

August 1, 1988

CONGRESSIONAL RECORD — Extensions of Remarks

E 2547

EXTENSIONS OF REMARKS

INTELLIGENCE OVERSIGHT BILL
AND 48-HOUR NOTICE

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, August 1, 1988

Mr. HYDE. Mr. Speaker, today I am submitting the second and final installment of publications relating to the upcoming vote on the Intelligence Oversight Act of 1988. These articles, by myself and by legal scholar Bruce Fein, appeared in the Washington Times on June 21.

Major objections to imposing an absolute 48-hour deadline for notification even in extreme circumstances revolve around the wisdom of keeping a very few operations absolutely secret until they are completed, usually so a "leak" will not endanger lives. Some argue that the greater the number of persons informed, the more likely there will be an unauthorized disclosure. Others claim the Congress has a good record in this regard and should be trusted. I have been very vocal in rejecting the view that Congress is an exception and that it is only the executive branch which leaks classified information, although I acknowledge that the executive branch also has severe problems in this regard.

Only last week, we were treated to a front-page Washington Post article alleging that a covert action to topple the Government of Panama had been approved less than 2 weeks previously. At this point, it makes little difference whether the newspaper accounts are factually correct—regardless, United States foreign policy interests and the Panamanian opposition have been damaged irrevocably. And I would note that the Post is citing both congressional and executive branch sources.

This is by no means the first time that Congress apparently has talked out of turn. The articles I am submitting today discuss this problem and the ramifications for mandatory 48-hour notice of covert action.

[From the Washington Times, June 21, 1988]

MORE THAN COVERT CAN ENDURE?

(By Bruce Fein)

Giddy with summit euphoria, blind to realpolitik, and emboldened by a weakened presidency, Congress is hell-bent on destroying the covert-action capability of the Central Intelligence Agency. That destruction would foreclose the president's use of the CIA to dethrone Gen. Manuel Antonio Noriega in Panama, Col. Muammar Qaddafi in Libya, the Ayatollah Ruhollah Khomeini in Iran or Gen. Wojciech Jaruzelski in Poland.

Nor would covert action be available to bolster fledgling democracies in the Philippines, El Salvador, South Korea or Honduras.

Without covert action, national security will be impaired so long as Soviet General Secretary Mikhail Gorbachev trumpets the teaching of Soviet icon Vladimir Lenin: "Everything is moral that is necessary for the

annihilation of the old exploiting social order and for uniting the proletariat."

On March 15, 1988, the Senate voted 71-19 to compel presidential notification to specified members of Congress of all clandestine CIA activities. If the activities are other than intelligence collection, the president must make a written finding that they "are necessary to support the foreign policy objectives of the United States and are important to the national security of the United States." The finding must describe any foreign-government or foreign-agent involvement.

Ordinarily, the finding must be shared with the House and Senate Intelligence Committees prior to any covert action. When time is of the essence, disclosure to the committees may be delayed for 48 hours after the Presidential finding. Further, in the most extraordinary circumstances affecting the most vital security interests of the United States, and when the risk of disclosure constitutes a grave risk to such vital interests, the president may report findings only to the speaker and minority leader of the House, and the majority and minority leaders of the Senate.

The House Intelligence Committee has favorably reported a bill that echoes the Senate-passed bill. The full House is expected to pass the anti-covert-action legislation within weeks, despite the threat of a presidential veto.

If enacted over the veto, the legislation would be the epitaph of covert action.

Experience and human nature guarantee cascades of congressional leaks to scuttle covert actions and cooperation from foreign intelligence agencies or foreign agents.

Former CIA Director William Colby recounted in his "Memoirs" that every covert action reported to congressional committees in 1975 leaked. Mr. Colby's successor, Stansfield Turner, testified that foreign intelligence agencies and potential CIA assets have refused cooperation because of fears of public disclosures. Former Deputy Director of the CIA Frank Carlucci confirmed that: "If our intelligence assets around the world, particularly cooperating organizations, perceive that the CIA is obliged to disgorge whatever the [Intelligence Committees] may want, then it is very clear, based on my experience, that our intelligence assets would dry up."

The former chairman of Senate Intelligence Committee, Republican Sen. David Durenberger of Minnesota, was recently reprimanded by the Senate Ethics Committee for publicly disclosing a CIA asset in the Israeli army.

Former vice chairman of that committee, Democratic Sen. Pat Leahy of Vermont, resigned after leaking a confidential report on the Iran-Contra affair that the committee had voted to withhold. Mr. Leahy also blundered in revealing to a national NBC television audience that the United States had intercepted and deciphered communications of Egyptian President Hosni Mubarak.

Democratic Rep. George Brown of California was shuffled off the House Intelligence Committee because of irresponsible handling of sensitive intelligence information.

In 1985, cogent evidence pointed to Sens. Durenberger and Leahy as culpable in leaking a planned covert action to overthrow

Libyan tyrant Muammar Qaddafi with the assistance of two North African nations.

A year later, Democratic Sen. Joe Biden of Delaware publicly boasted of derailing two covert-action gambits by threatening disclosure.

Numbers, inexperience and the absence of sanctions explains the propensity of Congress to publicize covert actions.

At present, the members and staffs of the House and Senate Intelligence Committees and the Defense Appropriations subcommittees with regular access to classified intelligence information approximate 132, a number both exceeding the entire membership of the initial Congress and incompatible with secrecy. As early as 1776, Benjamin Franklin and Robert Morris, members of the tiny committee of secret correspondence during the Revolutionary War, refused to disclose to the Second Continental Congress covert financial assistance negotiated with France. They explained: "We find, by fatal experience, the Congress consists of too many members to keep secrets."

Members of Congress are novitiates in the field of intelligence. Their intellectual energies are splintered, and tenure on the intelligence committees is limited to six years. Speaker of the House Jim Wright, Democrat of Texas, exemplified congressional innocence in falsely maintaining before the House Intelligence Committee that the CIA had engineered the assassination of Guatemalan leader Jacobo Arbenz in 1954.

Further, congressmen are unschooled in habits of taciturnity. They may unwittingly disclose secret information because of forgetfulness about its origins and sensitivity.

Congressmen are not fearful of sanctions for publicizing covert activities or other classified national security information. The "Speech or Debate" clause of the Constitution prohibits both the executive and judicial branches from penalizing a member or his staff for anything said on the floor of the House or the Senate or in committee hearings. Thus, Democratic Sen. Mike Gravel of Alaska with impunity placed the 47-volume Pentagon Papers containing classified information in the public record after convening a subcommittee meeting.

Congress is constitutionally authorized but disinclined to sanction members for improper disclosures of classified information. The sleepy House and Senate Ethics Committee are notorious for inactivity and leniency in disciplining members of Congress. And the House Intelligence Committee recently voted against criminal sanctions for members or staff who leak national security information.

A 48-hour congressional reporting requirement eviscerates covert action as a national-security or foreign-policy instrument of the president. History proves the grave harm it would cause. Six Americans hid in the Canadian Embassy in Tehran after the American Embassy was seized by the Iranian radicals in November 1979, Canada assisted the CIA in their covert exfiltration, but only because CIA Director Turner agreed to withhold notification to Congress until the 90-day escape mission was concluded.

Six months of covert activity preceded the ill-starred Desert I rescue attempt of the hostages held in the American Embassy in Tehran. Congress was not informed. Direc-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

E 2548

CONGRESSIONAL RECORD — Extensions of Remarks

August 1, 1988

tor Turner testified that the cover mission would have been canceled if congressional reporting was compelled.

A planned covert operation to assist Philippines President Cory Aquino fight domestic insurrections was scuttled after it was reported to Congress and later publicized.

George Carver, former chairman of the U.S. Intelligence Coordinating Committee in Germany, testified without contradiction: "Should it ever come to be widely perceived abroad that U.S. law required . . . the identification in a written document, of which at least two copies would be sent to Congress, of all non-U.S. individuals and entities, including governments, cooperatively participating in any U.S. [covert action], our pool of essential foreign assistance and support would swiftly evaporate."

We would act no differently. In the aftermath of World War II, the United States stopped sharing sensitive intelligence information with Australia because its government was unable to keep secrets from the Soviet Union.

Without foreign assistance, significant covert-action opportunities will be lost. In 1981, for instance, a CIA asset—Col. Wladyslaw Kuklinski—was infiltrated into the highest levels of Polish Intelligence. With a guarantee of secrecy, Col. Kuklinski was an attractive candidate to undertake a covert action in support of the Solidarity trade and freedom movement. But Col. Kuklinski would certainly have shunned participation if his involvement were to be shared with Congress in a written finding.

Covert action is important to the nation's national security arsenal and foreign policy goals. It was employed to preserve democratic governments in Western Europe and the Philippines in the late 1940s and early 1950s. It prevented communist domination of Iran in 1953, and Castro-style misrule in Guatemala in 1954.

At present, covert action should be branched to reinforce democratic impulses around the globe.

Attractive targets of covert action include dictatorial or communist nations, such as Chile, Libya, Nicaragua, Cuba, North Korea, Panama and Ethiopia, and embryonic democracies, such as Brazil, Argentina, Bolivia, El Salvador, Taiwan, South Korea, Singapore and Guatemala.

Overt U.S. support might be counterproductive, because of national pride and anti-American attitudes in many foreign countries.

The national security fecklessness of Congress is boundless. On Dec. 21, 1987, Congress manipulated the power of the purse to prohibit the president from requiring executive branch employees to keep national security secrets.

Section 630 of the Omnibus Continuing Resolution for Fiscal Year 1988 endowed all government employees with an absolute right to disclose any classified information to Congress, despite the objections of the president, based on his constitutional privilege of confidentiality recognized by the Supreme Court in *United States vs. Nixon* (1974). Federal District Judge Oliver Gasch held section 630 unconstitutional because it impaired the president's constitutional right to protect national security information (National Federation of Federal Employees v. U.S. (May 27, 1988)).

Why is Congress so incontinent in pursuing national security information and knowledge of covert actions?

It has turned a deaf ear to a bipartisan galaxy of former national security advisers, CIA directors, a secretary of state and a top CIA assistant, who have assailed a 48-hour reporting rule.

Members argue the reporting requirements enrich the president's decision-making over national security matters. But one searches in vain for a single instance since the creation of the CIA in 1947 when a member possessed of classified information made a productive contribution to the president's national security deliberations.

The more plausible explanation is congressional self-esteem that comes with enlarged powers. Neither the president, the Supreme Court nor the American people, however, should permit legislative *amour propre* to trump the national interest in a bold and robust covert action capability.

[From the Washington Times, June 21, 1988]

MORE THAN COVERT CAN ENDURE?

(By Henry Hude)

The House of Representatives soon will consider whether to follow the Senate's questionable "lead" in decreeing that, without exception, Congress' intelligence committees or top leadership must be informed of every covert action within 48 hours of presidential approval.

As hearings have shown, many present and former policy officials, persons of widely varying political affiliations, strongly reject such inflexibility and congressional micromanagement of foreign policy. They cite the need to protect at least temporarily a very few of the most sensitive operations from security leaks, as well as the dubious constitutionality of the proposal.

So corrosive has the permissive culture of "leaking" become that it materially contributed to the disastrous Iran escapade. Adm. John Poindexter testified that in addition to keeping even the congressional leadership in the dark for more than a year, he also deliberately minimized information given to top Cabinet and White House officials, and kept few documents or records of key meetings.

This is corroborated in the just-published memoirs of Don Regan, then White House chief of staff, who writes that unauthorized disclosures "had achieved such epidemic proportions that the inner circle was afraid to take notes lest they read them the next day in the newspapers". Mr. Regan concludes that "in fact, the root of the scandal may well lie in the fact that McFarlane and Poindexter and their assistants were, in a sense, driven mad by leaks".

The result was prolonged pursuit of an ill-considered and politically dangerous policy which suffered grievously from lack of full consideration and thorough periodic review. The paucity of records also contributed to later confusion and charges of a deliberate cover-up.

Some airily dismiss these security concerns as figments of Adm. Poindexter's paranoia. But every recent administration has quickly become appalled by the pervasiveness of leaks harmful to U.S. foreign policy and intelligence capabilities.

Moreover, despite the admiral's extreme precautions, the Iran operation indeed was soon exposed, originally in some Jack Anderson columns. It finally unraveled because of a leak which, for a change, occurred in a foreign newspaper.

With increasing frequency, high-ranking intelligence officials testify before the House Intelligence Committee decrying the human, intelligence and policy damage inflicted by injurious leaks. Lately, some have even gone public in a campaign to point out the harmfulness of an avalanche of unauthorized disclosures.

In this effort, they are hampered by an inability to cite examples, for to do so would confirm the authenticity of published mate-

rial and heighten the damage. A cursory glance at the daily headlines, however, should convince the average citizen that sensitive, intelligence-related issues have become regular media fare. One begins to suspect that the best way to publicize an issue is to stamp it "Top Secret" and wait for its predictable appearance in the media.

Nonetheless, members continue to press the 48-hour legislation, a key assumption being that Congress can indeed be trusted in every instance, no matter what the risk.

Let us be clear about the facts here. Whatever its reservations about congressional reliability, each administration normally has swallowed its concerns and freely provided the legislature a wealth of classified information. The intelligence committees have controlled the oversight process for more than a decade now.

As CIA Deputy Director Bob Gates recently observed, the availability of classified information to the intelligence committees in particular, and to a lesser extent to Congress in general, has increased exponentially over these years, a factor which allows them considerably greater ability to probe and question administration foreign policy than Congress ever had before.

Prior to the Iran-Contra initiatives, there had been only two cases in which House and Senate leadership, rather than both full committees, were initially informed of a covert action.

There have been only four cases in which notification of Congress was delayed. Three occurred during the Carter administration. All involved attempts to retrieve U.S. citizens hiding in Iran or held hostage in Iran or Lebanon. In each of these cases, the administration feared deaths could result from media leaks, and knowledge of the operations was also highly restricted within the executive branch.

In three of those instances, although notification was delayed three to six months, the Congress heartily supported the administration.

In all four cases, the administration intended to notify the Congress eventually and was legally required to do so, but it could not be determined from the outset how long notification might be delayed. Thus, only one case—the Iran-Contra affair—has raised serious concerns about notification.

It is a precedent that is most unlikely to be repeated. Given heightened congressional sensitivities and the personal and political pain caused by the Iran-Contra investigation (exemplified by the attempted suicide of one policy-maker, financial burdens for them all, the destruction of reputations, and, in effect, the crippling of the Reagan administration during its final two years), it is beyond imagination that any future administration again will temporarily withhold notification on an issue of similar potential controversy.

Moreover, as the bipartisan Tower Commission report noted, the Iran debacle occurred largely because existing procedures for handling covert action were ignored, not because new procedures were needed. The administration also has instituted additional precautions, such as an automatic review every 10 days if the president determines that notification to Congress must be delayed.

Congress will suffer a Pyrrhic victory if it wins on this issue. The Democratic majority will find succeeding presidents hamstringing in grappling with future hostage cases. Does anyone predict an end to hostage taking? And if, in one of those instances, word of covert initiatives leaks out prematurely, possibly triggering the death of a hostage or

August 1, 1988

CONGRESSIONAL RECORD — Extensions of Remarks

E 2549

agent, it is Congress that will fall under a dark cloud of suspicion. At that point, the diminishing mutual trust essential of effective oversight will suffer yet another grievous blow.

A TRIBUTE TO SCOUTMASTER JERRY SALMON

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, August 1, 1988

Mr. LENT. Mr. Speaker, on Sunday, August 7, Boy Scouts of America Troop 332 of East Rockaway, NY, will honor an individual who exemplifies the finest qualities of Scouting. That person is Scoutmaster Jerry Salmon, who will be retiring after 11 years of service to the youth of East Rockaway and Lynbrook.

With the help of his wife, Catherine, Jerry Salmon strived to teach these young men to achieve their highest personal goals and to improve their community. Under his guidance and encouragement, 44 young men have attained the rank of Eagle Scout, the highest rank in Scouting. Also, Troop 332 has been named Bishop's Troop three times, a very distinguished honor.

Jerry Salmon has served as an important role model for these young people. Throughout his dedicated career in Scouting, he gave generously of his time and energy. This commitment is borne of a genuine caring for the young Scouts in his charge and a concern that they mature into active members of the community. Indeed, we all benefit from Jerry Salmon's work. For the young men he has worked with become infected with this need to serve. They take what they have learned from him and reach out to many others.

Volunteers like Jerry Salmon, dedicated to the welfare of their fellow man, are the essence of the American spirit. They have helped make our country great, and we are very fortunate to have him. On this occasion, I'd like to offer my sincere appreciation to Scoutmaster Jerry Salmon for his many years of dedicated service to the young people of our communities and wish him many years of happiness in the years ahead.

SUPER BOWL QUARTERBACK DOESN'T FIND RICHES

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, August 1, 1988

Mr. STOKES. Mr. Speaker, I read with great interest an article which recently appeared in the Detroit Free Press entitled, "Fame Fine: Bucks Better." The article discusses the lack of endorsement opportunities for Doug Williams, quarterback of the Super Bowl champions Washington Redskins. Doug Williams' case is in stark contrast to the cases of other Super Bowl heroes such as Joe Theismann, Roger Staubach, and Jim McMahon. These quarterbacks have achieved more than Super Bowl victories—they have achieved the fame, glory, and, more importantly, the financial rewards that accompany such success. Is Doug Williams not worthy of the same?

Mr. Speaker, I read the article with great interest and I urge my colleagues to do the same.

[From the Detroit Free Press, July 7, 1988]

FAME FINE; BUCKS BETTER—QB DOESN'T
FIND RICHES

(By Ray Didinger)

PHILADELPHIA.—Joe Namath won a Super Bowl and got a movie contract. Phil Simms won a Super Bowl and wrote a book.

Jim McMahon won a Super Bowl and wound up selling tacos on TV. Joe Montana beat Dan Marino in Super Bowl XIX, then they co-starred in a hokey diet soda commercial.

For most NFL quarterbacks, the Super Bowl is like magic carpet. It whisks them away to a land where their names are in bright lights and strangers smile and hold open limousine doors 24 hours a day.

Mostly, it is a land where a quarterback can get rich in a hurry. It happened to Joe Theismann and Roger Staubach. It even happened to Bob Griese, who is duller than Muzak.

But it has not happened to Doug Williams, not yet anyway, and he had perhaps the best Super Bowl of any quarterback ever. Williams threw for four touchdowns and 340 yards (a Super Bowl record) as Washington buried Denver, 42-10, in Super Bowl XXII last January.

In the five months since his MVP performance, Williams has done just one national TV commercial and that was the Disney World spot that was arranged with both quarterbacks, Williams and Denver's John Elway, before the game. The winner got to do the line ("I'm going to Disney World") as he left the field in San Diego.

Since then, the advertisers and marketing types have beaten a path away from Williams' door.

Could it be they haven't been able to find Williams' offseason home in rural Zachary, LA? Or could it be they just aren't trying. Is it because they don't think white America is so eager to buy cameras and razor blades when they are being pushed by a black Super Bowl hero?

"I don't know the answer. That's just the way it is," Williams said recently as he accepted the NFL Filmstar Award for the outstanding individual achievement of last season.

"I've made it this far without all that (commercial) stuff, I'm not going to start worrying about it now. I don't even like to talk about it because it's not going to change anything. That's just the way things are."

"But it doesn't seem fair," someone said.

Williams smiled. "Whoever said life was fair?" he asked.

By all rights, Williams should have been a hot property after Super Bowl XXII. Here was a quarterback who had kicked around pro football for a decade, a man haunted by personal tragedy, who came off the bench to lead his team to the NFL championship. It was can't-miss, storybook stuff.

This script had everything, including a scene where the here twisted his knee early in the big game and limped off the field only to come back and win. It was all there. Blood and guts, tears and cheers, gritty underdog (Williams) outshining the golden boy (Elway).

Williams' performance was memorable on several levels; but in particular for the grace he displayed under pressure. He fielded every newsman's question during the week, no matter how clumsy. ("Doug, you've been a black quarterback all your . . .") He was virtually flawless when the curtain went up Sunday.

If Williams has been slighted by the advertisers and corporate spenders since then, well, it's something he can live with.

He has the new car he won as the game's Most Valuable Player. He has a gold Super Bowl watch. His championship ring is on order. He has piled up a lot of frequent flier miles traveling the banquet circuit and collecting awards.

His left knee, surgically repaired in February, is healing nicely. His family—wife, Lisa, and daughter, Ashley—is settled in the new house. He is listed first on the Washington depth chart, ahead of Jay Schroeder, going into training camp.

All in all, Williams, 32, figures he is much better off than he was this time a year ago.

"I'm not mad," Williams said. "Who should I be mad at. I've done a lot of things this off-season, met a lot of nice people."

"The best thing that's come out of this is the Doug Williams Foundation we set up in Washington. We raise money for scholarships and drug abuse programs for needy kids. We ran our first benefit three weeks ago and it was a big success."

"That is a direct result of what happened in the Super Bowl. It's a way I can give something back to the community. I'd rather spend my time working on that than banging on doors, asking why I'm not doing more TV commercials."

The people who said Williams' life would change after Super Bowl XXII didn't know much about the man or his life. Williams never cared for the spotlight, and, after his first wife died of a brain tumor in 1983, he pulled back even more.

Williams never bought into the argument that he played Super Bowl XXII for all black quarterbacks—past, present and future. Williams didn't want the label going into the game. He didn't want the credit after. If others wanted to cast him as a role model, that was up to them.

"I had three or four offers to write a book after the Super Bowl," Williams said. "I wasn't interested. Not yet anyway."

"I'll write a book, but after I'm done playing. And it won't be just a football book. It will talk about my growing up, my life off the field. It will talk about everything I've gone through."

"I'm looking forward writing it. I feel like I've got a lot to say."

FIVE MARYLAND ELEMENTARY SCHOOLS RATED OUTSTANDING

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, August 1, 1988

Mrs. MORELLA. Mr. Speaker, I take great pleasure in commending five elementary schools in Maryland's Eighth Congressional District that were recently rated "outstanding" by the U.S. Department of Education: Bells Mill Elementary School in Potomac, Whetstone Elementary School in Gaithersburg, the Hebrew Academy of Greater Washington in Silver Spring, the St. Jane de Chantal Catholic School in Bethesda, and the Center School in Chevy Chase.

From almost 100 applications, 10 public and private elementary schools were selected by the State of Maryland to be considered by the Department of Education for its biannual Elementary School Recognition Awards. Each school then underwent a 2-day, on-site and in-depth inspection. As part of this inspection, DOE interviewers spoke with students, par-