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Attached is the transcript of HFAC Bfg 14June88 re H.R. 3822.

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Attachment

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STATEMENT OF THE DIRECTOR OF CENTRAL INTELLIGENCE
BEFORE THE FOREIGN AFFAIRS COMMITTEE
HOUSE OF REPRESENTATIVES

14 JUNE 1988

MR. CHAIRMAN AND MEMBERS OF THE FOREIGN AFFAIRS COMMITTEE, I AM PLEASED TO BE HERE TODAY TO SHARE SOME OF MY THOUGHTS ON H.R. 3822, THE INTELLIGENCE OVERSIGHT ACT OF 1988. SINCE THIS IS THE FIRST TIME I HAVE APPEARED BEFORE THIS COMMITTEE AS DIRECTOR OF CENTRAL INTELLIGENCE, I ALSO WANT TO TAKE THIS OPPORTUNITY TO PROVIDE YOU WITH MY VIEWS ON THE RELATIONSHIP BETWEEN THIS COMMITTEE AND THE CIA.

THE VIEWS EXPRESSED IN THIS STATEMENT ON H.R. 3822 REFLECT THE POSITION OF THE ADMINISTRATION. I DRAW YOUR ATTENTION AT THE OUTSET TO THE ADMINISTRATION POSITION, AS CONVEYED TO CONGRESS IN THE PRESIDENT'S LEGISLATIVE MESSAGE, THAT A BILL WHICH FAILS TO PRESERVE THE FLEXIBILITY AND AUTHORITY THE PRESIDENT NEEDS TO CONDUCT INTELLIGENCE ACTIVITIES EFFECTIVELY WILL NOT BE ACCEPTABLE TO THE PRESIDENT.

MR. CHAIRMAN, MY TESTIMONY TODAY WILL BE THE THIRD TIME I HAVE TESTIFIED ON INTELLIGENCE OVERSIGHT LEGISLATION. I APPEARED LAST NOVEMBER BEFORE THE SENATE INTELLIGENCE COMMITTEE TO TESTIFY ON SIMILAR LEGISLATION AND IN FEBRUARY BEFORE THE HOUSE INTELLIGENCE COMMITTEE ON H.R. 3822. IN MY TESTIMONY BEFORE THOSE COMMITTEES, I FOCUSED PRIMARILY ON WHETHER THE LEGISLATION WAS TRULY NECESSARY, AND ON THE PRACTICAL IMPACT OF THE OVERSIGHT BILL ON THE

INTELLIGENCE COMMUNITY. I INTEND TO ADDRESS BOTH POINTS IN MY TESTIMONY TODAY ON THE HOUSE BILL.

THE NEED FOR LEGISLATION

IN MY REMARKS BEFORE THE SENATE AND HOUSE INTELLIGENCE COMMITTEES I QUESTIONED THE NEED FOR THIS TYPE OF LEGISLATION. ALTHOUGH BOTH INTELLIGENCE COMMITTEES SUBSEQUENTLY DECIDED TO RECOMMEND APPROVAL OF THE LEGISLATION, I STILL BELIEVE THAT THIS LEGISLATION IS NOT A NECESSARY RESPONSE TO THE CONCERNS MEMBERS OF THE CONGRESS HAVE EXPRESSED ABOUT THE OVERSIGHT OF COVERT ACTION.

AS YOU KNOW, THE PRESIDENT RECOGNIZED LAST YEAR THAT THERE WAS ROOM FOR IMPROVEMENT IN THE WAY THE TWO BRANCHES WERE MEETING THEIR RESPONSIBILITIES. AS A RESULT, HE TOOK CONCRETE, SUBSTANTIAL STEPS TO ESTABLISH IMPROVED PROCEDURES TO ENSURE THAT CONGRESS IS GIVEN THE OPPORTUNITY TO PLAY ITS APPROPRIATE OVERSIGHT ROLE. THESE NEW PROCEDURES, IN THE FORM OF A NATIONAL SECURITY DECISION DIRECTIVE ON SPECIAL ACTIVITIES (NSDD-286), MUCH OF WHICH HAS BEEN DECLASSIFIED, CLARIFY THE RULES BY WHICH COVERT ACTIONS ARE REVIEWED, APPROVED, AND REPORTED TO CONGRESS. IN FACT, MANY OF THE PROPOSALS CONTAINED IN H.R. 3822 ARE ALREADY CONTAINED IN NSDD-286. THIS CAN BE ILLUSTRATED BY MAKING A FEW COMPARISONS BETWEEN THE BILL AND THE PRESIDENTIAL DIRECTIVE.

--THE BILL REQUIRES THAT FINDINGS BE IN WRITING, CANNOT BE

MADE RETROACTIVE, AND MUST BE CONSISTENT WITH EXISTING LAW. SIMILAR REQUIREMENTS ARE CONTAINED IN THE NSDD.

--THE BILL MAKES CLEAR THAT A PRESIDENTIAL FINDING MUST BE OBTAINED BEFORE ANY AGENCY OR DEPARTMENT CAN CONDUCT A COVERT ACTION. THE PRESIDENTIAL DIRECTIVE AFFIRMS THIS PRINCIPLE.

--THE BILL REQUIRES THAT A PRESIDENTIAL FINDING SPECIFY THE NAMES OF EACH DEPARTMENT OR AGENCY OF THE U.S. GOVERNMENT THAT IS FUNDING OR PARTICIPATING IN A SIGNIFICANT WAY IN A COVERT ACTION, AND WHETHER IT IS CONTEMPLATED THAT ANY THIRD PARTY WILL BE USED TO FUND OR OTHERWISE PARTICIPATE IN A SIGNIFICANT WAY IN THE COVERT ACTION. AGAIN, THE PRESIDENTIAL DIRECTIVE CONTAINS THE SAME REQUIREMENT.

IT IS NOT SURPRISING OR COINCIDENTAL THAT PROVISIONS OF THE BILL ARE SIMILAR TO THE PRESIDENTIAL DIRECTIVE. THE PROCEDURES THE PRESIDENT HAS INSTALLED WERE DEVELOPED FOLLOWING CLOSE AND PROLONGED CONSULTATION WITH MEMBERS AND STAFFS OF THE INTELLIGENCE COMMITTEES.

WHILE A PRESIDENTIAL DIRECTIVE IS NOT THE SAME AS LEGISLATION, I AM NOT PERSUADED THAT NEW LEGISLATION AT THIS TIME IS THE BEST WAY TO ADDRESS THE CONCERNS THAT MEMBERS HAVE WITH THE CONGRESSIONAL ROLE REGARDING SPECIAL ACTIVITIES. IN MY VIEW, A LEGISLATIVE REMEDY SHOULD BE EMPLOYED ONLY IF IT IS CLEAR THAT

THERE IS A BASIC DEFICIENCY IN THE OVERSIGHT PROCESS. THAT IS DOUBLY THE CASE WHEN THE LEGISLATIVE REMEDY PROPOSED RAISES CONSTITUTIONAL ISSUES THAT THREATEN TO DIVIDE THE TWO BRANCHES IN AN AREA WHERE EFFECTIVE WORK PLACES A PREMIUM ON COOPERATION.

THE IRAN/CONTRA MATTER, WHILE SERIOUS, HAS NOT IN MY VIEW DEMONSTRATED THAT THE SYSTEM OF CONGRESSIONAL OVERSIGHT OF THE INTELLIGENCE COMMUNITY ESTABLISHED UNDER CURRENT STATUTES IS SERIOUSLY FLAWED. MANY OF THE PROBLEMS EXPOSED WERE THE RESULT OF OFFICIALS FAILING TO FOLLOW EXISTING PROCEDURES AND RULES. AS YOU MAY BE AWARE, I HAVE TAKEN STEPS WITHIN THE CIA TO DISCIPLINE THOSE EMPLOYEES WHO FAILED TO FOLLOW CIA PROCEDURES OR WHO TESTIFIED TO CONGRESS IN A MANNER THAT WAS NOT CANDID OR COMPLETE. THOSE ACTIONS, TAKEN IN LIGHT OF THE REQUIREMENTS DEFINED BY CURRENT STATUTE, IN MY VIEW HAVE ADEQUATELY ADDRESSED THE PROBLEMS WE FOUND. SIMILARLY, TO THE EXTENT THAT THERE WERE ANY PROCEDURAL SHORTCOMINGS DEMONSTRATED BY THE IRAN/CONTRA MATTER, THEY HAVE ALREADY BEEN ADDRESSED BY THE NEW PRESIDENTIAL DIRECTIVE WITHIN THE PRESENT STATUTORY FRAMEWORK.

I WOULD LIKE TO EMPHASIZE THAT ANY LEGISLATION THAT IS ENACTED SHOULD NOT ADVERSELY AFFECT THE INTELLIGENCE COMMUNITY'S ABILITY TO DO ITS JOB. IN THIS CONNECTION, MR. CHAIRMAN, THE BILL PASSED BY THE SENATE IN MARCH AND THE BILL MARKED UP BY THE HOUSE INTELLIGENCE COMMITTEE HAVE ADDRESSED CONSTRUCTIVELY SOME OF THE IMPORTANT SUBSTANTIVE CONCERNS I AND OTHER ADMINISTRATION

OFFICIALS RAISED WITH THE ORIGINAL SENATE BILL INTRODUCED IN THAT BODY. BOTH THE HOUSE AND SENATE BILLS, FOR EXAMPLE, RECOGNIZE THE NEED TO REPORT ON SPECIAL ACTIVITIES AND INTELLIGENCE COLLECTION IN A MANNER CONSISTENT WITH DUE REGARD FOR THE PROTECTION OF SENSITIVE INTELLIGENCE SOURCES AND METHODS. I AM ALSO PLEASED THAT NEITHER BILL REQUIRES THAT THE FINDING SPECIFY THE IDENTITY OF FOREIGN COUNTRIES ASSISTING THE AGENCY IN THE CONDUCT OF COVERT ACTION. THESE IMPORTANT SAFEGUARDS WILL IN MY VIEW GO A LONG WAY IN ASSURING FRIENDLY INTELLIGENCE SERVICES AND POTENTIAL AGENTS THAT SOURCE-IDENTIFYING INFORMATION WILL NOT BE WIDELY DISSEMINATED AND POSSIBLY COMPROMISED.

I AM ALSO VERY PLEASED WITH THE CHANGES IN THE ORGINAL HOUSE VERSION OF THE BILL MADE BY THE HOUSE INTELLIGENCE COMMITTEE IN RESPONSE TO CONCERNS I RAISED BEFORE THAT COMMITTEE. MY RESERVATIONS REGARDED THE DEFINITION OF COVERT ACTION, THE EXPENDITURE OF NON-APPROPRIATED FUNDS AND THE REPORTING OF THE TRANSFER OF DEFENSE ARTICLES OR SERVICES. IN PARTICULAR, THE NEW DEFINITION OF COVERT ACTION REMOVES MUCH OF THE AMBIGUITY OVER WHAT CONSTITUTES A COVERT ACTION AND IS IN MY VIEW A DISTINCT IMPROVEMENT OVER THE CURRENT DEFINITIONS.

PRIOR NOTICE OF SPECIAL ACTIVITIES

WHILE THE INTELLIGENCE COMMITTEES HAVE ADDRESSED SEVERAL CONCERNS PREVIOUSLY RAISED IN MY TESTIMONY BEFORE THOSE

COMMITTEES, THERE IS ONE AREA OF THE BILL THAT REMAINS PARTICULARLY TROUBLESOME. THIS AREA OF DIFFICULTY INVOLVES THE PROVISION OF THE BILL THAT REQUIRES NOTIFICATION OF A COVERT ACTION TO CONGRESS, WITHOUT EXCEPTION, WITHIN 48 HOURS AFTER THE SIGNING OF A FINDING. LAST SUMMER, THE DEPARTMENT OF JUSTICE PROVIDED THE CONGRESS WITH ITS VIEWS ON THE CONSTITUTIONALITY OF SUCH A PROVISION, SO I WILL NOT ADDRESS THAT ISSUE HERE. I HAVE TWO SEPARATE CONCERNS ABOUT THIS PROVISION.

FIRST, THE FACT THAT THERE IS A SHARP DIFFERENCE OF INTERPRETATION BETWEEN THE VIEW OF THE ADMINISTRATION AND THE POSITION EMBODIED IN THIS BILL REGARDING THIS PROVISION'S CONSTITUTIONAL VALIDITY WILL PROMOTE TENSION BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES FOR YEARS TO COME. IN THE INTELLIGENCE AREA SUCH TENSION HAS THE POTENTIAL TO DISRUPT THE COOPERATION AND TRUST THAT EFFECTIVE NATIONAL SECURITY POLICY REQUIRES.

SECOND, I BELIEVE THAT AS A PRACTICABLE MATTER ALLOWANCE MUST BE MADE FOR THAT RARE CASE WHERE A LIMITED DELAY IN CONGRESSIONAL NOTIFICATION IS CRITICAL TO PRESERVE THE ABSOLUTE SECURITY OF AN OPERATION WHEN, FOR EXAMPLE, LIVES ARE AT STAKE. IN SUCH A RARE CASE, THE SUCCESS OF AN OPERATION MAY DEPEND ON THE COOPERATION OF A FOREIGN GOVERNMENT THAT HAS CONDITIONED ITS SUPPORT ON THE PRESIDENT DELAYING CONGRESSIONAL NOTIFICATION UNTIL THE OPERATION IS COMPLETED. AN INFLEXIBLE NOTIFICATION REQUIREMENT COULD FORCE A PRESIDENT TO CHOOSE BETWEEN PROVIDING THE CONGRESSIONALLY

REQUIRED NOTIFICATION WITHIN 48 HOURS AND JEOPARDIZING THE LIVES OF INNOCENT AMERICANS, OR DELAYING THAT NOTIFICATION TO PROTECT THOSE LIVES. I CAN UNDERSTAND WHY ANY PRESIDENT WOULD BE RELUCTANT TO AGREE TO A LAW THAT WOULD REQUIRE SUCH CHOICES.

IT IS WORTHWHILE TO NOTE THAT CONCERNS ABOUT EXCESSIVE DELAY IN CONGRESSIONAL NOTIFICATION OF A SPECIAL ACTIVITY HAVE ALREADY BEEN ADDRESSED BY NSDD 286. THAT DIRECTIVE REQUIRES THE NATIONAL SECURITY PLANNING GROUP TO REEVALUATE AT LEAST EVERY 10 DAYS A DECISION TO DELAY CONGRESSIONAL NOTIFICATION OF A GIVEN FINDING. THIS WILL ENSURE THAT WHEN A DELAY IN NOTIFICATION IS NECESSARY, THE REASON FOR THAT DECISION WILL BE CONTINUALLY REASSESSED BY RESPONSIBLE SENIOR OFFICERS OF SEVERAL AGENCIES OR DEPARTMENTS SO THAT THE DELAY WILL BE AS SHORT AS POSSIBLE. I REPEAT, HOWEVER, THAT I CAN THINK OF FEW CIRCUMSTANCES THAT WOULD EVER NECESSITATE SUCH EXTRAORDINARY STEPS.

IF THE COMMITTEE SHOULD NEVERTHELESS DECIDE THAT LEGISLATION IS NECESSARY TO LIMIT THE PRESIDENT'S AUTHORITY TO DELAY NOTIFICATION, I WOULD URGE MEMBERS TO GIVE SERIOUS CONSIDERATION TO LANGUAGE CONTAINED IN A BILL PROPOSED BY RANKING MINORITY MEMBER BROOMFIELD THAT WOULD ALLOW THE PRESIDENT TO DELAY NOTIFICATION IF HE DETERMINES THAT AN EMERGENCY CONSTITUTING A GRAVE AND IMMEDIATE THREAT TO THE NATIONAL SECURITY OF THE UNITED STATES EXISTS. WHILE SUCH A STANDARD MAY NOT COVER ALL SITUATIONS WHERE LIVES ARE AT STAKE, IT WOULD ALLOW THE PRESIDENT THE

FLEXIBILITY TO DELAY NOTIFICATION IN CIRCUMSTANCES WHERE THE GOVERNMENT FACES A GRAVE AND IMMEDIATE THREAT TO ITS SECURITY.

ACCESS BY FOREIGN AFFAIRS COMMITTEE TO INTELLIGENCE INFORMATION

ALTHOUGH NOT DIRECTLY RELEVANT TO THE LEGISLATION BEFORE THIS COMMITTEE, I THOUGHT THIS WOULD BE AN APPROPRIATE TIME TO ADDRESS A CONCERN I UNDERSTAND SOME MEMBERS HAVE WITH RESPECT TO ACCESS BY THE FOREIGN AFFAIRS COMMITTEE TO INTELLIGENCE INFORMATION. IN MY VIEW, THE FOREIGN AFFAIRS COMMITTEE DOES HAVE A LEGITIMATE NEED FOR INFORMATION ABOUT DEVELOPMENTS AROUND THE WORLD. SOME OF THIS INFORMATION IS CLASSIFIED. OUR BEST INTELLIGENCE ANALYSIS ABOUT THE SIGNIFICANCE AND IMPLICATIONS OF SUCH DEVELOPMENTS CAN PLAY AN IMPORTANT PART IN THE COMMITTEE DOING ITS WORK PROPERLY.

I BELIEVE THE RECORD WILL SHOW THAT THE CENTRAL INTELLIGENCE AGENCY HAS, IN FACT, BEEN RESPONSIVE TO THE REQUEST OF THE COMMITTEE FOR SUCH INFORMATION. SOME RECENT STATISTICS HELP TO ILLUSTRATE THIS POINT. DURING THE PERIOD FROM 1986 TO THE PRESENT, THERE HAVE BEEN 48 STAFF BRIEFINGS, 68 MEMBER BRIEFINGS, AND 14 APPEARANCES BEFORE THE COMMITTEE INVOLVING FORMAL TESTIMONY. TO THE CONGRESS AS A WHOLE, CIA NOW PROVIDES MORE THAN 1,000 BRIEFINGS PER YEAR. LISTENING TO THESE BRIEFINGS TAKES A GREAT DEAL OF VALUABLE TIME ON YOUR PART, SO I GATHER YOU FIND THEM USEFUL.

THE SUBSTANCE OF THE INFORMATION CONVEYED BY THE AGENCY TO THE CONGRESS HAS RANGED FROM PRETRIP BRIEFINGS ON PARTICULAR COUNTRIES FOR MEMBERS TO FORMAL TESTIMONY ON THE DISASTER AT CHERNOBYL OR TERRORISM IN GENERAL. IN ADDITION, THE COMMITTEE HAS ACCESS TO THE NATIONAL INTELLIGENCE DAILY, OUR NATIONAL INTELLIGENCE ESTIMATES AND A VARIETY OF OTHER INTELLIGENCE PUBLICATIONS. I WOULD URGE MEMBERS OF THIS COMMITTEE WHO ARE INTERESTED IN OBTAINING MORE INTELLIGENCE INFORMATION TO TAKE ADVANTAGE OF THE ACCESS OF THE COMMITTEE TO THIS WEALTH OF INFORMATION.

WHILE I BELIEVE WE HAVE BEEN RESPONSIVE TO THE COMMITTEE'S REQUEST FOR INTELLIGENCE INFORMATION, I HOPE THAT YOU WILL UNDERSTAND MY NEED TO PROTECT FROM DISCLOSURE OPERATIONAL INTELLIGENCE INFORMATION THAT MIGHT JEOPARDIZE OUR SOURCES AND METHODS FOR GATHERING THIS INFORMATION. WHEN THIS INFORMATION IS COMPROMISED, NOT ONLY IS THE PARTICULAR SOURCE OF INTELLIGENCE LOST TO THE U.S. GOVERNMENT, BUT OTHERS BECOME RELUCTANT TO COOPERATE FOR FEAR THEIR IDENTITIES WILL ALSO BE DISCLOSED. IN SOME CASES IT MAY BE ADVISABLE TO DISCLOSE SENSITIVE OPERATIONAL INFORMATION IN ORDER FOR CONGRESS TO CONDUCT EFFECTIVE OVERSIGHT. A DECISION WAS MADE BY CONGRESS ITSELF IN 1980 TO LIMIT THIS TYPE OF INFORMATION TO THE INTELLIGENCE COMMITTEES. THIS DECISION WAS A WISE ONE, AND I WOULD STRONGLY OPPOSE ANY PROPOSAL TO EXPAND THE NUMBER OF CONGRESSIONAL COMMITTEES DIRECTLY INVOLVED IN INTELLIGENCE OVERSIGHT.

ACCESS TO COVERT ACTION INFORMATION

IN ADDITION TO THE QUESTION OF ACCESS TO INTELLIGENCE INFORMATION IN GENERAL, I UNDERSTAND SOME MEMBERS ARE CONCERNED THAT THE THE FOREIGN AFFAIRS COMMITTEE IS NOT BEING BRIEFED ON COVERT ACTIONS THAT HAVE SIGNIFICANT FOREIGN POLICY IMPLICATIONS. UNDER EXISTING LAW AND THE INTELLIGENCE OVERSIGHT BILL BEING CONSIDERED BY THIS COMMITTEE, ACCESS TO COVERT ACTION INFORMATION IS CONFINED TO THE INTELLIGENCE OVERSIGHT COMMITTEES AND THE DEFENSE SUBCOMMITTEES OF THE APPROPRIATIONS COMMITTEES. I DO NOT BELIEVE IT IS NECESSARY OR WISE TO EXPAND THE NUMBER OF COMMITTEES TO WHICH WE MUST REPORT COVERT ACTIONS. TO DO SO WOULD SIMPLY RETURN US TO THE SITUATION EXISTING BEFORE THE INTELLIGENCE OVERSIGHT ACT OF 1980 WHEN WE HAD TO PROVIDE COVERT ACTION INFORMATION TO EIGHT COMMITTEES OF CONGRESS. THIS SITUATION MADE IT ALMOST IMPOSSIBLE TO CONDUCT COVERT ACTION COVERTLY.

I BELIEVE THAT THE CONCERN EXPRESSED BY SOME REGARDING THE LACK OF COMMITTEE ACCESS TO COVERT ACTION INFORMATION MAY BE THE RESULT OF A MISPERCEPTION AS TO HOW COVERT ACTION RELATES TO OUR FOREIGN POLICY. COVERT ACTION IS IMPLEMENTATION BY CLANDESTINE MEANS OF THE FOREIGN POLICY OF THE UNITED STATES GOVERNMENT. OUR FOREIGN POLICY IS FORMULATED BY THE PRESIDENT AND THE SECRETARY OF STATE.

THE DIRECTOR OF CENTRAL INTELLIGENCE SHOULD NOT MAKE FOREIGN POLICY OR USE COVERT ACTION AS A VEHICLE FOR CREATING A SECRET FOREIGN POLICY. BECAUSE THE SECRETARY OF STATE IS OBLIGATED TO KEEP THE FOREIGN AFFAIRS COMMITTEE INFORMED OF OUR FOREIGN POLICY, I BELIEVE THAT THE COMMITTEE DOES HAVE THE NECESSARY MEANS TO MAKE ITS VIEWS KNOWN REGARDING FOREIGN POLICY, INCLUDING THOSE SPECIFIC POLICIES BEING IMPLEMENTED BY A COVERT ACTION.

IF YOU BELIEVE THAT THE ARRANGEMENT I HAVE DESCRIBED IS NOT ADEQUATE TO ENSURE THAT THE VIEWS OF THE FOREIGN AFFAIRS COMMITTEE ARE REPRESENTED IN THE OVERSIGHT OF COVERT ACTION, I WOULD SUGGEST CONGRESS CONSIDER GREATER USE OF CROSS-OVER MEMBERSHIP BETWEEN THE FOREIGN AFFAIRS COMMITTEE AND THE HOUSE INTELLIGENCE COMMITTEE. SUCH CROSS-OVER MEMBERS ARE IN THE BEST POSSIBLE POSITION TO EXPRESS THE VIEWS OF THE FOREIGN AFFAIRS COMMITTEE IN DELIBERATIONS CONDUCTED BY THE HOUSE INTELLIGENCE COMMITTEE. SOME OF YOU NOW SERVE OR HAVE IN THE PAST SERVED VERY EFFECTIVELY IN THIS WAY.

IN CLOSING, I WOULD LIKE TO REEMPHASIZE TO EACH OF YOU MY PERSONAL COMMITMENT TO MAKING THE OVERSIGHT PROCESS WORK. IT HAS ALWAYS BEEN CLEAR, AND RECENT EXPERIENCE HAS AGAIN DEMONSTRATED, THAT THE IMPLEMENTATION OF THE FOREIGN POLICY OF OUR GOVERNMENT, INCLUDING COVERT ACTION, CAN ONLY BE SUCCESSFUL WHEN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT WORK TOGETHER IN AN ATMOSPHERE OF MUTUAL RESPECT AND TRUST. THIS SPIRIT OF COOPERATION CAN ONLY OCCUR IF THE CONGRESS RECEIVES THE

APPROPRIATE INFORMATION NEEDED TO REVIEW AND MAKE INFORMED JUDGMENTS ON COVERT ACTION, WHILE AT THE SAME TIME ENSURING THAT THIS INFORMATION IS PROTECTED FROM UNAUTHORIZED DISCLOSURE. THE LAW SHOULD REFLECT NOT ONLY THE NEED FOR COOPERATION, BUT ALSO THE PRESIDENT'S RESPONSIBILITY FOR THE CONDUCT AND MANAGEMENT OF OUR INTELLIGENCE AND THE IMPORTANCE TO THE NATION OF ENSURING THAT THE PRESIDENT HAS THE NECESSARY FLEXIBILITY AND AUTHORITY TO EMPLOY OUR INTELLIGENCE CAPABILITY EFFECTIVELY.

AS I HAVE NOTED, THE PRESIDENT HAS TAKEN CORRECTIVE STEPS TO IMPROVE THE OVERSIGHT SYSTEM THROUGH A PRESIDENTIAL DIRECTIVE. AT CIA, I HAVE APPROVED A NUMBER OF MEASURES THAT WILL PREVENT A REPETITION OF THE SHORTCOMINGS IN THE AGENCY'S PERFORMANCE IN THE IRAN/CONTRA MATTER. IN SHORT, SIGNIFICANT CHANGES HAVE BEEN MADE. I WOULD RESPECTFULLY SUBMIT THAT THEY SHOULD BE GIVEN A CHANCE TO WORK. INDEED, THEY ARE WORKING. I AM CONVINCED THAT THE CURRENT FRAMEWORK, AND NOT NEW LAWS, REPRESENTS THE MOST APPROPRIATE AND EFFECTIVE MEANS TO ACHIEVE OUR SHARED COMMITMENT TO HAVE CONGRESS PLAY AN ACTIVE, EFFECTIVE ROLE IN THE OVERSIGHT OF UNITED STATES INTELLIGENCE ACTIVITIES.

THIS CONCLUDES MY STATEMENT. I AM PREPARED TO ANSWER YOUR QUESTIONS.

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON FOREIGN AFFAIRS

June 14, 1988

STATEMENT OF THE HONORABLE CLARK M. CLIFFORD

Chairman Fascell and members of the Committee:

I am pleased to appear before you today to offer my views on the subject of covert activities, and in particular the legislation under your consideration for improving the process whereby these activities are approved by the President and made known to the Congress. This is a subject of great significance to our nation's foreign policy and our system of government. It is also, as we have recently seen, a subject of serious potential abuse. Therefore, the Committee's efforts are both timely and vital.

As the Committee knows, covert activities have become numerous and widespread, practically constituting a routine component of our foreign policy. And with these activities have come repeated instances of embarrassing failure -- where the goals of the operations themselves were not fulfilled and unforeseen setbacks occurred instead. I believe that on balance covert activities have harmed this country more than they have helped us. Certainly, efforts to control these activities, to keep them within their intended scope and purpose, have failed.

We have reached the point now where we must reassess the very idea of conducting covert activities. If we are to continue with them and gain any benefit from them, we must find a way to keep them consistent with the principles and institutions of the Constitution and our foreign policy. If we determine that this cannot be done, then I say we are better off without covert activities entirely than with them out of control.

On this score, we must keep in mind what is meant by covert activities. These are only part, a very small part -- perhaps 2 or 3 percent -- of the intelligence activities of our government. Covert activities, in my definition, are active efforts to alter political conditions in foreign countries through financial, paramilitary, and other means. That the government should want to disavow responsibility for such activities is understandable.

Over the last year or so, the cost that covert activities can inflict on our system of government also has been clear. Whatever the specific actions or individual responsibility, the sale of arms to Iran and the diversion of profits from those sales to the contras in Nicaragua caused severe damage to our government and the institution of the Presidency. The President's credibility suffered drastically and with it the integrity of the nation's foreign policy.

One of the principal shortcomings of the Iran-contra affair was the failure of the President to notify the intelligence committees of the government's activities. The oversight process could have served a significant, salutary purpose: giving the President the benefit of the wisdom of those who are not beholden to him, but beholden like him directly to the people, and prepared to speak frankly to him based on their wide, varied experience. Had the President taken advantage of notifying Congress, he and the country might well have avoided tremendous embarrassment and loss of credibility.

The Iran-contra affair presents this Committee and the country with a crucial question: should the laws governing covert activities be changed?

To answer this question, we first might examine the attitude of President Reagan. In his letter to the Senate Intelligence Committee of August 7, 1987, the President said that the current laws are adequate and that any changes could occur by executive order. I strongly disagree.

In the Iran-contra affair, the President displayed an attitude that is antithetical to the oversight process. You will recall that the President signed a finding that explicitly instructed the Director of the CIA not to notify the Congress of the activity. For ten months, the Director and others involved abided by this instruction. In fact, the President finally notified the Congress only after the activity had become public knowledge. Much later, after the

Congress had begun its inquiry, the President in his letter to the Committee supported the concept of notification but insisted on two exceptions. These exceptions would relieve the President of the notification requirement in "cases of extreme emergency" and "exceptional circumstances." I suggest to this Committee that to permit these two exceptions would make the notification requirement meaningless.

Further evidence of the Administration's attitude is the Justice Department's December 1986 memorandum supporting the President's position in delaying notification for ten months. The memorandum offered the novel theory that the President may determine what is timely notice based on the sensitivity of the covert activity. According to this theory, the President would never have to inform Congress of a particularly sensitive activity.

Moreover, we find that this continues to be the legal theory of the Justice Department. In testimony before the Senate Intelligence Committee in December 1987, a Department representative made the following statement:

> There may be instances where the President must be able to initiate, direct, and control extremely sensitive national security activities. We believe this presidential authority is protected by the Constitution, and that by purporting to oblige the President under any and all circumstances, to notify Congress of a covert action within a fixed period of time, S. 1721 infringes on this constitutional prerogative of the President.

In other words, it is the attitude of the Administration that, whatever laws exist, the President may interpret them as he chooses. This is not the way that I understand our Constitution is supposed to work. So, my answer to the question confronting us today is that the laws governing the oversight process must be changed. And the changes must be specific, direct, and as clear as possible.

I wish to lend my full support to H.R. 3822, the legislation that the Committee is considering today. Late last year, I testified before the Senate Intelligence Committee and supported S. 1721, the companion bill to H.R. 3822, and earlier this year, I testified before the House Intelligence Committee concerning H.R. 3822. I understand that all of the committees have worked together on these bills, and I commend your cooperation, as well as its result. The legislation that you have crafted meets the need for change that exists in the important area of notification to the Congress.

H.R. 3822 would require the President to sign a written finding, setting forth the particulars of a covert activity, normally when approving it but in no event more than forty-eight hours afterwards. The legislation would require the President to provide the intelligence committees with the signed finding normally before the activity begins but in no event more than forty-eight hours after it is approved. The President could limit notification to the so-called Group of Eight, but he would have to explain why he was doing so.

Findings that purported to validate past activities or authorize illegal measures would violate the law.

I view these provisions as welcome and worthwhile improvements in the oversight process. And the Senate's approval of the legislation and the House intelligence committee's favorable report of it are positive steps that I encourage this committee to follow.

I would note that I recommended to the intelligence committees in my earlier testimony that the legislation be strengthened by including criminal sanctions for failure to notify Congress within the required period. Specifically, I proposed that a provision be added to H.R. 3822 prohibiting the continued expenditure of funds for any covert activity where proper notice was not given, and penalizing any government employee who knowingly and willfully violated or conspired to violate this prohibition. While the intelligence committees did not adopt this proposal, it should remain an important consideration for the future.

Finally, there are two questions concerning H.R. 3822 that arose during my previous testimony before the House and Senate committees and that you also may wish answered.

First, is H.R. 3822, particularly the specific-notice requirement, consistent with the Constitution? I have studied this question extensively. I am convinced of the constitutionality of requiring the President to provide notice of covert activities within forty-eight hours of approving them. There

is no basis in the Constitution for the Administration's claim of plenary Presidential power in foreign affairs; rather, Congress and the President share concurrent authority in this area according to the Constitutional system of checks and balances. It is entirely consistent with Congress' legislative and other, enumerated powers to establish reasonable procedural regulation of covert activities.

On this score, it bears emphasizing that the specific-notice requirement in H.R. 3822 is strictly procedural, not substantive. It does not dictate or limit what covert activity the President may approve or how or when the activity may occur. It simply says that the President must provide notice within a time certain. As the Committee knows, the oversight process does not give Congress a veto, but only a voice.

Notice is an obvious and essential component of oversight, and it is the least of what Congress may require in fulfilling its oversight function. After all, it was by act of Congress -- the National Security Act of 1947 -- that the CIA was established and exists today; and it was by this same act of Congress that covert activities were authorized and continue to occur. H.R. 3822 represents a refinement of Congress' previous reasonable procedural regulation of covert activity.

Second, is this the appropriate time to enact this legislation? Absolutely. Indeed, I believe that the

legislation is long overdue. We have gone through the agony of covert activity gone awry all too often. Change is essential.

I can recall some thirteen years ago testifying before the Select Committee to Study Governmental Operations -- the Church Committee -- regarding the gross abuses in covert activities that were the concern of that committee. In my testimony in 1975, I said:

> The lack of proper controls has resulted in a freewheeling course of conduct on the part of persons within the intelligence community that has led to spectacular failures and much unfortunate publicity. A new approach is obviously needed, for it is unthinkable that we can continue to commit the egregious errors that have caused such consternation to our friends and such delight to our enemies.

The Church Committee helped enact the 1980 Intelligence Oversight Act, and this certainly was a step forward. But today we know that it was not enough. Sadly, my words from 1975 are all too pertinent.

Now, the nation has endured yet another devastating blow to our stature and effectiveness. The Iran-contra affair demonstrated convincingly that the flexible requirement of the 1980 Act -- that Congress be notified of covert activity in a "timely fashion" -- is too easily eluded by expedience. The law must be made explicit and firm so that the oversight process functions and the nation benefits.

In my view, there is no excuse for failure to notify the Congress according to the law, and there should be no exception to compliance with such law. The purpose of this legislation is not to assume good faith but to ensure good government.

For many years the United States has offered leadership to the world because of our character as a nation and our devotion to freedom and the liberty of man.

We have great economic power.

We have unparalleled military power. But our standing in the world community rests mainly upon the confidence and trust that other nations have in us.

We do not hold the free world together at gunpoint.

It is mutual trust that binds us. And the vital element of that trust is our credibility.

Unfortunately, our credibility has been grieviously damaged this past year in many parts of the world.

It is incumbent upon all who are in positions of authority to take the necessary steps toward restoring our former position. This legislation is a splendid move in this direction, and will be of vital importance in reducing the possibility of another similar disaster.

Thank you.