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INTELLIGENCE OVERSIGHT AND THE IRAN ISSUE: LEARNING FROM THE PAST AND CHANGING FOR THE FUTURE

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, March 2, 1987

Mr. COURTER. Mr. Speaker, as a member of the House Select Committee to Investigate Covert Arms Transactions with Iran, I will be studying for months to come the administration's dealings with Iran and the Nicaraguan resistance. In the back of our minds, all Members will be considering what, if any, changes are needed in congressional oversight of clandestine intelligence operations.

Already, as evidenced by numerous bills submitted in the first days of this Congress, many are inclined to tighten the leash still further, especially by imposing inflexible notification requirements.

Others, however, are stepping back to examine the causes, rather than the circumstances, of what has become a foreign policy and domestic political fiasco. As revealed by the articles I am submitting for the RECORD, many believe the venture might have been halted in its infancy if the people directing it had not been convinced that damaging leaks to the media were inevitable unless the operation was tightly held. Therefore, the White House excluded those—both in the administration and in Congress—who might have counseled caution or at least shared some of the political risk. One cause of this debacle, in short, was lack of trust. It was because of distrust that the White House waived even pared-down congressional notification requirements. The problem was not that there were insufficient restrictions on administration freedom, but rather that existing procedures, both internal to the executive branch and relating to Congress, were bypassed.

As HENRY HYDE, a member of both the Intelligence and Iran Committees, has concluded, "it is clear the President and his closest advisers have lost faith in the existing intelligence oversight arrangement. Mutual trust is the key ingredient here, and right now it is conspicuously missing."

"The test of a policy is not its openness, but its wisdom," Charles Krauthammer observes. "If the outcome of the North affair is that the covert becomes impossible, then it will have been far more damaging than we now imagine." Strategic theorist Edward Luttwak likewise agrees that the highly secret nature of the venture and primary reliance on private individuals rather than on CIA was an attempt to avoid leaks. Harvard Prof. James Q. Wilson adds that "our allies do not trust us, and we increasingly do not trust each other."

Leaks have flourished, he says, because the United States consensus on foreign policy aims and methods was destroyed during the Vietnam war and has never recovered. Nonetheless, he judges that extensive leaks about sensitive operations have served hardly any American interests. He suggests a "new compact" to help control the debate without publishing "every secret, every name, every Swiss bank account."

Wilson, like Luttwak and Krauthammer, believes part of that should be consolidation of congressional oversight into a joint committee with a small professional staff. Again this session, HENRY HYDE has offered a bill to accomplish that goal, which he explains in the attached submission. HYDE argues that such a committee would be more efficient, reliable and bipartisan, as well as more secure. He notes that one hurdle to overcome will be congressional reluctance to reduce drastically the number of Intelligence Committee slots. Already, Members vigorously compete for these positions, which are considered "a major political asset." Let us hope, as the Daily Oklahoman editorialized, that this time around Members are "able to subordinate their political considerations to the national interest" by supporting a joint committee.

[From the Wall Street Journal, Jan. 20, 1987]

CONSOLIDATE THE INTELLIGENCE PANELS

(By Henry J. Hyde)

Now that the 100th Congress is under way, both the Senate and House have select committees probing the Iran-contra affair. A new challenge confronts the majority Democrats, however, as to whether they really want to improve congressional oversight of the administration's covert and other intelligence activities.

A case in point was the president's decision to defer informing congressional leaders on the intelligence oversight committees of what he was up to in Iran. That decision may have been legally correct; but surely it was politically disastrous, as prior notification would have provided the president with some political risk insurance against the inevitable day this initiative would become public knowledge. Interestingly and ironically, Jimmy Carter also postponed reporting to Congress in instances related to hostage rescues, according to former CIA Director Stansfield Turner. Mr. Carter, like Mr. Reagan, believed prior notification to Congress risked revelations that would have jeopardized the lives of those involved in these operations.

After serving two years on the House Intelligence Committee, I can understand the president's concern about leaks. Time after time, the president has seen the details of extremely sensitive covert operations disclosed in the media. As we all know the well-timed leak is a Washington art form that is often used to torpedo an administration initiative that some informed source doesn't agree with. Admittedly, many of these revelations come from within the executive branch, but Capitol Hill is culpable as well.

Indeed, the leaks have become so pervasive that the president has been bypassing many of the people within his own administration who ordinarily would have known about these sensitive activities. The same holds true for Congress, where it is clear the president and his closest advisers have lost faith in the existing intelligence oversight arrangement. Mutual trust is the key ingredient here, and right now it is conspicuously missing.

While the president revamps his National Security Council, a parallel overhaul is needed in the legislative branch that will restore the president's confidence that Congress can keep a secret. Specifically, it is time to merge the current House and Senate Intelligence committees into a Joint Committee composed of a small group of Republicans and Democrats who, in addition to the requisite trustworthiness, competence and responsibility, also possess the restraint to subordinate political considerations to the national interest. Such a committee would have full and exclusive legislative authority over all intelligence matters and be staffed by a small cadre of nonpartisan professionals with the same exemplary personal qualities as the committee's members. In recognition of political reality, the majority-party membership from each house would have a one vote edge.

A joint oversight panel would diminish the possibilities for partisan posturing and significantly reduce the number of people with access to sensitive information. This would not only minimize the risk of damaging unauthorized disclosures, but it would also substantially increase the likelihood of the Federal Bureau of Investigation and the Justice Department identifying leak sources—something that rarely occurs now, because of the large number of individuals in the "intelligence information loop." As the outgoing chairman of the House Intelligence Committee, Rep. Lee H. Hamilton, once noted, "Leaks are inevitable when so many people handle secrets." I agree and believe that Congress has a real opportunity to set an example for the executive branch.

It is also worth noting that Congress has increasingly insisted upon being briefed and consulted by the executive branch concerning national security and foreign-policy questions. A significant percentage of these "leadership" briefings are intelligence-related and require the involvement of high-level executive-branch officials who are often hard pressed to meet the demands of both the House and Senate Intelligence committees. This is particularly true during fast-breaking crises. A consolidated, secure oversight panel would provide one point of contact for consultations and briefings in those instances when time is of the essence.

In short, a Joint Intelligence Committee would provide a much more efficient, secure, reliable and bipartisan oversight environment, thereby drastically reducing the possibility that the president might again postpone informing Congress of clandestine activities. Consequently, I have introduced a revision of a proposal to bring this about that had nearly 170 bipartisan co-sponsors in the last Congress. Giving it new-found momentum is the sorry spectacle of almost daily leaks from those involved in the Iran-contra investigation.

Can the momentum behind this proposal be sustained? The test will come when the leadership of both parties must turn down the many applications from members of Congress who view service on an intelligence oversight committee as a major political asset.

[From the Daily Oklahoman, Jan. 21, 1987]

ONE PANEL BETTER THAN TWO

Members of Congress sincerely interested in avoiding the kind of situation that led to the Iran-Contra affair could do worse than heed the advice of one of their colleagues, Rep. Henry J. Hyde, D-Ill.

He believes merging the current Senate and House Intelligence committees into a joint, bipartisan intelligence committee

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would produce a more compact, secure congressional oversight operation that would win the confidence of the administration and the public. His premise is debatable, politicians being what they are, but it is certainly worth a try.

With the 100th Congress now in session, the inquiry into the arms sales to Iran and alleged diversion of profits to Nicaraguan rebels will get bigger and broader. Apparently nothing will keep it from developing into a full-scale Watergate-type circus. Too many people in Washington have a vested interest in making it so.

Secrecy is the key word in all of this. Last Saturday marked the first anniversary of Reagan's signing of a secret order authorizing direct U.S. arms shipments to Iran through the Central Intelligence Agency and other government channels. It also directed the CIA not to inform Congress of the operation.

The unusual degree of secrecy surrounding the order and the failure of the White House to consult with congressional leaders are responsible for much of the present turmoil. By law the president is supposed to inform Congress of such actions either in advance or "in a timely fashion" afterward. Defining that phrase is the gist of the problem.

Hyde says Reagan's decision to defer telling Congress may have been legally correct but it was politically disastrous. Prior notification would have given Reagan some "political risk insurance" against the inevitable day the operation would become public knowledge.

But Hyde also says that, after serving two years on the House Intelligence Committee, he understands the president's concern about leaks. Not only Reagan but other chief executives have had this problem. In the current situation the leaks were so pervasive Reagan has been bypassing even people within his own administration, Hyde says.

He proposes a joint intelligence committee composed of Republicans and Democrats who would not only be trustworthy, competent and responsible but would also be able to subordinate their political considerations to the national interest. That may be asking too much of members of Congress.

[From the New York Times, Nov. 17, 1986]
HOW TO ADMINISTER COVERT OPERATIONS
(By Edward N. Luttwak)

WASHINGTON.—If nothing else, recent events—particularly the air intrusion into Nicaragua that left Eugene Hasenfeld a prisoner, and the still obscure Iran arms deal—show by implication that the "rogue elephant" C.I.A. of the 1960's is now well and truly tamed. The White House has declared that C.I.A. operatives were involved in the Iranian mission, but it was current or retired employees of the National Security Council who were reportedly in charge of both operations.

What we have now learned is that there is something even worse than a "rogue elephant" Central Intelligence Agency—and that is the present situation, in which the delicate business of conducting secret operations is left to White House officials and the volunteer helpers they enlist.

The resulting lack of professional expertise was evident in the Nicaraguan case. If the C.I.A. had been involved, the C-123 aircraft that crashed north of Managua would not have been carrying compromising documents: a careful search for any identifying papers and labels is a routine part of pre-flight preparations for clandestine C.I.A. missions. In the Iranian case, the problem was not so much amateurism as a failure to

coordinate the venture with key allied governments; the C.I.A. would have done that, while preserving secrecy, by relying on its contacts with officials in foreign governments. As it was, the handful of overburdened individuals who conducted the Iranian operation lacked both the required contacts and the ability to minimize the damage when word got out—as it always will sooner or later.

Past experience shows that secrecy can be combined with coordination with our allies. The French kept a secret of Henry A. Kissinger's talks with Vietnamese envoys in Paris; Pakistan helped to mediate his talks with the Chinese; the British have kept secrets many times, and so have the Israelis and the Saudis. But individuals operating on their own from an office in the White House basement will inevitably find it difficult to manage a delicate initiative like the Iranian mission and at the same time to maintain liaison with allied capitals. The result is certain to be a severe loss of confidence when the inevitable disclosure follows.

Why then was the C.I.A. not in charge of the Iranian affair? Because as matters now stand the C.I.A. simply cannot carry out genuinely secret operations—as opposed to pseudosecret "covert" actions, such as the supply of arms to the Afghans, which was a matter of public knowledge almost from the start.

The problem is twofold: the C.I.A. will not now act without permission from Congressional intelligence committees, and Congress has failed to develop practicable oversight procedures and safeguards. The result is paralysis. No official of the C.I.A. in his senses would knowingly participate in a secret operation unless duly authorized by Congress, lest he find himself answering charges and possibly going to jail as a result of future investigations. On the other hand, no professional would risk taking part in a supposedly secret operation overseas if the details had been communicated—as they must be—to congressional committees. There are simply too many people involved, with too many reasons of their own for leaking to the press.

It was this paralysis that the President's volunteers tried to overcome in the Iranian and Nicaraguan cases, no doubt out of a sense of responsibility as well as sheer frustration.

So long as the United States remains engaged all over the world, each Administration will face the need to act secretly in delicate matters large and small, often entirely uncontroversial. If we are to do so at all competently, Congress must provide proper oversight. The most effective arrangement would include a single joint committee, with a small, stable staff, operating under strict rules (along the lines of the Joint Atomic Energy Commission, which kept the most sensitive secrets quite intact for decades). Policy would still be disputed, of course, and restrictions would no doubt continue to be imposed, but at least the C.I.A. could resume its proper function—and we would be spared the embarrassments and real diplomatic damage caused by unprofessional and uncoordinated secret operations.

[From Time magazine, Dec. 8, 1986]

WHEN SECRECY MEETS DEMOCRACY

(By Charles Krauthammer)

Can Americans do anything in secret anymore? You are a Russian or an Israeli or an Iranian. Tomorrow you are approached by an American agent to help his cause in a secret operation. Do you accept the offer? Not unless you have a lot of life insurance and a craving for publicity.

The arms-for-Iran turned into cash-for-the-contras scandal is just beginning to unravel. One sure consequence of that unraveling will be an endless series of disclosures—names, dates, places, faces—that will make it very unsafe to be an American agent. For some Americans that will mean the end of a political career. Elsewhere survival has a different meaning. In the early '80s, Israel had, then lost, contacts in the middle levels of the Iranian military. "They died out," said an Israeli official to the New York Times. "I mean that literally. Our contacts were executed."

The U.S. is the only country in the world where "covert" funding for "secret" wars is not only front-page news but the subject of open parliamentary debate. At a meeting with columnists and editors last year, President Reagan was asked why he was not doing more to help efforts in Congress to send aid to the rebels in Angola. Reagan replied that he didn't want to go that route, but that he would give covert aid instead. The President was speaking on the record.

In American political debate, the words covert and secret have lost all meaning. It is not just that, as the European traveler invariably notes, Americans are more open and informal in their social relations. It is that the very idea of secrecy carries a moral taint. Americans are passionately democratic, and thus acutely sensitive to the contradiction between democracy, with its promise and premise of openness, and the secret world of diplomatic and paramilitary intrigue.

Only what is known can be consented to. Secrecy smacks of tyranny. Americans do not readily accept the argument that secrecy is necessary for reasons of state. Americans would never stand, for example, for Britain's Official Secrets Act. In Europe the state predates democracy. In America, where the state and democracy were joined at birth, reasons of state are not permitted to supersede reasons of democracy.

The contradiction between secrecy and democracy did not much matter to Americans during their first century and a half when they looked mostly inward and let two great oceans and the British navy keep the world at bay. It was only after America suddenly became a great power after World War I that the contradiction presented itself most starkly. Woodrow Wilson immediately proposed a typically American solution. From the New World, a new way to do international business: open covenants, openly arrived at, America would indeed enter the corrupting arena of great power politics—but incorruptibly without secrets. In 1929 Secretary of State Henry L. Stimson found out about American code-breaking and interception operations. He abruptly terminated them with his deservedly famous dictum. "Gentlemen do not read each other's mail."

Another world war, the cold war and now the "low-intensity war" against terrorism have dimmed American faith in gentlemanliness. The first of these gave birth to the OSS, the second to the CIA and the third to everything from secret Delta Force commandos to Lieut. Colonel Oliver North and the other NSC "cowboys" who dreamed up the Iran-*contra* connection.

Still, Americans remain uneasy about secrecy. The firestorm reaction to the Iranian fiasco has much to do with its secrecy. "They were running the State Department, the CIA and the Defense Department out of the basement of the White House without any kind of congressional oversight," complained Patrick Leahy, vice chairman of the Senate Intelligence Committee. Sure, disclosure would have prevented the fiasco, but in

the same way that the guillotine prevents headaches. Disclosure of a secret mission to a leaky Congress might kill it, and thus kill any chance of failure (or illegality). It also kills any chance of success.

As will undoubtedly be proved in the North affair, secrecy is a breeding ground for genius. Without secrecy we would not have had the Kissinger trip to China or the interception of the *Achille Lauro* hijackers above the Mediterranean (North's idea, by the way). The problem with the North operation was not the secrecy. It was the policy of trading arms for hostages and then misappropriating the profits. The test of a policy is not its openness, but its wisdom. If the outcome of the North affair is that the covert becomes impossible, then it will have been far more damaging than we now imagine.

American antipathy to secrecy could be somewhat mitigated by one act of furniture rearranging that would deal Congress back in on the intelligence game and thus reduce the tension between secrecy and democracy. In the past two decades congressional oversight of intelligence operations has increased dramatically. The CIA must report some of its activities to as many as eight committees (Intelligence, Foreign Affairs, Armed Services, and Appropriations in both houses) with hundreds of members and staff. Because of these reporting arrangements, certain to lead and to endanger policy and people, both the Carter and Reagan Administrations increasingly entrusted secret missions to the NSC, which is not equipped to run them. One change that might encourage the return of secret work to the CIA (which is so equipped) would be the consolidation of congressional oversight into a single Joint Committee on Intelligence modeled after the old Joint Atomic Energy Committee, which had an almost spotless record of maintaining confidentiality.

But the deeper issue remains. Americans abhor secret covenants secretly arrived at because they smack of Old World real-politik, a way of doing business that the American Republic was to make obsolete. But this objection is today no more than nostalgia and sentimentality. America cannot be Sweden. (And without America, where would Sweden be?) Americans may not like being a superpower, but they have no choice, there being no one else to carry the burden. So they have to face the responsibilities of power. And one of them is the necessity for secrecy.

There will be future covert actions, and some are sure to go wrong. No amount of structural tinkering will prevent that. A world of Ayatullahs and Sandinistas is a world that will often demand clandestine deals. The particular deal now unraveling was cockeyed to begin with and probably illegal. Nevertheless, we may have to deal secretly again. If we are going to play the great power game, and ask others to risk their lives to help us win it, we had best accept the need for sordid secrecy. Or give up the game altogether.

[From the New York Times, Dec. 24, 1986]

REDUCING DISCORD OVER FOREIGN POLICY

(By James Q. Wilson)

CAMBRIDGE, MA.—In time, the investigation into the Iranian arms controversy will end. There may be prosecutions, new laws, a reorganization of the National Security Council. But one thing that is vitally necessary may not happen at all—creation of a new compact between the executive and legislative branches that will permit the United States to discharge more effectively its responsibilities as a great power.

From Vietnam, through Watergate, to the present, in Democratic and Republican Administrations, the estrangement between the White House and Capitol Hill has deepened. Congress distrusts the President and insists on multiplying checks—oversight committees, the War Powers Act, media leaks and legislative vetoes. The White House responds in kind—building up the National Security Council staff as an isolated and autonomous operational agency, appealing over the heads of Congress to the public, managing its own pattern of leaks and counter-leaks.

I do not know all the facts, but it appears that use of the National Security Council staff for the Iranian arms transfer may have reflected a desire to avoid the seemingly inevitable public disclosures that have been facilitated by the competitive and decentralized pattern of Congressional oversight of foreign operations. If that is true, it means that the very methods Congress has put in place to check the President's foreign policy powers have led to results wholly at variance with what Congress intended. As we have so often learned, in government good intentions are not enough.

With respect to foreign affairs, the Constitution is, as the late constitutional scholar Edward Corwin put it, an "invitation to struggle." That is desirable, for it insures that essential checks and balances will operate. But of late the struggle has become an alley fight—a cacophonous, decentralized, unmanaged public quarrel over every detail of every policy.

From World War II to Vietnam, this struggle was moderated by a bipartisan consensus as to the major aims and methods of foreign policy, a consensus given effect by a strong pattern of leadership in Congress and a Presidency sensitive to the need for Congressional support. Vietnam destroyed that consensus. It has not been rebuilt. Perhaps it cannot be rebuilt, but reasonable people in both branches of government want, and I believe can obtain, a moderation of the inevitable discord.

We may disagree over foreign policy, but hardly any American interests are served by extensive leaks about every sensitive operation we may wish to undertake.

They are not served by detailed public reporting of financial contributions by friendly governments to efforts made on behalf of Afghan rebels, even when assistance to those rebels enjoys strong bipartisan support on Capitol Hill.

And they are not served by detailed disclosures of intelligence-gathering operations.

People may disagree about how greatly all this helps the Soviet Union. But there can be no disagreement about this: our allies increasingly do not trust us, and we increasingly do not trust each other.

There is no point in assigning blame; both branches of government, always information sieves, have of late become geysers. This torrent of leak and counter-leak once did not exist, despite the separation of powers. This means that it need not exist now, even though we retain the separation of powers.

I suggest that when the Iranian issue has subsided, the White House and Congress attempt to establish a new compact that permits the fullest debate over the goals and major methods of foreign policy without aiding and abetting the media's understandable desire to track down and publish every secret, every name, every Swiss bank account.

The compact might take the following form:

1. The White House will make clear that the National Security Council and its staff

exist for advisory purposes only. They will not conduct sensitive operations.

2. Congress will merge the House and Senate intelligence committees into a Joint Congressional Committee on Intelligence with a small, bipartisan membership and a small, highly professional and nonpartisan staff.

3. The executive branch will adopt and enforce procedures designed to minimize intelligence leaks from its agencies. These leaks occur for purposes of aggrandizing one's own agency and policies and punishing those of one's bureaucratic rivals. (There is a widespread impression that the executive branch already tries to detect and punish leakers. With rare exceptions, it does not.)

4. Congress will adopt and enforce procedures designed to detect and punish unauthorized leaks from the Joint Intelligence Committee.

None of this will prevent a spirited debate over our role in Central America and the Middle East. And none of this is an adequate substitute for our lack of national resolve to act like a great power with vital, often difficult responsibilities. But it is a beginning.

RIGHT TO LIE

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 2, 1987

Mr. EDWARDS of California. Mr. Speaker, last December, the Subcommittee on Civil and Constitutional Rights which I chair; held a hearing on so-called fake clinics. These are centers operated by prolife activists which are set up to look exactly like abortion clinics and which advertise in the yellow pages under headings such as "birth control information services" or "abortion information and referral services."

We heard compelling testimony from a number of women who had been to these centers believing them to be real clinics. In some cases, as the editorial below points out, the effect of their visits reached far beyond than the duration of the visits themselves.

Prolife advocates have a right to speak out against abortion and to try to persuade women to seek alternatives. However, as this recent editorial from the New York Times makes clear, they do not have the right to lie. I commend the editorial to my colleagues' attention.

[From the New York Times, Feb. 21, 1987]

THE RIGHT TO LIE?

More than 100 law enforcement agents are now searching for Dennis Malvasi, a suspect in recent dynamite attacks against New York City abortion clinics. He is a fireworks expert who worked on last year's Statue of Liberty celebrations and is described as "clever, elusive and experienced." A similar description could well be applied to other "pro-life" zealots; to judge by a recent hearing before a House subcommittee. These activists prefer deceit to violence.

When Carla Abbotts decided to terminate her pregnancy, for instance, she looked up clinics in the San Francisco phone book and chose one called A Free Pregnancy Center. She told a counselor she wanted an abortion and was shown a slide show that had "pictures of bloody fetuses in trash cans, and it said abortion led to sterility, death, de-