173 rescuing them.

3174 It is a whole different policy, and that the Congress
3175 should have been spoken with, and was not.

3176 With respect to the more recent Iranian situation where
3177 you have private American people who had, to be blunt about
3178 it, no business being over there and the President of this
3179 country had no business holding hostage the foreign policy
3180 of this great country of 230 million people because of
3181 Americans not sent by us, not serving us in the CIA or State

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3182 Department who decided they wanted to go to Beirut for their
3183 own good purposes--which is fine and good. We should help
3184 them if we possibly can. But it is a totally different
3185 situation than the one the Admiral faced in my opinion.

3186 Mr. HYDE. Would you yield.

3187 Mr. BEILENSEN. Never again.

3188 Chairman MCHUGH. Mr. Beilenson's time is about up. Go
3189 ahead.

3190 Mr. HYDE. Can I make a point for the record. The book
3191 that has been admirably prepared by your staff and given to
3192 all of us to discuss this suggested new bill has an
3193 interesting paragraph on page 9, Executive Branch practice,
3194 as far as we know since enactment of the Oversight Act in
3195 the fall of 1980 the Committee has been given notice prior
3196 to implementation of all findings except for the January
3197 17, 1986 Iran Finding.

3198 In addition, as far as we know all covert actions carried
3199 out since 1980 again with the exception of the pre-January
3200 17, 1986 Iran arms transfer activities have been the subject
3201 of findings. There has been one occasion since enactment of
3202 the Oversight Act when prior notice was given only to the
3203 Chairman and Ranking Minority Member of the Committee and
3204 one occasion when notice was limited to the designated
3205 leadership group.

3206 So I think that sets the context, the environment for this

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3207 hearing that we are talking about one aberrational, and I
3208 concede aberrational act by the Administration, the
3209 Executive, and I just wonder if we are not overreacting.

3210 That is the point I wanted to make. Thank you.

3211 Chairman MCHUGH. Thank you.

3212 I think this has been a very helpful discussion and I
3213 think the dialogue between the panel and Mr. Beilenson has
3214 been especially interesting. I assume, based on what has
3215 been said that all of you agree that the intelligence
3216 committees of the Congress, or in some limited cases the
3217 Gang of Eight should be advised about any policy change,
3218 albeit in covert form, when that is decided upon by the
3219 President.

3220 Mr. COLBY. Yes.

3221 Admiral TURNER. Yes.

3222 Mr. CLINE. Yes.

3223 Chairman MCHUGH. All of you agree with that. All of us
3224 would agree, Mr. Cline, that we don't have to have our heads
3225 full of all the details of every single covert operation.
3226 That is the other extreme.

3227 As Mr. Beilenson has said, we don't need to know all of
3228 that. It is the policy formulation that really is the
3229 critical area. The frustration some of us feel in this
3230 particular case at least, and I think that some of the
3231 Senators felt on both sides of the aisle in the case of the

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3232 mining of the harbors of Nicaragua, is that when you have an
3233 Administration some of whose members are prepared not to
3234 tell the truth on policy issues, you have an Administration
3235 that will read timely notice in a very liberal way to say
3236 the least.

3237 Now as you said, Mr. Colby, you can punish people who lie
3238 to you about policy matters but there is not much resource
3239 available to us as Mr. Kastenmeier said where a President
3240 and his Administration chooses to disregard timely notice,
3241 because as you said, Mr. Cline, it is a very flexible term
3242 and therefore the remedy for us is very difficult. It is
3243 out of that concern that this bill is before us.

3244 I think you have all raised some interesting points and I
3245 think have helped us to wander through this difficult issue.

3246 I am sure I speak for all the members of the committee in
3247 thanking you for being with us.

3248 Mr. HYDE. Thank you.

3249 Chairman MCHUGH. I would like before we adjourn to ask
3250 unanimous consent to insert in the hearing record letters
3251 concerning H.R. 1013 that the committee received from Cyrus
3252 Vance, McGeorge Bundy and Admiral Turner, two memoranda
3253 concerning the constitutionality of a priority reporting
3254 requirement prepared by Mr. Ray Celada, Senior Specialist in
3255 the American Law at the Library of Congress, and letters to
3256 the committee from Professor William Van Alstyne, Duke

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3257 University Law School and Professor Laurence Tribe of the
3258 Harvard Law School.

3259 [The documents referred to follow:]

3260

3261 ***** INSERT 3C-1 *****

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3262 Chairman MCHUGH. Again thank you to all the witnesses
3263 from our colleagues on the Committee. The Committee will
3264 adjourn now and adjourn its hearings next week at this same
3265 time.

3266 [Whereupon, at 12:30 p.m., the Subcommittee was adjourned,
3267 subject to the call of the Chair.]

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