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# UNITED STATES

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

## SELECT COMMITTEE ON INTELLIGENCE

FULL COMMITTEE

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NOMINATION OF WILLIAM H. WEBSTER  
TO BE DIRECTOR OF CENTRAL INTELLIGENCE

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Thursday, April 9, 1987

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WASHINGTON, D.C. 20510

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STATEMENT OF:

PAGE

The Honorable William H. Webster,  
Nominee to be  
Director of Central Intelligence

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NOMINATION OF WILLIAM H. WEBSTER  
TO BE DIRECTOR OF CENTRAL INTELLIGENCE

- - -

Thursday, April 9, 1987

- - -

United States Senate,  
Select Committee on Intelligence,  
Washington, D. C.

The Select Committee met, pursuant to recess, at 3:15 o'clock p.m., in Room SD-628, Dirksen Senate Office Building, the Honorable David Boren, Chairman of the Committee, presiding.

Present: Senators Boren, DeConcini, Metzenbaum, Cohen, Murkowski, Specter and Hecht.

Also Present: Sven E. Holmes, Staff Director/General Counsel; James Dykstra, Minority Staff Director; and Kathleen McGhee, Chief Clerk.

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## P R O C E E D I N G S

1  
2 THE CHAIRMAN: We resume our hearings today on the  
3 nomination of William H. Webster to be Director of Central  
4 Intelligence. I remind Judge Webster that this a  
5 continuation of the hearing yesterday and of course you  
6 are still under oath. This post, of course, is an  
7 extremely important one. It is a position in which we try  
8 to strike that appropriate balance between the amount of  
9 secrecy that is necessary for effective intelligence  
10 operations and intelligence gathering, and yet operations  
11 that must be conducted within the bounds of law,  
12 responsible to and accountable to elected representatives  
13 of the people. So therefore, it is an important post,  
14 indeed. We had a series of thorough questioning  
15 yesterday, and, Judge Webster, as I indicated, I know you  
16 understand that degree of questioning indicates no  
17 hostility, but is an indication of the seriousness with  
18 which we view our responsibility to be thorough and  
19 complete, as well as fair in the examination of all  
20 information in regard to this particular appointment. We  
21 appreciate your willingness to respond to the questions  
22 which we asked yesterday. We continue that process today.  
23 I would say to the Members and staff members who are  
24 present, so that they can inform the other Members that we  
25 do anticipate an Executive Session to take up some

1 classified matters a little later on this afternoon,  
2 perhaps as early as 4:00 p.m. We will be able to tell at  
3 that time whether we will have further open sessions this  
4 afternoon, at a later date, or if we have been able to  
5 complete the open session matters today before we go into  
6 Executive Session.

7 I'll begin the questioning today with Senator  
8 Metzenbaum.

9 SENATOR METZENBAUM: Thank you Mr. Chairman.  
10 Director Webster, after we concluded the hearing  
11 yesterday, in which I had about 10 minutes to ask you some  
12 questions, your answers played on my mind regarding the  
13 matter of investigating the conduct of the Attorney  
14 General of the United States and, in assuming you find  
15 something to be of significance, what then would occur.  
16 You indicated that there is an ongoing investigation of  
17 the Attorney General and others in connection with the  
18 Wedtech matter. The Wedtech matter is truly a very  
19 significant issue because we know that there was a meeting  
20 in the offices of the Attorney General. We know that the  
21 Army originally did not want to do business with them, but  
22 that then Wedtech wound up with a no-bid contract. We  
23 know that Mr. Wallach talked publicly about his close  
24 personal friendship with the Attorney General and actually  
25 inferred the fact that that's the reason he was hired as

1 the attorney. Now what concerns me is how are we going to  
2 find out the facts, because we have a problem, assuming  
3 you come up with all the information and it provides a  
4 basis for the appointment of an independent counsel, in  
5 that the person who has the right to ask the court to  
6 appoint that independent counsel is the Attorney General  
7 of the United States, and he is the one that is the  
8 subject of the inquiry. What do you do? How does it  
9 work?

10 JUDGE WEBSTER: Senator Metzenbaum, I assume you are  
11 asking me that question in a general context and not in  
12 the context of an ongoing independent counsel  
13 investigation?

14 SENATOR METZENBAUM: That is correct. I think it  
15 would be general, but it is certainly applicable if you  
16 find something.

17 JUDGE WEBSTER: I do not recall my saying that the  
18 Attorney General was under investigation as of my  
19 testimony yesterday. Certain matters are before an  
20 independent counsel appointed to investigate the Wedtech  
21 and all criminal matters that may relate to it, but let me  
22 return to your question. The process is one by which the  
23 FBI or any other agency acquiring information or  
24 allegations of criminal activity by individuals who are  
25 covered under the statute, reports that information

1 immediately to the Office of Public Integrity in the  
2 Department of Justice. A preliminary inquiry begins.  
3 That procedure is governed entirely by the statute and  
4 there are certain time frames within which a decision must  
5 be made. If it involves the Attorney General, the  
6 Attorney General should recuse himself. I know of no  
7 situation that I can recall in which an Attorney General,  
8 while in office, has been made the subject of such an  
9 inquiry so I can't draw on precedent. But I can assure  
10 you that if an Attorney General, who became the subject of  
11 allegations as a covered person under the Independence  
12 Counsel Act did not promptly recuse himself, it would  
13 quickly be in the newspapers.

14 SENATOR METZENBAUM: Would the FBI, or would you as  
15 the Director of the FBI, feel obligated to make it a  
16 public matter, or would it just be in the newspapers the  
17 usual way it is around Washington, by leak?

18 JUDGE WEBSTER: Well, I would take the necessary  
19 steps to be sure that he did recuse himself.

20 SENATOR METZENBAUM: Let me come back to a question  
21 concerning the present Attorney General. Newspaper  
22 stories have reported that there was a meeting held in his  
23 office; that it was called at the insistence of close  
24 personal friends of his; that it did result in a change of  
25 position as far as the Army was concerned; and that it did

1 result in the company obtaining a no-bid contract for  
2 \$30-some million. It would seem to me that if it isn't  
3 illegal, it would certainly be highly improper; and you  
4 indicated yesterday, I thought, that you were  
5 investigating the Wedtech matter and, it is my  
6 understanding, that included all aspects of it, including  
7 the Attorney General. Are you now saying that you are  
8 not?

9 JUDGE WEBSTER: No. I said all aspects will be and  
10 are being investigated and the investigation is under the  
11 control of an independent counsel.

12 SENATOR METZENBAUM: But that independent counsel,  
13 I'm informed, has not indicated that his authority is  
14 broad enough to investigate the Attorney General. That  
15 investigation is related to Mr. Nofziger. But I do not  
16 understand that his investigation includes the matter of  
17 Mr. Meese or any others who might be involved.

18 JUDGE WEBSTER: I would anticipate that if the  
19 independent counsel considers that any other officials who  
20 were covered under the Act are logical subjects of  
21 investigation, that he would ask for authority to broaden  
22 his investigation. If he did so, and it required the  
23 approval of the Attorney General to make that  
24 determination, I would anticipate that the Attorney  
25 General, if he was the person included in the request,



1 would recuse himself.

2 SENATOR METZENBAUM: We are aware of the fact that in  
3 the Schmults case, also a close friend of Mr. Meese, the  
4 independent counsel not only asked for the right to  
5 broaden the inquiry, but went beyond that and went into  
6 court and asked for authority to include Mr. Schmults in  
7 the investigation. The Attorney General went into court,  
8 or rather the Department of Justice did, opposing  
9 broadening the inquiry and the court said that the  
10 independent counsel did not have authority to broaden the  
11 inquiry.

12 I don't know whether Mr. Meese was or was not  
13 involved in an improper way or an illegal way as pertains  
14 to Wedtech, and I'm not suggesting that he was. The basic  
15 issue that I'm getting at is that enough has been  
16 published concerning this matter that the people of this  
17 country have a right to know the facts. The only place  
18 that we can hope to get an answer as to what the facts are  
19 is the FBI, because you are the only arm of government  
20 charged with investigating violations of law. What  
21 concerns me is: how do we get the answers as to whether  
22 the Attorney General was or was not engaged in illegal  
23 activities?

24 JUDGE WEBSTER: Senator, I can only say that that is  
25 now the responsibility of the independent counsel who has

1 a free rein in conducting his investigations. If for some  
2 reason, the scope of his responsibility is not broad  
3 enough to include the Attorney General, and if the  
4 independent counsel believes it should be broadened, then  
5 he should bring that to the attention of the Attorney  
6 General, who should promptly recuse himself if he is the  
7 person involved, and then another official can make that  
8 determination.

9 SENATOR METZENBAUM: Now you have already indicated  
10 that the FBI is investigating the entire Wedtech matter.

11 JUDGE WEBSTER: I have to qualify that. The  
12 independent counsel is investigating it with such FBI  
13 assistance as he desires.

14 SENATOR METZENBAUM: I see. Your total  
15 responsibilities relate only to that which has to do with  
16 your work for the independent counsel.

17 JUDGE WEBSTER: Absolutely.

18 SENATOR METZENBAUM: And beyond that you have no  
19 further efforts.

20 JUDGE WEBSTER: We currently have an additional  
21 investigation. I don't like to confirm or deny ongoing  
22 investigations, but in view of your concern about it, we  
23 have one that does not involve a covered person and we are  
24 carrying that one out. But I thought that your questions  
25 were really directed to covered persons. And I believe,

1 if I'm not mistaken, that the court itself can broaden the  
2 scope of the independent counsel's investigation. But I'm  
3 aware of the court decision that you are talking about and  
4 I simply don't know the answer. If there is a flaw in  
5 that, that's a legislative problem. But as far as the  
6 ability to investigate the Attorney General if the  
7 independent counsel believes that he should, I know of no  
8 practical impediment to doing so.

9 SENATOR METZENBAUM: Let me go to another subject:  
10 the activities of Mr. Varelli and the placing in an FBI  
11 terrorist photo album of Congresswoman Pat Schroeder. It  
12 seems to me there were some others as well who were on  
13 that list. Now I have before me the letter that you  
14 addressed to Congresswoman Schroeder. You say that in  
15 looking through the FBI terrorist photograph album, she  
16 does not appear in that album. My question to you is,  
17 does she appear in any other record or album or local  
18 gathering of information having to do with terrorist  
19 activities, or alleged terrorist activities, or in any  
20 other way? Do you find her in some other place? Your  
21 letter specifically limits it to "a careful search of the  
22 entire album that do not you appear in our album, nor have  
23 you ever appeared in our album, nor would we ever have the  
24 slightest basis for including you in our album." Now my  
25 question is, and I think it is her question as well, does

1 it appear in any other files, either at the central office  
2 or any of the regional offices?

3 JUDGE WEBSTER: At the time that I had a telephone  
4 conversation with Congresswomen Schroeder and then  
5 immediately dictated that letter, this was the only  
6 information I could answer with certainty because it  
7 involves a much broader search of the records to determine  
8 whether her name has ever been mentioned or referenced or  
9 indexed. She is not the subject of any investigation.  
10 And beyond that I can only say that we are trying to get  
11 any information in which her name may appear. That sort  
12 of information is available to her under her Privacy Act  
13 privileges. But I will try to get it. I would be very  
14 much surprised if her name appears in any more than a  
15 cross-reference over many years of public life. She is  
16 not currently, and I do not know her ever to have been the  
17 subject of a criminal investigation. But we are trying to  
18 get that information together and make sure it is  
19 accurate and give it to her.

20 SENATOR METZENBAUM: I'm sure that she would  
21 appreciate it and I think the rest of us in Congress would  
22 as well. I have additional questions about Mr. Varelli,  
23 but I'm told that my time has expired. Perhaps I can ask  
24 them in the next round.

25 THE CHAIRMAN: Thank you very much Senator

1 Metzenbaum. Judge Webster, let me just complete with a  
2 couple of very brief questions along this line. Of course  
3 you've worked with the Justice Department and the Congress  
4 to develop and enforce strict guidelines to protect First  
5 Amendment rights. Given that experience, I want to voice  
6 my concern also about what happened in the case of former  
7 FBI informant Frank Verelli, who apparently was used in  
8 the FBI's investigation of a group actively opposing U.S.  
9 foreign policy in Central America, the so-called CSPES,  
10 Committee in Support of the People of El Salvador. As I  
11 understand it, the FBI special agent who handled Mr.  
12 Verelli resigned after the FBI began an internal  
13 investigation. Let me just ask this question, what are  
14 the control mechanisms that are supposed to make sure that  
15 sensitive investigations of domestic political groups are  
16 properly supervised?

17 JUDGE WEBSTER: The primary control element is found  
18 in the Attorney General's Guidelines for Domestic Security  
19 Investigations. These spell out the conditions under  
20 which an investigation of an organization can take place  
21 under the terrorism guidelines. In addition to that,  
22 there are separate Attorney General guidelines governing  
23 the use of informants and the management of informants.  
24 There are very substantial Bureau manual provisions  
25 dealing with the management of informants. I dare say

1 more care is given in this effort in the FBI than any  
2 other investigative agency in the world. We pride  
3 ourselves on our ability to manage informants. I think  
4 that there are the rare cases where we do not succeed tend  
5 to prove the rule that we do manage our informants well  
6 and keep strict accountability and records.

7 THE CHAIRMAN: How long was Mr. Varelli employed by  
8 the FBI? Do you happen to know how long he was employed  
9 or the value of his total compensation during that period?

10 JUDGE WEBSTER: I don't have his compensation for you  
11 but I'll be glad to supply that to you for the record.

12 THE CHAIRMAN: That would be fine. We could receive  
13 that for the record.

14 JUDGE WEBSTER: He was opened as an informant I  
15 recall in March 1981. He was closed in February 1982,  
16 reopened in November 1982, and closed in January 1985.

17 THE CHAIRMAN: So a fairly long period of time,  
18 especially in that second segment. Now which official was  
19 directly in charge of Mr. Varelli?

20 JUDGE WEBSTER: Special Agent Flanagan was directly  
21 in charge of the informant, taking the informant's  
22 information and informant management until he resigned in  
23 April 1984, I believe.

24 THE CHAIRMAN: He resigned in April, 1984?

25 JUDGE WEBSTER: Yes, Mr. Chairman.

1 THE CHAIRMAN: But then Mr. Varelli was continued on  
2 in some sort of relationship with the Agency until January  
3 of 1985?

4 JUDGE WEBSTER: That's correct.

5 THE CHAIRMAN: Now to whom did Mr. Flanagan report?

6 JUDGE WEBSTER: He reported to a supervisory agent,  
7 Mr. Park Sterns.

8 THE CHAIRMAN: Now at what point in time did this  
9 investigation or this operation begin to be conducted in  
10 an improper way? Obviously you decided to suspend the  
11 operation totally. When was the decision made to suspend  
12 the operation?

13 JUDGE WEBSTER: The operation was not suspended  
14 because of any alleged improper activities by the  
15 informant or by the special agent. It was closed about  
16 two years ago when the...let me be sure I'm right on  
17 that...it was closed in June 1985 in consultation with the  
18 Office of Intelligence Policy Review of the Department of  
19 Justice which monitors these ongoing domestic security  
20 investigations.

21 THE CHAIRMAN: Why was it closed?

22 JUDGE WEBSTER: Because there was no longer a basis  
23 for remaining open.

24 THE CHAIRMAN: There was not evidence under the  
25 Attorney General's Guidelines that this organization was

1 involved in some kind of activity covered by those  
2 guidelines.

3 JUDGE WEBSTER: Not sufficient to warrant a  
4 continuation.

5 THE CHAIRMAN: Now we've seen evidence that someone  
6 improperly obtained and falsified forms, and was putting  
7 the photographs of people like Congresswoman Schroeder on  
8 these forms. Some improper things were going on. I'm  
9 interested in trying to determine how long these kinds of  
10 activities may have gone on. Or how long improper  
11 management of the informant went on before it came to your  
12 attention as Director of the FBI.

13 JUDGE WEBSTER: The forms to which you refer were  
14 probably -- although I can't say because we haven't been  
15 able to determine when and how they were produced -- but  
16 they were most probably generated even after Special Agent  
17 Flanagan had left the employ of the Bureau. They are not  
18 in our records. So far as I can determine they never were  
19 in our records.

20 THE CHAIRMAN: Well, in terms of the improper  
21 activity, in other words we had a situation where the  
22 informant was not being properly handled, where the agent  
23 supervising the informant resigned in April of 1984. We  
24 have a sensitive investigation of a group that is  
25 practicing political dissent in the country which we now



1 believe there was lack of sufficient evidence of  
2 subversive activity to continue an investigation against  
3 that group. We are concerned about preventing the FBI or  
4 any agency of the government from interfering with  
5 legitimate political dissent in the country. What are the  
6 procedures for notifying you as Director of these kinds of  
7 situations when it is determined by anyone...how long does  
8 it take from the time the first person in the Agency  
9 determines something may be going on that shouldn't be  
10 going on, how long did it take in this case when the first  
11 person in the Agency learned that something might be  
12 wrong, before you, as Director, were informed about it.  
13 I'm concerned with the effectiveness of the mechanism we  
14 have put in place to determine that things shouldn't go  
15 on.

16 JUDGE WEBSTER: I want to be sure of my date, Mr.  
17 Chairman. Sometime in April 1984, Agent Flanagan was in  
18 Washington on other business, his car was broken into and  
19 some of his records were stolen. In the course of  
20 reconstructing the lost records, the Inspection Division  
21 became concerned about some of his activities and opened  
22 an Office of Professional Responsibility investigation.  
23 He resigned during that investigation.

24 There was also about that time, some indication of  
25 trouble between the agent and the informant over the

1 amount of money that was to have been paid to the  
2 informant. Prior to those incidents, the informant was  
3 supplying us with information in an appropriate, and I  
4 believe a proper way, although we still have not completed  
5 our investigation because the informant, through his  
6 attorney, declines to be interviewed under terms  
7 acceptable to the government. So I can't be final about  
8 that. It was only after the money issue surfaced that the  
9 informant began to tell an entirely different story to  
10 others than he had been telling to us.

11 THE CHAIRMAN: So the first problem surfaced in April  
12 1984 to the knowledge of authorities in the Bureau..with  
13 the breakin of the car and the investigation that  
14 followed.

15 JUDGE WEBSTER: That's correct.

16 THE CHAIRMAN: And then how long was it before you  
17 were personally notified that there might be something  
18 going wrong with people who were involved in activities,  
19 operations, with a domestic political group that was  
20 practicing political dissent?

21 JUDGE WEBSTER: I didn't anticipate that question.  
22 I'll have to supply it for the record. I distinguish  
23 between the activities of Mr. Flanagan and his informant  
24 and the overall investigation for which there was a very  
25 solid predicate.

1 THE CHAIRMAN: Did you make the decision personally  
2 to close out this operation with CSPES?

3 JUDGE WEBSTER: No I did not. That was made in the  
4 normal way in which our domestic security investigations  
5 take place when, on advice of the Department, there is no  
6 longer a basis for continuing. That's part of the  
7 process.

8 THE CHAIRMAN: How can you be assured, as Director,  
9 that you know of....in other words the American people  
10 have looked to you as Director of the Federal Bureau of  
11 Investigation to make certain that the authority of the  
12 FBI is not abused in terms of legitimate and rightful  
13 domestic political dissent. And if you are confirmed as  
14 Director of the Central Intelligence Agency,, the American  
15 people will look you principally to you to make sure that  
16 the assets of that Agency are not used in any  
17 inappropriate, illegal, or unconstitutional manner. What  
18 system did you have in place to make sure that you would  
19 learn of any kind of complaint or problem that might arise  
20 in terms of surveillance of domestic political dissent?

21 JUDGE WEBSTER: All allegations of impropriety are  
22 immediately picked up by our Office of Professional  
23 Responsibility. They pass through me to the  
24 Administrative Services Division for review following the  
25 completion of their investigation and then I monitor low

1 level administrative action and personally participate in  
2 high level administrative action. If I can say to you as  
3 a generalization, without trying to spell out all of the  
4 procedures that we have in place, in my nine years of  
5 office, there has not been one single successfully  
6 maintained claim of a violation of a constitutional right  
7 by agents of the Federal Bureau of Investigation.

8 THE CHAIRMAN: Senator Cohen and then Senator Specter  
9 will follow Senator Cohen.

10 SENATOR COHEN: Judge Webster, I was not quite clear  
11 on the notice that you would feel compelled to give to  
12 this Committee in the event a covert operation. I would  
13 like to read Bob Gates' testimony before the Committee  
14 when he came for us for confirmation. He said "I have  
15 committed to the Committee that I will recommend to the  
16 President against withholding prior notification under any  
17 circumstances except the most extreme involving life and  
18 death and then only for a few days, several days, my exact  
19 statment." Is that your commitment as well?

20 JUDGE WEBSTER: I'd like to make it my commitment.  
21 I'm not quite in the same position as Mr. Gates. He has a  
22 far more intimate knowledge of what goes on over there,  
23 and I hope he's right. I certainly would want to. I  
24 would expect to.

25 SENATOR COHEN: I think if you don't, you're going to

1 have Congress legislating 48 hours.

2 JUDGE WEBSTER: I know that absolutely. And I don't  
3 want you to have to do that.

4 SENATOR COHEN: Do you want to think some more about  
5 whether you are going to be in a position at some point to  
6 make the same kind of commitment that Mr. Gates made?

7 JUDGE WEBSTER: I can make it to you now. I just...I  
8 want from the very beginning of these confirmation  
9 proceedings until the end of the length of time I serve if  
10 I'm confirmed, to have you feel that I have maintained  
11 every pledge that I have made to you.

12 SENATOR COHEN: What is your pledge now on the notice  
13 to the Committee on covert actions?

14 JUDGE WEBSTER: My pledge is to notify you in the  
15 timeliest way possible and that I cannot conceive of  
16 ...and I said that yesterday... that I can't think of any  
17 that would not involve the promptest notification. That's  
18 whether we talk about several days, or forty-eight hours,  
19 or talk about as soon as possible. I would like to see  
20 you notified in less than forty-eight hours if it's  
21 possible to do so in a rational, reasonable way.

22 SENATOR COHEN: And what if you had doubts about the  
23 ability of this Committee to keep a secret?

24 JUDGE WEBSTER: Well I have no doubts at the present  
25 time. If I had reason to doubt, I think I would have to

1 discuss that with the Chairman and the Vice Chairman.

2 SENATOR COHEN: So you would still notify the Vice  
3 Chairman and Chairman of the Committee?

4 JUDGE WEBSTER: I would notify you that I had  
5 something to tell you, but I had a problem in telling you  
6 and see if you'd work with me on it.

7 SENATOR COHEN: I'll come back to that later. I was  
8 not exactly clear on what your statement was with respect  
9 to the Abscam investigation or operation in which one  
10 Senator was suddenly pulled in with your net.

11 JUDGE WEBSTER: We didn't say he was pulled in, he  
12 walked in.

13 SENATOR COHEN: Well, he was invited in.

14 JUDGE WEBSTER: He was invited in by a crook, not by  
15 the FBI.

16 SENATOR COHEN: Well that crook happened to be an  
17 informant for the FBI.

18 JUDGE WEBSTER: He was not an informant Senator. I'm  
19 glad you asked that question. He was a corrupt influence  
20 peddler who was himself tried and convicted, fined \$15,000  
21 and sentenced to three years in the penitentiary.

22 SENATOR COHEN: How did he put out this so-called net  
23 without FBI supervision?

24 JUDGE WEBSTER: We don't supervise people who are  
25 under investigation. He was one of those under

1 investigation, and we were following his activities. We  
2 tried in two ways, which worked very successfully through  
3 the investigaton. We would either have both systems work  
4 or at least one would work. In order to maintain an  
5 undercover scenario that was plausible, the so-called  
6 agent of the Arab shiek told all of the criminals with  
7 whom he was dealing that the shiek didn't want to sell  
8 anybody that he was interested in doing business with  
9 Congressmen who would sell out their office and only to  
10 bring people there who knew what it was all about and were  
11 prepared to deal with the shiek's representatives.

12 SENATOR COHEN: Now the shiek, that's FBI?

13 JUDGE WEBSTER: The shiek is a ficticious person. I  
14 think he only appeared three times in the whole operation.

15  
16 SENATOR COHEN: The FBI said go out and get me  
17 somebody who is corrupt.

18 JUDGE WEBSTER: No. We did not do it in that way.  
19 It has been interpreted in that way. I could take you  
20 back from the beginning to show you how we got into it,  
21 and I know you don't want me to do that, but we were  
22 receiving information about people who were in a chain  
23 operation in most cases. They came in very rapidly and  
24 the second procedure was that knowing that someone might  
25 do as you suggest and go out and try to bounty hunt for

1 unwitting members of Congress, our instructions to our own  
2 people -- which incidentally was being monitored over  
3 closed circuit television by representatives of the United  
4 States Attorney under circumstances where they could  
5 control the operation -- our instructions were no money  
6 should pass to anyone until they had made criminal  
7 representations. And that worked in the case you are  
8 talking about.

9       SENATOR COHEN: My only concern about that particular  
10 incident is that I think that as long as you have a  
11 reasonable basis to believe that public officials are  
12 corrupt, you certainly ought to use full powers of the  
13 office to go after them. But, there has to be a reasonable  
14 basis to go after those particular individuals other than  
15 let's see how many we can corrupt.

16       JUDGE WEBSTER: I agree entirely with you Senator  
17 Cohen and I testified yesterday, given another chance at  
18 it I would, I believe after nine years of experience that  
19 we would have found a better way to handle the situation  
20 where we were suddenly confronted with Sylvestri, the  
21 corrupt influence peddler, telling us he had substituted  
22 someone who knew what it was all about and wanted to come.  
23 We could do a better job next time. This does not  
24 represent a pattern and practice.

25       SENATOR COHEN: In 1978 during your confirmation



1 proceedings you indicated that you were willing and  
2 planned to put all of your assets in a blind trust.  
3 Following the confirmation proceedings you did not do so  
4 for the reason that some of the stock was of great  
5 personal sentimental value, I should say, belonging to the  
6 family of your wife. Correct?

7 JUDGE WEBSTER: No the reason I did not do so was  
8 that...two reasons, I decided to reduce my net worth,  
9 pardon me my investment holdings by not taking a mortgage  
10 on my home. And at the same time the financial disclosure  
11 acts came out and it was very complicated and it made it  
12 seem of no particular advantage to a blind trust because  
13 I'd still have to keep reporting and be susceptible to  
14 conflicts even though I didn't know what was in it. So I  
15 thought that in view of the fact I had reduced my holdings  
16 and was making a full financial disclosure that it was no  
17 longer necessary for me to do it. In this particular  
18 assignment I think there is far more sensitivity than  
19 there is in the FBI. I have a screening arrangement  
20 incidentally in the FBI and I have only had to recuse  
21 myself on my own account in cases involving family members  
22 associated with various businesses who have come on.

23 SENATOR COHEN: Is there any reason why you simply  
24 couldn't take your assets and put them in a blind trust  
25 today as opposed to a qualified, diversified blind trust?

1 JUDGE WEBSTER: Yes, I think there is a very good one  
2 Senator. This one makes far more sense. It's provided  
3 for in the statutes. It takes it out of my control. I  
4 don't know officially what's in there. In other words,  
5 I'm not entitled to know any more what they have. If they  
6 sell something they don't tell me. If I leave it in a  
7 blind trust, I still must disqualify myself from every  
8 holding until that holding has been sold by the trustee.  
9 I think it is unnecessary and unfair to require a person  
10 who volunteers for public life to have to roll over his  
11 securities at great personal cost. There is a low cost  
12 basis in most of what I have, because I haven't been  
13 trading or investing over these years and the law provides  
14 for a qualified investment trust that fully protects the  
15 government and does not simply put the burden back on the  
16 Agency to disqualify me from everything I hold until those  
17 holdings are rolled over for no appropriate reason.

18 SENATOR COHEN: So you are concerned about the tax  
19 implications or consequences of having to sell the stock  
20 and of a substantial capital gain.

21 JUDGE WEBSTER: That's certainly a factor, Senator.

22 SENATOR COHEN: I think you had it about right when  
23 you said that you took the position that as FBI Director  
24 you reduced your net worth. I think anyone on this  
25 Committee would probably agree with that. My time is up.

1 THE CHAIRMAN: Senator Specter and then following  
2 Senator Specter, I'll call on Senator DeConcini. Senator  
3 Specter.

4 SENATOR SPECTER: Thank you Mr. Chairman. Judge  
5 Webster we have talked about the circumstances of the Iran  
6 matter and you have testified on generalizations. There  
7 has been some comment of the dissatisfaction by the  
8 Intelligence Committee on the disclosures which have been  
9 made by the CIA. I would like to ask you in the context  
10 of the specific information which we know what action you  
11 would have taken had you been Director as a basis for our  
12 evaluating confirmation of you for that position.

13 The then-Director of the CIA testified before the  
14 Intelligence Committee on November 21, and provided  
15 information which omitted certain factors such as the  
16 diversion of funds from the sale of arms to  
17 Iran...diversion to the contras. There was no information  
18 in his statement concerning Ghorbanifar who was the key  
19 Iranian contact having failed two lie detector tests.  
20 There was no information that the CIA had proceeded  
21 without a finding when the CIA facilitated the transit of  
22 the airplane. There was no information provided by the  
23 then-Director of the CIA that the effort had been made to  
24 have a finding applied retroactively to actions already  
25 undertaken by the CIA. And my question to you is had you

1 been the Director of the CIA, and had known of those facts  
2 when you appeared before the Intelligence Committee on  
3 November 21, 1986, whether you would have made those  
4 disclosures to this Intelligence Committee?

5 JUDGE WEBSTER: Senator Specter, in deference to  
6 Director Casey I don't know what he knew, but your  
7 question was if I knew these things would I have disclosed  
8 them. The answer is yes.

9 SENATOR SPECTER: The issue came in a pointed fashion  
10 on the confirmation proceedings of Deputy Director Gates  
11 who had a significant role in the preparation of testimony  
12 of Mr. Casey. Deputy Director Gates testified that he had  
13 taken the responsibility for two or three drafts and the  
14 substance of Mr. Gates testimony was that he had  
15 information about the diversion to the Contras. He  
16 disagreed about Ghorbanifar saying he knew about only one  
17 lie detector test. He knew that the activities had been  
18 undertaken on the facilitating of the plane without a  
19 finding and he knew about the effort to have the finding  
20 applied retroactively. My question to you is should  
21 Deputy Director Gates have inserted those matters in the  
22 testimony which he knew was going to be presented by the  
23 Director to this Committee?

24 JUDGE WEBSTER: That's a tough question because,  
25 again I'm only answering in the context that you've

1 presented for me and there may or may not have been other  
2 circumstances that would flush out the problem that might  
3 confront someone in the position that Deputy Director  
4 Gates had at that time. I would hope that if at any time  
5 a Director was about to make a statement to this Committee  
6 or any other Intelligence Committee having appropriate  
7 oversight, which the Deputy Director knew contained  
8 material misstatements of fact, that the Deputy Director  
9 would, in the most forceful way, urge his point. Now I  
10 distinguish between differences as to differences of  
11 opinion as to policy or action where the responsibility is  
12 the ultimate responsibility of the Director. But the  
13 responsibility for truth is a combined responsibility and  
14 those who are preparing testimony for one who has to give  
15 it, have an obligation to insist upon truthful testimony.

16  
17 Now if that person, if the Director then goes forward  
18 and gives untruthful testimony, I think that there is a  
19 responsibility for the person who shares in that  
20 responsibility of truth to take some appropriate action to  
21 correct the record. I'm not sure nor would I want to try  
22 to answer that definitively here, where that person should  
23 go, because I value loyalty. I would expect it in all  
24 those who work with me. And I am head of an Agency. I do  
25 not expect them to join with me in an untruth.

1           SENATOR SPECTER: I appreciate the answer you have  
2 given. The answer that you've given goes beyond the scope  
3 of my question in terms of the Deputy Director preparing  
4 testimony which then may not have been used by the  
5 Director and then the duties which would involve the  
6 Deputy Director in that context. That is not the factual  
7 situation presented here that I have presented to you.  
8 And I do not put it in the terms of a hypothetical; I put  
9 it in terms of a fair statement of what the record showed  
10 and what the hearing showed in this very room within the  
11 course of several weeks ago.

12           JUDGE WEBSTER: I thought I was assuming in my answer  
13 to your question that in the situation where the Director  
14 gives testimony which the Deputy knows to have been  
15 untrue, that there be, that it is incumbent on him to take  
16 some action to correct that.

17           SENATOR SPECTER: Well, I think that's a commendable  
18 position and I would certainly agree with you on that.  
19 When you make a statement about the Director's statement  
20 having material misstatements of fact, I think it is  
21 important to focus on the factor that these facts which I  
22 have enumerated for you, were omitted. Some might  
23 therefore say that they are omissions as opposed to  
24 misstatements, but I think as to a legal conclusion it is  
25 the same. When the totality of the statement presented

1 omits material statements, I think that it constitutes a  
2 misstatement of fact. But I just want to focus on these  
3 items having been omissions. JUDGE WEBSTER: I agree that  
4 a purposeful material omission of fact is the equivalent  
5 of a misstatement of fact to this Committee. Where I  
6 think there is an avenue of, an area of discussion and  
7 exploration is whether that omission was purposeful and  
8 distorted the testimony itself. There will always be  
9 situations when you have to decide how much you want to  
10 include for purposes of a statement in order to tell the  
11 full story. And I certainly wouldn't want to suggest that  
12 because you left out a horse or an ox or something that  
13 did not distort the picture that that made it a material  
14 omission of fact. It has to be material. I think we're  
15 both talking about the same thing., But a purposeful one,  
16 not one that was left out because the researchers failed  
17 to bring it forward, but one that was considered, that was  
18 important, that should have been presented and was  
19 purposefully omitted. That's a material omission of fact.

20  
21 SENATOR SPECTER: Judge Webster, my next question to  
22 you is one which I will not press you to answer at this  
23 moment, until you have had a chance to review the record  
24 and to confirm the representations which I have made here  
25 today because it is a very important question. And that

1 question is did Deputy Director Gates act properly in  
2 having a hand in the preparation of Director Casey's  
3 testimony which omitted the important references of  
4 diversion of funds to the Contras, Ghorbanifar's failing  
5 the lie detector test, the absence of a finding and the  
6 subterfuge to have a finding applied retroactively. If  
7 you care to answer that now I'd be pleased to hear it, but  
8 I would understand because of the importance of the  
9 question and its bearing on the qualification of Deputy  
10 Director Gates to continue to serve in that position. If  
11 you would prefer to review the record as to the factors  
12 which I have brought to your attention, I will understand.

13 JUDGE WEBSTER: Senator Specter, I appreciate your  
14 realizing that I could not possibly answer that question  
15 at this hearing. I think you would impose an impossible  
16 burden on me if you expected me to carefully and  
17 thoroughly review a lengthy record on this subject during  
18 these confirmation proceedings. I will make an assurance  
19 to you that as a part of my responsibilities, as I would  
20 in any open situation, that I would review all of the  
21 activities of the Agency including those of its officials  
22 including the Deputy Director at the earliest opportunity  
23 and I would take appropriate action if any was required,  
24 as a result of that. I just think it would be unfair to  
25 expect me when two Committees of the Congress and an



1 independent counsel are trying to get all the facts out,  
2 to come to a hasty rush to judgment on a very senior  
3 official in the Agency.

4 SENATOR SPECTER: Well, Judge Webster, I'm not asking  
5 you to answer the question now because I understand that  
6 import. But it is likely, as a matter of scheduling, that  
7 your confirmation hearings will be pending at least until  
8 we return from the recess and that there will be at least  
9 a period of two weeks. Speaking for myself, I am very  
10 interested in your response to that question because I  
11 think it is very important as to the continued service of  
12 Deputy Director Gates and the adequacy of the information  
13 which was presented to this Committee by Director Casey,  
14 which Deputy Director Gates had a share in the  
15 preparation. I think you can review that if you take a  
16 look at Deputy Director Gates' testimony to this  
17 Committee, which was private, later released on December  
18 4, 1986 and you review the proceedings before this  
19 Committee.

20 JUDGE WEBSTER: Senator, I don't want to, but if you  
21 insist, I'll review the testimony. But I don't know that  
22 that's enough. If you think it's enough for me to draw an  
23 opinion, I'll be glad to look and see if I can. I can't  
24 guarantee that I would want to express an opinion on that  
25 narrow a record.

1           SENATOR SPECTER: Well, I would appreciate it if you  
2 would, because I think it is important. I think it is, it  
3 goes really to the crux of the matter as to appropriate  
4 disclosure by the CIA. It comprehends three factors. It  
5 comprehends, number one, the testimony which Director  
6 Casey gave to this Committee, and the absence of  
7 specification of very material facts. It goes, number  
8 two, to the competency of Deputy Director Gates, who had a  
9 significant hand in the preparation of Director Casey's  
10 testimony, and it goes, number three, to the factor which  
11 you raised here today, which I had not raised, and that is  
12 the duty of the Deputy Director of CIA to inform this  
13 Committee of material facts which were not disclosed by  
14 the Director.

15           Let me move on briefly to another point or two, Judge  
16 Webster. You testified yesterday that if the President  
17 had not made a disclosure to the Intelligence Committee or  
18 the Congress as required by law, that you would resign.  
19 Correct?

20           JUDGE WEBSTER: I think that's my testimony. That's  
21 right.

22           SENATOR SPECTER: My question to you is should you be  
23 faced with that unpleasant alternative and felt that  
24 failure of the President to comply with the law required  
25 your resignation, would you then inform this Committee of

1 facts which you considered to be required by law for  
2 disclosure?

3 JUDGE WEBSTER: I would do so to the extent permitted  
4 me by law, and I know of no reasons why I could not, but  
5 only after I had resigned.

6 SENATOR SPECTER: Judge Webster, you testified  
7 yesterday that you would not participate in the Cabinet  
8 upon confirmation as Director of CIA. That appears to me  
9 to be, to propose a grave difficulty in terms of the role  
10 which the Director of the CIA has in coordinating  
11 intelligence. In a sense, the DCI is in a supervisory  
12 capacity over other Cabinet officers, including the  
13 Secretary of Defense, who has intelligence gathering  
14 responsibilities in his Department and intelligence  
15 gathering in the Treasury. It also seems to me to be  
16 problematic in the context of exerting sufficient  
17 influence, commensurate with your knowledge, and your  
18 role, on advice to the President. For example, on trying  
19 to dissuade a President from selling arms to Iran...having  
20 the full value of that kind of advice, and having a full  
21 voice in the Cabinet on the quality of that interchange.

22 Wouldn't you be giving up a great deal and wouldn't  
23 there be a significant void if you were not to participate  
24 as a Cabinet member?

25 JUDGE WEBSTER: Not in my opinion, as much as the

1 difficulties that grow out of having a Cabinet  
2 relationship and the privilege of expressing personal  
3 opinions and becoming an advocate for policy provisions  
4 across the whole range of government. In the course of my  
5 discussions with the President and his chief advisors, we  
6 all agreed that this decision would not impact upon the  
7 direct access, which I have been promised, to the  
8 President -- perhaps, indeed, more direct access than most  
9 other Cabinet members currently enjoy. I was also  
10 promised the principle of awareness, that I would be  
11 included in all meetings which related to major foreign  
12 policy or national security issues, that I would have the  
13 opportunity to participate in those Cabinet meetings and  
14 in any innercircle meetings of limited numbers of ranking  
15 officials.

16 SENATOR SPECTER: You're saying that you would  
17 participate in some Cabinet meetings?

18 JUDGE WEBSTER: That's correct, any in which foreign  
19 policy issues or national security issues are likely to be  
20 involved, requiring the input of the Intelligence  
21 Community. I think the importance of my participation is  
22 to be aware of concerns and the ability to be sure that  
23 the quality of the intelligence and the analytical effort  
24 that is developed through the Intelligence Community is of  
25 a degree of excellence that will permit the policymakers

1 to make informed and wise judgments.

2 SENATOR SPECTER: Judge Webster, I would ask you to  
3 reconsider that position in terms of the national interest  
4 and not feel bound by what you stated here in these  
5 proceedings should you be confirmed. I would just ask you  
6 to reconsider it. You'll have to be the judge of that,  
7 obviously, but I have a sense that it would deprive the  
8 Cabinet and deprive the process of very valuable insights.  
9 It is hard to know which Cabinet meetings are going to  
10 take up the areas of your expertise. And it is hard to  
11 know when another meeting doesn't raise some subject for  
12 you which would be very useful. I would at least ask you  
13 to reconsider.

14 JUDGE WEBSTER: I appreciate that. I don't know that  
15 I can reconsider it, but I will consider the aspects of  
16 what you've said and we've already put in some  
17 bureaucratic procedures in place to make sure that I  
18 receive the kinds of materials that Cabinet officers  
19 receive and awareness of the meetings, and so forth. But  
20 thank you for your comment.

21 SENATOR SPECTER: But, it would save you one burden  
22 of coming to the State of the Union speeches. That might  
23 be worth part of it. Thank you very much, Judge Webster.  
24 Thank you Mr. Chairman.

25 THE CHAIRMAN: Thank you, Senator Specter. Senator

1 DeConcini.

2 SENATOR DECONCINI: Judge Webster, I believe that  
3 you've had some questions regarding Frank Verelli and the  
4 FBI conducting some breakins and what have you. Am I  
5 correct that there is an internal investigation underway  
6 into those charges?

7 JUDGE WEBSTER: Yes there is, Senator.

8 SENATOR DECONCINI: And we cannot take that up at  
9 this time particular time?

10 JUDGE WEBSTER: I think probably not, but I can say  
11 this much for the record because the investigation has  
12 been concluded with the exception of the interview of Mr.  
13 Varelli. The FBI can find no evidence of such breakins.

14 SENATOR DECONCINI: Okay, and we can be briefed on  
15 the evidence that was presented in the investigation.

16 JUDGE WEBSTER: Well, so far as we can determine, all  
17 of the other agents who were available for interview have  
18 explicitly denied it, and I don't know of anyone who has  
19 come forward with explicit evidence that any agent was  
20 involved.

21 SENATOR DECONCINI: Does that include administering  
22 any polygraph examinations?

23 JUDGE WEBSTER: No polygraphs on that investigation.

24 SENATOR DECONCINI: Is that normal that there would  
25 not be polygraphs on such ...

1 JUDGE WEBSTER: Normally, polygraphs are administered  
2 where there is an issue of fact, where two people are  
3 giving different testimony on a particular issue.

4 SENATOR DECONCINI: And you determined that there was  
5 no difference between the accusations of Mr. Varelli or  
6 anyone else, informants versus the FBI position?

7 JUDGE WEBSTER: Other than Mr. Varelli who declines  
8 to be interviewed at the present time.

9 SENATOR DECONCINI: What safeguards exist to control  
10 FBI warrantless searches for intelligence purposes?

11 JUDGE WEBSTER: There are very few warrantless  
12 searches.

13 SENATOR DECONCINI: How many are there in a twelve  
14 month period? Is that a classified number?

15 JUDGE WEBSTER: I think that is classified. I'm not  
16 sure that I have the exact number, but if I have it I'll  
17 give it to you in the closed session.

18 SENATOR DECONCINI: Will you please? And what are  
19 the procedures? Is that classified too?

20 JUDGE WEBSTER: I beg your pardon?

21 SENATOR DECONCINI: What are the safeguards and  
22 procedures for such warrantless searches? Is that  
23 classified too?

24 JUDGE WEBSTER: We use the basis for our request the  
25 Foreign Counterintelligence Guidelines of the Attorney

1 General. We make full affidavits of all facts that  
2 support the authority of the Attorney General to issue a  
3 warrantless search. If you are focusing on the CISPES  
4 investigation, I can confirm to you that there were no  
5 warrantless searches.

6 SENATOR DECONCINI: There were no searches? Well,  
7 although I'm interested in that case to a minor extent,  
8 I'm really interested in knowing what the procedures are.  
9 I'm sure you have them. I just don't have them and if  
10 someone could give them to me. I don't know if they are  
11 of a classified nature or not.

12 The FBI electronic surveillance for intelligence  
13 purposes requires a court order, I know, under the Foreign  
14 Intelligence Surveillance Act of 1978. In 1984 and again  
15 in 1986, this Committee recommended the development of a  
16 similar court order procedure for intelligence searches so  
17 that the FBI would have statutory authority, subject to  
18 the constitutional checks of a judicial warrant. Do you  
19 believe it would be a good idea to enact such legislation?  
20

21 JUDGE WEBSTER: Senator DeConcini, I believe the  
22 position of the Department of Justice has been that the  
23 present procedure is working satisfactorily. I have  
24 testified in response to questions, but I believe this  
25 Committee, and other Committees in the past, that we are



1 working well with the FISA statute and if you wanted to  
2 and felt it necessary to adopt similar legislation for  
3 warrantless searches that we could work with that.

4 SENATOR DECONCINI: I don't mean to put you on the  
5 spot, but your own personal opinion, after operating the  
6 FBI for nine years and some months, as its Director,  
7 would be valuable? Do you have a personal opinion? I  
8 just am interested in your observation having been there  
9 on the first hand.

10 JUDGE WEBSTER: There have been so few warrantless  
11 searches and most of them have been in counterintelligence  
12 areas, that it has really not risen to a problem. We did  
13 have a problem in domestic security searches which had  
14 been conducted without warrants, and the Supreme Court  
15 said you couldn't do that and then we had national  
16 security wiretapping which was presumed to be under the  
17 authority of the President. And while the Executive branch  
18 has never yielded in that authority, it did agree to  
19 support and abide by the Foreign Intelligence Surveillance  
20 Act. Prior to that Act, it was becoming increasingly  
21 difficult for the FBI to get approvals for electronic  
22 surveillance because of concern of those immediately  
23 around the Attorney General, that some how he would become  
24 exposed to personal liability. And the gloss on the rules  
25 became so heavy that it was hard for us to work. The law

1 that the Congress passed in electronic surveillanc has  
2 worked extremely well as far as the FBI is concerned. And  
3 I'm frankly glad it's there. I can say that because it  
4 was just being adopted at the time I was up for  
5 confirmation in 1978.

6 SENATOR DECONCINI: I take it, Judge Webster, you  
7 don't think it is necessary to go any further? If  
8 Congress elects to do that, that's fine? You think the  
9 Agency can work with it?

10 JUDGE WEBSTER: You've stated my position exactly.

11 SENATOR DECONCINI: One last question. Judge, your  
12 statement indicated that you will have or you have already  
13 made arrangements with the President to have direct access  
14 whenever you feel that is necessary. Based on what you  
15 know of the CIA what do you anticipate that amounts to?  
16 Do you think that amounts to briefing the President and  
17 seeing him on a scheduled basis as weekk as emergencies?  
18 What would be your schedule of keeping a President well  
19 informed, realizing emergencies arise where you have to  
20 call him and tell him instantly, but for normal day-to-day  
21 operations of the CIA.

22 JUDGE WEBSTER: Without going into too much detail in  
23 an open session, the President has frequent and regular  
24 briefing papers prepared for him by the Agency and those  
25 would continue. There will be, I think, increased

1 circumstances when I will want to discuss the content of  
2 those papers personally with the President. There will be  
3 other situations in which I will want to participate with  
4 the National Security Advisor in making certain that the  
5 President is aware of particular intelligence matters that  
6 impact upon the national security. And I would have no  
7 problems and in fact would want to participate in joint  
8 discussions with the National Security Advisor. There may  
9 be other circumstances in which I would feel that I had to  
10 have my own unvarnished views and my own unvarnished  
11 opportunity to present our intelligence to the President.

12 SENATOR DECONCINI: You would not foresee a scheduled  
13 meeting with the President on a time certain,  
14 notwithstanding any emergencies?

15 JUDGE WEBSTER: That's really up to the President.  
16 But I will expect to exercise that privilege because  
17 unexercised privileges disappear.

18 SENATOR DECONCINI: Well it concerns me and I don't  
19 know enough about it, but it seems to me if the past  
20 Director had scheduled meetings, some of these things  
21 might have come to the President's attention. I'm not  
22 sure that they did or didn't but my only observation, from  
23 what I know of the preliminary investigations of the  
24 present problem with Iran and the Contra affair is that  
25 the Director either withheld or did not meet with the

1 President frequently enough and tell him what was going  
2 on. I just leave that purely as a suggestion. It seems  
3 to me that if I were in your shoes, or if I were in the  
4 President's shoes, I'd like to see the CIA Director once a  
5 week.

6 JUDGE WEBSTER: I appreciate your comments, Senator,  
7 and I agree with them. I do not believe in the principle  
8 of plausible deniability. I have excluded it entirely  
9 from the FBI and I do not believe it should be applied at  
10 the national security level.

11 SENATOR DECONCINI: I agree with your assertion that  
12 you did. Thank you Judge Webster.

13 THE CHAIRMAN: Thank you very much Senator  
14 DeConcini. I have to go to the floor now to vote and I  
15 will return. Senator Cohen will preside. I do want to  
16 make one thing clear for the record in that we are not  
17 here for the purpose of debating the qualifications of any  
18 other person, but I do want to state that it is the  
19 opinion of the chair, the chair can speak only for  
20 himself, that Deputy Director Gates has rendered  
21 outstanding service. I would say that he has performed  
22 during the time as acting Director with extreme candor. I  
23 would not want to have conveyed to you that there is any  
24 unanimity of opinion on this Committee that the Deputy  
25 Director had acted in any improper fashion. Every Member

1 of the Committee is free to reach his own interpretations  
2 of the actions of the Deputy Director. This Senator  
3 happens to think that he has performed in an outstanding  
4 fashion and is continuing to render outstanding and very  
5 candid services as Acting Director during this difficult  
6 period. He has been extremely open with this Committee  
7 and has kept this Chairman extremely well informed as to  
8 activities of the Agency. I would want the record to very  
9 clearly reflect the view of this Senator on that matter.  
10 I'll turn it over to the Vice Chairman.

11 SENATOR COHEN: Senator Hecht.

12 SENATOR HECHT: Thank you very much Mr. Chairman.

13 I'd like to echo the words of Senator Boren. I too feel  
14 that Bob Gates has acted very well and is a very qualified  
15 individual, and I'd like the record to reflect that at  
16 this time.

17 JUDGE WEBSTER: Senator Hecht, may I say that I share  
18 the same view, and I'm looking forward to the privilege of  
19 working with Mr. Gates.

20 SENATOR HECHT: He is a professional. He's trained  
21 in aspects. The aspects he doesn't he has very qualified  
22 people handling that and I'm, very, quite impressed with  
23 him.

24 One reason I'd like to follow up from yesterday's  
25 questions. Last year the Senate passed a resolution

1 requesting an investigation into many of the questions I  
2 brought up yesterday, the handling of Judge Clairborne. I  
3 still feel it's very, very relevant; the point being how  
4 you handle agents, how you use agents for targeting. Not  
5 individuals, but how you target your agents. And how you  
6 discipline your agents.

7 You testified yesterday that although Mr. Yablonsky  
8 handled his investigation of Judge Harry Clairborne in a  
9 lawful manner, there are several things that occurred out  
10 there that you were not proud of. What were you not proud  
11 of?

12 JUDGE WEBSTER: Well, normally I would respectfully  
13 decline to answer that question because it would invade  
14 the privacy of the agent and we try to protect that, but  
15 this has already been a matter of public record through an  
16 official disclosure because of the intense interest in Las  
17 Vegas.

18 I was not proud of the way he had handled a  
19 complimentary dinner for his family at a casino, insisting  
20 that he had been promised a complimentary evening. And I  
21 required that he repay the money, the value of that  
22 dinner.

23 As I said earlier, I was not proud of his bad  
24 judgment in seeking to get information about a candidate  
25 for office who before he allowed him to come in to be

1 interviewed.

2 Those were the particular incidents that I thought  
3 were not worthy of the fine performance that I believe he  
4 had otherwise given the FBI and his country.

5 SENATOR HECHT: Following through, I'm going to bring  
6 up this candidate for office. When did you find out that  
7 Mr. Yablonsky, I'll call him Joe, had gone into this and  
8 sought information on his background?

9 JUDGE WEBSTER: I can't give you the exact date, but  
10 as soon as we received a complaint from Mr. McKay, we  
11 opened an Office of Professional Responsibility  
12 investigation into it.

13 SENATOR HECHT: Okay, so you had a memorandum from  
14 McKay and then that's how you found out about it. Not  
15 before?

16 JUDGE WEBSTER: Well, I'm not, I can't recall with  
17 certainty whether Mr. McKay complained to the newspapers  
18 or the newspapers went with the story, or whether he wrote  
19 to me or the Attorney General. That's not clear in my  
20 memory, but as soon as it became, it was called to our  
21 attention in that way. If you're asking did I hear it  
22 from anyone in the Las Vegas office, the answer is no.

23 SENATOR HECHT: So you had no idea at all that Mr.  
24 Yablonski was doing this?

25 JUDGE WEBSTER: No, Senator, none at all.

1           SENATOR HECHT: And as of yesterday, I am trying to  
2 remember exactly, what type of disciplining action did you  
3 take against him?

4           JUDGE WEBSTER: Mr. Yablonski was censored and placed  
5 on probation. He was called back to Washington, and I  
6 personally presented his letter of censure and expressed  
7 my disappointment in his performance. That, for a Special  
8 Agent who had already been eligible for retirement for a  
9 number of years and spent his lifetime in the Bureau,  
10 being placed on probation during his last months in  
11 office, was a very severe action, and was so regarded in  
12 the FBI and by him.

13          SENATOR HECHT: But it was brought out yesterday that  
14 when he retired he was given a recommendation, was he not?

15          JUDGE WEBSTER: I don't believe so. I don't know what  
16 that is all about. The only communication I had with him  
17 is the kind of letter that I send to retiring Special  
18 Agents at the command level.

19          SENATOR HECHT: Just routine; nothing more, nothing  
20 less.

21          JUDGE WEBSTER: That's right.

22          SENATOR HECHT: Okay, let me go on to another point I  
23 brought up. You cleared that up. Thank you, very much.

24                 I brought up about the IRS supposedly in newspaper  
25 talk making a deal. Did the FBI conduct a sting against



1 the Director of the Nevada IRS office, Gerald Swanson, who  
2 opposed making a deal with Joe Conforti, the brothel  
3 owner, and if so, why?

4 JUDGE WEBSTER: I think that was an IRS  
5 investigation, Senator Hecht. I don't believe the FBI was  
6 involved in it.

7 SENATOR HECHT: Not at all in that at all?

8 JUDGE WEBSTER: That is my understanding of it.

9 SENATOR HECHT: Did the FBI open a bribery  
10 investigation of a respected Las Vegas homicide detective,  
11 Chuck Lee, a polygraph operator, who had earlier cleared  
12 Judge Claiborne of other allegations? Is the name  
13 familiar to you at all?

14 JUDGE WEBSTER: Yes, vaguely. There -- I am not  
15 certain whether we opened an investigation involving him.  
16 There were some allegations of seedy conduct out there,  
17 and I don't believe that we had a specific investigation  
18 as to him, but I do believe that he was involved in the  
19 investigation in some way.

20 SENATOR HECHT: Well, could I ask you to respond to  
21 that in the next couple of weeks before any action is  
22 taken?

23 JUDGE WEBSTER: I'd be happy to do that, Senator.

24 SENATOR HECHT: Would you do that? I couldn't expect  
25 you to remember everyone involved in that case.

1           What probably cause did the FBI have to single out  
2 these individuals who were later cleared of any  
3 wrongdoing?

4           JUDGE WEBSTER: That is a very general question, as I  
5 am sure you understand. There was grounds to open an  
6 investigation on Senator Claiborne -- I said it again.  
7 Congressman Claiborne -- Judge Claiborne -- I beg your  
8 pardon. Judge Claiborne -- I guess it hurts to say that  
9 -- and it was based upon representations by a convicted --  
10 rather a convicted felon fugitive, who offered information  
11 which was subsequently added to by additional  
12 corroborative evidence, that bribes had been paid to Judge  
13 Claiborne in connection with a particular criminal trial.  
14 And that was a very substantial predicate to open an  
15 investigation. It later expanded into an income tax  
16 evasion case in which the Internal Revenue Service was  
17 involved. The case was tried -- he was indicted on both  
18 counts. Went to a hung jury. In retrying Judge  
19 Claiborne the Department of Justice made a decision to  
20 drop the bribery counts because they were really not too  
21 convinced that the government's witness would be a good or  
22 credible witness before a jury.

23           And so he was convicted on the income tax evasion  
24 counts which were brought forward in the second trial.

25           SENATOR HECHT: Getting back to this \$40,000 in the

1 bank and the bank error, one final follow up on that. You  
2 testified that the FBI investigated the matter but did not  
3 pursue it because Mr. Yablonski claimed his wife kept the  
4 books. I am told a Federal grand jury investigated the  
5 error. My question is, if Mrs. Yablonski was aware the  
6 \$40,000 did not belong to her, why was she not prosecuted?

7 JUDGE WEBSTER: I really don't know the answer to  
8 that question except that the prosecutors who have the  
9 prosecutive decision in this matter determined that there  
10 was no basis for prosecution. That is not an FBI  
11 function.

12 SENATOR HECHT: Is that not a Federal crime?

13 JUDGE WEBSTER: It may be a Federal crime if there is  
14 evidence to support it, but those who exercise the  
15 prosecutive discretion did not find a basis for going  
16 forward, and that was not the FBI.

17 SENATOR HECHT: My time is up. I have got one final  
18 question here. We passed by unanimous consent, in the  
19 closing days of the last session last year, about a  
20 follow-up on allegations of misconduct. Would you  
21 recommend to the Senate Judiciary Committee that we have  
22 that investigation?

23 JUDGE WEBSTER: The actual resolution that was  
24 adopted called for a Senatorial review by the Judiciary  
25 Committee of the follow-up to the Select Senate Committee

1 on undercover operations, which returned this lengthy and  
2 extensive report, and to see whether the recommendations  
3 had been fully and adequately implemented by the FBI and  
4 other law enforcement agencies.

5 We are certainly ready to respond to any such  
6 hearing. We would not be ready to respond to some  
7 allegation that we had been engaged in a lot of misconduct  
8 when the record is quite to the contrary. But I believe  
9 the resolution as passed calls for a review of how well we  
10 have implemented the procedures recommended in the  
11 original report. And I certainly can tell you the FBI is  
12 prepared to respond to the Committee if it desires to hold  
13 such hearings.

14 SENATOR HECHT: One last few moments -- let me just  
15 have 30 seconds.

16 SENATOR COHEN: 30 seconds.

17 SENATOR HECHT: I really appreciate the candor. We  
18 have had a lot of people testify before us in the four  
19 years that I have been in the U.S. Senate. You said you  
20 took full responsibility for putting Mr. Yablonski in Las  
21 Vegas. You take full responsibility for his actions. You  
22 took full responsibility for bringing him back to  
23 Washington and censuring him. And you were aware of all  
24 this going on, and I appreciate the fact that you have not  
25 evaded any of my questions.

1 JUDGE WEBSTER: Thank you, Senator. I appreciate  
2 that.

3 SENATOR COHEN: Judge Webster, there have been a  
4 number of recent reports that indicate that the FBI has  
5 maintained some files on two Catholic bishops that have  
6 been active in civil rights and the peace movement over  
7 the years. Much of that information was gathered back in  
8 the '60's and the '70's, prior to the issuance of certain  
9 guidelines which I believe became effective in 1976. But  
10 there is information contained in those files since 1976.  
11 I was wondering if you could tell the Committee how it is  
12 that the FBI goes about collecting information on  
13 particular individuals?

14 JUDGE WEBSTER: In testimony before the House of  
15 Representatives Judiciary Committee and I think perhaps  
16 elsewhere, I am not sure, I attempted to explain that we  
17 do not have criminal investigative files on the two  
18 bishops that you are asking about. Their names appear in  
19 other files for which we have legitimate investigative  
20 interests, either at the criminal level or pursuant to our  
21 foreign counterintelligence responsibilities.

22 A procedure exists in the Bureau for cross  
23 referencing names which appear in particular files so that  
24 they can be retrieved at some future date by persons  
25 investigating other things. I have gone back and had our

1 people go back to see the circumstances for these  
2 individuals being included, and I believe almost without  
3 exception, they were included in lists of names of people  
4 involved in certain organizations or activities for which  
5 there was a legitimate investigative interest. They were  
6 not singled out, so far as I can determine, because they  
7 were bishops, but because they were at a particular place  
8 involved in a particular way, and the agents responsible  
9 for entering records in the file simply indicated their  
10 names for clerical cross reference. There are no files on  
11 those bishops.

12 SENATOR COHEN: Quite a few pages of cross  
13 referencing.

14 JUDGE WEBSTER: Pardon me?

15 SENATOR COHEN: There are quite a few pages for cross  
16 referencing purposes of an individual.

17 JUDGE WEBSTER: Yes, and that is unfortunately a  
18 result of an inartful way that our Freedom of Information  
19 Office used to disclose the presence of information.  
20 There might be 350 pages of information about a particular  
21 activity in which the individual's name might be mentioned  
22 one time. And in responding to the FOIA request, they  
23 would say we have a reference with 350 pages, because the  
24 person might want to read the whole report. But it is  
25 not as lengthy or as extensive as those responses by the

1 FOIA office would include.

2 SENATOR COHEN: Tell me a little bit about how that  
3 cross referencing system works. Let's suppose, for  
4 example, that we have a Soviet delegation, or a  
5 representative or spokesperson for the Soviet Union comes  
6 to this country and goes around and gives a lecture on  
7 arms control. Would anyone in attendance at that  
8 particular lecture, because you had counterintelligence  
9 responsibilities, be listed as someone who attended the  
10 lecture?

11 JUDGE WEBSTER: Probably not in that situation, but  
12 we probably would identify the leaders of the meeting if  
13 they were identifiable and principal participants at the  
14 meeting in a counterintelligence type situation.

15 SENATOR COHEN: So if I were to participate in a  
16 debate or a meeting on arms control, let's say, with  
17 Georgi Arbatov or some other high ranking Soviet official  
18 or spokesperson for the the Soviet Union, and I were to be  
19 on the same panel or platform or a guest in the audience  
20 who got active in the debate, would I be listed as part of  
21 the cross referencing system?

22 JUDGE WEBSTER: The original report would probably  
23 include the panelists in the exercise. It would then be  
24 up to the agents who would have to designate cross  
25 referencing whether or not in the circumstances the names

1 of all the panelists should be included. We have been  
2 trying to tighten --

3 SENATOR COHEN: What are the guidelines?

4 JUDGE WEBSTER: The guidelines are not adequately  
5 clear. They should be essential information in criminal  
6 matters. Relevant information in counterintelligence  
7 matters.

8 We recently completed a planning and evaluation study  
9 of this process, and we have been implementing some  
10 changes to tighten up our procedures.

11 Ironically, a year or so ago, last year, one of the  
12 problems was that we did not believe that the officers  
13 were adequate in their cross referencing some of the  
14 files. I very recently sent out another communication to  
15 the field emphasizing the other end of the fact that names  
16 were not to go into the file unless they could articulate  
17 a reason for doing so.

18 SENATOR COHEN: So if I were to file a Freedom of  
19 Information application, I might find my name in a file  
20 listed with the FBI that I had been in attendance or a  
21 participant as a panelist in a arms control discussion  
22 with a top Soviet official?

23 JUDGE WEBSTER: If it was in a file involving a  
24 Soviet official, it would be classified and it would not  
25 be available to you or to anyone else.



1           SENATOR COHEN: That only pertains to  
2 counterintelligence activities?

3           JUDGE WEBSTER: That's correct.

4           SENATOR COHEN: If it were a group under  
5 investigation, a peace group as such, would that be  
6 available to the individuals involved?

7           JUDGE WEBSTER: If there were an ongoing  
8 investigation, there would probably be an exemption claim  
9 which would preclude its availability.

10          SENATOR COHEN: So as a practical matter, citizens  
11 have no way of knowing whether or not their names are  
12 ending up in the files of the FBI of some particular  
13 group, peace group, civil rights group, that's currently  
14 under investigation unless if the investigation is  
15 terminated?

16          JUDGE WEBSTER: I think your answer is correct. And  
17 even if it were closed but still classified, it would not  
18 be available. But I would like to clarify because I was  
19 going along with your hypothetical that it was not  
20 appearing -- the Soviet representative was not appearing  
21 before a group in which we had an interest, your name  
22 wouldn't automatically or even likely be mentioned or  
23 cross referenced.

24          SENATOR COHEN: Well, if the Soviet delegate was  
25 appearing before a group, let's say a group that is

1 stirring up controversy but is dedicated to promoting  
2 better relations between the Soviet Union and the United  
3 States, identified nationally as a peace group, peace  
4 links, some other group, would that be then be subject to  
5 notation?

6 JUDGE WEBSTER: I'd like to be able to answer that  
7 question, but I know we are going to have a closed  
8 session. I'm so often accompanied by spectators who have  
9 an interest in what I have to say about these things, and  
10 I really would rather put that one off if I could.

11 SENATOR COHEN: In 1978, you indicated you had  
12 membership in a couple of clubs which restricted their  
13 membership to white males. They were the St. Louis  
14 Country Club, the Noonday Club, the University Club, and  
15 the Veiled Prophet Society. In your response to this  
16 Committee's questionnaire, you indicated that you were a  
17 member of both the Noonday Club and St. Louis Country  
18 Club.

19 Do they maintain their same policies?

20 JUDGE WEBSTER: As I told the Senate Judiciary  
21 Committee in 1978, I really believe that I'm as color  
22 blind as anyone in the room and that I asked to monitor  
23 clubs and if I thought they were practicing discrimination  
24 or had any rules or regulations that were discriminatory  
25 in a way that I could not accept, I would leave.

1           The Noonday Club now has women members. The St.  
2           Louis Country Club has women members. I'm not sure whether  
3           they have any black members or not. That's a social  
4           organization, it has nothing to do with business or  
5           career, small family. And I have a non-resident  
6           membership in it. But I know that it has no restrictions  
7           based on race, religion or sex.

8           SENATOR COHEN: Do you want to tell us what the Alibi  
9           Club is? I think it's appropriate for the next Director  
10          of the CIA to talk about the Alibi Club.

11          JUDGE WEBSTER: It's a very small club. I think it  
12          enjoys a very prestigious membership of some of the senior  
13          people in this town, including Justices. It's so small,  
14          that I do not consider it significant that it has no male  
15          -- it has no female members at the present time. It is  
16          limited to 50 members. It meets once a week for lunch. No  
17          business is discussed. It's just a private group.

18          SENATOR COHEN: How about the Academy of Missouri  
19          Squires?

20          JUDGE WEBSTER: The Academy of Missouri Squires is  
21          the equivalent of the Kentucky Colonel or Nebraska  
22          Admirals. Only it is limited to one -- it's actually, I  
23          think, a little more honorary. There are only 100 or 200  
24          members. I succeeded General Omar Bradley when he died.  
25          It's a lifetime honorary position. I'm very proud of it.

1 SENATOR COHEN: Alfalfa?

2 This your resignation?

3 JUDGE WEBSTER: The Alfalfa Club is a fun  
4 organization. It meets for a fun evening once a year.  
5 And it currently has --

6 SENATOR COHEN: You can stop, I'm told the Chairman  
7 is a member.

8 (LAUGHTER)

9 THE CHAIRMAN: I think we're almost ready to go into  
10 executive session.

11 JUDGE WEBSTER: I can put my list away.

12 SENATOR COHEN: I would like to return just a moment  
13 to the issue of notification once again.

14 During the course of the questioning, I raised the  
15 issue as to whether or not you would have any hesitancy in  
16 notifying the Committee if you were concerned about a  
17 leak. And you said that you would take that into account.  
18 You would come and approach the Committee and at least  
19 express that concern. I wanted to say, at least for the  
20 record to you, that any time that you have any questions  
21 about the possibility of information being leaked by any  
22 Member of this Committee you not only should -- you have  
23 an obligation to come before the Chairman and the Vice  
24 Chairman, and if that's not satisfactory to the Member  
25 himself, and if that doesn't work, then to go directly to

1 the Leadership both Bob Dole and Robert Byrd and ask that  
2 the individual Members be replaced.

3 I think it's that serious and that should be not a  
4 consideration in your mind as to whether or not you would  
5 comply with the notice requirement under the statute.  
6 That should not be even a consideration. Any time you  
7 have a doubt, you ought to come before this Committee or  
8 the House Committee and express that concern. If it can't  
9 be corrected, then go to the Leadership of the Senate and  
10 the House.

11 JUDGE WEBSTER: I appreciate that.

12 SENATOR COHEN: And see that the Members are removed  
13 from the Committee. And I think that you will find a very  
14 responsive ear certainly from the two of us, and I  
15 suspect, from the rest of the Membership here, but  
16 certainly from the Leadership of the Senate.

17 So I hope that you won't, if you have any doubts  
18 about whether or not we can keep a secret, take that  
19 factor into account under the statute.

20 Secondly, I would like to indicate that I hope you  
21 will give some further consideration about the pledge that  
22 Mr. Gates did, in fact, make before the Committee. I  
23 think anything short of that calls into question  
24 compliance with the Act and I consider that to be very  
25 serious, especially since I believe that had notification

1 been given to the Congress, you wouldn't have had Irangate  
2 or Contragate or whatever they want to call it. It would  
3 never have taken place. And I believe that this Committee  
4 and the House Committee -- I assume the same thing applies  
5 -- have been insulating factors against abusive actions  
6 taken or arbitrary or unwise actions proposed by the  
7 Executive branch.

8 JUDGE WEBSTER: I agree with that.

9 SENATOR COHEN: A couple of just final questions on  
10 these issues.

11 With respect to a written Finding, do you believe  
12 that you can have a retroactive ratification of a prior  
13 act that took place before a Presidential Finding?

14 JUDGE WEBSTER: I really doubt it very much. I would  
15 not consider such a thing as solving the problem created  
16 by the failure to have a Finding.

17 I think it would be useful to have a full exposition  
18 in the event of such a failure -- what the President had  
19 in mind, would have had in mind -- but I would have not  
20 personally considered it to satisfy the intent and the  
21 spirit of the statute.

22 SENATOR COHEN: Well, I know that you are familiar  
23 with corporate law and the doctrine of ultra vires  
24 actions.

25 And I think that it would be a very dangerous policy

1 indeed if we ever allow the Agency to take action without  
2 a Presidential Finding and then put a President in a  
3 position of having to ratify it retroactively.

4 JUDGE WEBSTER: I mention -- excuse me. I mentioned  
5 one possible situation yesterday where something could  
6 happen in crisis form that required instant, immediate  
7 response. And I would probably take that as sufficient  
8 provided we got a Finding immediately after that -- at the  
9 first opportunity to write one down. And I wouldn't quit  
10 until I had one.

11 SENATOR COHEN: Do you know whether or not Mr.  
12 Yablonski is serving as a consultant to the Sacramento B?

13 JUDGE WEBSTER: I don't have that on personal  
14 knowledge but I believe, from what I've been told, that he  
15 is.

16 THE CHAIRMAN: Judge Webster, I want to also reaffirm  
17 what Senator Cohen said to you just a little bit earlier.

18 In terms of any question about this Committee  
19 maintaining the confidentiality of information, I feel  
20 very, very strongly about that. I do feel that if you  
21 have any doubts rather than withholding notification based  
22 upon those doubts, whenever those doubts arise, in advance  
23 of any situation where notification would be involved, I  
24 would urge you to bring those concerns either to me or to  
25 the Vice Chairman or to the Leadership of the Senate.

1 I would say that we have adopted rules, we do not  
2 allow documents to be taken out of our space, we do not  
3 allow notes on classified testimony to be taken out of our  
4 space, it must remain in the vault area. I have consulted  
5 specifically within the last two weeks with Senator Byrd  
6 and with Senator Dole. I have asked if they would back a  
7 decision by myself and the Vice Chairman that if we felt  
8 we had strong evidence that a Member of this Committee had  
9 leaked classified information, we would seek their removal  
10 or their resignation from this Committee.

11 I've been assured by Senator Byrd and by Senator Dole  
12 that they support that policy on behalf of the Leadership  
13 of this Committee. And I can tell you that the Leadership  
14 of this Committee intends to exercise exactly that policy  
15 and course of action. It will be my determination if we  
16 find strong evidence that a Member of this Committee has  
17 leaked information to ask for the resignation of that  
18 Member from either side of the aisle. If we find that  
19 any member of the staff of this Committee has leaked  
20 information, it will result in his or her immediate  
21 termination of employment with this Committee. We felt so  
22 strongly, we sought that assurance from both Leaders in  
23 the Senate. We have received that assurance of support  
24 from both of them. I want to lay that out to you and also  
25 to the public record and to the people of the country



1 because I think we have that very very strong  
2 responsibility.

3 Let me go back to just a couple of points.

4 JUDGE WEBSTER: Mr Chairman, before you do, may I say  
5 that I appreciate what you have said, that I agree to  
6 approach the problem as you and the Vice President -- the  
7 Vice Chairman have asked and that I appreciate your making  
8 such a strong statement because the trust factor which is  
9 so important between the Intelligence Community and its  
10 oversight is a two-way street. And that's one of the  
11 quickest ways for it to erode. And I appreciate your  
12 approach to it.

13 THE CHAIRMAN: I appreciate your comments.

14 Let me go back to the question of Findings and the  
15 process that we follow.

16 Would you commit to us that you would regard a  
17 retroactive Finding, in other words, actions taken without  
18 a Finding whether or not some writing was issued later  
19 after the fact, as an illegal action at the time of which  
20 you would feel an obligation to notify the Committee under  
21 the law in terms of illegal intelligence operations?

22 JUDGE WEBSTER: I would consider it -- I would  
23 consider the Finding and retroactive Finding not to be  
24 valid for purposes of acting upon it.

25 THE CHAIRMAN: And therefore -- if absent that

1 Finding at the time, it would not have been a legal  
2 action?

3 In other words, retroactivity would not give legality  
4 to the action?

5 JUDGE WEBSTER: That would be my view of it.

6 THE CHAIRMAN: And therefore you would report that  
7 illegality to this Committee?

8 JUDGE WEBSTER: I would report it.

9 THE CHAIRMAN: Let me ask also in terms of oral  
10 Findings because there is great concern of people saying  
11 that they are acting with the authority of the President  
12 without his knowledge. Would you pledge to us to act only  
13 upon either a written Finding, clearly signed by the  
14 President of the United States, or upon an oral direction  
15 from the President himself in case of extreme emergency so  
16 that you would know that that order came from the  
17 President and from no other person presuming to act under  
18 his authority?

19 JUDGE WEBSTER: I would.

20 THE CHAIRMAN: Let me go back again to the question,  
21 and I want you to think very carefully about this because  
22 it's very important to the Committee.

23 The law does provide for timely notice of covert  
24 action for which prior notice is withheld by the  
25 President. The President withholds prior notice; the law

1 says then timely notice shall be given after the fact.

2 Now I want to repeat again and I want you to really  
3 think about this because I can assure you it's extremely  
4 important to the Members of this Committee.

5 The Vice Chairman has already read the words of Mr.  
6 Gates, who has requested to give his position on this  
7 matter several times in the course of the hearings and he  
8 indicated that he would recommend -- we're not saying what  
9 would be done, you've already indicated that if the  
10 President did not follow your recommendations after a  
11 reasonable period of time, that you would consider leaving  
12 your post.

13 This has to do with what you would -- not the  
14 President's action, but what you would recommend. Would  
15 you recommend to the President against withholding  
16 notification under any circumstances except the most  
17 extreme circumstances involving life and death and then  
18 only for a few days? Would that be your recommendation?  
19 Would you tell this Committee that that would be your  
20 recommendation based upon your understanding of the  
21 importance of the oversight process?

22 Would you pledge to this Committee to make that your  
23 recommendation to the President?

24 JUDGE WEBSTER: Yes, it would.

25 THE CHAIRMAN: Well, I appreciate that very much and

1 I think it's extremely important that that be understood  
2 because we're going to build a consensus for foreign  
3 policy, make decisions together, decisions that can stick  
4 and won't be reversed every other week. I think it's  
5 essential that it is that kind of commitment and that kind  
6 of understanding that both branches of government need to  
7 go forward together.

8 Let me ask, and again, I don't want to come back to  
9 painful subjects and I don't want to close on this note.

10 No, I'm not going to come back to the Alfalfa matter,  
11 I assure you.

12 (LAUGHTER)

13 JUDGE WEBSTER: We can pick that up later with the  
14 Vice Chairman in private.

15 The question of the memorandum. A letter was  
16 dispatched from the Vice Chairman and myself to Mr. Walsh  
17 on March the 9th indicating to him that we would be  
18 considering your nomination and asking that any facts that  
19 might be relevant to your particular role including copies  
20 of any documents under his control which might relate to  
21 any possible knowledge that you might have of the Iranian  
22 arms sales or the Contra diversion be provided to us.  
23 And, as you know, the memorandum about which you were  
24 questioned yesterday was provided to us by the Office of  
25 Special Counsel.

1           After that, we brought it to your attention and I  
2 understand your interpretation as to events which you have  
3 set forth in the record and at the conclusion of your  
4 opening statement yesterday why you did not feel it  
5 necessary to include that document to us.

6           My question, had Judge Walsh not sent that document  
7 to us, would this Committee have ever been apprised of its  
8 existence by you or the Bureau or otherwise in the course  
9 of this proceeding?

10          JUDGE WEBSTER: I can't really answer that question.  
11 It is my understanding that the night before the hearing  
12 the Chairman asked about this document and that my  
13 representatives came right up to you and even though we  
14 did not know whether in fact you had a copy of the  
15 memorandum, made it readily available to you.

16          Certainly no intent to conceal it from you. There is  
17 nothing that I have instructed not be made available to  
18 you.

19          THE CHAIRMAN: You were aware of it in terms of your  
20 own review before the night before last. You were aware  
21 of it in terms of your own briefing preparation to appear  
22 here? Were you not?

23          In other words, the people briefing you, I think, had  
24 made you aware of the existence of this memorandum?

25          JUDGE WEBSTER: The particular matter that was

1 contained in that memorandum was discussed in a criminal  
2 investigative briefing several days before. It was not in  
3 a, as I recall, in a preparation for this hearing but in a  
4 general briefing. My senior staff in trying to pull  
5 together every bit of information that related to my  
6 knowledge of illegal actions by U.S. Government officials  
7 in respect to Central America did not consider that this  
8 particular document fell within your line of inquiry.  
9 And their reason really was because it was public source  
10 material and you had excluded other than media source.

11 When I was shown the document the morning of the  
12 hearing, it was my view that it did still not apply  
13 because you asked about evidence of U.S. officials  
14 involved in illegal activity. The material in that  
15 memorandum related to something entirely different. And  
16 while it was in the -- it had been referred to in a  
17 newspaper article, was obtained under sensitive  
18 circumstances.

19 And I do not believe that it was contemplated. If  
20 you ask me the broader question of whether I intend to  
21 give you half a loaf on your questions or whether I will,  
22 if confirmed, give you the fullest possible answers on  
23 matters that I think you are interested in, the answer is  
24 absolutely. There was nothing in that memorandum that I  
25 thought dealt with what in conversations with you you told

1 me you wanted to know which was what did I know about  
2 illegal activity. And I did not know anything about  
3 illegal activity.

4 THE CHAIRMAN: I don't want to go back over this item  
5 anymore than is necessary. I want to make it clear I  
6 don't want to -- I raise this question again with you not  
7 for the purpose of trying to over play its importance, or  
8 to become so technical as to be unreasonable. I do want  
9 the record to reflect that you and I had a discussion even  
10 I believe the day before in which you indicated to me that  
11 you had come across things sometimes in the files and were  
12 going back and researching them to make sure we know about  
13 everything. These were things you didn't know about.  
14 Things were not brought to your attention and therefore  
15 you wanted to make sure you were totally responsive to our  
16 question, but didn't want to throw in irrelevant data.  
17 And I said to you that indeed that was the case. We  
18 didn't expect you to bring in the entire files of the FBI  
19 before the Committee and matters that were not clearly  
20 relevant to our considerations. You expressed certainly a  
21 spirit of willingness to try to be thoroughly responsive  
22 and I want you to know that I appreciate that. I  
23 understand that and I want the record to clearly reflect  
24 that as I certainly am not trying to present a distorted  
25 picture.

1 I know that you sincerely wanted to do that. I would  
2 have to say in all candor that I think that this was an  
3 error on this one point because we were trying to find all  
4 of the input that might have come to you. What kind of  
5 suspicions would you have normally had. We know that  
6 Colonel North had talked to Mr. Revell earlier about this  
7 investigation into Southern Transport and then the request  
8 for the delay of the investigation and the various  
9 conversations you had had wondering about how Colonel  
10 North might be operating.

11 So we were interested in your state of mind and  
12 whether you had perhaps been suspicious enough at the time  
13 that you were asked to suspend the investigation for a  
14 period of time. That's the reason we felt on retrospect,  
15 and we're not trying to be your armchair quarterbacks, that  
16 perhaps that might have been relevant. But I understand  
17 it's simply a difference of interpretation. I'm not  
18 trying to overplay it or over dramatize its importance. I  
19 think we do understand it and I do want to say that the  
20 only point for making it again is to say that we on this  
21 Committee would hope that when in doubt about the  
22 relevance of something and you called me on two matters to  
23 ask me if I thought they were relevant and I said no.

24 We would hope you are always there on the side of  
25 disclosure to us and I take you at your word. I take you



1 at your word in the very fine statement you just made to  
2 us in terms of your determination to do just that.

3 JUDGE WEBSTER: I appreciate that, Mr. Chairman. If  
4 I might just add into the record that following yesterday,  
5 because it was the first opportunity we were able to  
6 ascertain from the document in the possession of the  
7 Independent Counsel, that that particular memorandum did  
8 not reach my office until October 31st, the day after I  
9 had authorized the suspension of all non-urgent  
10 investigation for ten days.

11 I had also, by that time, directed Mr. Clarke to let  
12 me know of any matters which would cause us any problem.  
13 Since he saw the same memorandum, my own conscious, at  
14 least in retrospect, is clear that the procedures that I  
15 set in place would have worked and did work. But the  
16 overall question, I just want to say again, I give you my  
17 solemn pledge that I will not try to be devious or cute  
18 with the Committee. You will -- if I know what you're  
19 looking for, you will have the information.

20 THE CHAIRMAN: I appreciate that very very much. I  
21 appreciate the candor with which you have answered our  
22 questions. The patience with which you dealt with them.  
23 Again, I want to say I think this has been a very healthy  
24 process. It sensitizes us on both sides of the table to  
25 our high responsibilities to a system of which we are a

1 part and I think that process in itself has to be good for  
2 the country for us to go through it.

3 It's somewhat stressful at all sides and we have had  
4 you sitting there alone at the table now for many hours.  
5 But I think in the long run this kind of process has a  
6 very constructive purpose and one which serves our country  
7 well. I appreciate your participation in it.

8 Let me ask the Vice Chairman if he has any concluding  
9 comments.

10 At this time, then, we will stand in recess into the  
11 closed session which we will resume in the Committee space  
12 upstairs to complete classified questions that Members of  
13 the Committee have to address.

14 (Whereupon, at 5:03 o'clock p.m., the Committee was  
15 recessed, to reconvene in closed session.)

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