HSSE
DOC
Y4.B 22/1:102-127

WHITE HOUSE EFFORTS TO THWART CONGRESSIONAL INVESTIGATIONS OF PRE-WAR IRAQ POLICY: THE CASE OF THE ROSTOW GANG

HEARING

BEFORE THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

MAY 29, 1992

Printed for the use of the Committee on Banking, Finance and Urban Affairs

Serial No. 102-127

PURDUE U. LIBRARY
APR 28 1993
U.S. DEPOSITORY

1013-A
93-204-P

Digitized by Google
Original from PURDUE UNIVERSITY

Digitized by Google
Original from
PURDUE UNIVERSITY

WHITE HOUSE EFFORTS TO THWART CONGRESSIONAL INVESTIGATIONS OF PRE-WAR IRAQ POLICY: THE CASE OF THE ROSTOW GANG

HEARING

BEFORE THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

MAY 29, 1992

Printed for the use of the Committee on Banking, Finance and Urban Affairs

Serial No. 102-127

U.S. GOVERNMENT PRINTING OFFICE

55-927 WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-040633-1

Digitized by Google

Original from PURDUE UNIVERSITY

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

HENRY B. GONZALEZ, Texas, *Chairman*

FRANK ANNUNZIO, Illinois
STEPHEN L. NEAL, North Carolina
CARROLL HUBBARD, JR., Kentucky
JOHN J. LAFALCE, New York
MARY ROSE OAKAR, Ohio
BRUCE F. VENTO, Minnesota
DOUG BARNARD, JR., Georgia
CHARLES E. SCHUMER, New York
BARNEY FRANK, Massachusetts
BEN ERDREICH, Alabama
THOMAS R. CARPER, Delaware
ESTEBAN EDWARD TORRES, California
GERALD D. KLECZKA, Wisconsin
PAUL E. KANJORSKI, Pennsylvania
ELIZABETH J. PATTERSON, South Carolina
JOSEPH P. KENNEDY II, Massachusetts
FLOYD H. FLAKE, New York
KWEISI MFUME, Maryland
PETER HOAGLAND, Nebraska
RICHARD E. NEAL, Massachusetts
CHARLES J. LUKEN, Ohio
MAXINE WATERS, California
LARRY LAROCCO, Idaho
BILL ORTON, Utah
JIM BACCHUS, Florida
JAMES P. MORAN, JR., Virginia
JOHN W. COX, JR., Illinois
TED WEISS, New York
JIM SLATTERY, Kansas
GARY L. ACKERMAN, New York

CHALMERS P. WYLIE, Ohio
JIM LEACH, Iowa
BILL McCOLLUM, Florida
MARGE ROUKEMA, New Jersey
DOUG BEREUTER, Nebraska
THOMAS J. RIDGE, Pennsylvania
TOBY ROTH, Wisconsin
ALFRED A. (AL) McCANDLESS, California
RICHARD H. BAKER, Louisiana
CLIFF STEARNS, Florida
PAUL E. GILLMOR, Ohio
BILL PAXON, New York
JOHN J. DUNCAN, JR., Tennessee
TOM CAMPBELL, California
MEL HANCOCK, Missouri
FRANK D. RIGGS, California
JIM NUSSLE, Iowa
RICHARD K. ARMEY, Texas
CRAIG THOMAS, Wyoming
SAM JOHNSON, Texas

BERNARD SANDERS, Vermont

Digitized by Google
Original from PURDUE UNIVERSITY

CONTENTS

Hearing held on: Page
May 29, 1992 1
Appendix:
May 29, 1992 97

WITNESSES

FRIDAY, MAY 29, 1992

PANEL 1:
Gejdenson, Hon. Sam, a Representative in Congress from the State of Connecticut; Chairman, Subcommittee on International Economic Policy and Trade, Committee on Foreign Relations 7
Rose, Hon. Charlie, a Representative in Congress from the State of North Carolina; Chairman, Subcommittee on Department Operations, Research and Foreign Agriculture, Committee on Agriculture 3
PANEL 2:
Mendelowitz, Allan, Director, General Government Division, U.S. General Accounting Office; accompanied by Phil Thomas, Director, International Trade and Agriculture; Susan Pursell; Scott Einhorn; and Robert Hunter, Associate General Counsel 40
PANEL 3:
Archibald, Jeanne S., General Counsel, U.S. Department of the Treasury 65
Cifrino, Michael, Senior Attorney, Office of the Deputy General Counsel, International Affairs and Intelligence, U.S. Department of Defense; accompanied by Judge Michael Luttig, Judge, Ninth Circuit, Court of Appeals [former Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice] 69
Green, Col. Fred K., Legal Counsel for the Chairman, Joint Chiefs of Staff, U.S. Department of Defense 59
Rindskopf, Elizabeth, Office of the General Counsel, Central Intelligence 54
Raul, Alan, General Counsel, U.S. Department of Agriculture 55
Williamson, Edwin, Legal Advisor, U.S. Department of State 56
Willkie, Wendell, General Counsel, U.S. Department of Commerce 60

APPENDIX

Prepared statements:
Gonzalez, Hon. Henry B. 1
Wylie, Chalmers P. 98
Johnson, Sam 100
Gejdenson, Sam 115
Rose, Hon. Charlie 106
Archibald, Jeanne S. 214
Cifrino, Michael 221
Green, Col. Fred K. 226
Mendelowitz, Allan 204
Raul, Alan 230
Rindskopf, Elizabeth 233
Williamson, Edwin 235
Willkie, Wendell 242

12543
Digitized by Google
Original from PURDUE UNIVERSITY

IV

Additional Material Submitted for the Record

	Page
Banking Committee Staff Memos on Rostow Gang	249
Gonzalez Floor Statements on Rostow Gang	256
Letters of Invitation to Testify Before the Banking Committee	276
Barnard, Hon. Doug, a Representative in Congress from the State of Georgia; Chairman, Subcommittee on Commerce, Consumer, and Monetary Affairs of the Committee on Government Relations	129
Dingell, Hon. John D., a Representative in Congress from the State of Michigan; Chairman, Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce	152
Bush, President George, Refuses To Allow White House Staff to Testify at Banking Committee Hearing	304
Luttig, Judge Michael, Justice Department, Refuses to Testify At Banking Committee Hearing	314
U.S. Department of Agriculture Documents Related to Rostow Gang	317
U.S. Department of Commerce, Related Rostow Gang Documents (submitted at the request of Congressman Sam Gejdenson)	404
Barnard, Hon. Doug, Rostow Gang-Related Documents Dealing With Iraq Export Licensing Records	362
U.S. Customs Department-Related Rostow Gang Documents	499
CIA-Related Rostow Gang Documents	502
U.S. State-Related Rostow Gang Documents	506
Additional Rostow Gang Documents	518
Rostow Gang-Related Press Article	535
Rostow Involved in Thwarting GAO Investigation of Panama, *Washington Post,* March 12, 1989	537

Digitized by Google

Original from
PURDUE UNIVERSITY

WHITE HOUSE EFFORTS TO THWART CONGRESSIONAL INVESTIGATIONS OF PRE-WAR IRAQ POLICY: THE CASE OF THE ROSTOW GANG

FRIDAY, MAY 29, 1992

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:45 a.m., in room 2128, Rayburn House Office Building, Hon. Henry B. Gonzalez [chairman of the committee] presiding.

Present: Chairman Gonzalez, Representatives Vento, Frank, Hoagland, Moran, Slattery, Wylie, Bereuter, Roth, and Johnson.

The CHAIRMAN. The committee will please come to order. The Chair apologizes. This is the second time I have been late to a hearing for the same reason. In fact, I told Chairman Rose that it would be at 10, and I was sitting there thinking it was 10, didn't bother to check the revision.

I ask unanimous consent to place my opening statement at this point in the record, and if Mr. Wylie concurs, we will do the same and recognize our colleagues and get it going.

OPENING STATEMENT OF HENRY B. GONZALEZ, CHAIRMAN, COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Hearing on the Administration's Efforts to Frustrate Congressional Investigations of U.S. Policy Towards Iraq

We meet today to hear testimony related to the Bush Administration's efforts to thwart Congressional investigations of its pre-invasion policy toward Iraq. During its Banca Nazionale del Lavoro (BNL) investigation the Banking Committee unearthed documents indicating that the White House and National Security Council (NSC) formed a high level interagency lawyers group to discourage, frustrate, evade and thwart Congressional investigations of Iraq policy. This lawyers group, which I call the Rostow Gang, established a process whereby a Congressional Committee had to hurdle a series of increasingly difficult barriers in order to obtain useful information on Iraq from executive branch agencies.

Ostensibly, the function of the group was to review documents and information and to establish a "coordinated" approach for the dissemination of that information. An NSC memo states as follows:

> "The NSC is providing coordination for the Administration's response to Congressional document requests for Iraq-related materials. The process is intended to be a cooperative one."

Digitized by Google
Original from PURDUE UNIVERSITY

While on the surface it appears the Rostow Gang was created to ensure cooperation with Congressional investigations, in reality the true purpose and effect was to have the White House carefully choke off the flow of information to Congress. The same NSC memo states:

> "When access to documents may be recommended, such recommendations should be circulated to this group for clearance."

This delay mechanism also gave the NSC the power to reverse an agency's decision to provide access to documents. Committees were also being discouraged from obtaining physical possession of the Iraq-related documents, thus making it impractical to conduct an investigation. The April 1991 memo states:

> "A recommendation to provide access should be restricted to members only subject to these conditions: no document may be retained; notes may be taken but should be marked for classification by the department or agency in question."

As the quote indicates, the NSC even wanted to make it difficult for Members of Congress to look at or carefully study Iraq-related documents. A February 1991 Commerce Department letter to the former Undersecretary for Export Administration further reveals the purpose of the Rostow Gang. It states:

> "In sum, the printout provided to Mr. Barnard (Chairman of a Congressional Subcommittee) is a summary reference document. . . . The printout is also consistent with Fifth Floor (Secretary Mosbacher's office) guidance and requests from both State (Department) and the NSC that no additional information be provided that does not directly address the Committee's request."

Translated, top level "guidance" means that if a Committee does not know that a document exists, the agency should not volunteer the information.

The Committee is disappointed that the President's General Counsel, Mr. Boyden Gray, and NSC's Counsel, Mr. Nicholas Rostow, and Judge Luttig, formerly with the Justice Department, have decided to spurn the Committee's request that they testify about their roles in the Rostow Gang. As I stated last week, the Committee will not be stonewalled by the White House and if need be, I will ask for subpoena authority in order to obtain the necessary information and witnesses that are necessary for the Committee to conduct its investigation.

The Administration's efforts to stall and frustrate Iraq-related investigations did not affect this Committee alone. Our first distinguished witnesses, Chairman Charlie Rose and Sam Gejdenson, will show the Administration was doing everything within its power to frustrate Iraqi investigations.

The Committee has also received written testimony from Chairman John Dingell and Chairman Doug Barnard which demonstrates that their investigations of Iraq policy ran into similar roadblocks.

There is no doubt that the various agencies have a legitimate right to work together to ensure coordination, but clearly the

Digitized by Google

Original from
PURDUE UNIVERSITY

Rostow Gang was not designed as a cooperative mechanism. The real motive was to allow the President and his top advisors to avoid potentially embarrassing revelations about their handling of Iraq policy and maybe even criminal activity.

I look forward to the testimony of our witnesses.

The CHAIRMAN. Mr. Wylie.

Mr. WYLIE. That is all right. I will have an opening statement before the next panel maybe, Mr. Chairman.

[The prepared statement of Mr. Wylie can be found in the appendix.]

The CHAIRMAN. Chairman Rose, thank you very much. I, again, apologize for coming late, but you will recall that when you asked me I told you it was at 10, so thank you again.

STATEMENT OF HON. CHARLIE ROSE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, CHAIRMAN, SUBCOMMITTEE ON DEPARTMENT OPERATIONS, RESEARCH AND FOREIGN AGRICULTURE, COMMITTEE ON AGRICULTURE

Mr. ROSE. Thank you, Mr. Chairman, and members of the committee. We appreciate the opportunity to appear before you today to discuss the Reagan and Bush administrations' efforts to assist the country of Iraq prior to Iraq's invasion of Kuwait and the subsequent efforts of both the Reagan and the Bush administrations to deter Congress from a full investigation of these efforts.

First, I would like to commend you, Mr. Chairman, for all the work you have done to expose the depth of the coverup by various Federal agencies. I say coverup because I think you would agree with me that no Federal agency has been straightforward in discussing what either the Reagan administration or the Bush administration's policy was toward the country of Iraq and what steps were taken either legally or illegally to accomplish these goals.

I think you know that your staff and my staff have worked together extensively for some period of time sifting through various documents and discussing my investigation of the U.S. Department of Agriculture's Export Credit Guarantee Program. I am glad that we have been able to cooperate in this matter, and I look forward to continuing to work with you.

Next week I will testify before the Judiciary Committee, Chairman Jack Brooks, to discuss the necessity of appointing an independent counsel to fully investigate what has come to be known in some of the national media as "Iraqgate." I am pleased that the Judiciary Committee has decided to go forward and investigate the concerns I have raised regarding the Banca Nazionale del Lavoro matter, and it is my hope that you, too, will assist him in this regard.

We must pool all of the resources that we have and provide the Judiciary Committee with all of the information we have gathered so they can make an informed decision on the need for the independent counsel. I think you would agree with me that there is a need for such an individual, and I believe this is the best entity to address all the issues that we have raised.

Digitized by Google
Original from PURDUE UNIVERSITY

You asked me to summarize the investigation that I have conducted through my subcommittee chairmanships on the Agriculture Committee; first, as chairman of the Tobacco and Peanuts Subcommittee and now as chairman of the Department Operations Research and Foreign Agriculture Subcommittee. I would like to submit for the record as soon as it is prepared a chronology of what I believe are the various steps taken by Federal agencies to either obstruct or limit my congressional investigation, and I will include in the chronology administration denials, particularly where we can establish that the administration actually had knowledge of efforts supporting arms sales to Iraq. I believe that those denials helped obstruct my congressional investigation.

Unfortunately, I was not able to have this information for you today, but I am prepared to give you a brief summary of the investigative efforts I took beginning in 1986. I want to stress for the record that beginning in 1986, and I would like to place now two letters in the record at this point, Mr. Chairman.

[The information referred to can be found in the appendix.]

I began questioning the United States Department of Agriculture about sales of foreign tobacco to Iraq. This is vitally important, because I intend to establish specifically before the Judiciary Committee that the Reagan administration and relevant Federal agencies involved in the decision to provide Iraq with economic assistance had knowledge that individuals involved in agricultural transactions were also involved in arms transactions. The Bush administration also had this information, and officials at the Department of Justice during the Bush administration have also been aware of the same information.

Again, I made my first inquiry concerning sales of tobacco under USDA's Agricultural Export Credit Guarantee Program to Iraq on June 11, 1986. The response from the United States Department of Agriculture was that I basically did not understand international business transactions and that Iraq was merely attempting to make a better deal. The record should reflect that this was the first official inquiry made concerning Iraq and Agricultural Export Credit Guarantee Programs and that officials in the Reagan administration very clearly told me that I was wrong to be concerned about the sale of agricultural commodities to Iraq in 1986. I did not let the statements from USDA deter me, and I continued to investigate this matter with very limited resources.

I had two staff members on the Tobacco and Peanuts Subcommittee. In addition to the normal duties associated with managing two complex agricultural commodity programs, I and my staff continued to investigate the matter. It was not until the summer of 1988 that I made what I considered to be one of the first important breakthroughs in this case. I learned that summer that all of the tobacco dealers had obtained financing through an entity called Banca Nazionale del Lavoro in Atlanta, and also that USDA's office of the inspector general had continued the investigation begun by me in 1986. In other words, Banca Nazionale del Lavoro was the entity through which tobacco dealers were receiving their loan guarantees for shipments of tobacco to Iraq.

I only learned this because the GAO, in assisting with this investigation, learned that the inspector general at Agriculture was in-

Digitized by Google
Original from PURDUE UNIVERSITY

vestigating information I turned over to USDA concerning the individuals who had shipped foreign tobacco to Iraq. To this day I do not know which individuals sent me the anonymous letter in 1987 from Paris, France, detailing the individuals shipping foreign tobacco to Iraq, but the American people truly owe this person a debt of gratitude.

Let me add that USDA's office of the inspector general is to be commended for their dedication to the full and fair investigation of ag credit programs involving Iraq. Despite obstacles placed in their path by USDA employees, and I believe these obstacles were deliberately placed in their path at the direction of higher authorities, the OIG has done a credible and worthwhile job of addressing the concerns I have raised since 1986. For all of 1988 USDA took a step that I believe shows the absolute complicity of this government in arms sales to the country of Iraq.

Not only did USDA change the policy to permit practices which I believe encouraged extra cash or extra sales services which are nothing less than bribes, but USDA insulted the intelligence of the American public, the American farmers, and Congress through this effort. Some 30 odd colleagues of mine on the Agriculture Committee joined me in decrying USDA's blatant attempt to make it easier to violate the tenets of the Agricultural Export Program.

What was the response of the U.S. Secretary of Agriculture? You just don't understand, was what he told my colleagues on the Agriculture Committee. Now, where had I heard that before? I must admit that I was intrigued by the rather common response from USDA, and hearing records of the Tobacco and Peanuts Subcommittee beginning in October 1988 dealing with USDA's export credit guarantees programs are rife with feigned ignorance by USDA employees, as well as USDA's assertions that Congress merely failed to understand that there was nothing wrong with executive branch dealings with the country of Iraq.

The transcripts of hearings I conducted as chairman of the Department Operations Research and Foreign Agriculture Subcommittee showed that USDA continues to deny the obvious. The discussions concerning the 1990 Farm bill wherein high ranking officials from USDA attacked me and my staff because we sought to regulate those export credit guarantee programs further confirmed the campaign waged by this government to cover up the extent to which this misuse of USDA's agricultural credit guarantee programs was encouraged, if not fostered by the executive branch of our government.

The administration's opposition in 1990 to legislation offered by my colleague, Dan Glickman, eliminating Iraq's eligibility in USDA's export programs also is further confirmation. As I have diligently searched for records along with USDA's office of inspector general and the GAO, plea bargaining arrangements have been struck with individuals who knowingly and willfully engaged in much more than normal agricultural trade. The fact that some of these pleas were entered in my own hometown of Fayetteville, NC, is even more repugnant to me because they sought to appease my interest in this matter in my own backyard. Thinking that I was merely interested in this matter for reasons of publicity, the Department of Justice even named my subcommittee and an obstruc-

Digitized by Google
Original from PURDUE UNIVERSITY

tion of my subcommittee's investigation in the infamous BNL indictment.

My friends, that just doesn't cut it for me. I don't care how many times I am mentioned in the press releases. What I care about is the fact that the Department of Justice has deliberately broken up what may be one of the biggest RICO cases, white-collar criminal cases, as Dick Thornburgh called it, and failed to follow through because they know what is hidden behind the curtain. What I care about is that the U.S. attorney in Atlanta is on record as saying to the Associated Press that he saw no reason to recuse himself from the BNL matter despite the fact that he had very recently represented Matrix-Churchill, a Treasury Department identified Iraqi arms dealer, prior to his appointment as U.S. attorney.

What I care about is that the assistant U.S. attorney in Atlanta supervising the BNL case has written a damaging letter to the Customs Service which effectively destroys the Federal Government's case against Matrix-Churchill. What I care about is various Federal law enforcement agencies harassing what I consider to be a very strong, logical, centered witness with solid information on Iraq arms deals involving misuse of agricultural programs monies. What I care about is the failure of the government to vigorously pursue the Matrix-Churchill case.

I could go on and on, but I think I can identify more of these issues for you in a more cogent fashion when I finish the chronology I have promised you. My farmers in North Carolina are owed an explanation, my colleagues on the Ag Committee and Congress are owed an explanation. You, Mr. Chairman, are likewise owed an explanation.

What I mean by this is that we need to know how, when, and why the decision was made to permit this misuse of agricultural monies to funnel military assistance to Iraq. The families in North Carolina, and farmers across this Nation who lost their children in the Iraq war also are owed an explanation, because how on Earth could this government, namely the Reagan and Bush administrations, create the enemy we would later fight against and deny it? There is no logical explanation for this dangerous game, particularly where the stakes were so high. There is no farmer in my district or this Nation, for that matter, who can afford to arm the country of Iraq or any country, for that matter.

This government has no right to do this, especially because we in Congress were misled and just plain lied to. The worst of it is that this has continued and you, Mr. Chairman, know of what I speak. You can drop 1 million bombs on the United States dual use or military use equipment that found its way to Iraq through an agricultural loan guarantee, but the paperwork remains, and when that paperwork is fully and finally examined, this Congress, like the Italian Parliament has done recently, will conclude that complicity is a nice term for what transpired between our executive branch and the country of Iraq over the last 10 years.

Finally, today's *Washington Post* carried a story regarding the former manager of the BNL branch in Atlanta, Christopher Drogoul. I believe we should look at that article for further confirmation of this administration's effort to limit disclosure in the BNL case. As the *Washington Post* stated, the government has apparent-

Digitized by Google
Original from PURDUE UNIVERSITY

ly offered Mr. Drogoul a 20-year deal, and this is clearly further evidence of the extent of the coverup.

Mr. Drogoul, as Judge Marvin Shoob so eloquently stated, could not, as a branch manager, have moved $4.5 billion in the fashion that was done without some type of participation by people in this country and outside of this country. The Federal judge, with many years of experience, knows there is more to this story, and I applaud Mr. Drogoul's efforts to tell the whole story next week on Tuesday morning. It is time we heard it, and I am comforted by the Justice Department's promise to pursue inquiries that might arise from Drogoul's statements next week, because we already know that the government has deliberately chosen not to pursue the BNL case fully in the first instance. Mr. Chairman, thank you for the opportunity to be here today.

[The prepared statement of Mr. Rose can be found in the appendix.]

The CHAIRMAN. Thank you, Chairman Rose. I wish to acknowledge the fact that you, from the very beginning, have enabled the committee and its staff, particularly in the case of BNL, to do the work and fulfill its responsibility over on our end of jurisdiction, and we owe you a very deep debt of gratitude. I want to acknowledge it. Do you have time constraints? If you do, we could go on ahead and ask you questions, but if not and you have no objection, we will recognize Chairman Gejdenson, who is chairman of the Subcommittee on Foreign Affairs on Economic Policy and Trade, and who was one of those lonely voices at the very beginning and I guess even before we had any indication as to the contrived dimensions of this mess.

Mr. Chairman, thank you very much.

STATEMENT OF HON. SAM GEJDENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT; CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE, COMMITTEE ON FOREIGN AFFAIRS

Mr. GEJDENSON. Thank you, Mr. Chairman. I think one of the things that is astounding to all of us is that so many committee jurisdictions have come into play here, and I think as you sit back and examine the information that you are getting this morning and that you have gotten to date, what is clear is that this action by the administration was an action that utilized virtually every arm of a modern government. Not just the intelligence agencies, not just the State and Commerce Departments, but the Agriculture Department, and the Justice Department to facilitate a program of aiding and abetting Saddam Hussein.

My committee's activities began over 1½ years ago when we were concerned about the Export Administration Act and whether or not the Commerce Department had done its job in precluding items that could be used in military systems from being shipped to Saddam Hussein. As a matter of fact, there was a little bit of what we thought was interagency back-stabbing going on that rumors kept leaking out that it was a sloppy Commerce Department, a Commerce Department that was in such a hurry to have American

Digitized by Google
Original from PURDUE UNIVERSITY

companies profit from the sales of high-technology items that led to Saddam Hussein being able to purchase many of these items.

What we found in our investigation and what is further demonstrated in NSD–26 that we will be partially releasing today is that this wasn't a bunch of bureaucrats at the Commerce Department asleep. This was the national policy of this government, directed by the President of the United States, and that what Saddam Hussein got, he got intentionally. Then this administration used every vehicle within the government, every arm of the government to make sure that Saddam Hussein got what he wanted. It clearly emboldened Saddam Hussein, and it clearly showed that this administration never sent him a message that there was a limit to his brutality.

The Subcommittee on International Economic Policy and Trade has for over 1½ years been investigating the relationship between the United States and Iraq prior to the war in the Persian Gulf. The administration has at every turn tried to block, delay, obscure, and interfere with this investigation. One of my staff argued that they had more defensive plays than the Washington Redskins. Now the administration is saying we made a few mistakes in Iraq, but that is behind us.

I am not sure it is appropriate to just simply dismiss George Bush's prewar coddling of Saddam Hussein simply as a mistake. It was a major foreign policy blunder of the first order. It put Americans in harm's way. It clearly created a situation where more Kurdish citizens—men, women, and children—died, and it is clear that the administration at no time sent a message to Saddam Hussein that there was a limit to his brutality or aggression. The administration has attempted to deny to the American people essential facts regarding our prewar embrace of Saddam Hussein through classification of documents even to this day.

Last week I asked the administration to declassify 93 internal documents regarding its prewar policy on Iraq. Next week is the deadline for the lion's share of the documents to declassify. Our subcommittee will carefully examine the administration's responses and pursue the investigation.

Mr. Chairman, the administration has criticized you harshly for releasing classified information. Now the administration has put itself on the hot seat. If they criticize you for releasing documents and give my committee the runaround when I play by their rules, they will have created a Catch-22 situation and demonstrate their intention to withhold this information from the American people as they tried to withhold it from the U.S. Congress.

In response to my request, the administration within the last 48 hours has declassified a handful of documents or portions thereof. One such document is the National Security Directive 26 written to the Vice President, the Secretaries of State and Defense, among others, and signed by the President of the United States, George Bush, on October 2, 1989. A copy of the unclassified version of this document is attached to my testimony. Unfortunately, the White House has redacted large portions of this document, and I think as I just showed you, the last page of this document, the only thing that hasn't been redacted is the President's name. Nevertheless, the information contained in the unclassified portion is significant.

Digitized by Google
Original from PURDUE UNIVERSITY

Under the heading of "Iraq" on page 2, the President makes a series of remarkable statements, and if the committee staff will look, it is the one that has the section on the top redacted. First, he states in quote, "Normal relations between the United States and Iraq would serve our long-term interests and promote stability, both in the gulf and the Middle East."

What followed this attempt to achieve stability in the region by moving to normalize relations with Iraq? What happened after this? Ten months after the date that the President signed this document Saddam Hussein invaded Kuwait. Then the President states, and I quote, "The United States Government should promote economic and political incentives for Iraq to moderate its behavior and to increase our influence in Iraq." There was virtually nothing in President Bush's experience that should have led him to the belief that such coddling of Saddam Hussein would produce positive results.

From the time the United States took Iraq off the terrorist list in 1982 and provided Iraq with a panoply of militarily significant equipment and technology, handed over $5 billion worth of CCC agricultural credits, Iraq harbored and supported all manner of terrorists, and 10 months after the date of this signature by the President, Saddam Hussein invaded Kuwait. The President continued, and I quote, "At the same time the Iraqi leadership must understand that any illegal use of chemical or biological weapons will lead to economic and political sanctions for which we would seek the broadest support from our allies and friends." The President was a bit late.

Fourteen months earlier Saddam Hussein had spewed poison gas on his own people, killing 5,000 innocent men, women, and children. The administration not only refused to impose sanctions on Saddam Hussein after butchering these civilians, it sent its staff up to the Hill, including the Secretary of State, to fight any congressional efforts to criticize or condemn Iraq. It was an incredible message that we not only sent to Saddam Hussein, but to other butchers around the world that the United States would sit idly by when it suited our purposes after 5,000 men, women, and children had been gassed.

The President of the United States states, and I quote, "We should pursue to seek to facilitate opportunities for U.S. firms to participate in the reconstruction of the Iraqi economy, particularly in the energy area, where they do not conflict with our nonproliferation and other significant objectives." The President of the United States was interested in rebuilding the Iraqi economy, and in the field of energy no less, which 10 months later fueled and funded Iraq's war effort against the United States.

Finally, the President of the United States states, and I quote, "Also as a means of developing access to and influence with the Iraqi defense establishment, the United States should consider sales of nonlethal forms of military assistance, for example, training courses, medical exchanges on a case-by-case basis." Ten months to the day after the President of the United States, George Bush, said that we should provide military assistance to Iraq, Saddam Hussein invaded Kuwait. It is entirely possible that American soldiers were confronted on the battlefield by those whom the

Digitized by Google
Original from PURDUE UNIVERSITY

United States had provided training to. Perhaps what is most remarkable is that George Bush issued this directive 14 months after the end of the Iran-Iraq war.

Even to the extent that the administration could argue that a tilt toward Iraq was justified while the Iran-Iraq war was going on, it seems to make no sense at all to continue to strengthen Saddam Hussein in the Middle East where he was a predominant military force once he had defeated Iran. The continuing classification of documents is only the latest chapter in a coordinated attempt to thwart the subcommittee's inquiries. The administration withheld witnesses from the committee, documents from the committee that the committee was legitimately entitled to, and did not turn them over until we issued subpoenas. Secretary of State Baker only provided the requested documents under threat of subpoena and after extensive negotiations with the committee.

In fact, Secretary Baker violated his promise that he made to the committee. The Secretary did not provide all the documents requested. In addition, the State Department admits that it withheld relevant portions of summaries of Secretary Baker's morning meetings. Many, if not most of the documents provided to the committee had significant portions redacted. In light of Secretary Baker's withholding of important information for Congress, it becomes harder to accept the statement in his letter to the committee that "we have nothing to hide regarding the policy in this area." A copy of that letter is attached to my testimony as well.

In addition, in this letter Secretary Baker imposed numerous conditions under which the documents would be provided. Secretary Baker would allow only four Members of Congress to read the documents, four members of the committee and no others. Other members of the Foreign Affairs Committee and other Members of Congress were not allowed to see these documents. The administration also tried to thwart the subcommittee's investigation by not providing witnesses, by possibly firing witnesses from the Commerce Department who testified before the committee.

A witness who testified before the committee only days earlier indicating he was nervous that his testimony would cost him his job, several days after having testified before the committee miraculously submitted his resignation and resigned from his position at the Commerce Department.

In April, 1991, Secretary Dennis Kloske testified before the subcommittee. He stated that in the spring of 1990 he attended two meetings in the White House at which he recommended that the United States restrict the flow of technology to Iraq. His recommendations were rejected. Secretary Kloske told us prior to the hearing that at a meeting it was stated that neither Secretary Baker nor President Bush wanted to single out Iraq for sanctions. Mr. Kloske was fearful of testifying on those points publicly. Nevertheless, again, within 48 hours of his testimony it was announced that Mr. Kloske would be parting his ways with the administration. Either it constituted a coincidence of miraculous proportions that the day after or so that he testified before the committee that suddenly he wanted to leave his job or was a direct result of that testimony.

Digitized by Google

Original from
PURDUE UNIVERSITY

Six weeks later when we finally got Under Secretary Kimmitt, presently the Ambassador to Germany, to testify before the committee, Mr. Kimmitt, who is known as a rather bright and capable individual within the administration, could remember virtually nothing of the meetings that had occurred. His amnesia seemed to cover almost everything that had happened at those meetings and that led up to the dismissal or the resignation of Mr. Kloske. In fact, the fact that President Bush chose to romance the leader he later compared to Adolf Hitler was a huge miscalculation. Clearly, it is time for the administration to end its concerted attempt to withhold information from the Congress and the American people. This is a democracy. The people and their duly elected representatives have a right to know what led up to our war with Saddam Hussein.

As you look over the series of events, Saddam Hussein must have been the most surprised individual in the world when the United States responded to his invasion of Kuwait. In 1982, the U.S. Government took him off the terrorist list while he still harbored terrorists. When an American ship was attacked by Iraqi planes, the United States and Secretary Weinberger at the time took great pleasure in blowing up the Iranian oil wells. When 5,000 Kurds were killed, we heard not a peep from the administration about the death of these innocent men, women, and children, and when 6 days later, as my colleague pointed out, Mr. Glickman, others, and myself had an amendment on the floor to cut off the loan guarantees to Iraq, the administration opposed the legislation.

It seems clear to me that what we had here was we never sent Saddam Hussein the message that he ought not invade Kuwait. Forget April Glaspie, forget the private letters between the President and their descriptions. In the public statements from the State Department Margaret Tutweiler, and I can't give you the exact quote, but it seems to me my recollection is pretty accurate, was that we had no defensive treaty with Kuwait and that we didn't get involved in Arab land disputes. We need to air all that was involved here: Why those companies that may have violated American laws weren't prosecuted, why we decided to coddle this criminal in the Middle East, and what was the result of that policy that extended for over 8 years? Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Chairman Gejdenson. Well, just to say thank you doesn't adequately describe the feeling I have had for some time for both of you gentlemen. Also I ask unanimous consent that statements prepared for this occasion by Chairman Dingell and our colleague, Chairman Doug Barnard of the Subcommittee on Government Operations, be placed in the record at the conclusion of Chairman Gejdenson's testimony.

[The prepared statements of Messrs. Dingell and Barnard can be found in the appendix.]

You have very well outlined, in fact, you anticipated the only possible questions I would have had other than some general judgmental questions I am going to ask you, and we really owe you a great debt of gratitude, because in your own jurisdictions you have done such a great job.

As they coaligned with our concern about the banking system, the lack of regulatory laws which we have been working on in my

Digitized by Google
Original from PURDUE UNIVERSITY

case since 1975 have been most helpful. But the biggest worry that I personally have, and which I haven't even had a chance to pursue it with the staff, is that I am sure there are dozens of other BNL and BCCI cases out there. We also have this mishmash of a system, if you want to call it that, that continues to exist. In the testimony that we heard last week, the Fed's representative, I believe it was Mr. Kelley, stated that nothing had changed as far as the procedures and the meetings and also the decisions and the decisionmaking process. I found this to be very disturbing because I know that it is impossible for our main monetary setting authority, the Federal Reserve Board, to do a job of setting the monetary policy for this country without having a jurisdictional ability to know all of these extraterritorial transactions which are going on, and the offshore activities that coincide with these banks such as BNL, BCCI, and others. So that is the standpoint that we are looking at.

But where we have joined together here and I will be more than honored to join you, Chairman Rose, because you have been ahead of us and God willing, I will be there shoulder to shoulder with you before Chairman Brooks Tuesday, June 2, and in your jurisdiction, Mr. Gejdenson on Foreign Affairs. I am glad to hear that you are going to pursue this as well. Here we are respectful of each other's jurisdiction, and we have enough work on our own without having to worry about making incursions into each others.

But there is one question I wanted to ask, because on a personal basis you know our officials involved, and you have the best of feeling on the personal basis. It is very difficult to answer these contradictions. In your opinion, what do you think was the motivation behind the administration's efforts to obstruct or thwart the congressional oversight of the United States policy toward Iraq not only in your jurisdictional side, but on the financial and international financial and domestic financial side?

Do you believe it was no more than just embarrassment in hindsight to see a mistake in policy?

Mr. ROSE. Mr. Chairman, I think it is probably a number of things. I suspect that the Agricultural Loan Program, the GS–102, –103 Programs were chosen as a method for funneling economic aid of various sorts to Iraq because it was sort of a sleepy little program over in one corner of USDA that not a whole lot of attention had ever been paid toward. I think they were probably very concerned all along, especially now that it is out in the open, that Israel not get wind of all the aid that was being funneled into Iraq. They didn't want to get Israel upset.

I think probably the biggest problem they have got now with coming clean on what their policy was, what we find is—or what we are finding in companies like Kennametal, for example, is that these people who were running the company, in my opinion, felt like they could do just about anything to help Iraq and not have to comply with other laws such as getting export licenses or properly reporting what they were doing with dual use items that were being sold.

I think the embarrassing point for this administration is that the NSD–26 clearly sets out what the policy was. That word went out through the administration and they went upon a course of making it happen quietly without getting attention, and some people in

Digitized by Google
Original from PURDUE UNIVERSITY

some agencies allowed things to get shipped without export licenses that were clearly dual use items. The Kennametal Co., in Latrobe, Pennsylvania, sold machine tool systems and gave us, from their records, drawings of artillery shell fuses that their machine tool systems were designed to make. It is a little hard to say you didn't know that the machine tools were going to be used in a military fashion if you have the drawings in your files.

Now that kind of thing has never been pursued by the Justice Department. As a matter of fact, the assistant U.S. attorney in Atlanta wrote the company a letter and said we don't think you violated any law. That is what caused them a lot of press attention. So simple answer, they are embarrassed about the way in which NSD–26 was carried out, and they don't want the American public to find it out.

Mr. GEJDENSON. Mr. Chairman, I would just like to add two things. I think the chairman is right. I think clearly this document with the President of the United States' signature means that you can't write this off on a handful of bureaucrats back in some agency. This is national policy. It wasn't an accident that Commerce officials let things go. It was the intentional policy of the United States to support and assist the Government of Iraq and the Presidency of Saddam Hussein.

Additionally, this does not stand with some kind of hindsight in a foreign policy leaked discussion. This can't stand the test of showing it to the American people. If the American people forget what we have got here today, in some ways NSD–26 is the most dramatic because it has the President's signature, but the things we are still fighting to get released, further demonstrate what a failure this policy was, and they should have known it at the time.

Mr. ROSE. Mr. Chairman, just one more footnote. I think this document is the key that Mr. Gejdenson has brought forward. I think this is the trunk of the tree, and all the other things are branches and fruit that come out from that, and they are embarrassed at the way this was carried out.

The CHAIRMAN. Well, my compliments to you. You know, I may have mispronounced your name because whenever we see each other I don't call you by your last name. I know you as Sam, but it doesn't sound dignified this morning.

Mr. GEJDENSON. You can call me Sam, Mr. Chairman. It is a good name, coming from Texas, I think.

The CHAIRMAN. Well, you know, there are two good solid American surnames, but actually I compliment you. We couldn't get that document, and I will tell you the truth, you know, I have been either given credit or blamed, whichever point of view. But had I gotten this document, I probably would not have put that in the *Congressional Record* because it was NSC. So that leads to the second and final question.

Do you feel the classifications assigned to the documents that your committee requested merited the national security classification they received by the administration?

Mr. ROSE. Mr. Chairman, I had the privilege of serving on the Intelligence Committee when it was first formed in 1977, and what I have learned and developed as an opinion back then carries forward in everything that I have seen here. Some administration

Digitized by Google
Original from PURDUE UNIVERSITY

agencies would classify their—the weekly cafeteria menu if they could. I think very definitely they have gone far overboard in classifying items regarding this whole Iraqi business for only one reason, and that is to keep it out of the public view, and I think you have met the sting of that yourself, and I think we in the Congress are very proud of you for standing up, and I think we can all work together.

There are not enough hours in the day, not enough committee staff on the Hill for us to cover this whole thing, and we are just going to have to divide the work up and work the best we can. I believe the Judiciary Committee will create an independent counsel, and in my opinion this is a lot bigger scandal than Iran-Contra, Mr. Chairman, because I think it involves some of the biggest corporations in America.

We have run across some frightening examples of intimidation by large corporations of major network news organizations, threatening them with billion-dollar lawsuits if they even mention that they were involved in selling equipment to Iraq. We have found tobacco companies in North Carolina, in Winston-Salem, NC, who were supposed to be shipping tobacco to Iraq who we have on their letterhead lists of mortar shells, ammunition of all description that they have made available to Iraq.

I think it was a very lucrative business for those few trusted administration corporate friends that got in this business. Everything was done very quietly, everything was very hush-hush, and it was never supposed to see the light of day, but as things happen to do in this world, especially in Washington, the truth will hopefully eventually come out.

The CHAIRMAN. Well, thank you very much for your generous remarks, both of you. Mr. Wylie.

Mr. WYLIE. Thank you, Mr. Chairman. In the law that last question was known as a leading question to which you know the answer. I am not going to ask any questions because I think I know what the answers would be, but I do feel that I need to make a statement at this point.

The notice of this hearing this morning was to examine the role that various counsels played in responding to document requests from this committee and other congressional committees on the preinvasion of Iraq policy of the administration. It appeared that the chairman was interested in determining the role of the National Security Council in the exchange of information with other agency lawyers to coordinate document requests pertaining to United States-Iraq policy before August 2, 1990. There does exist a memorandum regarding one of these meetings from Mr. Nicholas Rostow, dated April 8, 1991. Mr. Rostow is the legal advisor for the National Security Council, and having reviewed this memo and other documents, I find nothing out of the ordinary about this meeting.

The Rostow memo simply suggests that document requests be reviewed for executive privilege. The memo suggests that briefings might be preferable to giving documents, and finally the memo suggests that in the case of doubt one should seek advice from the working group established at the White House.

Digitized by Google
Original from PURDUE UNIVERSITY

On April 17, 2 days after another meeting with the National Security Council, the Agriculture Department counsel, Mr. Alan Raul, wrote a review of his impressions of the meeting. He wrote that it was noted that the objective is to cooperate with Congress. The memo indicates that Hill staff eventually got classified documents from the Treasury Department. So far this fishing expedition has disclosed no evidence of conspiracy or coverup. If anything, Congress circuits have been overloaded with voluminous documents on administration policy toward Iraq. Many of these documents have been widely publicized.

Last week, Mr. Eagleburger said he felt that our preinvasion policies toward Iraq were a failure. Perhaps so, but that doesn't justify criminalizing our foreign policy differences. Another dimension has been added, I think, to the hearing this morning. Now, Mr. Rose indicated that he hadn't received any documents from the USDA, they hadn't cooperated.

In testimony a little later on from Mr. Raul he says in a letter dated August 21, 1991, Chairman Gonzalez requested documents from USDA. USDA cooperated fully with this request, and on September 27, 1991, USDA submitted approximately 3,700 pages from Department files. All requested documents were provided except for a limited number of documents which had been originated outside USDA by other agencies of the Federal Government.

Were you given those documents, Charlie, or did this go through the chairman of the Banking Committee and you didn't share the information?

Mr. ROSE. We have received a number of documents—Mr. Wylie—from USDA, but every time we see a new stack there is something in there we didn't have. We just were given by counsel for this committee some USDA documents that we haven't seen before that relate to this, so they selectively give a little bit here and a little bit there.

Mr. WYLIE. Apparently, all the documents were submitted to the chairman of the Banking Committee, so you might want to communicate with him. But when we started on this hearing as far as the Banking Committee was concerned, we were talking about BNL bank participation with Iraq, and as I have said, I think that another dimension has been added this morning, but it is entirely possible that there were overriding foreign policy considerations which come into play on our relationship with Iraq before Saddam invaded Kuwait, and I think that charges of a coverup coming as they are just before an election looks a little bit like politics as usual. I am reminded of an observation by Justice Learned Hand in one of his famous opinions in which he says the wisdom borne after the event is the cheapest wisdom of all. Anybody could have discovered America after 1492.

The CHAIRMAN. Will you yield to me?

Mr. WYLIE. Yes, of course.

The CHAIRMAN. I want to correct a malimpression you have. We never did receive the full documentation from USDA.

Mr. WYLIE. Mr. Raul's statement is not accurate, then, and he will make that a little later on in his testimony.

Digitized by Google
Original from PURDUE UNIVERSITY

The CHAIRMAN. That is right. He will be a witness in the next panel, so we will straighten this out. I will tell you this, we got a relatively small, minuscule document.

Mr. WYLIE. I might respectfully suggest that there be an exchange of information between the two chairmen of the committees.

The CHAIRMAN. There has been fully.

Mr. ROSE. Can I just say one thing in response to Mr. Wylie's statement. It is absolutely illegal to use agricultural loan guarantee funds for arms. That is not permitted in the law. That has not been pursued.

Mr. WYLIE. I didn't say it was.

Mr. ROSE. But the information about how that was done is only being painfully brought out as we go around and survey the scene, and second, there is a file at USDA on the Rafidain Bank, which is the central bank of Iraq, which is the bank BNL was relating to so far as credit was concerned, and we have asked USDA for the Rafidain Bank file, and they have said we have lost it.

We don't have it anymore. So the central bank, Mr. Chairman, in Iraq where all these billion dollars in credit loan guarantees were directed, the file at USDA on the Rafidain Bank is missing.

Mr. WYLIE. Well, Deputy Secretary Crowley had a little different view when he testified before us last week, may I respectfully suggest.

The CHAIRMAN. I will also, as a matter of personal privilege, ask my colleague to yield a little bit further. I somewhat resent your implication that this is a politically motivated witch hunt on the eve of an election. If the administration had given us the documents——

Mr. WYLIE. Mr. Chairman, I didn't——

The CHAIRMAN. A year and a half ago, which wasn't an election year.

Mr. WYLIE. I didn't use the words "witch hunt."

The CHAIRMAN. Well, you are alleging this has real political motivations. We have been on this case through nonelection years, and if we had received the documents then the administration wouldn't be yelling today that it was an election year.

Mr. GEJDENSON. Mr. Chairman, the other thing I would say, Chairman Rose, I think, started in 1986, before this administration was in place, but let's take a look at the facts. Everybody can argue that every action is political.

Mr. Wylie, somebody could argue that your defense of the administration is simply politically motivated. That doesn't go to the merit of your arguments. Make your arguments. If you think they did a good job in getting the information to us, applaud them for getting the information to us. If you think they did a good job prosecuting people who may have violated the law, applaud them for that. Those of us who disagree will be happy to make the arguments.

Mr. WYLIE. I thought I made the argument that the information from the U.S. Department of Agriculture, which is the argument that Mr. Rose had made, had been supplied at least to the chairman of this committee. Maybe the chairman of the committee

Digitized by Google
Original from PURDUE UNIVERSITY

didn't get it. I don't know. Mr. Raul is going to testify to that a little later on.

The CHAIRMAN. He will be up.

Mr. WYLIE. But in any event, as I indicated a little earlier, the notice of the hearing this morning belies the testimony which followed.

The CHAIRMAN. Mr. Vento.

Mr. VENTO. Well, thank you, Mr. Chairman. Sam, I paid special attention to your testimony. I want to commend both my colleagues, Chairmen Gejdenson and Rose, for their work on this matter. I think that we really all owe them—it is very difficult to do under the circumstances where I think there has been bad faith, there hasn't been good cooperation with this, but I think the point that concerns me is the statement that Chairman Rose—Chairman Gejdenson made pointing out that 14 months after the Iran-Iraq contest, that it took until this year, March and April, that the continuing classification of documents is taking place right now. They didn't find any reason to classify these documents until 1992. Is that accurate?

Mr. GEJDENSON. No, no. What happened is we spent a considerable amount of time battling with them to get the documents, and we had about 20 or 30 feet of documents in several piles, and it has taken us a while to get through them, but the battle with the administration was just getting them to give the classified documents to the appropriate committees so we had—the negotiations went on, and what we finally had to agree to was that only four members of the Foreign Affairs Committee could even see the documents, and it seems to me that there ought to be an obligation on the part of the administration to share these documents.

I think there is no question that there is no danger to America's foreign policy or any of our allies in having this information public, having read the ones that we have demanded be released, and the only thing it does is it protects the administration from making bad decisions throughout the process, and there was no hindsight in this. There were lots of people in town and around this country who thought it was a bad idea to sit by while Saddam Hussein killed 5,000 men, women, and children.

People thought it was a bad idea. Obviously some people in the administration thought it was a bad idea to sell Saddam Hussein things he could make into weapons while it was going on. It was overruled by the President of the United States in NSD–26, and that is part of the information that needs to be released.

Mr. VENTO. Well, Mr. Chairman, I think that the fact that there is an ongoing and continuing classification of these documents after the fact indicates that this is an effort simply to obstruct, not to give us what we need. It isn't up to the administration to decide what we need. That is our call, our decision, and we have responsibilities if we are given certain material in terms of its classified nature. I think the concern here isn't the administration determined what we need, and I think that is the concern that we are always in elections here. We are in elections every 2 years, so that has nothing to do, I mean in terms of this issue, and we need the continuity and the cooperation of the other committees that are

Digitized by Google
Original from PURDUE UNIVERSITY

working on these matters, and I appreciate the fact that there is an effort to accomplish that.

I am pleased to see that we aren't getting involved in jurisdiction fights on this. We have a common interest in bringing forth the information. Everyone is entitled to their own attitude. They are not entitled to their own facts with regard to this. I think that we need to have the information here and the American public, I think, deserves that information. We write these programs, put these laws into effect, and what is apparent here is that they have been disregarded in a blatant way. They have been blatantly disregarded in terms of the application of these laws subservient to executive orders by people in the administration.

Now we get a letter saying, well these people can't come forward and testify. It is our policy that personal aides shouldn't come forward and testify. Well, what are they doing, then, exercising public policy responsibilities if their personal aides, why are they given public policy decisionmaking power at the National Security Council and the other activities?

I think that this is ludicrous on the surface. If they are going to be given these types of responsibilities, powers, and appointments, this is a problem within the administration where cabinet officials no longer have responsibility. You have got a clique within the administration with the National Security Council that are running things, then they throw a blanket of Presidential immunity and rights around them so they can't come forth and talk about this. I just think we have to have this.

We should be full partners in the decisionmaking. If we are there for the crash landing, we ought to be there for the takeoff. We at least ought to have the opportunity to set a policy for the future. Really, that is what we are talking about here. Obviously, if there is criminal wrongdoing, that is up to the Justice Department. That is up to a special counsel. Principally, though, we can't expect it to write rational policies when we are denied information as to what is going on. If you want an example of why Washington doesn't work, this is exhibit A as to why Washington doesn't work, and it won't work when you have this type of attitude and this type of denial of the facts and the process. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. I understand we will be able to make opening statements before the next panel, so I would reserve—I just have two questions to Chairman Rose if I could proceed with those.

On page 2, Congressman Rose, you made comments about the use of U.S. ag export credit guarantees and specifically run into foreign tobacco sales and to BNL. I am not sure that I see explicitly the links. I think that you believe they are there and they may be, but I want to put them on the record.

Do you think—are you saying on page 2 and the top of page 3 that there was a sale of foreign tobacco to Iraq or elsewhere using United States ag export credit guarantee resources through BNL or through any other financial institution for that matter? Are you saying our resources were used for foreign tobacco to be shipped to Iraq?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. ROSE. Yes. It is a little complicated, but not really. The tobacco dealers were cheating Iraq. They were blending Brazilian and South American tobacco with American tobacco and selling it to Iraq as if it were 100 percent United States grown, but they were also, and they pled guilty to this in Federal court in Fayetteville, North Carolina. They were also paying bribes to Iraq.

Mr. BEREUTER. Since we are a Banking Committee, that is obviously a violation of USDA's responsibility and the Ag Committee's responsibility to oversee it. Should BNL have been knowledgeable about that and did they contribute knowingly to a violation of U.S. law in permitting that to happen?

Mr. ROSE. Yes. All of these transactions were taking place through BNL, and we have discovered that the Foreign Agriculture Service of the United States Department of Agriculture was encouraging people who wanted to sell or do business with Iraq to go down to Atlanta and talk to the good people at BNL, because they have got the lines of communication, the doors open and so forth.

Mr. BEREUTER. But you are saying specifically, Chairman Rose, if I could get this reiterated from you, as I understood you to say it the first time that BNL had reason to know that tobacco was being blended and, therefore, U.S. funds were being used illegally by the firms, the tobacco firms to which they were extending USDA credit?

Mr. ROSE. Yes, and worse than that, I think BNL clearly knew that the Iraqi Government was requiring extra sales services; that is, bribes, and that in most instances the price that Iraq was paying for the tobacco was many times the world price. Therefore, there was a lot of cash left sitting around on the table for other things, and I think this will come out next Tuesday when Mr. Drogoul pleads guilty in Federal Court in Atlanta.

Mr. BEREUTER. Thank you. Now, my second question, are you saying that United States ag credit export guarantees through BNL were used by Iraq in purchasing weaponry?

Mr. ROSE. Absolutely.

Mr. BEREUTER. Why do you say that?

Mr. ROSE. Because we have cables from Iraq back to United States agricultural suppliers in which the buying company, the central buyer for Iraq says we want machine tool parts, we want trucks, we want military equipment to be sent to us or we are not going to continue to buy agricultural products from you. They were requesting and getting extra sales services, and we also know it has been reported in the national press that the Iraqis were bartering foodstuffs to the Soviets in return for weapons.

Mr. BEREUTER. And you are saying that there was—there should have been no doubt in the minds of BNL officials that the conditions being sought for future sales using USDA credit extended through BNL would require that weaponry be sent even with other funds.

Mr. ROSE. Absolutely.

Mr. BEREUTER. They didn't necessarily say, I gather you are saying, that those ag export credit funds had to be used for weaponry, but they would no longer be purchasing agricultural products under this USDA Program unless BNL could find weaponry available and for purchase?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. ROSE. No. The Iraqi letter, the Iraqi central buying company would write to the company that was selling it something, not BNL, but BNL knew this was going on and the Italian Parliament investigating this whole affair has concluded that they knew exactly what was going on.

Mr. BEREUTER. Do you have any evidence at this point that USDA officials or any other U.S. officials were knowledgeable about the violations of law that were being—were taking place on the part of BNL?

Mr. ROSE. Yes, we have extensive knowledge that they knew exactly what was going on. We were telling them what was going on. They were denying that it was going on. Secretary Baker has said publicly that he went to Yeutter and asked him to make an additional $500 million in loan guarantees. We can get into how the National Advisory Committee works if you want to because that is where the word came to Agriculture to make these loans.

Mr. BEREUTER. I am wondering at what point Chairman Rose, at the Agriculture Committee or through information you give to us, you will be able to lay out evidence that U.S. Government officials were knowledgeable that BNL officials were violating law with respect to USDA ag export credits.

Mr. ROSE. Well, BNL was simply doing what they were being encouraged to do. NSD–26 was the policy of the country. Baker was encouraging Yeutter to continue to make agricultural loans.

Mr. BEREUTER. There is nothing in this United States—this number 26—number 24 which indicates violations of the law.

Mr. ROSE. I agree with you. That is why we say there should be vigorous pursuit of those violations of the law and there is no interest anywhere. I asked the head of Foreign Agriculture Service: How do you know that a load of rice left an American port and got to Iraq?

How do you know it wasn't a hollow transaction and the only thing that made it was cash? He says we don't know. We don't inspect.

Mr. BEREUTER. We don't know if, in fact, routinely that that always happens with respect to any of our USDA-Agriculture export credit sales?

Mr. ROSE. That is right.

Mr. BEREUTER. We don't know that for a fact?

Mr. ROSE. We know that Agriculture was getting a lot of feedback that people who were trying to sell to Iraq were getting hit up for bribes. I think my good tobacco dealers just got a little ahead of the game. They were paying the bribes and cutting the product, you understand, at the same time. They were a little smarter than the average bear.

Mr. BEREUTER. Thank you. I know my time has expired. I think the important point is, if it can be shown that these kind of bribes were being done with the knowledge and even support of U.S. Government officials, and thus far we haven't seen that.

The CHAIRMAN. Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman.

Let me say with regard to the questions of political motivation and timing, what I guess sometimes reflects around here, we all deny there could be any political motivation. My general feeling

Digitized by Google
Original from PURDUE UNIVERSITY

has always been that if people want decisions made with absolutely no political motivation, they should never ask 435 elected officials to come anywhere remotely near them.

There is, thanks to the Constitution of the United States, fortunately, a reasonable political motivation that everything we do the American people are entitled to know what are the different conceptions that people have, where do parties differ. I regard that as wholly correct. In this case, I was doing some homework and got my staff to give me all of the special orders you had done so I could reread them. And I notice the first special order in this series was dated February 4, I believe, 1991.

That is about as far from an election as it is possible to get. So the chairman began this series in February 1991. If you were trying to influence elections I can't imagine why you would be doing something in February 1991 unless you had a candidate for Valentine's Day Queen.

Mr. WYLIE. Will the gentleman yield? I was making reference to the hearing this morning, not to the special order of February 4.

Mr. FRANK. I appreciate that. But the fact is that this hearing this morning is a large culmination in that chain of events. I think the chairman has been working on this and has usually been able to get enough for the rest of us to focus on.

Mr. WYLIE. Logical to you maybe, not to me.

Mr. FRANK. OK, I will accept that.

Mr. GEJDENSON. If the gentleman will yield. If we had received these documents earlier, we could have had this done a long time ago.

Mr. FRANK. Instead of people marking when something might be done politically, I thought when watching the Senate on C–SPAN that they could save time, to have a card saying the Senate is conducting a quorum call. I thought they would have to use that less if they just had a card that said the Senate is conducting business and we could assume they are having a quorum call.

On those rare occasions when this body of elected officials that has the duty of presenting competing views to the American public acts totally non-political I suppose we ought to notify that. Otherwise, it doesn't seem to me, worthy of remarking.

I would ask Chairman Rose in particular, I would say to follow up—I think the gentleman from Nebraska's questions were perfectly reasonable, but I don't think the question at this point is guilty knowledge on the part of the administration. What bothers me is what looks like invincible ignorance. That is, people who did not know, didn't want to know, went to great lengths to avoid knowing, and were determined not to let anyone tell them anything.

When we talk about an independent counsel, I would point out to people, most independent counsels—I have had some dealings with that through my subcommittee—I believe the majority of them have exonerated the people they have investigated. We should not have this view that the appointment of an independent counsel is a condemnation. What we say is that in some cases the indirection between the Justice Department and the matter to be investigated has been so intimate that no one will have confidence or very few people will have confidence in that investigation.

Digitized by Google
Original from PURDUE UNIVERSITY

Remember, under the independent statute, if you are investigated and not indicted, unusual in American law, your attorneys fees are paid. If you as a private citizen are investigated and you are not indicted, or your indictment is totally thrown out, you are out of the money. But in the independent counsel case you are reimbursed and we have reimbursed in the hundreds of thousands of dollars. The question I would ask is this: When we had the panel before us of administration officials, they all quite confidently told us there had been no diversion of the CCC funds for arms, but none of them could tell me why they were sure of that.

I think the gentleman from Minnesota had the same reaction. Do either of you have any knowledge about any executive branch agency that has seriously investigated this possibility? I agree with the gentleman from Nebraska you cannot assume that in every case. A basic principle of law enforcement, yes, you assume most people most of the time are doing things legally.

But when you get indications there have been deviations, as it seems to me we clearly have in this case, a kind of threshold is reached and then that assumption is suspended and you go and investigate. The question is, clearly there was enough evidence to justify the investigation. Has any government Department, to the knowledge of either of you, seriously and thoroughly investigated the possibility there was a diversion of CCC funds into arms? Mr. Rose.

Mr. ROSE. No. We have some documents that are in foreign languages that will be translated and available at the hearing on Tuesday that will relate a little bit more to the knowledge that the government had.

Mr. FRANK. Will you specify what language? Between you and me, they could think that was English.

Mr. ROSE. Just French and German. If your French is pretty good, I will read them to you now. Other than that, nobody is doing a thorough investigation of this. Your term for practiced ignorance is absolutely right. That is the kind of thing we found over and over again at USDA, that people said, hey, we are just trying to sell farm products here, that is all we are trying to do.

But they knew the customers—that the sellers were getting bribed. And they knew that they were sending money to Swiss bank accounts, but you know, by God, we got to look out for the old farmer. We got to keep on selling them farm products.

I am on the Agriculture Committee and I want things sold by the bushel and the ton for the American farmer, anywhere we can sell it. But the National Advisory Committee within the executive branch of government was telling USDA what loans to make to Iraq. The whole history of GSM-102, -103 Programs- there had been $25 billion in loan guarantees made. Iraq got five of them.

Mr. FRANK. My time is out. It seems to me this: What you got here was minimal investigation. When outside sources brought information suggesting criminal behavior, they did the minimum necessary to deal with that. And what I think we have is—and I agree—you should not criticize policy differences. The question I have here, given the burning desire which I cannot understand from this administration, after the war in Iran—and the gentleman from Connecticut is right, that is really—the policy makes no

Digitized by Google
Original from PURDUE UNIVERSITY

sense after the war with Iran is over. The burning desire of the administration to be nice to Iraq afterwards may well have led the administration to ignore evidence of criminality. I don't say that it is criminal for helping Iraq, I think it was a very poor policy.

The question we have is: Given that there is a pattern of criminal activity that various groups engage in, BNL and others, did the administration allow its zeal to help Iraq bind it to criminal activities and then, subsequently embarrassed by that, they improperly withheld documents from us to cover up the fact they were not zealous or even active in going after the criminality?

Mr. ROSE. Absolutely. You heard of the Supercannon. The Supercannon was made by a company in England, among others, named Matrix-Churchill. Matrix-Churchill got the carbide tips you need to cut the steel, the machine system from Kennemetal in Latrobe, Pennsylvania.

But the U.S. attorney in Atlanta used to be in a law firm in which he represented Matrix-Churchill before he came to be the U.S. attorney in Atlanta. He recused himself, let his assistant handle the investigation of Kennemetal and she wrote them a letter saying you all haven't done anything wrong. That stinks to high heaven.

The Justice Department has got to be out of its mind to let an assistant to the U.S. attorney who represented a link in the chain for manufacturing the Supercannon handle the investigation over one of the exporting companies here that is under question.

Mr. FRANK. Is that the same office that would be handling the current matters?

Mr. ROSE. It was also the office handling the investigation of BNL, absolutely.

Mr. FRANK. Thank you.

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. I have to say that you know, I haven't been up here long enough to really get the feel of the land, but I am learning a lot. I have to tell you, when I came up here from Texas, I couldn't understand about half the people, but Chairman Rose, I can understand you, you speak English. I appreciate that.

Mr. FRANK. Mr. Chairman, can I get a translation of my remarks?

Mr. JOHNSON. Barney, I tell you I really appreciate you admitting this is a political hearing and I thank you for bringing that to our attention. I would also like to point out that this document that you gentlemen were showing us does have some comments about restricting certain aid if it is not appropriate. And I was glad to hear you say that it didn't violate anything, because it appears to me there is nothing in there of substance.

Could I ask you, Chairman Rose, please, sir, did the USDA, IG, as a result of your comments, start an internal investigation of their own?

Mr. ROSE. There has been an internal investigation, yes, as a result of my request, yes.

Mr. JOHNSON. Right. And I mean it has been ongoing for some period of time, hasn't it?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. ROSE. It has been ongoing for a long time. We are getting ready to have another update in the next several weeks of what the investigators at USDA have located.

Mr. JOHNSON. Did they get into the bank connection with that?

Mr. ROSE. Yes. They are the ones that told us about the connection with BNL.

See, when the Department of Agriculture enters into a loan guarantee program, they are relying on a bank in the foreign country to guarantee that the loan will be paid back, and then the U.S. Government guarantees some local banker that they will see that the whole transaction is made good.

The Central Bank of Iraq is called the Rafidain Bank in Baghdad, Iraq, beautiful downtown Baghdad it is called, the Rafidain Bank. And they were the central guarantor for all of these credit guarantees, $5 billion worth that were going to Iraq. We asked the investigators at USDA to let us see the file on the Rafidain Bank, because in the files of all the other central banks that are involved in this is information about the insolvency of the bank, what their condition is, their ability to repay, all that kind of good information. They couldn't find the file. They said it has been lost. I just happen to find that amazing.

Mr. JOHNSON. But they did provide you with the information they had on the investigation, did they not?

Mr. ROSE. Yes, they sure did.

Mr. GEJDENSON. Mr. Johnson, I hope you can understand me—I think you can because I was down in North Carolina and they understood me just fine. If you take a look at where we are, in 1982, the administration took Iraq off the terrorist lists. That was the green light for sales of dual use items to Saddam Hussein. That basically said you can sell stuff to Iraq.

With NSD–26, after the war with Iran was over, this was putting a cop in the intersection and waiving people on saying you should do business with Iraq, we want you to help Iraq. We want you to help rebuild their energy industry. We want you to sell them militarily useful items. We want to aid and abet Saddam Hussein. That is the importance of this document. This isn't some bureaucrat asleep at the switch, which is where my committee started off.

The arguments to my committee at the beginning of this was, the reason technology was being transferred to Iraq was that those bureaucrats over in Commerce were asleep. And there were a bunch of guys running around this town selling the argument to us the reason stuff was getting to Iraq was because we either had a bad Export Administration Act or the Commerce Department was such an eager salesman for American industry, and that is why dangerous things were getting to Iraq.

When you look at NSD–26 and the other documents we can't release yet, you find out it was the administration's sole desire and policy to aid and abet Saddam Hussein. The cop was put in the intersection and he was waiving the sellers on.

Mr. JOHNSON. I would comment there is probably one country over there we need to try to make strong enough to hold the peace and, at that time, we probably thought it was Iraq. I am not sure that the Iraq-Iran war was totally over. You all keep talking about how they beat Iran.

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. GEJDENSON. It was over for 14 months. The clear problem was now Saddam Hussein was not just another powerful dictator in the region, he was the most powerful dictator in the region. When he came up against the American forces, he didn't look all that tough.

You have got to understand this was the United States of America. We were prepared to fight the Soviet Union and China simultaneously if need be. This guy had more power than any of his neighbors combined in numbers of tanks and planes and people in uniform. When we went to war, we took 6 months to get ourselves ready to do it. There was no need to strengthen Saddam Hussein; he was the single danger in the region after the war was over.

Mr. JOHNSON. I understand that, but this document you brought up talks about no military weaponry. It is talking about nonessential items.

My time is up. Thank you, Mr. Chairman. I appreciate your response.

Mr. GEJDENSON. Did you understand me?

Mr. JOHNSON. Yes, sir.

Mr. GEJDENSON. Thank you.

The CHAIRMAN. Mr. Hoagland.

Mr. HOAGLAND. Thank you, Mr. Chairman.

I want to set aside for a moment the question about what has been provided and what has not been provided for in the documents and ask the gentlemen to help me with the big picture as to what is going on here and if you could comment.

My understanding, first of all, over this period of several years we extended $5 billion in agriculture credits; is that right?

Mr. ROSE. To Iraq.

Mr. HOAGLAND. To Iraq, that is right. These funds were either diverted or they enabled the freeing up of other funds by Iraq.

Mr. ROSE. Absolutely, that is the key point. They enabled a cash-starved nation to either barter with what they got or, if they were able to bribe a supplier, use that hard currency directly—excuse me for interrupting.

Mr. HOAGLAND. Those funds were then used to buy weaponry, right?

Mr. ROSE. Absolutely. I doubt if they used the extra money for their library system at this particular point in time. I think they were interested in strengthening their military.

Mr. HOAGLAND. This concluded after the end of the Iraq-Iran war, right?

Mr. GEJDENSON. As a matter of fact, it in some ways sped up after the Iran-Iraq war because what we had was now from the President of the United States, a signal we wanted to be more serious about this. Some people have speculated that the embarrassment over selling arms to Iran in the Iran-Contra Affair may have contributed to some of this.

Other people have speculated the growing strength of Iraq the administration was now fearful of losing its friend and there are all kinds of excuses. What we had was 771 licenses for dual use items worth $1.5 billion, 85 percent of which would have been denied if we wanted to sell it to Syria, because Syria is still on the

Digitized by Google
Original from PURDUE UNIVERSITY

terrorist country list. It is hard to distinguish between these two guys, they are both about the same.

Mr. HOAGLAND. During the Iran-Iraq war, you might argue there is some foreign policy justification for allowing agriculture credits to be diverted because we wanted to see Iran defeated.

Mr. GEJDENSON. You might have a debate before the war was over, but there shouldn't have been any debate after the war.

Mr. HOAGLAND. Clearly, the law was broken in terms of the way agriculture credits are supposed to be extended and used. Clearly, the law is broken in terms of the technology that was supplied——

Mr. GEJDENSON. On the technology side, it is much worse. If the law is broken, you have some third-rate people in business violate American law. There may have been violations in licenses in some instances that Mr. Rose has uncovered that they failed to get licenses they needed to. That is a violation of law.

The central issue, when it comes to the dual use item exports is they were encouraged by the administration, that when people from Commerce went to the administration—in two instances—not just Mr. Kloske and not just other documents but his predecessor argued against these sales he was overridden by Mr. Kimmitt and others in the administration.

Mr. ROSE. You didn't get the answer to the piece of your other question. The BNL indictments, the 347 counts are about the misuse of these agriculture loan programs and the knowing manipulation of them by the Banca Nazionale del Lavoro manager.

Mr. HOAGLAND. All these loans were extended to a country about whom agriculture experts had serious reservations concerning their creditworthiness and repeatedly stated those. These loans were extended to a country that we know had used chemical weapons on its own people, and a country we know harbored terrorists, even though we had taken them off the terrorist list in 1982, is that right?

Mr. BEREUTER. Would my colleague yield?

Mr. HOAGLAND. Yes.

Mr. BEREUTER. I think you have asked two questions. It is important, it seems to me, to differentiate between the two. There was no question that based on the record, that Iraq was creditworthy, had always repaid and would continue to repay until the time the conflict started. The other part of your question would be answered the opposite way, if I could inject that.

Mr. SLATTERY. Would my friend yield?

The CHAIRMAN. Let me correct the record. We do have evidentiary documentation showing that Iraq was not creditworthy and that that was brought out in the case of the Export-Import Bank time after time. I do want to straighten that out.

Mr. BEREUTER. Would the gentleman yield? I do not believe that is the case. I would be happy to look at that. At the time, payments were still coming from Iraq until the time they invaded Kuwait, and, of course, that stopped any kind of payment.

The CHAIRMAN. We have had hearings on that.

Mr. BEREUTER. We went through discussion on the House floor on several occasions about creditworthiness.

The CHAIRMAN. We had two hearings on that.

Digitized by Google

Original from PURDUE UNIVERSITY

Mr. ROSE. We have put in the record documents that we have obtained that show both USDA and the National Advisory Council were raising questions about Iraq's creditworthiness 1½ years before the invasion. That is on the record.

Mr. SLATTERY. Would my friend from Nebraska yield for 30 seconds?

Mr. HOAGLAND. Could I ask unanimous consent for an additional 3 minutes.

The CHAIRMAN. Yes.

Mr. SLATTERY. I thank my friend from Nebraska for yielding. In fact, last week at a similar hearing, I read into the record Eximbank internal documents floating around indicating that they viewed Iraq as a terrible credit risk. There was no question about that.

There was discussion Iraq was threatening to cease further payment on loans they had already entered into unless additional credit was extended. I think the record is very clear on this that the Eximbank viewed Iraq as a very serious credit risk, and in fact Iraq was threatening to terminate further payments on existing loans unless more credit was extended.

Mr. BEREUTER. Would the gentleman yield one more time?

Mr. HOAGLAND. Let me make a comment first. We have an extensive staff memo here which I would be happy to share with the gentleman from Nebraska, providing it is all right with the chairman of the committee, concerning Iraq's creditworthiness. It details various opinions of the Eximbank and elsewhere raising red flags. I will be happy to yield.

Mr. BEREUTER. My point was with respect to USDA, the agriculture export credit. There was no indication whatsoever that Iraq, on the basis of its past arrangements, would fail to repay. I am not talking about the Eximbank. I am talking about the Agriculture Export Credit Program.

Mr. ROSE. Mr. Hoagland, can I make one point? The central file that would tell you whether or not Iraq is creditworthy or not is the CCC file on the Rafidain Bank and it is missing.

Mr. HOAGLAND. To underscore that point, let me first wrap that up and then I will ask you a question about that.

It seems to me that I am correct, the conclusions of the two of you and your subcommittee staffs are that the tremendous buildup in arms of $5 billion resulted in enabling Mr. Hussein to engage in increases in his military prowess and the growth of his own arrogance. The conclusion that he could move in and take over a small but very, very wealthy nation like Kuwait with impunity, directly led to the war.

Mr. GEJDENSON. I think there is no question Saddam Hussein was the most surprised man in the world when we responded negatively to his invasion of Kuwait, considering everything you heard from Chairman Rose and me, from 1982 when they took him off the terrorist lists, throughout the entire process.

Mr. ROSE. To say it another way, to say the other side of that, George Bush became outraged when Saddam Hussein misunderstood the relationship that existed between them. Saddam Hussein was, you know, sitting over there in Baghdad saying, look at what

Digitized by Google
Original from PURDUE UNIVERSITY

the United States of America is doing for me. Look at what we are getting through BNL Atlanta, these are my pals.

Surely we can straighten out a little border problem we have got down here in the south. And I think Sam is absolutely right. I think Saddam Hussein was probably the most surprised fellow on the face of the Earth when he turned on the TV and saw what was coming to get him.

Mr. HOAGLAND. What about if our government had played it straight and followed the law, followed the regulations with respect to the extension of agricultural credit and with respect to enforcing laws concerning the exported technology and complex military equipment? What about following the Commerce regulations?

Mr. ROSE. It wouldn't have happened. Let me give you another key point to this. The Banca Nazionale del Lavoro was the funnel for the Rafidain Bank adventurism in other parts of this country—the *Financial Times* of London reporter told me it was broadly known on Wall Street that BNL money was being used to put arms deals together for Iraq.

Well, tell me how did BNL in Atlanta get so liquid? It got liquid because of USDA pumping $2 billion in loan guarantees into that little bank in Atlanta. And out from there this octopus was able to put together all kinds of arms deals that directly aided Saddam Hussein. Sure, USDA can sit back and say well, all of the loans were carried out properly. Well, that misses the point.

Mr. GEJDENSON. The administration can't point to one instance between 1982 and the invasion of Kuwait where they sent Saddam a signal that there was a line in the sand he couldn't cross. Not when he harbored terrorists and got taken off the list. Not when he attacked an American ship. Not when he killed 5,000 men, women, and children with chemical weapons. And not when he moved all his forces to the Kuwaiti border did he hear one objection from the administration or its representatives.

Mr. HOAGLAND. Thank you.

The CHAIRMAN. Mr. Roth.

Mr. ROTH. Thank you, Mr. Chairman. I appreciate being allowed to ask a few questions here this morning. I must say Monday morning quarterbacking is easy. Mr. Rose, of all the people in Congress, I must say you have got more chutzpah than anyone in the Congress for you to say, gee, Saddam Hussein must have really been surprised when we went in after him. Saddam probably thought we were all Liberals here in Congress, no patriotism left.

How did you vote when the President came to you and said, Mr. Charlie Rose, my good friend, support me in the Gulf. How did you vote?

Mr. ROSE. I voted the same way Ross Perot said he would have voted if he was here.

Mr. ROTH. In other words, you didn't back the President.

Mr. GEJDENSON. Let me say something to my friend. I had this discussion with a colleague of mine. Frankly, knowing what I know today reinforces my fear of leaving George Bush in charge of the war. As my friend knows, Saddam Hussein is still in power. More Kurds died.

Mr. ROTH. Let me say this. I have—there is no personal—I don't have any sharing in personal animosity toward any of you people.

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. GEJDENSON. You are a good friend and good colleague.

Mr. ROTH. The point is, this is all political. You guys are here to beat up George Bush. Why don't we Democrats and Republicans work together for the good of the country at some time? My God, the chairman of this committee, whom I revere, who is a great guy, was going to impeach George Bush when he went into Kuwait. Now we are down here beating the hell out of him.

Mr. ROSE. Where were you in 1986 when I was trying to get the USDA to cooperate with me to tell me how they were using this loan program? I could have certainly used your help.

Mr. ROTH. You always have my help.

Mr. GEJDENSON. The gentleman is a great defender of his party and he is a good friend of mine, but the gentleman and I stood shoulder to shoulder 1½ years ago when we fought with the administration to get the information out. If your and my President had given us the documents that you and I asked for when we asked for them, this wouldn't be coming up now. We would have finished this investigation a year ago.

Mr. ROTH. My friend, I must say this would always come up. This is a political charade. You guys just want to beat up on George Bush. George Bush is not going to be your big enemy, Ross Perot is going to be the guy that is ahead of you guys. This is what you should be focusing on. This is getting too political. We cannot have this.

This country is coming apart at the seams. We cannot allow this type of political action anymore. It can't be the Republicans' and Democrats' fight. You can't continuously fight on Capitol Hill. We owe it to this country to stand united. By God, we aren't doing this as a political charade.

Mr. GEJDENSON. Does my friend believe the American people ought to know what the actions of their government were?

Mr. ROTH. You bet they should and George Bush is telling them.

Mr. GEJDENSON. This is what this is about. Let the American people know the facts of the case and they will decide that is how democracy works.

Mr. ROTH. The American people do know how it works. I don't believe George Bush would mislead the American people. He is not misleading the American people.

The CHAIRMAN. Mr. Moran.

Mr. MORAN. Mr. Chairman, I can't believe what I just heard.

Mr. ROTH. Would the gentleman yield?

Mr. MORAN. Yes, but I am going to ask for the same time.

Mr. ROTH. How did you vote, Mr. Moran? How did you vote when the President came and asked you for your support? First, you were with him. Then you held a town hall meeting and then you were opposed to him. What kind of political courage is that?

Mr. MORAN. That is listening to my constituents and keeping my mind open, Mr. Roth.

The CHAIRMAN. Will you both yield to me.

Mr. MORAN. Sure.

The CHAIRMAN. I will ask the gentleman from Wisconsin to strike those words. The gentleman was questioning the motives of a colleague as to his actions and his votes and I think that is not

55-927 O - 93 - 2

Digitized by Google
Original from PURDUE UNIVERSITY

allowable under our rules and I will ask the gentleman to strike his words.

Mr. MORAN. Mr. Chairman, I would request it be kept in the record and I don't want any of that struck, because the more I listen to this testimony, the more I am convinced that that vote was the right thing to do, that we had no business creating an enemy and then putting—then putting the lives of 200,000 American men and women exposed to the very guns that we had supplied Iraq.

The CHAIRMAN. If the gentleman would yield to me.

Mr. MORAN. Yes.

The CHAIRMAN. It would impair your time. This involves the rules of the committee and the House and that is the reason that, as chairman, I am asking that unparliamentary language be stricken from the record voluntarily. I would like to have a motion to that effect from the gentleman from Wisconsin. I think under the rules it should be forthcoming, Mr. Roth. Regardless of Mr. Moran's wishes.

Mr. ROTH. Could we have the words read back?

The CHAIRMAN. Will the reporter read back Mr. Roth's words with respect to Mr. Moran's vote and position taken and the insinuation that he had.

Mr. MORAN. Supported the President until he got better information, listened to his constituents and then voted properly?

The CHAIRMAN. That is right. The information is the motives were questionable. I know that is a violation.

Mr. ROTH. Mr. Chairman, I insist those words be read back. I just asked the question.

The CHAIRMAN. Will the reporter kindly favor us.

[The record was read as requested.]

Mr. ROTH. Mr. Chairman, that is a legitimate question and what I have said I have said. Maybe the gentleman will want to respond.

Mr. MORAN. Thank you, Mr. Roth. I appreciate you putting that in for the record, because, as I said, I am becoming more and more proud of that vote and I certainly think it is a pretty good idea to listen to one's constituents, to keep one's mind open, and not to make the assumptions that even the President of the United States is always acting, in fact, in the best interest of this country. That is the what is coming out of this hearing.

My shock comes from people like you—frankly, I am disillusioned. Here I have thought the world of so many of you people that—and I would have to assume that you would have the courage to make the right decisions to want all the information, particularly provided to the American people, and based upon that information, to make the right judgment.

And yet here you are suggesting that something is a political charade or whatever disparaging words you used in defending the actions of the President of the United States who, knowing that 5,000 men, women, and children were gassed, innocent people, and yet he is fighting to make available billions of dollars to Iraq, did not sanction them.

In fact, even from 1982, knowing there were terrorists in the country and the President of the United States was head of the CIA, he knew the intelligence information was available, that

Digitized by Google
Original from PURDUE UNIVERSITY

there were terrorists in that country, yet he takes Iraq off the list of people harboring terrorists. We go through a full decade where we cozy up to Saddam. In fact, apparently more than any other member nation in the Middle East, perhaps including Israel, and here it is certainly a nondemocratic nation.

A man who later he describes as Hitler, the most evil personification of anybody in modern history. Imagine how jilted Saddam must have been when the President is relying on information from people who were paid consultants to Saddam. That was brought out in the previous hearing. We have all this information made available to agencies that Commodity Credit money was being used to acquire weaponry for Iraq.

We have a national security directive to improve our economic and political relationship with Iraq, knowing that he has gassed, against all the international agreements, knowing that he has gassed thousands of innocent people, and yet we are supposed to improve our relationship with Saddam Hussein and then 5 days before he invades Kuwait, the administration is up arguing with you—and I would ask you how you voted, Mr. Roth, 5 days before the invasion, whether or not to provide another $500 million to Iraq when it came out in the amendment debate that Mr. Glickman and Mr. Gejdenson have proposed that there were 40,000 Iraqi troops on the border of Kuwait that this money was being used corruptly to finance Saddam's military buildup and yet the administration is up here arguing to pour another $500 million into Iraq 5 days before he invades a country that was supposed to have been our friend.

I ask you, Mr. Roth, how did you vote and how can a Member of Congress honestly compare this to some kind of political effort when our chairman, for 2 years, has been trying to make this information available and has had very little support, even from his own party, never mind the administrative branch of the government.

We have the IG here telling us that documentation was altered within the Department of Commerce, that instead of what originally said military trucks, the word military is wiped out. Official documentation is altered and yet you are suggesting this is some kind of political hearing that we ought not get into this kind of information?

Mr. ROTH. I would be happy to. I have always voted against foreign aid. Saddam Hussein gassed 5,000 people. Yes, he was a monster, but when President Bush went after Saddam Hussein, you were absent. You were nowhere to be found. Now you crawl out and attack the President, the man who stopped this monster.

Mr. MORAN. OK. You confirmed my estimation of how far people can go for political purposes. I will discuss that with you, Mr. Roth, and get into a little bit more of the substance.

I would like to ask Mr. Rose and Mr. Gejdenson if when we have such an extreme example of cozying up to somebody who is reported to be the worst tyrant, a personification of Adolf Hitler, and we cozy up to him for a decade, share military intelligence for a decade, intelligence that can't even be shared with the Congress of the United States and we share it with Saddam Hussein, are there other examples?

Digitized by Google
Original from PURDUE UNIVERSITY

Are we doing this with other countries? China, for example, this inexplicable determination on the part of the President of the United States to give most-favored-nation status to China. Is it possible there is similar treatment to countries that stand for exactly opposite of what the United States of America stands for?

Mr. GEJDENSON. I think that the real problem here is exactly what you have hit on. It is a very bad example to show the rest of the world that when the United States allows, whether it is the octogenarians in Tiananmen Square, or whether it is Saddam Hussein in the Middle East to continue to brutalize people and be a tyrant without taking some action, it then provides a message to other tyrants around the globe.

And whether or not we are aiding and abetting other tyrants as we did Saddam Hussein, it is the message we sent them. That if there appears to be some advantage for the United States, we very well may let you do anything you want. And I think that is the real danger of the message.

Mr. ROSE. Can I add one point? You brought out something very important and it is not focused on here. George Bush was the Director of the CIA. If anybody is ever the Director of the CIA, you maintain forever the kind of contact and understanding, and especially if you become the Commander in Chief, you know exactly how that operation works.

I am afraid that where we are headed with this investigation will disclose that some of the largest corporations in America were intimately involved in violations of the law with respect to reporting exports and dual-use of items to help carry out NSD–26. I mean, I am talking about large manufacturing of vehicles. I am talking about nuclear technology that moved to Saddam Hussein, and the lid is tight when you start asking questions about things like that.

Mr. MORAN. Thank you, Mr. Rose, and I also want to thank Mr. Roth for showing me the depths of political cynicism that some otherwise fine, intelligent people will go to to defend the administration.

Mr. ROTH. Mr. Chairman.

The CHAIRMAN. You are out of order. You are not being recognized.

Mr. ROTH. Point of personal privilege.

The CHAIRMAN. The gentleman is not recognized on a point of privilege or any other. The Chair was about to comment on the remarks made by Mr. Moran and they were inevitable in view of the fact that the previous remarks that I referred to as being out of order and in violation of the rules and it has nothing to do with your judgment. It is a clearly imposed duty on the Chair.

Mr. ROTH. If you don't agree with the chairman, then you are out of order in this committee. Is that what is taking place, Mr. Chairman? You have to follow the party line?

The CHAIRMAN. The gentleman is out of order again and the Chair will ask him to keep in mind that the Chair has a responsibility of declaring any remarks that tend to demean, or ridicule, or in any way engage in personalities out of any consideration during a hearing. That is the clear duty imposed on me as the Chair. That is the only reason I am intervening.

Digitized by Google
Original from PURDUE UNIVERSITY

I would just advise both gentlemen that you reached a point now where you are in violation of rule 14. The other one 10(c) as well, but 14 in which the Chair has that inescapable responsibility of preventing any debate degenerating into personality clashes and remarks. I will ask the gentleman to withhold. His time has expired.

The Chair will recognize Mr. Slattery.

Mr. SLATTERY. Thank you, Mr. Chairman. You know as I sit here and listen to all this discussion, one word comes to mind and that is accountability. In a democracy and in an election year, that is what it is all about. All of us on both sides of the political aisle in both elected branches of our government have records we should run on.

We make decisions every day. Those decisions are decisions that we should be judged on. Did we exercise good judgment, yes or no. That is legitimately what politics in its finest sense should be about, testing our judgment, determining whether we have exercised good judgment. Anticipating whether we have an answer to problems down the road.

And one of the very relevant questions in this Presidential election is: Who is best qualified to shape this Nation's foreign policy in a complex world? George Bush has held himself forth for a number of years as a renowned expert in foreign policy matters. Now we learn facts and information that raise new questions about whether he is the expert that he would like for the country to believe that he is. I think that it is very relevant for all of us on both sides of the political aisle to seek the truth in these matters.

I can acknowledge that it is most uncomfortable for those on this side of the aisle to deal with this hearing, because what we are getting to is some very uncomfortable information. I don't think we have gotten to the bottom of this yet. I think it is important for us to pursue this and all of us must have the courage and willingness to take it where it leads us. The public has the right to know the facts and the right to know the truth.

Last week at this hearing we answered one very important question; that is, who was responsible for this policy. And the answer to that fundamental question is President George Bush was responsible. You need to look no further than NSD–26.

In addition to that, Secretary Baker endorsed the policy. Secretary Yeutter endorsed the policy. Secretary Mosbacher endorsed the policy. They all embraced this policy and I hate to use this word because of its historical and inflammatory connotation—but this policy of appeasement toward Saddam Hussein. They mistakenly believed they could buy his friendship.

Last week, Secretary Eagleburger sat where Mr. Gejdenson is sitting today and basically acknowledged that. That is what NSD–26, when you read it in its entirety, basically says. We want to try to change this guy and the best way to change him is to be nice to him.

In spite of all that evidence, apparently George Bush believed that he could do what Chamberlain thought he could do at Munich and what Roosevelt thought he could do with Stalin at Yalta and they were all wrong.

Digitized by Google
Original from PURDUE UNIVERSITY

I would say to my friend from Wisconsin, I voted to give George Bush authority to respond militarily to Saddam Hussein. I happen to believe I made the right decision. That decision had to be made at that time, but I have been intrigued and really amazed to learn how this administration got us to that point.

That is why I am here on a Friday trying to learn as much as I can about exactly how this country got into that mess and what we should have done to have prevented this colossal blunder and hopefully we will learn from all this so we will prevent future blunders. This is legitimate political discussion as far as this member is concerned and I think it is legitimate political discussion for American people.

My friends, if elections in this great democracy stand for anything, they stand for determining who was responsible for this Nation entering wars and how we conducted ourselves before and after those great historic events. That is what this is all about.

It is very political. Yes, you are darn right it is. All of us in this room have political interests or we wouldn't be here and the people watching this on television have a political interest also. Thank goodness they do. There is nothing wrong with being political in an election year in a democracy and we shouldn't apologize for that one bit.

Mr. GEJDENSON. Can I say something before you ask a question. I like what you said and I think you said it very well, obviously. When my committee started this work, we were looking for a battle not between partisans, not even a battle between people of different philosophy. I understand, as you get closer to the election, things get hotter.

What my committee was doing, we were being told by people in this town that the Commerce Department hadn't done its job. That the Commerce Department, as one agency of the government, had failed to restrict high-technology items from getting to Saddam Hussein. So because Commerce was doing a bad job, we were told and that led to Saddam Hussein getting this technology. That is where I started with Mr. Roth and others on this committee.

Mr. SLATTERY. Another committee I spent some time on, the Energy and Commerce Committee, took a look at this stuff and there is some very revealing information there also.

One of the things we had to answer was who. We know who was responsible. What we don't know yet is why this was going on. There are some fundamental questions here, too, I think. Specifically, why did this administration arm Iraq, and did they know that this money was being diverted through the CCC to purchase arms.

This is a very important question, a very important question. Because if in fact money was being diverted through the CCC to Iraq and that enabled them to purchase arms, we have serious questions here and serious problems. And I believe very strongly that if our government and the people in this administration knew this was going on or had significant reason to believe it was going on and didn't pry into it, didn't determine what was involved here, we have a very serious problem, a very serious problem.

Mr. ROSE. I totally agree with you. Like what you said when you started, but the problem is best looked at from the executive's

Digitized by Google
Original from PURDUE UNIVERSITY

point of view and what Mr. Eagleburger said. It didn't work. So then the problem became how do you cover up what didn't work.

Mr. Gejdenson's perspective is that the Commerce is allowing too much high-tech stuff to move over into Iraq. My perspective through companies like Kennametal is that they were cleverly using intermediaries so they could attempt to say we didn't know the dual-use.

We didn't know the military use that was going to be made of this equipment, therefore we didn't have to have the export licenses that are required and that Justice has done almost nothing to go back and clean that up.

Mr. SLATTERY. As the chairman probably knows, there were officials in the Pentagon who have publicly stated before different congressional committees that they were objecting to the export of a number of dual-use technology items.

Mr. GEJDENSON. And people in Commerce.

Mr. SLATTERY. And people in Commerce that were objecting and these people were being overridden by other people.

Mr. GEJDENSON. By NSD–26.

Mr. SLATTERY. Basically by the implementation of NSD–26. I think it is important to keep that in mind. As I sit here today, I have two basic questions I want to get an answer to. That is: Did this administration know—did anyone in this administration know whether CCC money was being diverted to buy arms by Iraq? Yes or no. That is a big question that we need to get an answer to.

And the other question is: If the administration did know or had sufficient evidence so as to lead any reasonable person to conclude that this was going on, yet didn't really explore it, if they were doing this, was it this administration's policy to really arm Iraq after the end of the Iranian-Iraqi war? Yes or no.

Then the next question becomes, if we were in fact, as a nation, committed to rearming Iraq in the face of the atrocities and in the face of knowledge that they were in fact building a nuclear capability, a biological capability, a chemical capability, what in the world was going on?

These are the questions I think the American people have a right to know. And if the chief architect of these policies runs for reelection this year, saying reelect me because I am a brilliant foreign policy strategist and leader, I think we have a right to know this information so the American public can make their own independent judgment as to the brilliance of these sort of problems.

Mr. ROSE. If you take NSD–26 and what Eagleburger said to the Foreign Affairs Committee, it was the policy to get closer to Iraq, it didn't work. What—the problem now is that Iraq used all that assistance to arm itself and then the question is: Did we know that they were about the business of arming themselves, and if we did, why didn't we stop it?

I say the record is clear that we had many indications that this NSD–26 directed aid was being misused and that the pipeline kept on flowing. Once you got that pipeline started and the business community was making a little extra money, boy, it is hard to stop. And nobody was able to stop it.

Digitized by Google

Original from
PURDUE UNIVERSITY

And now that it is all out on the table, nobody wants to go and investigate who the real criminals are that knew things were off track and that they should have been stopped.

Mr. SLATTERY. One last observation I would make. That is, when we try to answer the question why this was going on, it is very clear—and I have—and the chairman has this information, it has been entered in the record here, but this is information from the Export-Import Bank of the U.S. Country Risk Analysis Division dated January 23, 1989 and it is replete with statements about serious questions regarding Iraq's one, willingness to pay, and two, their ability to repay loans they had already obtained. The record is very clear on this. The Export-Import Bank had this information in 1989.

The question also arises and I think a very legitimate question, one I raised last week and I am still waiting for information on, what banks in this country had money at risk, what banks had money at risk. And when Iraq was saying, if you want to get repaid, loan us more, I would like to know what banks had money at risk.

Mr. ROSE. We have a list of that.

Mr. SLATTERY. That may help us understand maybe what was perhaps motivating some of this policy.

Mr. GEJDENSON. Thank you, Mr. Chairman.

Mr. WYLIE. Mr. Chairman, I wonder if the chairman would help us and the committee and supply that list to the Banking Committee.

Mr. ROSE. Be glad to.

The CHAIRMAN. We have had that list and I think it goes back to the first hearing we had in 1990.

Before you leave, gentlemen, you have been very patient. Just one question. Everything you said and what has been brought out this morning indicates that, with the BNL demanding payment on the guarantee of a little better than $250 million and when I asked a question last week as to what the administrators were going to do about that, they said, well, they had passed it on to higher officers, I guess, in the Justice Department.

What I want to know is: Is your committee, Chairman Rose, doing anything to block the payment on those payments to the BNL; that is, to the Agriculture Department?

Mr. ROSE. Would you restate that? I was getting another piece of information for you.

The CHAIRMAN. In view of all of this now, is BNL—which is really the Italian Government asking for payment, a little better than $250 million on those guarantees, CCC guarantees, is anything being done to try to persuade them to block those payments?

Mr. ROSE. Let me tell you the problem. The problem is Dick Thornburgh in the indictment—or was it the press release—the press release accompanying the BNL indictments made a most remarkable statement, which I am sure the home office of BNL considers as a finding of fact that they will argue. Thornburgh, in his press release, said that the home office of BNL had done nothing wrong.

Now that is why BNL is pursuing the $250 million credit guarantee. That whole—why would the U.S. attorney gratuitously hand a

Digitized by Google
Original from PURDUE UNIVERSITY

quarter of a billion dollars to the home office of Banca Nazionale del Lavoro. Why didn't he keep his mouth shut? Why did he say anything about that? Was Thornburgh part of the "be nice to BNL so they don't tell too much"? I think we will know the answer to that next Tuesday morning when Drogoul makes his speech in Atlanta.

The CHAIRMAN. Thank you, sir.

Mr. GEJDENSON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, gentlemen. You have gone over and beyond the call of duty here.

The next panel is Mr. Allan Mendelowitz, who is Director of the General Government Division of the U.S. General Accounting Office, and who once again has been most responsive to this committee's invitation. Thank you very much.

Mr. MENDELOWITZ. Thank you, Mr. Chairman. With your permission, I would like to introduce the folks who are at the table with me today.

The CHAIRMAN. If you would for the reporter.

Mr. MENDELOWITZ. On my immediate right is Mr. Phil Thomas who is our assistant director for agriculture trade issues. To his right is Ms. Susan Purcell who worked on—is working on the assignments we will be talking about today. On my immediate left is N. Scott Einhorn who is evaluator in charge of the work we will be talking about today. On my far left is Mr. Robert Hunter, Associate General Counsel.

The CHAIRMAN. Gentlemen, the ranking minority Member had preferred an opening statement at this point and I believe Mr. Bereuter as well. I will recognize them.

Mr. WYLIE. Mr. Chairman, I made the point I wanted to make in my opening statement. I don't have any further opening statement at this time. I would yield to Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. Today's hearing appears to have been structured to produce testimony that alleges that administration lawyers conspired to obstruct proper congressional oversight of United States-Iraq relations prior to the gulf war. From the documents I have seen, I have seen nothing thus far to convince me any unlawful activities have occurred.

One thing my colleagues should consider is that any time there is a potential confrontation between two branches of our government many lawyers get involved. This is true whether it involves congressional subpoenas of executive branch documents or grand jury subpoenas or records from the House Post Office. Meetings for the coordination of policy for the examination of documents for privileged status don't necessarily mean a conspiracy exists.

I look forward to the panelists that are assembled here, hoping that some light will be shed, but at this point I am waiting for some evidence that anything illegal happened.

I also want to comment briefly on the redacted document that was added by our colleague, Sam Gejdenson, to his testimony. He referred to it properly as NSD–26. I would say I have no idea what the information was that was redacted, but in looking at this document which is said to have guided these gentlemen and ladies here and others in the administration, I find that even after many months have passed and a war has been pursued that the objec-

Digitized by Google
Original from PURDUE UNIVERSITY

tives set forth in this document do not seem inappropriate and seem—in fact, they seem highly appropriate.

I encourage members of this committee and members of the news media and the citizens generally to take a look at what it actually says. It says, for example—and I am just going to give you some highlights about the objectives—the United States Government should propose economic and political incentives for Iraq to moderate its behavior and increase our influence with Iraq. It says that at the same time the Iraqi leadership needs to understand that illegal use of chemical or biological weapons will lead to the economic and political sanctions for which we will seek the broadest possible support from our allies and friends.

It says that any breach by Iraq of IAEA safeguards for its nuclear program will result in a similar response. What similar response? Political and economic sanctions. It says that human rights considerations should continue to be an important element in our policy toward Iraq. It says that we want to encourage by our policies to cause Iraq to stop ceasing—to urge it to cease its meddling in external affairs such as those in Lebanon and to encourage it to play a constructive role in negotiating a settlement with Iran and cooperating in the Middle East peace process.

It says we would aid in the reconstruction of the Iraqi economy, particularly in the energy area where we do not—where they do not conflict with our nonproliferation and other significant objectives. I have to say also beyond this recitation of what the policy's statements really are that anyone in this Congress who did not understand during the Iraq-Iran war that we were tilting toward Iraq, not because we wanted them to win the conflict, but because we didn't want Iran to win the conflict, must have had their eyes closed.

I can recall sitting in several meetings as a member of the Foreign Affairs Committee, bipartisan meetings where we were given explicit information about the way we were assisting Iraq during that Iraq-Iran conflict. Certainly, that was true of the Armed Services Committees of the two Houses. Certainly, it was true of the Intelligence Committees, and so I do not think it was a closely held secret on the part of the administration, that tilt toward Iraq during the war between Iraq and Iran was not—was known widely. It was suspected outside the Congress, it was known outside the Congress, and it was certainly known within the Congress.

At that point in time there was no objection raised to that tilt toward Iraq to keep Iran from winning. And what happens if we had made it very public as an explicit statement that we were leaning toward Iraq? Do you think that Khomeini would not have used this as an additional factor to gin up his fundamental radicals in Iran? Of course, he would. He would have given them additional strength, and that was certainly not something we wanted to do at that time. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. JOHNSON. May I enter some comments in the record and paraphrase a few comments?

The CHAIRMAN. Certainly.

Mr. JOHNSON. Thank you, sir. I request unanimous consent to enter the comments in the record.

Digitized by Google

Original from
PURDUE UNIVERSITY

The CHAIRMAN. Without objection, it is so ordered.

[The prepared statement of Mr. Johnson can be found in the appendix.]

Mr. JOHNSON. Thank you, sir. Last week the committee heard from the administration witnesses regarding our policy toward Iraq, and they admitted that foreign policy concerns were the driving force behind our export policy toward Iraq in the 1980's. They also admitted several times that the policy of favoritism toward Iraq didn't work. As I said last week, looking after your interests sometimes means having to work with those you don't particularly care for, and in this case the greatest threat to stability was, and I believe still is Iran, and that fact dictated that we work with Iraq to stem Iran's influence.

You know, some of the members of the committee are not interested in the truth as much as they are in reaping the benefits of misperceptions about the administration's actions regarding Iraq. Mr. Chairman, I know that you—I respect you very much and I know that you are sincere in your pursuit of this matter, and that is why you have been by yourself for so long, but I find it interesting that only recently some of the Democrat colleagues of yours decided to jump on board, and again it has already been admitted by Mr. Slattery and others that it is an election year and this is an election debate.

This hearing, though, concerns the White House Interagency Lawyers Group meeting of April 8, 1991, and the purpose of the meeting was to coordinate the release of documents requested from numerous branches by several committees of the Congress, and reasons for such a meeting were obvious and made good sense, and I agree with you, Mr. Chairman, that it is a matter of great concern anytime you get a group of lawyers together, but I believe that the record will show that no conspiracy to cover up information was discussed in this case. Thank you, sir.

Mr. FRANK. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. FRANK. I would like to make an opening statement.

The CHAIRMAN. Pardon?

Mr. FRANK. I would also like to make an opening statement, not having made one.

The CHAIRMAN. Certainly. The gentleman is recognized.

Mr. FRANK. Mr. Chairman, I am astonished at my colleagues on the other side objecting in various ways to the fact that we are having this hearing. I cannot imagine anything more directly in line with our constitutional duty. We are told, the previous speaker just said the administration admitted it was a mistake, it was a failure. It is not enough to say simply the policy was a failure. It is important, I think, to look at how that failure came about and what we can do in the future to restrict it.

One of the important points here is that many of us believe that safeguards that were supposed to exist in the Export-Import Bank Program, in the Commodity Credit Corporation Program, and elsewhere were overridden inappropriately by a foreign policy consideration, and that is one of the things we want to focus on. We will also, and I think we have been very clear for many of us the major focus is not what went on during the Iran-Iraq war but what went

Digitized by Google
Original from PURDUE UNIVERSITY

on afterwards, and, in fact, much of what we have been asking about has to do with afterwards.

We are talking here about a disaster in foreign policy and how you can prevent it from happening in the future. Strengthening some of the safeguards in these programs now appears to me to be even more important than I would have thought before, and so I think these hearings are absolutely essential, and as my colleagues on the other side talk about partisanship, I gather it is their view that it is partisanship the Democrats are critical, but an entire coincidence that the Republicans have been uniformly in defense of the administration. I don't believe that either characterization is accurate, and I would repeat, yes, this is political in the best sense of political.

It is in discharge of the function of elected officials in the democracy to present to the public various views, and in particular about this hearing it is very clear that there have been efforts by the administration to use the classification process, which is supposed to exist to protect national security, instead to prevent embarrassment.

We asked, many of us asked, Mr. Eagleburger, in fact, chided me appropriately, because I had been in and out of the hearing for asking him again to point to any example of material divulged by yourself or anybody else which damaged national security, and the administration has not been able to advance one case where anything advanced in any way impinged on national security.

I do think it is valid to look at the extent to which people think of ways in which they can use national security arguments inappropriately to prevent material from getting to the public that is relevant to the public debate. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Mendelowitz, thank you for your patience, and once again cooperating with us. You have been before the committee before. You may proceed as you deem best.

STATEMENT OF ALLAN MENDELOWITZ, DIRECTOR, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY PHIL THOMAS, ASSISTANT DIRECTOR FOR AGRICULTURAL TRADE ISSUES; SUSAN PURCELL; N. SCOTT EINHORN; AND ROBERT HUNTER, ASSOCIATE GENERAL COUNSEL

Mr. MENDELOWITZ. Thank you very much, Mr. Chairman. We are here today to discuss our efforts to obtain information and documents concerning our ongoing reviews of the BNL's Atlanta operations and Iraq's participation in the GSM–102, –103 export credit guarantee programs. We are performing our reviews at the request of this committee as well as others in the Congress.

As I will describe later, our work has been delayed significantly due to the reluctance of some government agencies to provide us with timely and complete access to the information we require. GAO's basic authority to access records is contained in 31 U.S.C. 716. This statute grants GAO access to executive agency records for the purpose of conducting GAO audits and evaluations.

Generally, we do not encounter problems in accessing records in the course of most of our work. However, this was not the case in

Digitized by Google
Original from PURDUE UNIVERSITY

conducting our ongoing reviews of Iraq's participation in the CCC's export credit guarantee programs and issues involving the Banca Nazionale del Lavoro. We have recognized from the outset that the work requested of us concerns issues of considerable sensitivity, some involving alleged illegal activity.

In such instances, it is always our policy to avoid interfering with ongoing criminal investigations. Furthermore, we have procedures in place to protect classified and confidential information. Nevertheless, we have not received full cooperation from the agencies from which we have sought information. In April 1991, White House Legal Advisor, Nicholas Rostow, convened meetings consisting of representatives from the general counsels of a number of executive branch agencies.

The meetings were held to determine how the agencies should respond to congressional requests for information and documents pertaining to United States-Iraq policy prior to August 2, 1990. Procedures were established whereby agencies' general counsels review all such requests, requesters would be permitted only to read some documents rather than receive copies, and alternatives to providing documents would be explored. In addition, Treasury reported at one of the Rostow group meetings that it was not even permitting the taking of notes on the contents of classified documents.

Our experiences at the agencies were consistent with the results of these meetings. Typically GAO works with program officials in identifying and obtaining records relevant to our reviews. However, during the BNL and export guarantee credit reviews, different procedures were adopted. At most of the agencies at which we were conducting work, we were instructed to direct our request for information to the agency's general counsel offices. Some of the experiences we encountered at the various agencies include the following:

Generally the Department of Agriculture has cooperated with our request for access to records. However, there was one issue about which we had problems in obtaining timely information. We were not permitted to review the work papers supporting the USDA's May 1990 administrative review of the GSM programs until we had submitted several oral and written requests. This process created a delay of about 5 months.

We also faced considerable delay in meeting with officials and obtaining access to documents at the Department of Justice. We requested all Justice Department correspondence with other agencies on the BNL matter and all other relevant documents. To date we have only been allowed to review five documents. Furthermore, we are not allowed to either photocopy the documents or take extensive notes. This limited access to documents cannot be considered sufficient for audit purposes.

At the State Department, the Office of Legal Advisor explained that it was concerned about grand jury secrecy rules and would therefore screen all documents we requested to avoid inappropriate disclosure. The Office of the Legal Advisor at State permitted us to read and take notes from, but not copy, 26 cables that were determined by that office to be both relevant to our review and not related to the grand jury investigation of BNL. The Office of the Legal Advisor informed us that there were other documents, but that the office was withholding them from us because they con-

Digitized by Google
Original from PURDUE UNIVERSITY

tained information that might be covered by grand jury secrecy rules.

Despite the fact that the assistant U.S. attorney handling the BNL case had informed us that documents not in their possession are not subject to secrecy rules, State advised us to get clearance from the Justice Department to gain access to these documents. We have asked Justice for this clearance and the matter is still under consideration at this time. Furthermore, we were not able to determine for ourselves which cables were relevant. This fact is particularly troublesome in light of Deputy Secretary of State Eagleburger's testimony before this committee last week in which the Deputy Secretary stated that over 4,000 documents relating to Iraq have been turned over to the committee.

The State Department never informed us of the existence of this vast amount of documents. In December 1991, we visited Rome to meet with BNL and United States Embassy officials. That trip was coordinated with and approved by the State Department. In notifying the Embassy of our visit, the State Department cable reminded the Embassy that it was the Department's policy to be of assistance to GAO and to be as helpful as possible. Nevertheless, the U.S. Embassy refused to give us access to its files on the BNL Atlanta issue.

We met with the Deputy Chief of Mission who told us that he had not been instructed by Washington on how to respond to our request to review documents. He said he believed that all requests for documents were being coordinated in Washington. He said that in any case the Embassy would have limited information because its only efforts in the BNL matter had been to monitor Italian press reports.

Subsequently, we learned that more substantive reports on the issue had been prepared and transmitted by the Embassy to the Department of State in Washington. The Department of Treasury did not permit us to photocopy any of the minutes of the meetings of the National Advisory Council on International Monetary and Financial Policies during which interagency discussions about the Export Credit Guarantee Program for Iraq took place. Some of those minutes were classified, and in those cases we are not permitted to take notes, either. The minutes in question covered almost a decade and included a substantial amount of material. It is not reasonable to expect that GAO could adequately review, analyze, and report on such a substantial body of information on the basis of the auditor's memory supplemented by limited notes.

In addition, Treasury has still not complied with our outstanding request for relevant correspondence. In summary, Mr. Chairman, our principal concern is with the delay that we have experienced in resolving these issues. This problem was particularly acute in this instance given the number of agencies involved. We are committed to providing Congress with the information it needs in as timely a manner as possible. Our ability to do so can be frustrated when, as here, we have less than full cooperation of the executive agencies.

Mr. Chairman and members of the committee, this concludes my prepared statement. I would be pleased to respond to any questions you may have.

Digitized by Google

Original from
PURDUE UNIVERSITY

[The prepared statement of Mr. Mendelowitz can be found in the appendix.]

The CHAIRMAN. Thank you very much, sir. It seems that there is really nothing new. I would like to place in the record at this point and ask unanimous consent a *Washington Post* article of March 12, 1989, in which I am going to read just the pertinent paragraph. It says, "On June 22, GAO investigators held a second meeting with the NSC, National Security Council, and White House staff personnel." And then it quotes, "Among those attending was Nicholas Rostow," which you mentioned before, "a special assistant to the President and legal advisor for the NSC." The GAO once again requested NSC cooperation. The chronology noted the White House, promised a prompt response, but the NSC failed to respond to the GAO despite at least 15 requests to NSC and other officials over a 3-month period according to the investigative chronology. So—that was in the case of General Noriega in Panama.

It just seems that what you have described here so well and so succinctly describes what we have confronted, and there was a long delay before we finally did get some, even if there were some substantial documents. You did make reference to the testimony of the Deputy Secretary last week in which he said he had submitted over 4,000 documents. I think he meant pages. By no means could it be documents, I will assure you that. I think he made a mistake.

I believe that his statement, even written statement, says documents, I think he meant pages because we certainly haven't received 4,000 documents. Well, I think that the main thing here is the fact that you have been delayed for obvious reasons in providing the report that has been requested of GAO. Have you ever seen or have you asked for the so-called Rafidain Bank file? Is it normal for files to be lost or missing at the USDA?

Mr. MENDELOWITZ. The Rafidain Bank file is obviously an important file for the project that we have under way. As a result we asked for it, and we have never seen that file, and it is extremely troublesome when an agency misplaces a file of documents that is obviously so important to a critical issue as in this case.

The CHAIRMAN. Has the executive privilege question been raised with regard to GAO's inquiry and if so, could you tell us on what occasions?

Mr. MENDELOWITZ. GAO's access to records has certain provisions under which the administration may choose to deny access to records. One of the provisions is executive privilege, and certainly, given the sensitivity of the issue, I would say that the administration has looked very carefully at all the provisions of law with respect to our access in order to that use them as effectively as they could. I don't remember, offhand, that on any particular issue we were told executive privilege was the basis on which something was denied, but certainly that was one of the factors being considered by the administration when reviewing documents that we requested.

The CHAIRMAN. Have you been told by any government agency that they had no problem in acceding to your request except for the fact that the White House or the NSC had intervened to prevent?

Mr. MENDELOWITZ. I don't think we were ever told that directly.

Digitized by Google
Original from PURDUE UNIVERSITY

The CHAIRMAN. Inferentially?

Mr. MENDELOWITZ. I think in my statement what I tried to get across was that our experience with respect to accessing records was consistent with the procedures adopted by the Rostow group, and that clearly was a White House initiative.

The CHAIRMAN. We had invited Mr. Rostow and Mr. Gray, but I believe the same reason was given by the executive branch as we had in the case of two witnesses last week, and that is that they were in a privileged position with respect to the President, and therefore you could say executive privilege was raised. Which would you say is the most troublesome agency?

Mr. MENDELOWITZ. I think that the agencies ran the full gamut from the least helpful to the most helpful, and I would say that the Department of Treasury was the least helpful in terms of providing access.

The CHAIRMAN. Well, yes, in our case the Department of the Treasury was the first to interpose the executive privilege, but the reason was because of the advice of the Justice Department. I think the testimony presented earlier by the two chairmen indicates that it is a pattern. I have one or two questions but there is no reason I can't submit those in writing. Mr. Wylie.

Mr. WYLIE. Thank you, Mr. Chairman. Mr. Mendelowitz, Congressman Rose, in his testimony a little earlier suggested that CCC guarantees were connected with military purchases, but he was not able to offer any hard evidence of this. It was merely hearsay. Do you have any evidence to support any allegations along those lines? Or stated differently, have you provided any evidence to the U.S. Department of Agriculture to support those allegations?

Mr. MENDELOWITZ. That is a good question. We have been working on the CCC Program for some years and issued a number of reports, and when asked that specific question at a hearing before the Agriculture Committee I pointed out that there are two answers. One answer is related to the issue of fungibility of capital. That is, capital was in short supply and Iraq was having trouble borrowing money. Iraq had substantial capital needs in order to purchase armaments when it was prosecuting the war with Iran. By making capital available or loanable funds available to purchase needed agricultural commodities, we in effect enabled Iraq to free up other resources to meet its arms procurement needs.

With that said, I pointed out that we did not have any specific evidence ourselves of criminal diversion of CCC funds for weapons procurement directly. We just don't know.

Mr. WYLIE. You are saying that as of this time you do not have any hard evidence.

Mr. MENDELOWITZ. That is right. We do not know. There is the issue of after-sale service. Some of the items that were allegedly provided by after-sale service clearly border on being weapons. The fact that some of the after-sale services involved cash transfers, those cash transfers could have been used for weapons purchase, but we don't have the evidence, unfortunately.

Mr. WYLIE. You said or made reference to "given the sensitivity of the issue," I think was the phrase you used, what did you mean by "given the sensitivity of the issue?"

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. MENDELOWITZ. Well, this issue, first of all, involved questions of alleged illegality with respect to officials at the Banca Nazionale del Lavoro in Atlanta. Any time you get involved in work in which there are allegations of wrongdoing that would be violations of law, it creates situations of substantial sensitivity. We certainly don't want to in any way confound U.S. attorneys' efforts to prosecute a case, and so we always view those as especially sensitive.

Mr. WYLIE. You don't want to confound or jeopardize his——

Mr. MENDELOWITZ. We certainly would not want to jeopardize any U.S. attorneys' efforts at prosecuting wrongdoing.

Mr. WYLIE. OK. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Frank.

Mr. FRANK. Thank you. Mr. Mendelowitz, on the question of the possibility of diversion to weapons, were you ever charged with investigating that specifically?

Mr. MENDELOWITZ. I don't think that we were asked specifically to look at that issue, but we were given a broader request to look at wrongdoing or——

Mr. FRANK. Have you focused on that possibility? Have you thoroughly investigated the possibility?

Mr. MENDELOWITZ. I cannot say that we thoroughly investigated that possibility because so much of the information that would be needed to answer that question would be outside of the United States and beyond our ability to access records.

Mr. FRANK. So you are basically agnostic, then, on that general question?

Mr. MENDELOWITZ. We don't know. There is a lot of smoke around the issue, but——

Mr. FRANK. But it has not been thoroughly investigated to get a definitive answer one way or the other by yourselves?

Mr. MENDELOWITZ. That is correct.

Mr. FRANK. By anybody else that you are aware of?

Mr. MENDELOWITZ. I would say that to my knowledge I can't say that anyone has so thoroughly investigated it that you could prove the negative.

Mr. FRANK. Or the positive, either way?

Mr. MENDELOWITZ. Yes.

Mr. FRANK. Let me ask next, you say that there was delay in documents and you were aware of the sensitivity. In many cases you got the documents. You have had a lot of experience in this area. You are sensitive to national security. You are sensitive to not screwing up ongoing criminal investigations. Were there any instances when you received the document afterwards that you believed that, in fact, it would have been a problem if you had gotten them earlier?

Were you ever persuaded that you had asked for a document you shouldn't have asked for? Were there any cases where your getting the document did interfere with the criminal investigation or did impinge on national security?

Mr. MENDELOWITZ. No, absolutely not, and I think it is not just my opinion that the answer is absolutely not. The fact is one of the offices that was especially helpful to us was the U.S. attorney in Atlanta. They were quite forthcoming in sharing information, and so given the fact that they were directly charged with the prosecu-

Digitized by Google
Original from PURDUE UNIVERSITY

tion, if they took a stance that they could be helpful to us, I don't think that the other information from the agencies would have been problematic.

Mr. FRANK. Based on what I think you said, your demonstrable sensitivity at GAO to these kind of problems is that, in fact, you had never asked for anything that would have been inappropriate?

Mr. MENDELOWITZ. I am sorry, would you repeat that?

Mr. FRANK. You didn't ask for any documents that would have caused any of these problems?

Mr. MENDELOWITZ. No.

Mr. FRANK. Let me also ask you this. You ultimately got a lot of these documents where there was delay. Are you aware of any problem that was caused by your getting any of these documents?

Mr. MENDELOWITZ. Not that I know of.

Mr. FRANK. That strengthens my view that we were not talking here about concerns that were as stated but were, in fact, efforts to prevent political embarrassment. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir. Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. Mr. Mendelowitz, are any of your current or past investigations at GAO specifically related to criminal wrongdoing at financial institutions with respect to their handling of USDA Agriculture Export Credit Guarantee Programs, including BNL? Have you examined BNL for possible criminal activities related to USDA programs?

Mr. MENDELOWITZ. I would have to say, given the U.S. attorney's involvement with BNL, we did not think it was appropriate for us to simultaneously be doing any kind of criminal investigation. We basically were doing a case study of BNL's activities and participation in the program.

Mr. BEREUTER. You were examining BNL before the criminal investigations by the executive branch began?

Mr. MENDELOWITZ. That is correct.

Mr. BEREUTER. Did you find any evidence of criminal activity at BNL with respect to the USDA Export Credit Guarantee Programs?

Mr. MENDELOWITZ. Our familiarity with BNL at the time was not the result of work directed specifically at BNL, but it was the result of an effort to identify the—who was participating in the GSM-102 Program on the part of financial institutions, what that participation was. We were——

Mr. BEREUTER. Is your answer no, though, or yes?

Mr. MENDELOWITZ. The answer is if we had found any evidence of criminal wrongdoing at any particular institution, we would have referred that to the Justice Department for prosecution.

Mr. BEREUTER. Have you received or have you requested information from any congressional committee, for example, either of the two Agriculture Committees of the Congress with respect to evidence that BNL had been engaged in criminal activities with respect to the implementation of USDA's Export Credit Guarantee Programs? Have you requested or have you received?

Mr. MENDELOWITZ. No, I don't believe that we received information from the Agriculture Committee.

Mr. BEREUTER. Have you requested it?

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. MENDELOWITZ. Basically, you know, we try to undertake our efforts as an independent effort in the sense that we like to be sure where the documents came from, what they are, and so on, so we generally tend to do our own data collection and analysis.

Mr. BEREUTER. Are you saying to me that—you are not answering directly, and I am asking you——

Mr. MENDELOWITZ. The answer is, no, I don't believe we have asked the Agriculture Committees.

Mr. BEREUTER. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I believe at this point I will ask unanimous consent to recognize Chairman Rose, because I believe he has a question that is related to this line of questioning. No? OK.

Mr. ROSE. I have no questions.

The CHAIRMAN. Then we will defer to the end. Mr. Hoagland.

Mr. HOAGLAND. Thank you, Mr. Chairman. In reviewing your testimony, Mr. Mendelowitz, you are here basically briefing us on your efforts to get the documents concerning these transactions from a variety of agencies. I gather from your testimony that the procedures that have been imposed are very different from virtually all other document searches that you have conducted for the Congress?

Mr. MENDELOWITZ. That is correct.

Mr. HOAGLAND. You have come here and detailed the problems you have had with each agency. You state, for instance, the Department of Agriculture did not allow you to review their work papers concerning an administrative review of GSM programs resulting in a 5-month delay. Is that right?

Mr. MENDELOWITZ. It took us 5 months to gain access to the information. We eventually did gain access.

Mr. HOAGLAND. And the Justice Department, in spite of all your requests to date, has only allowed you to review five documents?

Mr. MENDELOWITZ. That is correct.

Mr. HOAGLAND. You found out when Mr. Eagleburger testified from the State Department last week that they had provided over 4,000 documents to a House committee, but had never advised you of the existence of those documents?

Mr. MENDELOWITZ. Correct.

Mr. HOAGLAND. You have documented in some detail here the difficulties you have had with each agency, the Treasury and CIA as well. This is quite different than the treatment you customarily receive; is that right?

Mr. MENDELOWITZ. That is right.

Mr. HOAGLAND. Do you have any explanation for that?

Mr. MENDELOWITZ. Well, obviously, the explanation would be pure conjecture, and I think I would be stepping over the bounds of good auditing if I resorted to conjecture rather than fact.

Mr. HOAGLAND. OK. Well, I will respect that we don't want you to just speculate. Let me ask you about the specific file that Chairman Rose discussed during his testimony, the Rafidain Bank file. Now, Rafidain Bank, as I understand it, is the commercial branch of the central bank of Iraq, is that right?

Mr. MENDELOWITZ. Correct.

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. HOAGLAND. And the creditworthiness of Iraq as a potential recipient of loan guarantees is determined by the creditworthiness of the Rafidain Bank? Did I say that right?

Mr. MENDELOWITZ. Well, the program works by requiring a guarantee from the country purchasing the commodity that, in fact, a loan will be repaid. In the case of Iraq the guarantee was provided by the Rafidain Bank as a government-owned commercial bank that in effect represented the government's guarantee.

Mr. HOAGLAND. All right. So as the central bank of Iraq, the Rafidain Bank had to guarantee these up to $5 billion in agricultural credits, is that right?

Mr. MENDELOWITZ. Well, the $5 billion is cumulative over time. There was never a period in time when there were $5 billion in guarantee credits outstanding at one time. When the program began in 1983, the initial exposure was about $400 million. By the mid to late 1980's the annual extension of guarantees was in the vicinity of $1 billion a year, so that at any given time the maximum exposure with respect to guaranteed loans was somewhere between $2 and $3 billion.

Mr. HOAGLAND. But what it comes down to is that this file contains all the documents in the Agriculture Department concerning Iraq's creditworthiness?

Mr. MENDELOWITZ. No. The creditworthiness assessment is done as part of something which we would call a country risk assessment, and there is a group in the Agriculture Department that does country risk assessment. Then the country risk assessment generally is discussed within the NAC, and advice is provided by other agencies that do country risk assessments, such as Treasury or the Eximbank.

We do have those documents, the country risk assessment documents. Ultimately, when you talk about the soundness of Rafidain Bank, what you are really talking about is the willingness of the Iraqi Government to stand behind it and that, in effect, says that the ultimate soundness of the Rafidain Bank depends upon the creditworthiness of Iraq in the international capital markets.

Mr. HOAGLAND. Why is this one file so important?

Mr. MENDELOWITZ. Well, it includes a whole series of documents and analyses relating to the operation of the program with respect to Iraq.

Mr. HOAGLAND. Which would reflect on Iraq's creditworthiness the likelihood of their repaying these loans?

Mr. MENDELOWITZ. I have to say that without having seen it I can't say how important it is, and I would be speculating again. We assume it is important, that is why we asked for it. The fact that it is not in existence means that we just don't know. We asked for it because we assumed it was important.

Mr. HOAGLAND. Now, during this period of time, didn't Iraq have a major external debt problem—around $50 billion in external debt of funds it owed to other countries around the world?

Mr. MENDELOWITZ. Iraq, in the course of the war, ran up a very heavy international—set of international obligations and was running into difficulties servicing those international obligations.

Mr. HOAGLAND. And most European banks had declined to extend Iraq anymore credit; is that right?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. MENDELOWITZ. Private banks had stopped extending in many cases extra credit, and Iraq had ceased servicing debt to some private sector banks.

Mr. HOAGLAND. And Eximbank had serious reservations about extending Iraq credit?

Mr. MENDELOWITZ. Eximbank monitored its program with respect to Iraq very carefully. Basically, during the period we are talking about, the only Eximbank assistance available to Iraq consisted of short-term export credit insurance, and any time Iraq fell into arrears on any of the credit that Eximbank had insured, the Eximbank would close the window and not open the window again until the arrears had been made up.

Mr. HOAGLAND. A lot of the fundamental evidence of Iraq's lack of creditworthiness, the problems it was having with the European banks, with the Eximbank, a lot of the documents that would lead the Agriculture Department to have concerns about it were contained in this file, were they not?

Mr. MENDELOWITZ. That is correct, but I would sort of like to put the issue of Iraq and GSM-102 and creditworthiness into a somewhat broader setting. The issue of Iraq and its creditworthiness is not a singular case with respect to GSM-102 and -103. Generally speaking, extensions of export credit guarantees under the programs were extended for market development purposes. They were also extended for foreign policy purposes, and because a government guarantee was involved, they were extended to countries which, by definition, were not sufficiently creditworthy to enter the commercial credit market. I don't think I could draw the conclusion that Iraq stands out as unique with respect to its questionable creditworthiness. I just think the program generally operated across the board in many cases with countries benefiting under the program with questionable creditworthiness. This is why in the 1990 Farm bill the Congress chose to change the criteria with respect to creditworthiness.

Mr. HOAGLAND. My time is up. Let me just make one final point. The creditworthiness issue is an important issue. My understanding is that this file would show the underlying documents pertaining to that—many of which we can't find in other files or from other sources, and is therefore a very important file inasmuch as it bears on the judgment of those who would have continued in extending credit to Iraq.

Mr. MENDELOWITZ. Obviously, a key file from the documents is important to understanding the process of what happened, but I think even without that file we have sufficient documentary evidence that we reviewed that reflects the fact that Iraq represented a very problematic credit risk under the program, that a number of agencies providing advice to the Agriculture Department with respect to CCC did not consider Iraq creditworthy and did not consider Iraq to be worthy of the large amounts of credit being extended to them. It is clear that the funds were extended for foreign policy and market development purposes rather than based exclusively on sober judgment of credit risk.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOAGLAND. Is there any explanation as to why this file is missing?

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. MENDELOWITZ. We don't know.
Mr. HOAGLAND. Did anybody——
The CHAIRMAN. Mr. Roth.
Mr. ROTH. Thank you, Mr. Chairman.
Mr. MENDELOWITZ. We are just told it can't be found.
Mr. HOAGLAND. I have no further questions, Mr. Chairman. Thank you.
Mr. ROTH. I thank you, Mr. Chairman. Mr. Mendelowitz and members of your group, I have had some dealings with GAO, and I want to compliment you for the work that you have done that I have been involved with, for example, in the Mirecki case and something that had far-reaching examples for military training, so I know you have done some excellent work.
I know GAO doesn't get involved unless you are asked to get involved. Who asked you to get involved, if I may ask?
Mr. MENDELOWITZ. I am sorry, in this issue?
Mr. ROTH. Yes.
Mr. MENDELOWITZ. We have been doing work on CCC and BNL at the request of the Senate Agriculture Committee, the House Agriculture Committee, Chairman Rose's subcommittee of the House Agriculture Committee, Chairman Schumer, Chairman Gonzalez, Chairman Wise.
Mr. ROTH. So you have a whole host of people that have asked you to get involved?
Mr. MENDELOWITZ. That would be correct.
Mr. ROTH. All Democrats, incidentally?
Mr. MENDELOWITZ. They are all chairmen of committees, but I believe—didn't Senator Lugar cosign something? Some of the requests we have gotten have been cosigned by both chairmen and ranking Members. I will be honest, I don't really remember who signed what, but I do know that there was a recent letter sent from the Senate Agriculture Committee to agencies asking them to help us in this effort, and it was signed by both the chairman and the ranking Member.
Mr. ROTH. OK, thank you. You were involved in a trip to Rome. What was that all about?
Mr. MENDELOWITZ. Well, I wasn't personally, but my staff was. Fortunately, they are here, they can talk about it, but basically the purpose of going to Rome was to interview headquarters staff at the BNL Bank to try to get their perspective on the events that we were looking at and also to meet with the United States Embassy folks in Rome because our understanding was that they had some understanding of the issue.
Mr. ROTH. What did the Embassy folks tell you when you got there?
Mr. MENDELOWITZ. The Embassy folks told us that basically they had very little involvement with the BNL issue. They said they read local newspapers, summarized the articles that were appearing with respect to BNL and forwarded them to Washington. At the end of our visit, the team had a meeting with the Ambassador who actually went on at some length discussing the issue from his perspective.
He said that he was relatively new. He was not familiar with the issue, but one of the first things that came up was the BNL issue,

Digitized by Google
Original from PURDUE UNIVERSITY

and that he had met the new chairman of BNL when he was in Washington, that he had met the new chairman of BNL when he arrived in Rome, and that the BNL chairman was making certain requests and he was passing them along, so that——

Mr. ROTH. But did you learn anything of substance other than his perceptions or——

Mr. THOMAS. We asked a number of officials at BNL whether they knew anything about Drogoul's operation in Atlanta. Each one of them essentially denied any knowledge of it. All they could confirm was that Drogoul had been a very successful branch manager and brought a lot of business in.

One of the questions that continuously surfaces is how could such a large operation in Atlanta continue without the knowledge of headquarters people, and to a person the bank officials denied. Explanations ranged from just incompetence in some respects to no knowledge. They feel that there was no deliberate involvement of the Rome headquarters and we were unable to——

Mr. ROTH. So we really didn't get anything substantive out of that is basically the long and the short of that; is that right?

Mr. THOMAS. We got impressions. We met with the inspector general of the Italian equivalent of Eximbank. He told us it was impossible to conceive that Rome would not know, that BNL Rome would not know what was going on in Atlanta if it had been of that magnitude and illegal.

Mr. ROTH. Now, Mr. Mendelowitz, the other side, we heard from our friends on the other side of the aisle say this is a political hearing. Now, you in GAO are really—really don't involve partisan politics, do you?

Mr. MENDELOWITZ. That is absolutely correct. If you would like to repeat that for the record, I would appreciate it.

Mr. ROTH. Well, GAO is supposedly an impartial group. Otherwise your credibility suffers, credibility comes under question.

Mr. MENDELOWITZ. I would ask you to strike the word "supposedly" from your statement, and if you do I would be happy to agree with it. We are absolutely a nonpartisan organization. We serve the Congress in its entirety, and we work very hard to do that, and we work very hard to make sure that——

Mr. ROTH. Is it true that on the floor of Congress, and I say you have done some good work for me, and that is why I like GAO, but on the floor of Congress it has come up that GAO is partisan, that it does lean to the other side. Now, of course, you would deny that, right?

Mr. MENDELOWITZ. Not only would I deny it, I would state absolutely unequivocally in all my years working at the General Accounting Office, number one, I have never been asked to undertake a project or slant results for partisan purposes. I have consistently been encouraged to make sure that all conclusions we draw are based on fact and analysis, and that——

Mr. ROTH. Let me ask you, how do you do that when you have a political hearing like this and GAO is supposed to be as clean as Caesar's wife? How do you do that? Aren't you in sort of a tough predicament?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. MENDELOWITZ. The way we do it is by relying completely on facts and analysis, and we do it by avoiding innuendo, we do it by avoiding conjecture.

Mr. ROTH. OK. Thank you.

The CHAIRMAN. Mr. Moran.

Mr. MORAN. Mr. Chairman, I would like to focus on this memo from Mr. Frank DeGeorge, the inspector general of the Commerce Department, and, incidentally, for the purposes of the member of this committee who was so obsessed with party affiliation, I think it might be instructive to let him know that I knew Mr. DeGeorge when I was an auditor for the Weinberger administration. He was hired for quality control administration, quality control of entitlement programs. He passed all the Republican litmus tests as a career military officer, and probably as crusty and no nonsense as anyone you could find, but has an extremely high standard of integrity, so I have to put that into the record because of my colleague's implication that anybody that is not a Republican somehow has to prove their credibility.

So let me get to this memo that Mr. DeGeorge has authored with regard to Iraqi export licenses. He says that Bureau personnel, including the former Under Secretary of Commerce, stated that while preparing printouts for submission to the chairman, changes were made to selected data on 66 approved export licenses for sales to Iraq. A review disclosed changes to data on two additional licenses concerning trucks. Bureau personnel also changed permanent records on the export control automated support system data base, compromising the integrity of the Iraqi license records. Neither the changes to the data provided to the chairman nor the changes to the data provided to the system data base were adequately supported.

What these changes were, was to take out the reference that truck licenses were for military purposes. In fact, the total value of the license trucks was over $1 billion or approximately two-thirds of the total value of the approved export licenses for Iraq during the period under review, and they—what happened is that the Bureau of Personnel changed the commodity description for trucks from vehicles designed for military use to commercial utility cargo trucks or vehicles.

Now, I don't know who changed that, and I think it is important to get to the basis of that, because it seems to me that altering documentation that is supplied to the Congress is, in fact, an offense. I believe it is a criminal offense if you change—if you alter factual information requested in an official capacity. Now, I would like to ask the—our witnesses if they have any indication at this point of who might have been responsible for altering these documents.

Mr. MENDELOWITZ. The particular IG investigation you are talking about was conducted by the Commerce IG. It involves the Bureau of Export Administration, and quite honestly I really have no information about Bureau of Export Administration, and I can't be of any assistance.

Mr. MORAN. OK. I appreciate that. I wanted to know whether you had looked into this at all. I think Mr. Bereuter's approach is an important one because not only do we want to look into the propriety of public policy, whether public policy was properly carried

Digitized by Google
Original from PURDUE UNIVERSITY

out—that is a legitimate oversight function, particularly with regard to the international banking network—we also do want to determine whether there was any type of criminal offense involved here, and since the inspector general of the Department has indicated that, in fact, official documents have been altered, altered in a material way because military products that can be used for military purposes were not supposed to have been provided under that program, then I think this is a very serious area that needs to be pursued, Mr. Chairman.

I would like to suggest to the General Accounting Office that we would like to know at any point when your legitimate inquiries have been obstructed from lack of information being provided. You have informed us of that today. I don't know that we would have been informed had we not had this context in which to ask you, and it is not only in your interests, but it is certainly in the Congress' interests and most certainly, most importantly in the American public's interest to know when information is withheld. That is what worries me so much.

I would have far more confidence that impropriety had not taken place if information had been fully provided. Almost by implication, if the information can be made available to the general public, and there is nothing to hide, then there is no reason for hearings like this, but when you have a document authored by the President of the United States that is addressed to the Vice President, the Secretary of State, Secretary of Treasury, of Defense, Attorney General, Secretary of Energy, Director of OMB, Assistant to President of the National Security Affairs, Director of the CIA, Chairman of the Joint Chiefs of Staff, Director of the U.S. Arms Control and Disarmament Agency, the Director of the United States Information Agency, and those of you who have worked in the administration know that when you get this kind of circulation, there has got to be thousands of people throughout the administration who are aware of this.

For the Congress to be given a document the majority of which has been blacked out has to raise questions. This is a document circulated throughout the administration, which was designed to influence foreign policy in a major way, and yet the Congress of the United States is given something like this? Imagine an entire page, the concluding paragraphs written by the President of the United States, "There is information here that cannot be shared with the Members of Congress, even the chairmen of the committees?" That is why I have the high level of anxiety here that there is something very seriously wrong, and I very much appreciate the role that the General Accounting Office has played in terms of trying to get this information.

I apologize for Congress for the fact that we have a situation where the Federal Government employed, paid by the American people, will not provide you the relevant information you request even without giving adequate information. Mr. Chairman, I hope we can continue these hearings because you look at a page like this from a memo sent out by the President of the United States, and we can't—it is so damaging, apparently, that we can't even be—it can't be shared with us, let alone the American people. There is

Digitized by Google
Original from PURDUE UNIVERSITY

something seriously wrong here that must be—to which we have to get at the heart of, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much. Let me assure the gentleman that we intend to continue and persist. Thank you for your help which has been great.

If the witness has any statement to make, we will hear or any questions to ask of us or any member of your panel has any additional statement to make or observation, we want to thank you again very much.

Mr. MENDELOWITZ. Thank you very much.

The CHAIRMAN. Thank you, gentlemen, and Miss Purcell.

The next panel consists of Miss Elizabeth Rindskopf, Office of the General Counsel, Central Intelligence Agency; Mr. Alan Raul, General Counsel, U.S. Department of Agriculture, and I want to thank him in advance because this is the second show in 8 days; Mr. Edwin Williamson, Legal Advisor, U.S. Department of State; Col. Fred K. Green, Legal Counsel for the Chairman, Joint Chiefs of Staff, U.S. Department of Defense; Mr. Wendell Willkie, General Counsel, U.S. Department of Commerce; Ms. Jeanne S. Archibald, General Counsel, U.S. Department of the Treasury; Mr. Michael Cifrino, Senior Attorney, Office of the Deputy General Counsel International Affairs and Intelligence, U.S. Department of Defense.

Let me thank the panelists in advance and apologize for the lengthiness of your wait before you were heard and ask if any one of you has any time constraints, any appointments you must soon arrive at, and also if there is any objection to my recognizing you in the order that you were introduced. That is beginning with Ms. Rindskopf. If not, we will recognize you, Ms. Rindskopf.

STATEMENT OF ELIZABETH RINDSKOPF, OFFICE OF THE GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Ms. RINDSKOPF. Thank you very much, Mr. Chairman. My statement will be brief so I am prepared to lead off, rather than summarize and let me simply read it.

I am here today at your request to discuss the CIA's role in providing the committee with information concerning the Iraqi procurement network and Banca Nazionale del Lavoro (BNL). When the committee first contacted the agency for this information, we responded that we would be pleased to provide access to whatever intelligence we had on these topics.

I understand that officers from our Office of Congressional Affairs sat down with members of the committee staff to work out procedures for doing so. We have been working with you and your staff ever since, and we have tried to be helpful. I know that the Director appreciates the positive comments you have made at previous hearings and on the floor of the House concerning CIA's cooperation with your committee on this investigation.

Your concern today appears to be whether the White House had some role in deciding what documents or information we would provide to the committee during this investigation. My answer to your concerns is a direct and simple no. In particular, you have asked whether the CIA received any communication from the White House, the State Department, the NSC, or any other Depart-

Digitized by Google
Original from PURDUE UNIVERSITY

ment asking the Agency to withhold information from congressional committees investigating the administration's Iraq policy.

You have also asked whether the State Department, White House, or NSC reviewed and/or cleared information that was submitted by the CIA to congressional committees in response to information requests concerning Iraq or BNL. To my knowledge, the answer to both of these specific questions is also no.

However, after I submitted my testimony, I did find one case where we let the NSC know we were going to send to the House Intelligence Committee analytical papers requested by that committee. These papers related to warning of Iraqi military activities before Desert Storm. They did not pertain to the subject of your inquiry, which as I understand it, is BNL and the Iraqi procurement network.

The agency officials who worked with your staff to provide relevant information followed our normal policies, and they received no directions from the White House, NSC, or any other agency to withhold CIA information.

You have asked, in addition, about a meeting that was hosted by the NSC staff on April 8, 1991 concerning congressional requests for information pertaining to United States-Iraq policy prior to the gulf war. I did not attend that meeting, although I did attend a later meeting where I believe this subject was mentioned. My memory of those discussions, however, is not especially vivid, but my general impression is that they followed the routine that occurs whenever many agencies have been asked to respond to similar congressional requests—the NSC reminds agencies to coordinate the release of third agency information, and the NSC asks to be informed of any possible need to invoke executive privilege. I can say with certainty that I was never directed to withhold CIA information on these topics from congressional investigators.

I would be happy to answer any questions you may have, although as I indicated in my opening remarks, my personal knowledge in this area is exceptionally limited.

Thank you.

The CHAIRMAN. Thank you very much.

[The prepared statement of Ms. Rindskopf can be found in the appendix.]

The CHAIRMAN. Mr. Raul.

STATEMENT OF ALAN RAUL, GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. RAUL. Mr. Chairman and members of the committee, at your request, I am here to respond to questions enumerated in the chairman's May 4, 1992 letter. The letter inquires about meetings conducted in the spring of 1991 by agency lawyers and legislative affairs officials to discuss the various document requests regarding Iraq that had been submitted to numerous agencies by multiple congressional committees. The following responds to your questions:

The Agriculture Department attended these meetings because it is entirely routine to establish and participate in an interagency process when more than one agency is involved in an issue. Partici-

Digitized by Google
Original from PURDUE UNIVERSITY

pation did not require authorization. I attended meetings on April 9, 15, May 6, 13, 31, and June 5, 1991. Representatives of numerous agencies also attended. Issues involving overlapping and related congressional document requests regarding Iraq were discussed.

In a letter dated August 21, 1991, Chairman Gonzalez requested documents from USDA. USDA cooperated fully with this request and, on September 27, 1991, USDA submitted approximately 3,700 pages from Department files. All requested documents were provided except for a limited number of documents which had been originated outside USDA by other agencies of the Federal Government.

With regard to that limited group of documents, we referred the committee's staff to the originating agencies; that is, the Treasury Department and Justice Department to obtain copies directly.

When it was learned that the committee was publishing classified documents, the issue of providing classified materials was raised since it appeared that readily available declassification procedures were not being followed or requested. In any case, USDA is not an intelligence agency and does not typically create or initiate significant quantities of classified information.

Nonetheless, in a February 24, 1992, letter, Chairman Gonzalez requested information about intelligence documents. On April 2, 1992, Secretary Madigan responded "that while USDA wishes to cooperate in every way possible with your request, USDA is not in a position to release information about classified documents which were originated by intelligence agencies. We respectfully suggest that you direct your inquiries about classified documents to the intelligence agencies that originated them."

It is customary for USDA, and all other agencies, to consult with other agencies and/or provide draft or final materials for information, review comment, or clearance by other agencies having an interest in the subject. In the case at hand, apart from the classified information imbroglio of which this committee is well aware, I have no knowledge that any agency, including the State Department and the National Security Council, ever directed or requested that we not provide any document to this committee or any other committee of Congress.

I trust this responds to the committee's questions.

In closing, I should state that consultation among agency lawyers working on the same issue at the same time is entirely principled. Indeed, not to do so would be almost unprofessional. Effective legal counsel depends on the ability of lawyers to consult freely with colleagues and clients.

Mr. Chairman, if you or members of the committee have any further questions, I am prepared to answer them.

Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Raul can be found in the appendix.]

The CHAIRMAN. Mr. Williamson.

STATEMENT OF EDWIN WILLIAMSON, LEGAL ADVISOR, U.S. DEPARTMENT OF STATE

Mr. WILLIAMSON. Thank you, Mr. Chairman.

Digitized by Google

Original from PURDUE UNIVERSITY

By the early part of April 1991, the State Department had received numerous congressional requests for information about United States-Iraq policy, including requests from the House Foreign Affairs Committee, the Senate Foreign Relations Subcommittee, and the House Permanent Select Intelligence Committee, as well as this committee.

In response, we made an extraordinary effort to make available thousands of pages of documents to various congressional committees at a considerable cost in employee hours. To this committee alone, the State Department has made available an estimated 4,000 pages of documents on more than a half dozen occasions.

The suggestion that the administration has sought to cover up its policy toward Iraq is simply not true, and is belied by the extensive production of documents we have already made to Congress, the congressional testimony of administration policymakers, and our continued willingness to make available additional information.

Mr. Chairman, you have specifically asked about the Department's involvement with lawyers of other agencies in discussions about pending congressional document requests. The simple and complete answer is that we consulted with one another about our responses to the committee's requests.

Coordination among government agencies in responding to congressional document requests is a longstanding practice and an appropriate way to ensure that the interests of both the Congress and the executive branch are met. And the fact of this coordination was hardly secret. When we sent to your committee, Mr. Chairman, our first collection of documents on August 2, 1991, we informed the committee that the Department—quote, "Department is consulting with other agencies about the remaining documents identified by your staff," close quotes.

In responding to congressional requests, the Department attempts to meet several important objectives including:

To provide Members of Congress with the information they need; to maintain the integrity and candor of the Department's reporting and decisionmaking processes; and to protect the confidentiality of diplomatic communications and other national security information.

Let me stop and elaborate on those objectives for a moment. On their face, they appear simple. In fact, they raise a host of complex considerations and potential conflicts. Developing ways to accommodate these objectives is one of the principal things we lawyers consult about.

The first objective is straightforward. The Department's policy—our marching orders—is to give you the information you need.

The second objective—maintenance of the integrity and candor of the Department's reporting and decisionmaking processes—and the third—protecting the confidentiality of diplomatic communications and other national security information—have spawned a group of operating procedures.

Although not always legally binding, for the most part, they are based on legal considerations, and that is why, in my view, it falls to the lawyers to deal with them. The two most important procedures from a coordinating standpoint are those surrounding the

Digitized by Google
Original from PURDUE UNIVERSITY

issue of executive privilege and those embodied in what we refer to as the third agency rule.

As you know, we have not asserted executive privilege in respect of any State Department documents requested by the committee. In fact, I do not—I am not aware it has been asserted in respect of any documents requested by this committee. But, part of what we lawyers do is to work with others in the executive branch to develop accommodations for congressional requesters to avoid the need to even consider asserting it.

The third agency rule takes the most coordination between various agencies. Insofar as classified documents are concerned, this rule is codified in Executive Order 12356. The rule is simple in its formulation—one agency does not give up another agency's documents without the consent of the owning or controlling agency. But it requires a great deal of practical coordination.

The reason it exists is very straightforward—the controlling agency typically is in the best position to determine the extent to which a document's release would harm national security, have a chilling effect on the deliberative process, or compromise law enforcement or other important confidentiality interests.

Let me now try to answer the specific questions you put to me.

The first was: Why did the State Department join this group—that is the lawyers group established by the White House? Who at the State Department authorized such participation? First, the group was simply a practical attempt to organize the voluminous document requests that the administration had received. It was entirely routine and no authorization was required.

Second, you ask for a list of the meetings held by the lawyers group. To the extent that there were meetings of this group as such, I would list their dates as April 8, April 9, April 15, May 6, May 13, May 31, and June 5. I do not believe that formal minutes or lists of participants were generally kept, because these were working level meetings. Indeed I, myself, only attended two of the meetings.

Third, you asked if we had been asked by other agencies to withhold information from congressional committees investigating the administration's Iraq policy. To the best of my knowledge, and obviously other than in the context of coordinating under and complying with the procedures that I outlined earlier, particularly the third agency rule, the answer to your question is no.

Finally, you asked whether the White House or the NSC had reviewed or cleared information submitted to congressional committees in response to information requests regarding Iraq or BNL. The answer to that question is yes, but again I believe it is fair to say that such review or clearance was only in the context of the procedures I referred to.

I will be happy to take your questions, Chairman Gonzalez.

The CHAIRMAN. Thank you, sir.

Colonel Green.

Digitized by Google

Original from
PURDUE UNIVERSITY

STATEMENT OF COL. FRED K. GREEN, LEGAL COUNSEL FOR THE CHAIRMAN, JOINT CHIEFS OF STAFF, U.S. DEPARTMENT OF DEFENSE

Colonel GREEN. Mr. Chairman, I reviewed your letter of May 4, 1992, requesting my appearance and want to provide this committee with the following information in specific response to the questions posed in that letter.

At the time I prepared my statement, I recall attending only one of the interagency meetings of lawyers on the topics that you mentioned. That was the meeting held on April 8, 1991. I know I was at that meeting because I have it noted on my personal calendar. I was invited to attend the meeting by the NSC counsel's office. I did not request any specific authority from any Department of Defense officer or official to attend nor was I directed to attend.

In listening to the other witnesses this morning and looking at a list of participants, I think it is possible I attended a meeting on April 15 there, as well, but certainly the occurrences at those meetings have melded together in my mind at this point.

To the best of my recollection, the National Security Council memo of April—that you enclosed with your letter accurately summarizes the April 8 meeting. Operation Desert Shield and Desert Storm had been a particularly busy time for me and those in my office, and even with the ground war over, I was still attending numerous meetings involving Iraq. And this particular meeting on April 8 at the NSC was just one more of those meetings.

As I recall, there were a number of people there, several of whom I did not know. I did not retain any notes made at that meeting, nor do I remember participating specifically in the discussion.

When I returned from the April 8 meeting, I gave no direction to any members of the Joint Staff and I took no specific actions as a result of that meeting. Later in June 1991, the Joint Staff responded to a subpoena duces tecum signed by the chairman of the House Foreign Affairs Committee to the Secretary of Defense for documents pertaining to the export or reexport to Iraq of equipment or technology controlled for national security or foreign policy purposes.

Several responsive documents were found located within the Joint Staff files, and they were provided in their entirety to the Office of the General Counsel of the Department of Defense for use in responding to that subpoena. The Joint Staff had no further involvement in this matter until I received your letter concerning this hearing.

In reviewing the events for the purpose of preparing for this hearing, I learned from personnel in the Office of the General Counsel of the Department of Defense that other interagency meetings with lawyers on this same topic occurred on May 6, 13, and June 5. I do not recall being invited to those meetings or attending. I have no personal notes or calendar entries that would indicate that I attended on those days.

I do not know if the Department of Defense has ever received a document from the White House, State Department, or the NSC asking or directing that information be withheld from the Congress

Digitized by Google
Original from PURDUE UNIVERSITY

on the administration's Iraq policy. I do not know if the White House, State Department, or NSC ever reviewed any information submitted by the Department of Defense to the Congress concerning the matters you indicate.

I was aware, of course, based on the April 8 meeting, and perhaps on the 15, as well, that the NSC counsel wanted to ensure that any decision by any executive agency to withhold a document based on executive privilege would be coordinated in advance with the NSC before that privilege was asserted.

I trust the foregoing has been responsive to your specific questions and I would be pleased to attempt to respond to any further questions from the committee.

Thank you, sir.

The CHAIRMAN. Thank you, Colonel.

[The prepared statement of Colonel Green can be found in the appendix.]

The CHAIRMAN. Mr. Willkie.

STATEMENT OF WENDELL WILLKIE, GENERAL COUNSEL, U.S. DEPARTMENT OF COMMERCE

Mr. WILLKIE. Good afternoon, Mr. Chairman. I have submitted written testimony for the record which I will briefly summarize here.

As you know, several agencies are involved in the export licensing process. The Export Administration Act, the authorizing legislation for export controls on dual use items, requires consultation among several agencies, principally Commerce, State, and Defense. Administrative procedures elaborate on the statutory framework and specifically call for referral of export license applications to a number of other agencies.

As a result of this interagency process, documents and information originated by one agency will often be found in the files of a number of other agencies. Therefore, in preparing to respond to a sweeping request for export control documents such as the 1991 request from Congressman Gejdenson which he described this morning, coordination among the agencies is not only prudent, but necessary.

Coordination in the preparation of responses to such requests is necessary for a number of reasons: First, there is need for coordination to ensure all agencies are working from a common interpretation of the scope of the request.

Second, coordination is necessary because of well-known and accepted third agency procedures.

Finally, coordination among agencies is necessary to address important executive branch interests. In responding to requests, an important concern may be the protection of executive privilege which, under longstanding and well-known executive branch procedures, only the President can assert.

There is nothing unusual, Mr. Chairman, about a group of lawyers from various agencies meeting with NSC lawyers to coordinate certain responses to congressional requests. Indeed, it is a common practice.

Digitized by Google
Original from PURDUE UNIVERSITY

I would like to address the specific questions posed in your letter of invitation.

First, the Commerce Department participated in the meetings of the lawyers group and this kind of coordination is not an unusual response to congressional document request. There is no special authorization necessary for Commerce personnel to participate in the group.

Second, I am providing a list of meetings held by the lawyers groups we have reconstructed to the best of our ability from documents in Commerce files as well as other sources. We will also provide copies of notes, minutes, and letters originated as a result of such meetings.

Third, during the interagency coordination process, I have described, other members of the lawyers group asked the Department of Commerce not to produce, for the time being, certain documents that Congressman Gejdenson had requested, pending possible negotiations with his subcommittee and/or determination of whether to assert executive privilege over those documents. And we will provide copies of documents reflecting such communications.

Fourth, in the course of preparing to respond to the Gejdenson request in 1991, lawyers and others at the White House, NSC, State Department, and other agencies did review information submitted to Congress by the Commerce Department. These reviews were undertaken in accordance with third agency procedures as well as to assess whether to assert executive privilege.

I want to emphasize in conclusion, however, that to the best of my knowledge, all responsive documents located in Commerce files were produced to Congress and no such documents were withheld.

In closing, I would like to assure the members of this committee, the Department of Commerce is mindful of the oversight and legislative needs of the Congress and we have made and will continue to make every effort to be responsive to congressional requests for information. As you may be aware, we are doing so with respect to declassifying certain documents in response to Congressman Gejdenson's most recent request.

Thank you. I will be pleased to take any questions you may have.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Willkie can be found in the appendix.]

Mr. MORAN. Mr. Chairman, I have to leave momentarily. I have only questions directed to Mr. Willkie. Would it be possible to ask those questions of Mr. Willkie now?

The CHAIRMAN. Any objections? Hearing none, the gentleman is recognized and the witnesses, please forgive.

Mr. MORAN. Thank you very much for your indulgence, Mr. Chairman, and the ranking minority Member.

Mr. Willkie, following up on your last statement, you want in every way to be responsive to the Congress' request for information, you were here when I raised the issue of this report from the inspector general of the Department of Commerce that cited 66 cases in which a—the information requested by the Congress was altered and in the words of the inspector general, it was unjustified and deliberately misleading.

55-927 O - 93 - 3

Digitized by Google
Original from PURDUE UNIVERSITY

Many of the changes were to change the description, commodity description for trucks from vehicles designed for military use to commercial utility trucks, cargo trucks. And then in another case, the end user—excuse me, the exporter had inserted a comment that, according to our information, the end user is involved in military matters in the end use field. Apparently, that information was deleted.

So there were material alterations of information that was submitted by the Department of Commerce to the Congress of the United States and it was, of course, an official request, official documentation. I know it must have been—you must have been aware of it as General Counsel for the Department of Commerce.

Who authorized those changes in these documents, Mr. Willkie?

Mr. WILLKIE. With regard to the specific changes to which you referred, it is my understanding that the Under Secretary for Export Administration authorized those changes.

Mr. MORAN. Mr. Willkie, did he make those changes?

Mr. WILLKIE. Did he personally make those changes?

Mr. MORAN. Who made the decision what to take out, what to change?

Mr. WILLKIE. Mr. DeGeorge's report indicated he approved all the changes made. Let me provide a bit of background about this. When allegations surfaced that this conduct to which you refer may have occurred which appeared in certain trade publications, trade sheets, I was concerned—I asked Mr. Kloske for a report about this. He provided a detailed report about changes which were made and the rationale for the changes.

I was not satisfied with the report that I received and I asked the inspector general—and I very much share your confidence in his integrity and judgment and independence. I asked him if he would look into this. And I also urged Mr. Kloske to divulge all information he had about this to Mr. Barnard.

Mr. MORAN. When the information was submitted from Department of Commerce you must have been aware there were some changes made. Were you aware that changes had been made to documents?

Mr. WILLKIE. I was not aware specifically of the changes that had been made until the report that I received from Mr. Kloske, I believe it was about February 26.

Mr. MORAN. To your knowledge, do you know whether the Secretary of the Department of Commerce was aware that 66 changes had been made to official documentation being supplied to the Congress?

Mr. WILLKIE. It is my recollection that I said I had concerns about what I was hearing, these allegations that had surfaced and that I was going to ask Mr. Kloske for a report on this. I believe that I advised him about the report, said I wasn't satisfied with the report and that I recommended he and I request the inspector general look into the matter.

Mr. MORAN. In all due respect, that isn't the answer to the question I asked. Do you know whether or not the Secretary of Commerce was aware that changes had been made to documentation being officially supplied to the Congress, changes that, in the inspector general's words, were misleading?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. WILLKIE. I don't recall. This is more than a year ago. I don't recall all the specifics of my conversation with the Secretary.

I might add that you refer to—there were 66 changes. I think the changes regarding the trucks which have been the subject of a number of news stories, I think the *New York Times*, the *Washington Post*, the *Los Angeles Times*, and other publications reported on this about a year ago at the time the IG's report was released, are the source of particular concern and were certainly unjustified and inappropriate.

There were other changes that were suggested when the document was reviewed in the interagency process because the initial printout had information which itself was misleading. In other words, had other of those changes not been made it is my understanding, it is my impression, that the report that would have been provided would have itself been misleading.

What Mr. Barnard had requested was not a document that previously existed, but he was requesting information which was available from the Department's computer data base.

Mr. MORAN. The information that was originally developed for submission to the Congress in response to the chairman's request by the Department of Commerce employees, can you tell me whether that information was retained in the physical possession of Department of Commerce at all times, or was there any other agency of the government, members of the government, not employees of the Department of Commerce, who had physical possession of that documentation at any time between the original preparation of it and the actual submission to the Congress?

Mr. WILLKIE. The printout—copies of the printout—and there were several iterations of the printout because Mr. Barnard requested information about referrals to other agencies—copies of the printout were shared with other agencies where there was reference made to referral of license applications to other agencies.

Mr. MORAN. But I am trying to get at this information that was in response to requests by the Congress for specific items, the original description of the information and the data base, the computer data base was in fact altered, and it is clear it was altered for unjustified reasons, reasons which not only were unjustified but deliberately misleading. We know that now, and I think you would agree that that was inappropriate.

Mr. WILLKIE. Absolutely.

Mr. MORAN. It was inappropriate. Do we know whether the Secretary of Commerce was active or complicit in the submission of that altered information, and do we know whether any other people in the administration were involved in the chain—in the alteration of those documents before its submission to the Congress. Do you have any information?

Mr. WILLKIE. Two questions. To the second question, the printout was shared with other agencies. Other agencies made comments such as: Your information here is incorrect, it indicates you referred such and such an application to us and you didn't.

Mr. MORAN. That is advisory. Did they change the document—they wouldn't have any authority to change documentation coming from the Secretary of Commerce.

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. WILLKIE. Specifically, I don't know where, physically, the changes occurred. I believe they occurred at the Department of Commerce, within the Bureau of Export Administration.

Mr. MORAN. To the best of your knowledge, the changes that were made to the documentation, the decision and actual alteration of the information was made wholly within the Department of Commerce and you are saying, to the best of your knowledge, you do not know whether the Secretary was aware of the 66 changes that were made to the information prior to their submission to the Congress. Is that accurate?

Mr. WILLKIE. I don't believe he was aware prior to their submission to Congress. As to your other point—I would like to go back and check our records and follow up and confirm with you, if I may, but it is my understanding other agencies made recommendations saying your information here is incorrect.

Mr. MORAN. Was any other agency authorized to make material changes to the information?

Mr. WILLKIE. I don't believe so.

Mr. MORAN. Those were only advisory, those recommendations as to changes.

Mr. WILLKIE. That is my understanding, Mr. Moran. I want to confirm it is my understanding other agencies provided input based on—because they saw characterizations of their actions in that printout as being inaccurate, misleading information and they said this isn't correct and so we ask that you change this. That is my understanding.

Mr. MORAN. I think you are fully aware. I don't want to exaggerate the importance of this, but we are talking about material information being altered prior to its submission to the Congress, in the words of the inspector general, that was altered for unjustified and misleading reasons, so it is terribly important for us to know the integrity of the process.

Was it done within the Commerce Department? Are people in the Commerce Department solely responsible for altering material information given to the Congress, or was there some other people or body within the government that should assume equal responsibility or maybe sole responsibility.

Mr. WILLKIE. The inspector general has advised me that responsibility for those changes rests solely with the Bureau of Export Administration.

Mr. MORAN. So they are going to take the rap for that, is what we are saying. That is my own words and I understand.

Mr. WILLKIE. I think this is a complicated picture, Mr. Moran. Mr. DeGeorge's comment about the unjustified and misleading referred to those truck—the truck licenses.

Mr. MORAN. But that was two-thirds.

Mr. WILLKIE. He said—he didn't have the same reaction to the other changes. I think the concern and I think the changes were made by Department personnel that they thought were appropriate. And had they not made changes, it is arguable they would be subject to allegations they were misleading because they were providing a document that was incorrect.

Mr. MORAN. But you know they changed the data base. They changed information after the request.

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. WILLKIE. The inspector general has indicated such in his report, yes, that the data base was changed.

Mr. MORAN. You agree this was wrong to do.

Mr. WILLKIE. Absolutely.

Mr. MORAN. You would agree it is important to identify who was responsible for making that change. Under normal procedures, the Secretary of Commerce should have been made aware of any material changes to information being submitted to the Congress. You would agree with that?

Mr. WILLKIE. Yes, and as I think I indicated, I briefed him that I'd asked Mr. Kloske for a report and I was not satisfied with the report I received and I was asking Mr. DeGeorge to conduct a full investigation.

Mr. MORAN. To the best of your knowledge, you have no reason to believe that the Secretary of Commerce was aware changes had been made to documentation being supplied to the Congress.

Mr. WILLKIE. I don't recall all the specifics of the conversation. I would leave my answer as I provided it.

Mr. MORAN. You are a very intelligent and capable man, Mr. Willkie, I know that to be the fact. I am surprised you don't recall that because your knowledge of the facts is ordinarily very precise and very—and reliable. I am trying to determine the scope of responsibility here for submitting misleading—deliberately misleading information to the Congress and you are the representative of the Commerce Department and Secretary of Commerce.

Mr. WILLKIE. I have no reason whatsoever to believe that he had any knowledge of the problems in the information that was submitted prior to the time of its submission. The concerns surfaced later, in the February–March time period.

Mr. MORAN. That is different. You are saying if he had been aware of the fact this was going to be raised at the hearing, this was going to be a problem and publicized that is different. I am asking is he aware of material changes which he would have recognized as deliberately misleading, was he aware that information was being given to the Congress.

Mr. WILLKIE. I have no reason to believe he did at the time it was submitted.

Mr. WYLIE. Mr. Chairman, would the gentleman yield?

Mr. MORAN. Yes, thank you.

Mr. WYLIE. I think you have gone over the same question several times. It has been going on for about 15 minutes. Maybe what we ought to do is try to find out who made the change and ask him why he made the change.

Mr. MORAN. Excellent suggestion. Thank you, Mr. Wylie. Thank you.

The CHAIRMAN. Ms. Archibald. Thank you for your patience.

STATEMENT OF JEANNE S. ARCHIBALD, GENERAL COUNSEL, U.S. DEPARTMENT OF THE TREASURY

Ms. ARCHIBALD. I am pleased to be able to testify before the committee today. As you requested, I will discuss my activities relating to several interagency meetings I attended in 1991 in which it was considered how to respond to congressional requests for Iraq-relat-

Digitized by Google
Original from PURDUE UNIVERSITY

ed information and documents. In doing so, I hope to dispel unfounded suspicions and incorrect assertions that these meetings were intended to impede congressional review of these matters.

The facts are that these meetings were nothing more than an effort to provide a mechanism for consultation and coordination among executive branch agencies which were receiving numerous requests for Iraq-related information and documentation. The focus of these meetings was to determine means by which the congressional requests for information could be met in a manner consistent with the constitutional and statutory responsibilities of the executive branch. Certainly, at none of these meetings did anyone suggest explicitly or implicitly we should cover up embarrassing or illicit activities, nor did anyone suggest there were any such activities.

There is nothing unusual or improper about such consultation and coordination. Indeed, it has been my experience that it is common in the executive branch for agencies to consult with one another with respect to similar or overlapping document requests from the Congress. This is particularly so where, as here, documents in the possession of one agency may have originated with or concerned activities of other agencies. In such cases, those other agencies are best able to determine if a document request raises legitimate confidentiality concerns.

Nor should improper motives be imputed simply because an agency reviews documents requested by Congress to determine whether their disclosure will interfere with the agency's performance of its responsibilities. Treasury has received congressional requests for a variety of sensitive information, such as grand jury or other information on open criminal investigations, confidential business information, deliberative process information, and information about the financial transactions of private citizens. It is entirely proper in such cases to consider appropriate ways of providing the access the Congress needs to fulfill its responsibilities while preserving the confidentiality needed to ensure the executive branch's efficient and effective administration of the laws for which it is responsible. The need for mutual accommodation between the branches is an essential element of the separation of powers under the Constitution.

Having said this, it is important not to lose sight of the fact that Treasury has been very responsive to the Banking Committee's requests for documents relating to Iraq and Banca Nazionale del Lavoro. We made available approximately 175 documents relating to the National Advisory Council on International Monetary and Financial Policies and its review of Commodity Credit Corporation and Eximbank financing for Iraq.

The Customs Service has provided the committee with approximately 525 pages of documents relating to BNL and Matrix-Churchill. During an initial meeting with committee staff, Treasury counsel explained that a large number of documents which might otherwise be responsive to subpoenas issued by the committee were considered by Customs and Justice to be Justice Task Force documents, some of which related to an ongoing grand jury proceeding. Committee staff and counsel concurred and noted the subpoenas did not cover the Justice Department documents. –

Digitized by Google

Original from
PURDUE UNIVERSITY

During the course of subsequent discussions with committee staff, numerous documents were identified which related to ongoing law enforcement investigations or prosecutions, which disclosed sources and methods, which identified agents, informants, or potential targets or witnesses or which were provided by foreign sources under promises of limited confidentiality. In each instance, the individual document or class of documents was identified and discussed with the committee staff.

Throughout the process, efforts were continuously made to provide as much information and as many documents as possible, at least in redacted form, to aid the committee's inquiry.

In addition, Customs gave a member of the committee staff access to approximately 50,000 documents which were located at its Cleveland office and which Customs had obtained from Matrix-Churchill office in Solon, Ohio. Moreover, a photocopy machine was made available to the staff member.

That staff member was also licensed by Treasury's Office of Foreign Assets Control to enter the Matrix-Churchill premises and have access to all documents on the premises.

Now, if I may, I would like to respond to the four specific questions contained in your letter of invitation.

I do not require authorization by any other Treasury Department official to accept invitations such as the one Nicholas Rostow extended to me, and I did not seek any authorization to accept that invitation. I chose to attend these meetings because I believed it would be useful to coordinate with the other agencies on the topic of requests for documents related to Iraq.

My records indicate that I attended meetings convened by Mr. Rostow concerning congressional requests for documents on April 9, April 15, May 6, and May 13, 1991. The Deputy General Counsel of the Treasury Department, Dennis Foreman, attended one such meeting on June 5, 1991, and, to the best of his recollection, William Mackay of Treasury's Office of Legislative Affairs accompanied me to the April 15 and May 6 meetings.

We have been able to locate two documents responsive to your request of May 4 in our files. One was originated by a National Security Council (NSC) official, and we have referred your request to the NSC. The second document is a set of notes taken by Mr. Foreman at the June 5 meeting mentioned above. We are prepared to make arrangements to make that document available to the committee for review, with attributions deleted.

It is the recollection of Messrs. Foreman and Mackay and myself that all meetings concerned the subject of requests of congressional committees for access to Iraq-related documents and information.

Except for communications received in the course of coordinating with Justice relating to the criminal investigations of BNL and Matrix-Churchill, which I referred to earlier, I am not aware that Treasury has ever received any communication from the White House, the State Department, the NSC, or any other Department or agency asking it to withhold Treasury documents from congressional committees investigating the administration's Iraq policy. As you know, if a document originates in another agency, the third agency rule followed by the executive branch calls for the originat-

Digitized by Google
Original from PURDUE UNIVERSITY

ing agency to make the decision whether to make the document available pursuant to a request from the Congress or the public.

We have in our files several NSC documents responsive to a request from the committee including one which was prepared by Treasury staff but which records the proceedings of an NSC meeting. The NSC has directed Treasury that these documents should be made available only with the approval of the NSC. This information was relayed to your staff.

You also asked whether the State Department, White House, or NSC ever reviewed and/or cleared any information submitted by the Treasury Department to congressional committees in response to information requests concerning Iraq or BNL. As a matter of course in dealing with requests concerning documents of the NAC, especially minutes of NAC meetings, we routinely seek the views of the other NAC members and of any other relevant agency. The State Department is a member of the NAC, and accordingly its views were sought. This is a well-established procedure that was being followed before any of the lawyers' group meetings which are the subject of my testimony took place.

In dealing with congressional committee requests for information, Treasury did coordinate with the White House and the NSC concerning several documents which we considered to be sensitive. With respect to each of these documents, Treasury made the final determination, and we proceeded as we had planned.

In conclusion, Mr. Chairman, I believe that Treasury's coordination with other executive branch entities concerning responses to requests by congressional committees for Treasury documents concerning Iraq or BNL has been appropriate and consistent with our usual practice. We spent much time and effort in responding to requests from the Banking Committee. We believe our response has been thorough and honest. It has resulted in the committee's obtaining access to numerous Treasury documents.

One final note, I would like to add, Mr. Chairman. Mr. Mendelowitz stated that Treasury has been uncooperative in providing information in response to GAO requests. I recall we received a request from the GAO for access to the NAC minutes in the fall of 1990, and I also recall that, while we still had that request under consideration, I received a call from Mr. Mendelowitz telling me I could ignore that request because he had obtained the documents from another source.

Thus, I was somewhat surprised when we received a further request from the GAO in June 1991 to review those same documents, but we did make those documents available for their review. It has recently come to our attention through a letter from the Senate Agriculture Committee that GAO apparently is under the impression it has made a further request for documents to which we have not responded. We are not in receipt of that request.

We did call the GAO and asked them if they submitted one and we understand they are looking in their files for the request, but we have not heard back from them.

Thank you, Mr. Chairman. I am prepared for my questions.

The CHAIRMAN. Thank you very much.

[The prepared statement of Ms. Archibald can be found in the appendix.]

Digitized by Google

Original from
PURDUE UNIVERSITY

The CHAIRMAN. Mr. Cifrino.

STATEMENT OF MICHAEL CIFRINO, SENIOR ATTORNEY, OFFICE OF THE DEPUTY GENERAL COUNSEL, INTERNATIONAL AFFAIRS AND INTELLIGENCE, U.S. DEPARTMENT OF DEFENSE; ACCOMPANIED BY JUDGE MICHAEL LUTTIG, JUDGE, NINTH CIRCUIT, COURT OF APPEALS (FORMER ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE)

Mr. CIFRINO. I am appearing at the request of the committee because of my role as the primary Department of Defense official who participated in certain meetings called by the legal advisor to the National Security Council to discuss proposed responses to written requests from the chairman of the Subcommittee on International Economic Policy and Trade and at least one other committee for documents regarding United States Government export policy for Iraq from 1979 through 1991.

Your invitation to me, dated May 22, to testify today posed a number of questions which I will be pleased to answer. Attached to that invitation was a memo dated April 8, 1991, to Terrence O'Donnell, the General Counsel of the Department of Defense, at that time, and other executive department's legal counsel. While I subsequently attended other meetings for Mr. O'Donnell, I did not attend the April 8 meeting.

On April 19, 1991, the Secretary of Defense received a letter from the chairman, Subcommittee on International Economic Policy and Trade requesting a wide range of intraagency and interagency documents regarding United States Government export policy for Iraq and seeking a response to that request by May 13, 1991.

On May 6, at Mr. O'Donnell's request, I attended a meeting held at the Old Executive Office Building that was chaired by Mr. Nicholas Rostow, Special Assistant to the President and Legal Advisor to the National Security Council.

To the best of my recollection, the purpose of that meeting was to coordinate the responses of the various executive agencies that had received similar written requests from that subcommittee.

The major topics of discussion that I recall were the extremely burdensome nature of the requests for documents, whether or not the issuance of a subpoena was likely, and the issue of executive privilege, generally.

On May 13, I attended my second meeting, also called by Mr. Rostow. The discussion, I recall, dealt with the issue of whether the National Security Council would represent all executive departments that had received documents requests from the International Economic Policy and Trade Subcommittee in discussions with that subcommittee staff or whether each Department would discuss the release of its documents directly with the subcommittee staff.

It was decided as I recall at that meeting, as a practical matter, each agency would have to deal directly with the subcommittee.

On June 5, I attended my third and I believe last interagency meeting on this subject. I recall that meeting was initially addressed by Mr. Boyden Gray, Counsel for the President, who emphasized the importance of maintaining the institutional preroga-

Digitized by Google
Original from PURDUE UNIVERSITY

tives of the Presidency through the use of executive privilege where appropriate.

There was discussion regarding the types of documents that should be considered for a claim of executive privilege. The meeting closed with a request that executive departments provide to the NSC staff any documents for which the departments were contemplating a claim of executive privilege.

I would like now to respond to the specific questions in your letter inviting me to testify today.

As to the first question, I attended the first meeting I described above on May 6 at the direction of the DOD General Counsel and the two subsequent meetings I attended at the direct invitation of Mr. Rostow.

I attended these meetings to ensure that the Department of Defense response to the April 19 letter from the subcommittee chairman would be legally consistent with the responses that would be provided by other executive departments that had received similar letters.

As to your second question, I have described the three meetings I attended and, to the best of my recollection, the topic of each meeting. I am providing three memorandum dated May 8, May 14, and June 5 which I drafted for my superiors.

Your third question. At no time during the course of my participation in the process of responding to the subcommittee chairman's letter of April 19, did I receive any communication from the White House, State Department, the NSC, or any other executive department asking me to withhold any information from any congressional committee.

Fourth. Subsequent to receipt of the letter from Secretary Cheney of April 19, at least three documents were provided by the Defense Department to the NSC staff for consideration of a claim of executive privilege. To the best of my recollection, access to those documents was subsequently provided to the subcommittee.

I would be pleased to respond to any questions you may have. Thank you.

[The prepared statement of Mr. Cifrino can be found in the appendix.]

The CHAIRMAN. Thank you very much. I again express my gratitude in the name of the committee for your response to our invitation based on the letter in which we outlined what it was we wanted to have answered.

The hour is late and I think I can boil down my basic question and I have two or three questions that I could submit in writing subsequently.

Our impression is that the Rostow-originated meetings were not usual, they were unusual. My question would be, how many congressional requests for information are coordinated with the White House or the National Security Council? And if you want to provide documentation or answer in writing, it is fine for the record. If you have an answer, fine. Again, if you wish to research that and provide the documentation in writing, that is fine, too.

In other words, we know that there are considerable requests from Congress ranging from—the Department of Commerce as to how many chiles are imported from Mexico, and so forth. But obvi-

Digitized by Google
Original from PURDUE UNIVERSITY

Indeed, as you know, your request to us, your initial request to us predated by some months this group getting together, and we were already making decisions on how to respond to your request before this group ever met.

Ms. RINDSKOPF. Mr. Chairman, if I might make a contribution on a broader note. As I mentioned, I had no involvement in this particular case, but as one who has been in the intelligence community for the last approximately 8 years, in a sense I think that the community is the beneficiary here.

We, in previous years, and in a previous administration, found that many times in a rush to comply with requests, whether from the Congress or other bodies, our information was released without proper attention to concerns, equities, and national security handling procedures, and so it is the case that we were, not in this instance, but in other cases, eager to see the kind of process put into play that we have described for you today.

So that the third agency rule would be something that others, particularly Department level entities, would be mindful of as they considered requests, and simply from a standpoint of making certain that they didn't inadvertently reveal classified information without first consulting with us.

The CHAIRMAN. I see. Well, I will have a couple of questions that I will submit in writing because they may call for some research and statistical information.

Mr. FRANK. And they might have to get together before deciding if they can answer them.

The CHAIRMAN. Well, I don't know.

Mr. WYLIE. Mr. Chairman, that very well may be true, and I can understand the need for coordination here. You have mentioned the so-called third agency rule here. How many requests do any of you remember where information was asked of seven different governmental agencies at the same time?

Mr. WILLKIE. Mr. Wylie, I would say that we only had, in this context, considered the request from Mr. Gejdenson, which was an identical request submitted to several agencies which called for any and all documents regarding exports to Iraq and Iraq policy and so on. It was an extraordinarily voluminous request.

We produced thousands of pages of documents. I think Mr. Gejdenson said this morning there was 20 to 30 feet of documents that we produced, some of which were very highly classified documents involving high level deliberations, so this was an omnibus request that was submitted to several of the agencies represented at the table at the same time.

Mr. WYLIE. I think that is the point I wanted to make. Coordinating talk in this case might lend itself to efficiency in replying to the request for information. I was given a document in my file folder this morning that says "coverup mechanism and Lies to Congress, Statement of Henry B. Gonzalez, Chairman, Committee on Banking, Finance and Urban Affairs, March 16, 1992."

I have a feeling that that may have been circulated in other ways, and that seems to me to be a very serious allegation on the face of it. Now you have talked in terms of a procedure which you set up, and there is a procedural statement here.

Digitized by Google
Original from PURDUE UNIVERSITY

That seems to me that the Rostow memo simply suggests that a document request be reviewed for executive privilege, and that is the first one that is in this—under this cover sheet. Now, is this statement here, the Rostow statement, indicative of what really happened, and I say that, are you aware of anything that could be characterized as a coverup coming out of that meeting or any meeting, with the possible exception of the alteration to the Commerce—Commerce Department report which Mr. Moran referred to a little earlier, any member can answer that. Mr. Raul.

Mr. RAUL. Well, I am certainly aware of absolutely no coverup at all. If what you are referring to, Mr. Wylie, is the April 8, 1991, memorandum which memorializes certain principles, if that is the document——

Mr. WYLIE. That is the document I am talking about.

Mr. RAUL. I have to note that I was not at the meeting which—this was an April 8 meeting. I attended a meeting on April 9.

But I can say that the principles enumerated here are fairly standard operating principles in connection with providing any documents by any agency, so there is nothing at all unusual, but you will have to ask someone who was at the April 8 meeting whether it fairly memorializes the subjects discussed.

Mr. WYLIE. Well, in your own memo you said that the idea was to cooperate with Congress, and would anyone who was at the April 8 meeting——

Mr. RAUL. Mr. Wylie, I will be happy to address that further. The memo you were referring to was written and does fairly describe some subsequent meetings to April 8. There was a meeting on April 9, and, as I testified, on April 15, I think that was an April 17 memo of mine that you may be referring to. It was quite clear that the purpose for the meeting was to ensure cooperation with Congress, with this committee, other committees, and at the same time bear in mind where there might be applicable issues of privilege or other matters that ought to be taken into account. It was an entirely principled discussion by government lawyers trying to respond to numerous requests from different committees. Sometimes the same committee submitted requests to numerous agencies, and I should note that often the requests that come in, as I think Mr. Williamson or one of my other colleagues here noted, are extraordinarily voluminous requests, as Mr. Willkie indicated that he had 20 or 30 feet of documents.

Almost routinely a committee, as I am sure you are all well aware, will submit a request for really an unbelievably large amount of documents, so that is a starting point from which discussions ensue with the agency. The committee recognizes, as staff members of this committee have recognized, that a request is initially made and then it is discussed with the agency. Because the committee understands that the agency can't possibly find enough copying machines to provide all of the documents that are requested, so that there is a process of discussion that ensues.

It is entirely appropriate between the committee, generally the staff and the agency attorneys, and that process, it is very important to bear in mind that if the same request has been submitted by a committee to numerous agencies, the executive agencies should all ensure that they are being cooperative with Congress,

Digitized by Google
Original from PURDUE UNIVERSITY

and that requires some discussion, some consultations with each other.

Mr. WYLIE. Well, as I look through these documents under this cover sheet, the only one where there might be some possible opportunity for discussions other than this procedural statement or mechanism, which I just mentioned a little earlier, was this April 8, 1991 memorandum.

Did Rostow make it clear that it was necessary to cooperate with Congress in responding to these requests for information? Was there any—Ms. Archibald, you seem to be reaching for the microphone.

Ms. ARCHIBALD. Mr. Wylie, I also was not at or invited to the April 8 meeting, but certainly in all the discussions that occurred at the meetings I did attend and in all the many discussions I have had both prior to these meetings and after these meetings that related to congressional requests, certainly all of my colleagues that I spoke to started from the premise that the Congress does have a legitimate interest in seeking documentation from the executive branch.

You start from recognizing that. At the same time we also recognize that there are legitimate interests that the executive branch wants to preserve. So we always start from the premise that we have to find some way to accommodate the interests of the two branches of government.

Mr. WYLIE. All right. Thank you very much, Mr. Chairman.

The CHAIRMAN. That was a leading question.

Mr. WYLIE. That is what you call a leading question, that is right.

Mr. FRANK. Thank you. Let me start by referring to the burden-some nature of some of the requests.

I understand it can be burdensome to be asked for all the documents, but let me explain from the standpoint of a requester why you sometimes get those. I am referring to a memorandum from Mr. Kloske to Mr. Willkie, February 26, 1991, accompanying the proposed submission to Mr. Barnard about Iraq, and Mr. Barnard asked for it more specifically, and basically what the memo says is he is going to get what he asked for and nothing more.

And if you are going to interpret the request in such a very, very specific manner, then you are going to get more general requests. On page 3 of the submission to you that came with—there is a cover memo from Mr. Kloske, then a three-page attachment, the last paragraph in the printout is also consistent with fifth floor guidance, that is the Secretary's floor, I assume?

Mr. WILLKIE. Yes, sir.

Mr. FRANK. Only here do floors personify themselves and give orders, so we don't know who did it, but the floor did it. The printout is also consistent with fifth floor guidance and request from both State and the NSC that no additional information be provided that does not directly address the committee's request. Provide this kind of very, very specific and careful response, and that is why you get what you get.

In fact, as I read this memo, what it said was he didn't even ask for the right things, some of the stuff isn't that good, but he is

Digitized by Google
Original from PURDUE UNIVERSITY

going to get that and only that. The way you get around that is to ask for the kitchen sink. I say that by word of explanation.

Now, a couple questions. I understand the need to talk when there are third agencies, and if there was duplication. Were there discussions at these meetings about the release of documents that were wholly the property of a particular agency, did not involve a third agency, and were not duplicative? Were they also covered?

Let me ask all of you. Why don't we begin with this end and we will go down. Mr. Cifrino.

Mr. CIFRINO. Yes. The best I recall as to the agencies, no. There was some discussion as to information that may be contained in an agency document that was originated at the White House staff, and we were under general instruction not to release such documents.

Mr. FRANK. All right, let me go down the list. Treasury.

Ms. ARCHIBALD. If I understand your question, you are talking about information other than third agency information, in other words, Treasury information.

Mr. FRANK. I am talking about documents that were wholly within the control of a particular agency and were not duplicative since by definition they were wholly at one agency, they wouldn't be duplicative. Were those discussed in those meetings at all, guidance about those?

Ms. ARCHIBALD. Not that I recall. In fact, I don't recall specific documents of any agency even being brought to a meeting or discussed at a meeting.

Mr. FRANK. What are you talking about then?

Ms. ARCHIBALD. All the conversations were general, about how to go about responding and making sure we coordinate——

Mr. FRANK. Then I should have rephrased the question. I appreciate your allowing me to not Barnard-ize myself this way by being too specific on what I asked. When you talked about the general guidance, were you talking about general guidance—I mean you have given two very plausible reasons why you had to talk to each other, I can't release a document that says something about you that you helped me prepare without asking you, and then maybe duplication.

My question is, did the guidance that you discussed also apply that you would take back the documents that you had in your Department that did not fit that description that were not third agency documents? Were you also talking about first agency documents or second agency documents, however—whatever the number is?

Ms. ARCHIBALD. Not that I recall, not specifically.

Mr. FRANK. None of this had to do with how you, Treasury, should respond with regard to Treasury documents?

Ms. ARCHIBALD. That is correct. I do recall, though, that there was a general thought that we would keep each other informed as to what we were doing, but no requirement to bring documents to the group. Certainly, we did not——

Mr. FRANK. You are saying that these meetings dealt only with shared documents?

Ms. ARCHIBALD. That was the main focus——

Mr. FRANK. No, main. Main only is what I am talking about.

Ms. ARCHIBALD. Again, I do not recall ever having a specific——

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. FRANK. You do not recall having a discussion that would apply to documents other than the shared documents?

Ms. ARCHIBALD. I never had a discussion that I had to receive wholly Treasury documents to this group to be reviewed; that never happened.

Mr. FRANK. But you weren't talking about specific documents, you said, so it only had to do with shared documents.

Ms. ARCHIBALD. I was never instructed, when I found Treasury documents, to bring them to the group to be reviewed.

Mr. FRANK. If someone asked you for something which was a Treasury-only document, you could then simply make the decision by yourself without referring it to the group's instructions?

Ms. ARCHIBALD. That is what we did.

Mr. FRANK. There was no general guidance from the group about this?

Ms. ARCHIBALD. Other than the general guidance we have talked about, about trying to find ways to accommodate requests from the Congress while assuring that the deliberative process, the law enforcement requirements, and so forth——

Mr. FRANK. So that did apply to your own documents? You did get out of this general guidance for your own documents?

Ms. ARCHIBALD. But that is a typical guidance process that has been in the executive branch as long as I have been there.

Mr. FRANK. Why would it be peculiar in this? I assume you always have that. Are there documents where you don't? Let me put it this way, in other areas where people ask you for a document, would you not be concerned about these things?

Ms. ARCHIBALD. I am sorry. I am not understanding your question.

Mr. FRANK. In areas outside of this particular Iraq situation, if you were asked for a Treasury document, you wouldn't worry about whether or not it revealed the deliberative process, and so forth?

Ms. ARCHIBALD. Oh, yes, of course.

Mr. FRANK. You would. Then there is nothing peculiar about that. I am puzzled here because I still don't understand what the role of the group was with regard to documents that were wholly within the jurisdiction of one Department.

Ms. ARCHIBALD. As I recall, we simply shared information about what we had done in the past or ideas that we had about how you try to find an accommodation between the interests of the Congress and the executive branch.

Mr. FRANK. Do others have a specific response to that? Mr. Willkie.

Mr. WILLKIE. Mr. Frank, I only attended one such meeting. It is my understanding that most of the——

Mr. FRANK. Just talk about the meeting that you were at.

Mr. WILLKIE. At the meeting that I attended, there were—it is my distinct recollection that there were no specific documents under discussion. It was a bunch of lawyers——

Mr. FRANK. The question was whether the guidance you had applied to general documents, only third agency documents or specific departmental documents.

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. WILLKIE. Well, there is a definitional question there, a specific departmental document, using that phrase, OK? The discussion I attended——

Mr. FRANK. Never mind. My time has run out. I don't think I am going to get an answer, so——

Mr. WILLKIE. I think I can provide you an affirmative answer, Mr. Frank.

Mr. FRANK. Go ahead.

Mr. WILLKIE. You might call it a Commerce Department document, but if it calls for a recommendation from the Secretary of Commerce to the President of the United States, that would arguably invoke the concept of executive privilege. Now, you might call that a specific Commerce Department document, but that is a document——

Mr. FRANK. But it is not a third agency document.

Mr. WILLKIE. That is correct.

Mr. FRANK. Let me get on because I don't think I am getting very much that is useful. I do have one specific question I want to ask of all of you because one of the questions we have is the question of whether or not any of these funds, some of which were clearly misspent, were diverted in some way directly or indirectly into arms sales, and I would like to know from each of you, did your Department investigate this, to what extent, and what did you find? Let's begin with Defense.

Mr. CIFRINO. I am sorry, would you—investigate what?

Mr. FRANK. Diversion of CCC funds into arms procurement.

Mr. CIFRINO. To the best of my knowledge, the Defense Department did not.

Mr. FRANK. Treasury is busy. What about Commerce? We will come back to Treasury.

Mr. WILLKIE. I think we have been asked about that. It is my understanding that Commerce has no information.

Mr. FRANK. That was not the question, whether you had information. I am sorry.

Mr. WILLKIE. Been asked to look into it, Mr. Frank.

Mr. FRANK. No, have you investigated it? Have you investigated it? I am sorry, that is the only thing——

Mr. WILLKIE. Can I check with staff and get back to you in the sequence?

Mr. FRANK. Sure you can.

Colonel GREEN. To the very best of my knowledge the Joint Staff has conducted no——

Mr. FRANK. No, I wouldn't expect you to. State?

Mr. WILLIAMSON. I don't believe we have investigated it.

Mr. FRANK. You haven't investigated it. Intelligence?

Ms. RINDSKOPF. I think you have to ask someone more knowledgeable about what our information showed. I really have no——

Mr. FRANK. That is a great answer. I congratulate you. That is the best evasion I ever got.

Ms. RINDSKOPF. I have no personal knowledge.

Mr. FRANK. Do you know who in the Department has? Can you get back to me?

Ms. RINDSKOPF. We will be happy to take it as a question for the record.

Digitized by Google

Original from PURDUE UNIVERSITY

Mr. FRANK. How about Agriculture?

Mr. RAUL. Mr. Frank, our office of inspector general and the Department of Justice have been investigating the issue of diversion of CCC guaranteed agricultural commodities and shipments under GSM guarantees. There has been no evidence—and I have checked, others in the Department have checked with the inspector general, with the Department of Justice—there is no evidence to date that has been produced of any diversion for military purposes.

Mr. Mendelowitz testified here earlier today, and I do appreciate his saying this especially in this arena, that he has no evidence that there have been diversions for military purposes. The February 28, 1991 indictment handed down, 347 counts, has no reference to any diversions for military purposes. The May 13, 1992 plea agreement with Entrade, one of the exporters under the CCC Program, has no reference to military shipments.

In fact, the factual basis for the plea which has been released as a public document indicates that they did not have anything to do with——

Mr. FRANK. You are going beyond my question.

Mr. RAUL. This is important because——

Mr. FRANK. I understand it is important, that is why I want to—I am sorry, sir, but you are not responding to my question. If you can get someone else to ask you that question, you can answer it.

In the first place, I think—I asked Mr. Mendelowitz that question, and his answer was, as I said, and he agreed agnostic. He said no, he didn't have any——

Mr. RAUL. He said he had no evidence.

Mr. FRANK. Right. He hadn't looked into it, and he said he was agnostic about it because he said he had no evidence one way or the other because he said he hadn't looked into it. I understand that. I don't have any evidence, either.

Mr. RAUL. Mr. Frank, this is a key point.

Mr. FRANK. I understand that, and I am not going to allow you to misstate the transcript of what we had with Mr. Mendelowitz. He did say when I asked him that he was agnostic on the question. That is a direct quote.

He said that he had not really looked into it, and they hadn't been asked to look into it enough to have an opinion one way or the other. I think you quoted him misleadingly.

Mr. RAUL. I am sorry to interrupt. May I address this? This is a key point.

These allegations keep being repeated as though there is evidence. That is why I thought what Mr. Mendelowitz said today was significant, but we can check the record. The point is that investigations have been made, they are continuing underway, and whether or not one is agnostic about what the investigations will ultimately discover, the point is that there is no evidence that has been provided, as far as I know, to date about any connection with military shipments. It is an allegation that continues to be repeated.

Mr. FRANK. In the first place, I will repeat, you have misstated the clear impetus of what GAO said because he didn't simply say that he knew of no evidence. He said he was not in a position to evaluate that one way or the other when we questioned him.

Digitized by Google
Original from PURDUE UNIVERSITY

Second, I am prepared to agree that we haven't gotten the evidence yet. The question is whether we should have had some.

The question is not whether we have hard evidence, but the diligence with which this has been pursued by the administration, and that is why my question to you was not what was in an indictment but has the Agriculture Department investigated this, to what extent, and what is your conclusion. I would like to know what is the extent of Agriculture's independent investigation of these allegations.

Mr. RAUL. Our inspector general has been working with the U.S. attorney's investigation in Atlanta since just after that investigation commenced around August 4, 1989. They have been working extremely closely. That represents the Department of Agriculture's efforts to assist the investigation with regard to military shipments.

Mr. FRANK. So it is primarily Justice?

Mr. RAUL. It is a U.S. attorney investigation out of the Atlanta office. The FBI is involved, our inspector general at USDA is involved. I believe that other agencies either are or have been involved, such as Customs Service and Federal Reserve Board have been involved. Perhaps they continue to be involved, but the point is that it is a very extensive investigation.

Our inspector general testified on this point, and there was extensive testimony about this last week in the hearings before this committee, and the fact remains that the investigations are ongoing. I believe that is consistent with what Mr. Mendelowitz said, but the point is that these investigations, while they are ongoing, have uncovered no evidence to date, and neither you nor I can predict what they will uncover in the future, but that is not the point.

The point is what we have been told as of today about what the investigations have uncovered, and as Mr. Mendelowitz believes, as of today that investigation——

Mr. FRANK. I want to repeat, you are misstating the thrust of his testimony, you are citing as a—please, I have listened to you and I will not be interrupted at this point. You lose me, some of what you said is perfectly reasonable, but I believe you misstate him for your purposes, put that kind of spin on it. He made it very clear that he didn't feel he was in a position to comment one way or another; it was not an area of his expertise. When you cite him to the contrary, I think you are misstating——

Mr. RAUL. If I have done so, it is unintentional.

Mr. FRANK. I am sorry, but I am not finished.

Second, I do want to say, yes, I agree the investigation is ongoing. The question that many of us have is how thorough and how enthusiastic an investigation it is. I would be willing to end on a note of agreement. You predict nothing is going to be found.

Mr. RAUL. I did not predict that. I said I could not predict.

Mr. FRANK. Oh, I am sorry, you said you couldn't. I apologize.

Mr. RAUL. Thank you, Mr. Frank.

Mr. FRANK. I apologize. Then we do disagree because I can predict. I predict your guys are going to find nothing.

Thank you, Mr. Chairman.

Digitized by Google
Original from PURDUE UNIVERSITY

The CHAIRMAN. The Chair will recognize Chairman Rose who has requested to ask a question, and I am sure that it is in obedience to the statement he made to the committee earlier. Chairman Rose.

Mr. ROSE. Thank you, Mr. Chairman.

Mr. Raul, you said there has been no evidence to this point uncovered of any diversion of the CCC loan to, in any way, help Iraq militarily?

Mr. RAUL. What I said—certainly what I intended to say, Mr. Rose, is that I am not aware that there is any evidence from any investigation that any CCC guarantees were used in connection with any military purpose. If that is the same as what you have said, then I agree with it. If not, I am——

Mr. ROSE. Are you aware that Mr. Thomas Kay said under oath before my committee when he was still the Director of the Foreign Agriculture Service, that he couldn't tell me whether or not any shipment ever arrived where it was sent. Are you aware of that?

Mr. RAUL. I am not, Mr. Rose.

Mr. ROSE. In other words, you can't tell me that all the things that were guaranteed ever went anywhere?

Mr. RAUL. Well, I have asked that question, and this is what I have been told about our basis for knowledge that shipments did arrive. One, our agricultural attache at the time in Baghdad has indicated, and it has been related to me, that he has seen United States-guaranteed shipments arrive at Baghdad.

The team that we had in Baghdad in April 1990 reviewed a selection of shipping documents that they requested, for GSM-guaranteed transactions. They had with them an interpreter from the United States Embassy in Baghdad.

Working with the interpreter and in reviewing that selection of documents, they ascertained that the shipments that they had in front of them did, in fact—there were invoices and customs receipts going into Iraq.

Mr. ROSE. All right. You are aware that eight tobacco companies pled guilty down in North Carolina to blending and you also are aware that they paid restitution for bribes that they had paid, are you not?

Mr. RAUL. For after-sales services; yes, sir.

Mr. ROSE. After-sales services. You have also seen all the telex that have been provided to you from customers of Agriculture Commodity customers who were asked for bribes.

Mr. RAUL. I, of course, haven't seen them all, but we have seen——

Mr. ROSE. You know about them?

Mr. RAUL. I am aware of telexes where they were asked for after-sales services.

Mr. ROSE. You know your response to Iraq was to just tell them to stop doing that and don't do that anymore.

Mr. RAUL. We did tell Iraq they shouldn't do it. Let me explain about that, if I may, sir.

The after-sales services are not, per se, illegal. They represent a violation of the GSM Program regulation, and this is very important.

When the exporter, who has registered the shipment with CCC, has not discounted the price that is registered for guarantee with

Digitized by Google
Original from PURDUE UNIVERSITY

CCC to basically net out the value of the after-sale service or the rebate or any other allowance, the exporter is not prohibited by our regulations from providing after-sale services or a discount. What is critical from our standpoint is that the amount registered with CCC be accurate.

Mr. ROSE. It is clearly fraud, and it is clearly violating other U.S. laws.

Mr. RAUL. Explain that, sir.

Mr. ROSE. Well, I am asking you the question. Isn't it fraud?

Mr. RAUL. To provide after-sale services?

Mr. ROSE. Yes.

Mr. RAUL. You will have to provide me with more details. The program violation concerns the failure accurately to provide information to CCC about the value. Now, if a—let me explain.

If an exporter provides these after-sale services but nets it out of the amount registered with CCC, that is certainly not a violation of our program requirements. If it is fraud for some other reason under some other law, I would need further information about it.

Mr. ROSE. So even the tobacco companies that paid these bribes are still participating in USDA loan programs, are they not?

Mr. RAUL. I believe not. I believe that they——

Mr. ROSE. They haven't been disbarred, Mr. Raul?

Mr. RAUL. I believe—I will check, but I believe that the pleas indicate a voluntary debarment.

Mr. ROSE. I have had a hearing on this and I will be delighted to find out, but I believe they are still storing tobacco-program tobacco, but that is another question.

The last question. Why did USDA tell everybody to go to BNL in Atlanta?

Mr. RAUL. I am not aware that that is accurate.

Mr. ROSE. You don't—BNL Atlanta handles $4.2 billion, $5 billion worth of loan guarantees, and you don't have any idea how the commercial side of the transaction in the United States got down to Atlanta? You people told them to go to Atlanta.

Mr. RAUL. I have no information about that. BNL is not a participant, as you know, sir, in the GSM Programs. They are an assignee of a guarantee that USDA provides to the exporter. I have no, absolutely no knowledge about USDA telling anyone to go to BNL.

As of November 1989, BNL had agreed that they would not participate by accepting assignments from exporters, and they did not do so.

Mr. ROSE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Slattery.

Mr. SLATTERY. Mr. Chairman, thank you.

I wanted, if I could, to follow up a little bit on what the chairman was talking about. I am curious about information that we received last week that indicated that some of the exporters apparently were overbilling the Commodity Credit Corporation for some of the grain that was apparently moved.

In other words, if something was selling for X amount per ton, they were claiming that they needed X plus Y to move it. I am just curious, what kind of supervision, what kind of oversight of this program is in place to deal with this or the sort of thing?

Digitized by Google

Original from PURDUE UNIVERSITY

Mr. RAUL. The testimony last week was that our administrative review discovered instances of high prices being charged to Iraq during a period from approximately 1985 through 1987, although I understand that some high-priced sales may also have taken place subsequent to that. To clarify one point that you made, sir, the CCC was not being billed, of course. We——

Mr. SLATTERY. I understand.

Mr. RAUL. We are just guaranteeing a commercial transaction between the United States exporter and Iraq, so——

Mr. SLATTERY. I use the term loosely, but the guarantee is involved.

Mr. RAUL. The guarantee is involved, that is right, but during the period that the—that I mentioned, 1985 through 1987, when we discovered this information about apparently higher price sales, all during that period, of course, the guarantees were—all of those transactions were completely paid for, and there were no guarantees that were paid out on at all, there were no claims for that period.

But during our administrative review of the higher prices, what we discovered was that it appeared that freight charges were on occasion included in the value of the transaction that was registered with CCC.

Mr. SLATTERY. Which was very uncommon?

Mr. RAUL. During most of the period in question it was not permitted under our CCC regulations, and that was one of the violations that we did reflect in the May 21, 1990 administrative review.

Mr. SLATTERY. The thing that I found troubling about this, Mr. Raul, is that not only was the Commodity Credit Corporation involved in indirectly guaranteeing the payment on the grain that was overpriced in many instances by a significant amount, and just a casual observation should have caught that, but in addition to that there was this rather unique arrangement where you were also indirectly guaranteeing the payment of the transportation costs, and based on the information that I have, this was highly unique.

In fact, it may have been only with respect to Iraq that in fact the Commodity Credit Corporation indirectly guaranteed the payment of transportation costs. Is that correct?

Mr. RAUL. For some of those shipments that I mentioned where freight was improperly included, that was a program violation that we did reflect as a program violation in the report. At some point in——

Mr. SLATTERY. Let me ask you the question another way, do you have the legal authority to pay or to guarantee the payment of transportation costs under any circumstances?

Mr. RAUL. Yes, sir. Yes, sir. In fact, in late 1986 or 1987, in fact, the requirements changed, and freight was authorized to be included as a part of the guarantee.

Mr. SLATTERY. That was after when?

Mr. RAUL. I believe it was late 1986 or early 1987. I believe that that time frame is accurate.

Mr. SLATTERY. But prior to this in the 1985 time period——

Mr. RAUL. Freight was not authorized to be included, and if freight was included in the amount registered with CCC, it was a

Digitized by Google
Original from PURDUE UNIVERSITY

program violation. We did discover that and refer to it in our May 21, 1990, report.

You asked a question which I didn't get to answer previously, which was: What is in place in order to prevent these unusually high priced transactions from recurring in the present time. When we discovered this pattern of higher priced trades, we have established within the Department a price review so that when commodities are—when an exporter comes to CCC to register a transaction, the price for the commodities in question is reviewed by experts within the Department.

Mr. SLATTERY. Well, that is encouraging.

You know, I support the Commodity Credit Corporation; I support the program. I did not support making the program available to Iraq.

I voted for the Glickman amendment, and darn glad I did, but it is troubling, as I hope you understand, for us to now try to sort out what was going on in this time period and to realize that not only were we using the Commodity Credit Corporation to sell a lot of products to Iraq during this very dangerous period of time, but we were also doing it to help pay for some transportation costs, and we were doing it in a situation where apparently the cost of the grain in question was dramatically inflated, and it created this potential for real rascality and potential for this money being sloshed around and used for other purposes, and that is what is troubling when we look at this. Do you understand my concern?

Mr. RAUL. Yes, sir, entirely.

Mr. SLATTERY. OK. I have no further questions at this time, Mr. Chairman.

The CHAIRMAN. Mr. Hoagland.

Mr. HOAGLAND. Mr. Chairman, let me ask, first of all, of Ms. Archibald. We have this testimony here from the GAO who testified right before you all did, and the gentleman went to great lengths to talk about the problems he was having with each Department getting documents. My question is: Why don't you all just go ahead and produce these documents and let Congress see them? By resisting them, suspicions grow, everybody assumes the worst, and conspiratorial theories develop.

I think the Congress would like to see them. There is no doubt some members of the public that would like to see them. Why not just go ahead and produce them and let go of them? What is the problem?

Ms. ARCHIBALD. I am glad you asked that question. I would like to make one point. I think perhaps, Mr. Hoagland, you were out when I mentioned before my response to the GAO. I was a little surprised and in some ways a little amused. Mr. Mendelowitz and I know each other well. We have worked together before on other occasions.

In the fall of 1990, they had asked for access to the NAC minutes. While we were considering that, he called me up personally, and I think in a gesture of a little fun—we were ribbing each other—he said that he didn't need them anymore because he had gotten them somewhere else. Then the following spring, or summer actually, we got a request from the GAO to review those same documents, and I called him, and ribbing him a little bit, asked him

Digitized by Google
Original from PURDUE UNIVERSITY

why are you requesting these when you got them before. The end of it was that we did give them access; the GAO did get to see them.

Mr. HOAGLAND. So everything they have asked for from Treasury, they have gotten?

Ms. ARCHIBALD. There is apparently some misunderstanding because he also made reference in his testimony to some further document requests that they had. We were unaware of them. We heard about it for the first time when we got a letter from the Senate Agriculture Committee that made reference to a further request. We called the GAO and said we were not aware we had had this request. They said they were going to search their files; they thought they had sent in a written request, and they are still checking that out.

Mr. HOAGLAND. But you intend to go ahead and produce those documents?

Ms. ARCHIBALD. Congressman, I have to say, and I said this earlier, too, that when we get requests we start from the premise that there are legitimate purposes for which the Congress or the GAO on behalf of the Congress can be seeking information.

At the same time, as a coequal branch of government, there are legitimate interests that the executive branch wishes to protect. Sometimes, therefore, when we give documents to GAO, we do it under an agreement that they will be protected if they are confidential and classified. Sometimes we do it in a way to try to shield the deliberative process by asking them not to release names of individuals, but we do definitely try to work out an accommodation to provide as much information as we can, consistent with our own obligations.

Mr. HOAGLAND. But you certainly apply a high standard as far as there being any possibility of making documents public. You do that; don't you? That really serves our open system of government the best.

Ms. ARCHIBALD. Yes. Yes, we do.

Mr. HOAGLAND. Mr. Raul, how about Agriculture? Why don't you just produce these documents, let us see them? You don't have anything to hide; do you?

Mr. RAUL. We produced every document, I believe, that the committee has requested, with the exception of the classified information issue that I referred to. The chairman requested on, I believe it was August 21——

Mr. HOAGLAND. Let me ask you this, what about the Rafidain Bank file? There has been quite a bit of reference to that.

Mr. RAUL. I am glad you asked that question. That is not among the documents that have been requested, but there has been a lot of discussion about this file being missing.

Mr. HOAGLAND. Is it missing?

Mr. RAUL. While we were here this morning, when I heard the testimony that it was missing, we called back to the Department, and the file is not missing, and this is a canard that originated——

Mr. HOAGLAND. Is that the file you have here?

Mr. RAUL. This is the file.

The CHAIRMAN. For Rafidain?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. RAUL. This is the file. It is not missing. What happened was——

Mr. HOAGLAND. Are you willing to let us see that before you leave the hearing room?

Mr. RAUL. I am willing to come up afterwards and let you all——

Mr. HOAGLAND. Would you turn that over to the chairman?

Mr. RAUL. And let you all see the file. It was just given to me. It is my only copy.

Mr. HOAGLAND. Is it the entire Rafidain Bank file?

Mr. RAUL. Well, I asked for the Rafidain file, and I was told that the Rafidain file isn't missing and I was given the Rafidain file. This happened this morning while we were here.

But let me explain because I have tried to reconstruct what has happened, based on these comments that the file was missing.

Mr. HOAGLAND. You know, we are limited to 5 minutes here, so unless it is really important that you go through that detail——

Mr. RAUL. It is. So much was made of this missing file and countless Members have already mentioned it, and this gives me an opportunity to correct the record because our inspector general——

Mr. HOAGLAND. Are you telling us—can you tell us under oath that that is the entire Rafidain file you have got there, the whole thing, not just——

Mr. RAUL. I don't know that I am under oath. All I can tell you is I asked for the Rafidain file, and I was given this.

Mr. HOAGLAND. So you are saying, you are representing that you have been told this is the Rafidain file?

Mr. RAUL. Well, yes. I have also been told that our inspector general did review it in August 1990, and that if other people asked for the file and were told it was missing? You know, I don't know how to explain that because the inspector general saw the file in August 1990 after originally requesting it and being told by someone they couldn't find it all. Then, it was provided to them. The file was found. It was reviewed by the inspector general, and I don't see any problem in anyone reviewing the file. This is something that is available.

Mr. HOAGLAND. OK.

The CHAIRMAN. Is it in Arabic?

Mr. HOAGLAND. Is it in code? Let me ask you this, let's talk about something different. May I have unanimous consent for another 3 or 4 minutes?

The CHAIRMAN. Hearing no objection.

Mr. HOAGLAND. Thank you, Mr. Chairman.

In response to Mr. Frank's questions, you indicated that an investigation is ongoing on this issue of whether CCC funds were ever diverted to military uses; is that right?

Mr. RAUL. Yes. The inspector general, Mr. Snead, who was here last week, as was I, testified that his investigation is continuing into this matter, his investigation with the U.S. attorney.

Mr. HOAGLAND. Now, how many people have been assigned to that investigation?

Mr. RAUL. I don't know. It is an inspector general investigation with the U.S. attorney, and I don't know.

Mr. HOAGLAND. Is this the inspector general of the Department of Agriculture that you are talking about?

Digitized by Google

Original from PURDUE UNIVERSITY

Mr. RAUL. Yes, it is.

Mr. HOAGLAND. Has any sort of task force or any special group of people been set up to undertake this investigation?

Mr. RAUL. This is a matter within the office of inspector general. I don't know. He has decided what resources to make available without any consultation.

Mr. HOAGLAND. Have you seen any documents that have been generated by that investigation?

Mr. RAUL. As I have stated, I have consulted with the inspector general and with the Justice Department many times to inquire what the state of their investigation is, do they have any evidence of these allegations, and I am sure all of you know——

Mr. HOAGLAND. Have you seen any documents that have been generated by the investigation?

Mr. RAUL. I don't know whether I have seen any documents that have specifically been generated by the investigation or not. That criminal investigation is being conducted pursuant to Rule of Criminal Procedure, rule 6(e), which permits only authorized persons access to information that comes before a grand jury. I am not on that rule 6(e) list.

Mr. HOAGLAND. Here is what I would like you to do, will you agree to ask the inspector general to send the committee a letter describing what has been done up to this point, how many people are involved in the investigation, what they have looked into, and how long it has been going on?

Mr. RAUL. I am happy to convey that request.

Mr. HOAGLAND. And to satisfy our need to know that, in fact, Agriculture is checking out these allegations. I mean, these are very serious allegations.

Mr. RAUL. The inspector general, of course, will speak for himself, but I will be happy to pass on your request.

Mr. HOAGLAND. Now, Mr. Willkie, in light of all the allegations of violations of Commerce Department statutes and regulations, wouldn't it be appropriate for the Commerce Department to conduct an investigation?

Mr. WILLKIE. An investigation was conducted, sir. I requested the inspector general to conduct an investigation of the issues which have been raised here. I asked him to do that in March 1991, and he produced a report in early June 1991.

Mr. HOAGLAND. Has that report been made available?

Mr. WILLKIE. Yes.

Mr. HOAGLAND. To the committee?

Mr. WILLKIE. I believe it is in the record for the hearing.

Mr. HOAGLAND. All right. OK.

Now, how about Treasury, does Treasury see any need to conduct an investigation relating to any of these charges?

Ms. ARCHIBALD. With your permission, I would like to keep the record open so I could add anything necessary, but my understanding is that the Customs Service, which is a bureau of the Treasury Department, has, of course, been conducting an investigation of BNL and was involved in some of the indictments there. That investigation is ongoing, but I have no information on the details of the scope or the status of the investigation at this point.

Mr. HOAGLAND. All right. Will you provide us those details?

Digitized by Google

Original from PURDUE UNIVERSITY

Ms. ARCHIBALD. I will certainly ask. I don't know whether there will be any problem in terms of having an adverse impact on the ongoing investigation and revealing exactly where they are now.

Mr. HOAGLAND. Because you know there have been allegations here today that no investigation has been undertaken and, further, the administration is not interested in doing any investigating, and I think if each of you could send us a letter from your Department telling us what, if anything, you are doing, it would satisfy some of the concern about that.

Ms. ARCHIBALD. I will be happy to provide whatever we can.

Mr. HOAGLAND. And Colonel Green, will you do the same?

Colonel GREEN. I am sure the Department of Defense will respond to that. The Joint Staff is not going to respond.

Mr. HOAGLAND. That is Mr. Cifrino. Will you provide us with the details of any investigation that DOD is conducting into these allegations?

Mr. CIFRINO. Of course.

Mr. HOAGLAND. By these allegations, I mean the whole full panoply of allegations that have been made in this hearing, all right?

Mr. Williamson.

Mr. WILLIAMSON. Yes, we will respond. I would appreciate it very much, though, if you would make that a little more of a formal request, though, because I think the answer is going to be no, we are not conducting any investigation, but I think it is going to be very important to explain why we are not because the explanation that the implication of these hearings is that we are not doing it because we are covering up, but we are not doing an investigation of CCC because CCC isn't one of our agencies, and so—if I could ask you for a little more specific——

Mr. HOAGLAND. OK, well, we will get you a letter.

Finally from the CIA, Ms. Rindskopf, is your organization conducting any kind of investigation?

Ms. RINDSKOPF. We are very much in a similar situation that Mr. Williamson described. We don't collect information on U.S. entities, and certainly the CCC is a United States, as I understand it, entity.

Now, we have provided such information of a foreign intelligence nature that seemed to bear on this. We will certainly undertake, if your question is do we feel it necessary to conduct an investigation, but, thus far, I am advised the information we have that is relevant is minimal. We have provided all of that.

Mr. HOAGLAND. OK. Well, thank you.

Let me just say in closing that I would urge each of your Departments to get these documents over to us. I mean, the more you resist, and the more you set up special procedures, and the more GAO tells us that most everything they do they has a routine, and in this particular area of subject matter extraordinary sense activity has been shown, and a lot of foot dragging. All it does is add fuel to the fire. I would sure encourage all of you to go back and tell your supervisors to fully and properly comply because that is the best way to put all of this behind us.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wylie.

Mr. WYLIE. Mr. Chairman, on that note I think the panel has been thoroughly examined as to the role of the various agencies

Digitized by Google
Original from PURDUE UNIVERSITY

and the agency counsels played in responding to document requests. It seems to me that was the subject of the original hearing, and that we have gone into that in great detail.

I want to congratulate the panel. I think you have done an extremely commendable job answering the questions which have been put to you, and I am satisfied with the results and have no further questions, Mr. Chairman.

Mr. SLATTERY. Mr. Chairman?

The CHAIRMAN. Mr. Slattery has requested permission to ask some questions.

Mr. SLATTERY. Thank you again, Mr. Chairman. I wanted to focus, again, if I could, on a sworn affidavit from Mr. Paul Freedenberg, who was the chief export licensing official at the Department of Commerce from 1985 to 1989. This is an affidavit given in April 1, 1991.

My question, I guess, would be directed to you, Mr. Willkie. I would just like to hear your comment on this. I will quote from the affidavit. It said: "In the summer of 1988 a number of licenses," and he is referring to export licenses, "were pending with regard to technology transfer to Iraq. I asked for official guidance with regard to what the licensing policy would be toward Iraq since by that time there was credible evidence of the use of poison gas by the Iraqis against their own people and also against the Iranians.

"I suggested that the imposition of foreign policy controls be considered as a way of justifying the denial of export licenses to Iraq. I was told by the National Security Council that the licensing policy with regard to Iraq was that of normal trade and that under normal circumstances on an individual case-by-case basis I should clear the licenses that were pending to Iraq."

He went on to say, "I passed that information on to my licensing officers, and the few dozen licenses that were pending at that time were approved and licenses were issued for exports to Iraq."

Do you have any observations on what Mr. Freedenberg was saying?

Mr. WILLKIE. I am not familiar with either his affidavit or the incidents that he describes therein.

Mr. SLATTERY. What Mr. Freedenberg was telling us, to make a long story short, is that he had some reservations about some of the exports that were heading to Iraq. He raised these questions, especially in light of evidence regarding the gassing of the Kurds and what Saddam Hussein was doing, and he was told by the National Security Council to press on, to in fact license these exports, and immediately that was done.

I am just curious. Is that something unique that goes on in the Commerce Department where someone raises questions and the NSC involves itself and says press ahead with these, with this sort of licensing? Or was this sort of a rather unique situation involving Iraq?

Mr. WILLKIE. I really, in all candor, Congressman, I was not at the Department at that time. I haven't seen Mr. Freedenberg's affidavit. I am not familiar with the events in question there. I know that some export controls were considerably tightened in February 1989, and, of course, there has been a substantial debate since then whether the controls were sufficiently tight.

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. SLATTERY. Let me now share with you some testimony that I personally heard here at this committee about a year ago, on April 9, 1991. This was testimony by Dr. Steven Bryen, who was the former Deputy Under Secretary of Defense for Trade Security Policy and Director of the Defense Technology Security Administration, the DTSA.

Let me share with you his testimony, Colonel. He said, and I quote: "Generally speaking, the Defense Department's strongest objections for Iraq concern the potential use of exported goods for Iraq's nuclear program."

Now, this is the person in the Pentagon charged with monitoring this stuff and saying to folks in the government, in the Commerce Department and other Departments. We are concerned, I am the person in charge in the Pentagon, and I am concerned about this; this is what he was basically saying. We are talking about Iraq's Nuclear Program. And also programs for missile testing and construction and for chemical and biological weapons development. So the Department of Defense was saying, we are concerned about this.

Now, I am back quoting him, he said: "In most cases when we raised these issues, we ran into strong opposition from the State and Commerce Departments. In July 1987, at the urging of the State Department, the National Security Council directed the DTSA to be more forthcoming with respect to Iraq. The NSC singled out a number of cases DTSA held up and urged us to revisit them. We decided in all but two of the three cases identified by NSC to stick by our guns and not give in because we had evidence that technology was going into strategic programs."

I find this very, very troubling. Here you have the person in the Pentagon that is the expert, appointed by the President or his appointee telling people in the State Department and the Commerce Department we have a problem. This technology is being diverted for nuclear use, for biological weapons, and for strategic programs, and somebody in the Commerce Department and somebody in the State Department basically overriding him, and when Dr. Bryen testified before the committee, as you might have imagined, he was terribly frustrated.

I would just like to hear your comments on what Dr. Bryen had to say as you reflect back on all this now. Mr. Willkie.

Mr. WILLKIE. Well, I think that I would defer to comments that were made last week about overall policies that were in place. I would be misleading you, sir, and misleading this committee, if I suggested competence or personal knowledge regarding the licensing policy that was in place at that time.

As general counsel at the Department, I provide advice to 10 operating units. BXA happens to be 1 of the 10. I don't have personal knowledge of the policy.

Mr. SLATTERY. Should we have former Secretary Mosbacher come over and tell us what he was doing? I mean, who was in charge? Accountability is what I am looking for. Who was in charge? Who was the person——

Mr. WILLKIE. Preeminently, the official who has responsibility is the Under Secretary for Export Administration, and as I indicated——

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. SLATTERY. Who is that at this time?

Mr. WILLKIE. At that time, it was Dennis Kloske who succeeded Mr. Freedenberg. It is now Joan McAntee who serves in an acting capacity. These policy questions are resolved on an interagency basis, as I indicated in my testimony.

Mr. SLATTERY. Colonel Green, I am just curious. Do you have any evidence of how these kind of problems are being handled now? I mean, when the person in the Pentagon raises questions about the export of high technology that can be used for dual purposes—I mean, are you finding that the Commerce Department is more receptive to putting a hold on things, or the State Department is more receptive? Or are they still interfering with the judgment of the experts in the Pentagon that these items should not be exported, or do you know anything about this?

Colonel GREEN. I have no personal knowledge of any of those goings-on.

What I would observe is that frustration in the interagency process is probably the norm. This is nothing unusual. If an individual is a regular participant in the process, he is bound to experience some frustration because we don't always get our recommendations accepted in the process.

Mr. SLATTERY. The chairman has been very generous in giving me another opportunity to ask questions.

Mr. Raul, I will just conclude by observing that at the time that you all over in the Department of Agriculture were involved in making decisions about extending more credits to Iraq, you see that you had people over in the Department of Defense were saying to the Department of Commerce, we have a big problem with what Iraq is buying from us. You know, all money is fungible, and it is pretty amazing that we had this whole policy being pursued—either it was orchestrated pursuant to NSD–26, or it was all sort of happening by accident.

It looks to me, based on what we have seen and heard here in the last few weeks, that there was a lot of pressure coming from the highest levels to move this policy forward of trying to help Iraq in any way we possibly could, with little regard given to what they were doing with a lot of resources that we were making available to them. I don't know how you can look at this evidence that we are looking at and conclude otherwise. There is just overwhelming evidence out there that no one has refuted, that these people were involved in producing biological, chemical, nuclear devices with a lot of technology about which our own Defense Department had raised concerns.

It is very troubling, especially as someone who comes from farm country, it is even more troubling to contemplate that CCC credits may have been indirectly, hopefully without the knowledge of our government, being diverted to help pay for some of this. And I hope that when we get to the bottom of this, we will find out that, in fact, our CCC credits were not diverted. I hope we can find that. I hope we can find that certainly there was no knowledge that this was going on.

So, Mr. Chairman, I yield back any time that I might have.

The CHAIRMAN. Thank you very much. Chairman Rose.

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. ROSE. Mr. Raul, this is a very interesting file. It feels a little warm from the Xerox machine, but other than that—no, I am teasing.

Mr. RAUL. You didn't make a copy, sir, did you?

Mr. ROSE. We haven't made copies, but——

Mr. RAUL. We will be happy to send you a copy.

Mr. ROSE. Thank you very much.

In this file you discuss a Commodity Credit Corporation, the letter—one letter in here to the Rafidain Bank seeks to recover from the Rafidain Bank $727 million. You are saying to the Rafidain Bank, we have paid out claims totaling $727 million on GSM-102, -103, on the loan guarantees that—you haven't made your payments, so we have had to make good on the guarantees: First City Bancorporation, $2.5 million; Arab Banking Corporation, $49.7 million; CoBank National Bank for Cooperatives, $69.4 million; DG Bank, $11.5; Girozentrale, $59.9 million, Gulf International Bank, $236 million; Morgan Guaranty, $67 million; National Bank of Kuwait, $106 million; UBAF, $103 million; total $727 million.

Question, if you knew that things were not being run right at BNL—and you are right, after you found out things were going rotten at BNL, you stopped them and you spread that business around to all these people—my question is, did you conduct the same investigation of these banks that you conducted of BNL; and if you didn't, why not?

Mr. RAUL. You have me at a disadvantage, obviously, since you have the file and I don't. I should say I haven't really studied the file, because it did literally come while we were here.

Do you recall the date of that letter?

Mr. ROSE. December 1991.

Mr. RAUL. December 1991 was after—well after, of course, the Iraqi invasion of Kuwait and after the——

Mr. ROSE. The government paid off in September 1991. The government paid out the claims of American bankers and European bankers who—to whom the Rafidain Bank was in default; the U.S. Government stepped in as guarantor and paid them off.

You investigated BNL. You talked about people you sent down there because of the shenanigans that they engaged in with regard to these loan guarantees. Have you conducted the same investigation with these banks?

Mr. RAUL. Not to my knowledge, because no allegation whatsoever that I am aware of has been raised. As I mentioned before, the banks who hold these guarantees which you enumerated in your question are not, as I stated, participants in the CCC Program. They are merely assignees from the exporter.

Mr. ROSE. You investigated BNL and it was just an assignee.

Mr. RAUL. Regarding BNL, there was a criminal investigation that was initiated by a raid of the FBI in 1989 because of information they had as a result of an informant's tip. To my knowledge, that has not been replicated with any other bank. The BNL situation does stand out. There was a criminal investigation initiated there that began with a raid on August 4, 1989.

Mr. ROSE. If the same man arranged financing with these banks that arranged the financing with BNL, wouldn't that raise a question?

Digitized by Google
Original from PURDUE UNIVERSITY

Mr. RAUL. I am not certain what you mean by the same man, if it is Mr. Drogoul.

Mr. ROSE. Sadi Kaha.

Mr. RAUL. I don't know if he was involved with these banks.

Mr. ROSE. You probably ought to start to find out. We will ask you that at another hearing.

The CHAIRMAN. Mr. Slattery.

Mr. SLATTERY. Thank you, Mr. Chairman.

Getting back to a line of questions I had earlier with Mr. Willkie, to reconstruct what I was talking about earlier, the person over in Department of Defense who is responsible for monitoring the export of high technology had advised the Commerce Department not to approve some of these exports, and the person that was in the first instance responsible for making that determination in the Commerce Department was Mr. Dennis Kloske.

Mr. WILLKIE. Not in the first instance.

Mr. SLATTERY. It wasn't the Secretary, the Under Secretary?

Mr. WILLKIE. He would have been the senior policy official.

Mr. SLATTERY. Senior policy official. Let's assume he was the one that ultimately would make these decisions. If it wasn't the Secretary, it was the Under Secretary or someone below him, right?

Mr. WILLKIE. Ultimately, there is a process if there is an interagency conflict where differences can be escalated all the way up through the chain of command.

Mr. SLATTERY. Are you aware that Mr. Kloske testified before the Subcommittee on International Economic Policy and Trade, Committee on Foreign Affairs—and this was in May of—let's see, he testified in April 1991, Mr. Kloske did, and he stated in that testimony that in the spring of 1990 he attended two meetings at the White House at which time he recommended—this was the Under Secretary of Commerce—recommended that the United States restrict the flow of technology to Iraq. His recommendations were rejected—this was in a White House meeting—and Secretary Kloske told the committee that prior to the hearing meeting that neither Secretary Baker nor President Bush wanted to single out Iraq for sanctions.

And apparently Mr. Kloske was fearful of testifying, and within 48 hours he was apparently fired after his testimony before that committee. I was just wondering, are you aware of all this? Are you aware Under Secretary Kloske was saying he agreed with the recommendations, in effect, of the Department of Defense?

He was saying we shouldn't be selling them all this technology. And that recommendation that he took to the White House was rejected. Are you aware of that?

Mr. WILLKIE. I am generally aware of the testimony that he gave. I was not aware—I do not believe I was aware of his having made those recommendations prior to the time he gave his testimony.

Mr. SLATTERY. OK. His testimony has been that in the spring of 1990—this was the spring before the war broke out—he was saying, in effect, the Defense Department has some legitimate concerns, and those recommendations were being overridden. And apparently, based on his testimony, they were being overridden by Secretary Baker.

Digitized by Google

Original from
PURDUE UNIVERSITY

Secretary Mosbacher isn't mentioned in this testimony, but Secretary Baker and the President were basically overriding his recommendations that this technology be restricted. And I guess what you are saying is, you are unaware of this. Is that what you are telling me?

Mr. WILLKIE. Let me amend my previous answer. I think after—at some point in the months preceding Dennis' providing that testimony before the Gejdenson committee I believe he made some reference to having referred—to his having made recommendations in the interagency process for a tightening of controls, and he only referred to that in the most general terms.

I might, on the circumstances of his departure to which you spoke and Mr. Gejdenson spoke.

Mr. SLATTERY. Tell us about that. What was going on?

Mr. WILLKIE. We were surprised he gave his testimony. There was some coverage of it, not a lot. The following day there was a front-page *New York Times* story saying he was being asked to leave by the White House, which took us by surprise, because he had submitted a letter of resignation, informal handwritten note to the Secretary dated March 8; he submitted a formal letter of resignation on April 30. And I would be happy to provide those for the record.

But I was certainly aware of the fact prior to the time he gave his testimony that he was looking at private sector opportunities. And, as I say, he had submitted this letter to the Secretary prior to the time, in fact, that he gave his testimony.

Mr. SLATTERY. So is it your testimony today then that his departure from the Department had nothing at all to do with his testimony?

Mr. WILLKIE. Well, his letter of March 8 said he received confirmation of an offer, "It is a dream come true I am very excited about a new challenge. I would like to discuss timing with you, as I want to ensure a smooth and orderly period of transition. Respectfully yours, Dennis."

I am not aware of any connection.

Mr. SLATTERY. My desire is just to get to the truth, OK? I want to be fair to everybody.

If that is the case, it may just be a coincidence that he would testify and 48 hours later he would be leaving.

Mr. WILLKIE. I understand your concerns, and certainly there were news accounts that said that.

Mr. SLATTERY. Again, I would make the observation DOD was saying we shouldn't do this. The person at the highest level, right below the Secretary of Commerce, was saying we shouldn't be exporting this equipment, this dual technology. Apparently, the President and Secretary of State were saying, we are pressing ahead. I find this a pretty amazing situation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Slattery.

Mr. Raul, would it be amenable if you were to submit that document for the record of the proceedings?

Mr. RAUL. Yes, sir. I will go back and make copies for you and Chairman Rose as well.

55-927 O - 93 - 4

Digitized by Google
Original from PURDUE UNIVERSITY

The CHAIRMAN. For the record, the committee transcript is what I am talking about. Yes, we would welcome a copy.

Mr. RAUL. I have no reason to believe there is any business confidential information there from any exporters, but I am not certain there isn't. If I could go back through it, but I will be happy to send it to you as soon as practical.

The CHAIRMAN. Or Mr. Hoagland suggested maybe you could give us the original, and we would make copies.

Seriously, I don't have the words, and I am not, I guess you could say "eloquent" enough to express in proper words my concern for a few years now, but particularly the last 5—and with special emphasis, the last 2½.

We seem to have hit a point in our conduct of matters where, for instance, in August 1990 we were in the midst of a so-called "budget summit" and, in fact, it had just broken up, and the President had very bitterly assailed the Congress, and particularly those that participated in closed-door sessions at Andrews Air Force Base. I thought it was so undesirable to say this was a "summit," as if it were two foreign potentates meeting.

But anyway we are living in that kind of an era. I can't convey in words the seriousness, the gravity, the complexity of the crisis, the depth of the crisis that this Nation faces financially and economically, but mostly really the safety and soundness of our financial and banking system. I just have been aghast since 1987, particularly, that there seem to be such a smug, complacent sort of uncaring attitude.

What Chairman Rose just mentioned and pointed to the number of banks—we had the information about those banks. We had obtained that from other sources. The thing that hurts me is that the United States, our country, is vulnerable. It is vulnerable to very, very cunning, most knowledgeable individuals outside of the United States who know our system, know its weakness, know the crevasses that exist and have played Uncle Sam for Uncle Sap.

The banks Chairman Rose mentioned are just part. The reason is that BNL syndicates its involvement just as in the case of the hostages in Iran. The reason for the hostage-taking, the basis was really financial and a stake of our private banks to the tune of over $10 billion in Iran, which, incidentally, at the touch of a button on January 20, 1981, at the Federal Reserve Bank in New York, releasing several billion dollars in London to Iran, you had the simultaneous announcement of the release of the hostages. The last hostages that were released were done so after one of the last payments—they still claim there are payments due of about $270 million.

So at the bottom of all this you have finances.

Now, we are not protected in our country. We are the only country of any magnitude that does not have any kind of a screening board as far as acquisition either directly or indirectly of our assets, including banking assets. Even Canada has more protection. BNL and BCCI, which have gained quite a bit of notoriety, in my mind are just happenstance things that erupted and came to the attention of the general populace. But the more serious and insidious conditions are still here.

Digitized by Google
Original from PURDUE UNIVERSITY

And I want every one of you to know that when I tell you that I, as chairman of this committee, am grateful that you answered your summons. I say so sincerely, because my intention wasn't and never has been—and I don't know of anybody at any time that I have chaired any committee or subcommittee—and I have been chairman of subcommittees for 15 years before—that I ever abused or was disrespectful to any witness, because I consider them guests.

The reason was that the system that gave rise to the judgmental decisions that canceled out, as Mr. Slattery brought up, not only defense observations and recommendations, and the fear of the national interest impairment, but the financial—the Federal Reserve Board, for instance, and its spokesmen. At this point, the value of the dollar has decreased, just since 1985, somewhere around 60 percent.

Now, what value will any kind of defense system be, or anything that we have that we appropriate money for, if our currency is devalued? And these incidents—now the payoffs on those numbers of banks that Chairman Rose mentioned was close to $1 billion, taxpayers' money.

This is a reason that I have pursued this, and, besides the fact that I am, the reason why we had the first International Banking Act of 1978—and I have said this before—it was because of the hearings that I caused to bring in my hometown of San Antonio in 1975. And I wasn't chairman, but I persuaded the subcommittee chairman to come down. As a result of the 2-day hearings, they led to the indictments and convictions of both citizens and noncitizens.

But there were no laws on the books governing national and international transactions in our country. It took 3 years in 1978 before we finally got a minimum legislative enactment. I criticized it. It was watered down to a point of really no use whatsoever. Then with the advent in the early 1980's of the drug money laundering, we finally had a few amendments having to do with the cash transactions and transportation requirements. So last year we finally had a little enhancement—but it was very little, it was still inadequate—to even have some idea of the movement of about $1 trillion in our country, domestically of this kind of money.

So that is the reason—and I feel very strongly—and maybe perhaps I get over-emotional. I am a man that feels passionately about these things, because I am like you are, I love my country. Everything I am or ever have been is because of the unique institutions of our country, and I cherish them. And I see they are in grave danger, very grave danger that hasn't even been perceived.

There is a lot of talk of how I endured for 2 years. I didn't make press releases when I had special orders. Mr. Slattery read into the record from the hearing we had the first month in 1991, but we read most of the things that have now been publicized when we had the first hearing in October 1990.

What I wanted to tell you was, if we have detained you here, it is because we feel your presence has been a most valuable contribution to us, trying to find from our standpoint, Mr. Rose from his, and the Foreign Affairs Committee from theirs, but certainly from our standpoint, how we have got to act and pretty soon to amend that law further.

Digitized by Google
Original from PURDUE UNIVERSITY

It so happens that in the Credit Commodity Corporation's doings and all of you did have to have your financial or what they call a fiscal agent—in this case the BNL, but it also so happens that we never have evaluated the fact that most of these banks are not, like in our case, private, they are really government-owned by other countries.

We have a very, very sensitive policy matter whereby through some activity such as this it is conceivable that our own national policies could be frustrated, even with the best of intentions. This is an extremely serious matter. It is complicated as all get out. We are going to have one devil of a time to sit down and get legislative counsel and work out the amendments we know are necessary in view of the testimony we have garnered, not only today but prior to today.

I wanted to say that because I don't know that that has come out. I haven't been the one that had a special order and made a release. I did send copies to some of the members of the committee, but the members nowadays are besieged with a plethora of issues.

Most members, if not all, have other committee assignments, and sometimes I understand that and I have nothing but the highest regard, and I wanted you to know I feel the same respect for you gentlemen.

There was just one last thing, Mr. Willkie. You have a very historical name. Are you related or a descendant?

Mr. WILLKIE. Yes, grandson, sir.

The CHAIRMAN. You are the grandson. I am old and I can recall vividly, as if it were today, when your grandfather, against great odds even within the party structure became the nominee and, I think, was the opponent in the third try for reelection of Franklin Roosevelt. But he was a very impressive individual to me, and he published not only some speeches he made, but he published a book, and I still have them. And I just wanted to know if you were a direct lineal descendant or just were named after him.

Mr. WILLKIE. Yes, sir.

The CHAIRMAN. My congratulations. You stem from a very, very distinguished lineage.

Mr. WILLKIE. Thank you.

The CHAIRMAN. Thank you very much, ladies and gentlemen. You have been most patient.

[Whereupon, at 3:15 p.m., the hearing was adjourned, subject to the call of the Chair.]

Digitized by Google

Original from
PURDUE UNIVERSITY

APPENDIX

May 29, 1992

Digitized by Google

Original from
PURDUE UNIVERSITY

OPENING STATEMENT OF THE HONORABLE CHALMERS P. WYLIE
Hearing on Pre-Invasion of Iraq Policies
May 29, 1992

Thank you Mr. Chairman.

The nature of the hearing is to examine the role that various agency counsels played in responding to document requests from this Committee and other Congressional Committees on the pre-invasion policy of the Administration toward Iraq.

It appeared the Chairman was interested in determining the role of the National Security Council in the exchange of information with other agency lawyers to coordinate document requests pertaining to United States-Iraq policy before August 2, 1990. There exists a memorandum regarding one of these meetings from Mr. Nicholas Rostow, dated April 8, 1991. Mr. Rostow is the legal Adviser for the National Security Counsel. Having reviewed this memo and other documents, I find nothing out of the ordinary about this meeting.

The Rostow memo simply suggests that document requests be reviewed for executive privilege. The memo suggests that briefings might be preferable to giving documents. Finally, the memo suggests that in cases of doubt, one should seek advice from the working group established by the White House.

Digitized by Google
Original from PURDUE UNIVERSITY

On April 17, two days after another meeting with the National Security Council, the Agriculture Department Counsel, Mr. Alan Raul, wrote "it was noted that the objective is to cooperate with Congress." The memo indicates that Hill staff eventually got classified documents from the Treasury Department.

So far this fishing expedition has disclosed no evidence of a conspiracy or cover up. If anything, Congress' circuits have been overloaded with voluminous documents on Administration policy toward Iraq. Many of these documents have been widely publicized.

Last week, Mr. Eagleburger said he felt that our pre-invasion policies toward Iraq were a failure, perhaps so, but that does not justify "criminalizing" our foreign policy differences. I think there were overriding foreign policies consideration which came into play on our relationship with Iraq before Saddam invaded Kuwait. Charges of a cover-up just before the election look like politics as usual.

Finally, I am reminded of an observation by Judge Learned Hand, in one of his opinions said, a wisdom born after the event is the cheapest wisdom of all. After all, anybody could have discovered America after 1492!

Thank you Mr. Chairman, I look forward to the testimony.

Digitized by Google

Original from
PURDUE UNIVERSITY

STATEMENT OF REPRESENTATIVE SAM JOHNSON (TX)

HOUSE BANKING, FINANCE, AND URBAN AFFAIRS COMMITTEE

HEARING ON PRE-INVASION IRAQ POLICY

29 MAY 1992

Digitized by Google

Original from
PURDUE UNIVERSITY

LAST WEEK THE COMMITTEE HEARD FROM ADMINISTRATION WITNESSES INCLUDING DEPUTY SECRETARY OF STATE LAWRENCE EAGLEBURGER REGARDING OUR POLICY TOWARD IRAQ IN THE 1980s.

THEY ADMITTED THAT FOREIGN POLICY CONCERNS WERE THE DRIVING FORCE BEHIND OUR EXPORT POLICY TOWARD IRAQ IN THE 1980s. THEY ALSO ADMITTED, SEVERAL TIMES, THAT THE POLICY OF FAVORITISM TOWARD IRAQ EVENTUALLY DIDN'T WORK.

AS I SAID LAST WEEK, LOOKING AFTER YOUR INTERESTS SOMETIMES MEANS HAVING TO WORK WITH THOSE YOU DON'T PARTICULARLY CARE FOR. IN THIS CASE, THE GREATEST THREAT TO STABILITY WAS -- AND I BELIEVE STILL IS -- IRAN. AND THAT FACT DICTATED THAT WE WORK WITH IRAQ TO STEM IRAN'S INFLUENCE.

Digitized by Google
Original from PURDUE UNIVERSITY

THAT WAS THE TRUTH. BUT APPARENTLY SOME MEMBERS OF THIS COMMITTEE ARE NOT SO INTERESTED IN THE TRUTH AS THEY ARE IN REAPING THE BENEFITS OF MISPERCEPTIONS ABOUT THE ADMINISTRATION'S ACTIONS REGARDING IRAQ.

MR. CHAIRMAN, YOU KNOW I RESPECT YOU VERY MUCH AND I BELIEVE THAT YOU ARE SINCERE IN YOUR PURSUIT OF THIS MATTER. THAT IS WHY YOU HAVE BEEN ON THIS, BY YOURSELF, FOR SO LONG. I FIND IT INTERESTING, THOUGH, THAT ONLY RECENTLY HAVE MANY OF YOUR DEMOCRATIC COLLEAGUES DECIDED TO JUMP ON BOARD THE BANDWAGON. IT'S NO COINCIDENCE THAT THIS IS AN ELECTION YEAR.

YOU KNOW, IN POLITICS PERCEPTION IS EVERYTHING. AND THE DEMOCRATS KNOW THAT THE TRUTH WON'T BE AS INTERESTING AS THE PERCEPTIONS THEY CAN CONCOCT.

Digitized by Google

Original from PURDUE UNIVERSITY

IN THIS ELECTION-YEAR WAR OF POLITICS, THEY ARE QUITE CONTENT TO MAKE A CASUALTY OF TRUTH SO THEY CAN KEEP A FALSE PERCEPTION ALIVE.

THIS HEARING CONCERNS THE WHITE HOUSE INTER-AGENCY LAWYERS GROUP MEETING OF APRIL 8, 1991. THE PURPOSE OF THE MEETING WAS TO COORDINATE THE RELEASE OF DOCUMENTS REQUESTED FROM NUMEROUS EXECUTIVE BRANCH AGENCIES BY SEVERAL COMMITTEES OF CONGRESS. THE REASONS FOR SUCH A MEETING WERE OBVIOUS AND MADE GOOD SENSE.

ALTHOUGH I AGREE WITH YOU MR. CHAIRMAN THAT IT IS MATTER OF GREAT CONCERN ANY TIME A GROUP OF LAWYERS GETS TOGETHER, I BELIEVE THE RECORD WILL SHOW THAT NO CONSPIRACY TO COVER-UP INFORMATION WAS DISCUSSED.

Digitized by Google

Original from
PURDUE UNIVERSITY

I THANK OUR WITNESSES FOR BEING HERE AND LOOK FORWARD TO THEIR TESTIMONY.

Digitized by Google

Original from
PURDUE UNIVERSITY

PANEL NO. 1

Digitized by Google

Original from
PURDUE UNIVERSITY

Statement of Congressman Charlie Rose Before The House Banking, Finance and Urban Affairs Committee

May 29, 1992

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today to discuss the Reagan and Bush Administration's efforts to assist the country of Iraq, prior to Iraq's invasion of Kuwait, and the subsequent efforts of both the Reagan and Bush Administrations to deter Congress from a full investigation of these efforts.

First, I would like to commend you Mr. Chairman for all of the work you have done to expose the depth of the coverup by various federal agencies. I say coverup because I think you would agree with me that no federal agency has been straightforward in discussing what either the Reagan Administration or the Bush Administration's policy was toward the country of Iraq, and what steps were taken, either legally or illegally, to accomplish those goals. I think you know that your staff and my staff have worked together extensively, for some period of time, sifting through various documents, and discussing my investigation of USDA's export credit guarantee programs. I am glad that we have been able to cooperate in this manner, and I look forward to continuing to work with you.

Next week I will be testifying before Chairman Brooks to discuss the necessity of appointing a Special Prosecutor to fully investigate what has come to be known to some in the national media as "Iraqgate." I am pleased that the Judiciary Committee has decided to go forward and investigate the concerns I have raised regarding of the Banca Nazionale del Lavoro matter, and it is my hope that you too will assist them in this regard. We must pool all of the resources we have and provide the Judiciary Committee with all of the information we have gathered so that they can make an informed decision on the need for the Special Prosecutor. I think you would agree with me that there is a need for this prosecutor, and I believe that this is the best entity to address all of the issues that have been raised.

You asked me to summarize the investigation I have conducted, through my subcommittee chairmanships on the Agriculture Committee, first as Chairman of the Tobacco and Peanuts Subcommittee, and now, as Chairman of the Department Operations, Research, and Foreign Agriculture Subcommittee. I would like to submit for the record, as soon as it is prepared, a chronology of what I believe are the various steps taken by federal agencies to either obstruct or limit my congressional investigation. I will include in the chronology Administration denials, particularly where we can establish that the Administration actually had knowledge of efforts supporting arm sales to Iraq. I believe that those denials helped obstruct my

Digitized by Google

Original from PURDUE UNIVERSITY

congressional investigation. Unfortunately, I was not able to have this information for you today, but I am prepared to give you a brief summary of the investigative efforts I took beginning in 1986.

I want to stress for the record that beginning in 1986, and I would like to place two letters in the record at this point in time, I began questioning the U.S. Department of Agriculture about sales of foreign tobacco to the country of Iraq. This is vitally important because I intend to establish, specifically before Chairman Brooks' Committee, that the Reagan Administration, and relevant federal agencies involved in the decision to provide Iraq with economic assistance, had knowledge that individuals involved in agricultural transactions were also involved in arms transactions. The Bush Administration also has had this information, and officials at the Department of Justice during the Bush Administration have also been aware of this same information.

Again, I made my first inquiry concerning sales of tobacco, under U.S.D.A.'s Agricultural Export Credit Guarantee Program, to Iraq, on June 11, 1986. The response from the U.S. Department of Agriculture was that I basically did not understand international business transactions and that Iraq was merely attempting to strike a better deal.

The record should reflect that this was the first official inquiry made concerning Iraq and agricultural export credit guarantee programs, and that officials in the Reagan Administration very clearly told me that I was wrong to be concerned about the sales of agricultural commodities to Iraq. This again, was in 1986.

I did not let the statements from U.S.D.A. deter me and I continued to investigate this matter with very limited resources. I had two staff members on the Tobacco and Peanuts Subcommittee, and in addition to the normal duties associated with managing two very complex agricultural programs, I and my staff continued to investigate this matter.

It was not until the summer of 1988 that I made what I consider to be one of the first important breakthroughs in this case. I learned that summer that all of the tobacco dealers had obtained financing through an entity called Banco Nazionale del Lavoro in Atlanta, and also, that U.S.D.A.'s Office of the Inspector General had continued the investigation begun by me in 1986. I only learned this because the General Accounting Office, in assisting with this investigation, learned that the Inspector General at Agriculture was investigating information I turned over to the Department of Agriculture concerning the individuals who had shipped foreign tobacco to Iraq. To this day I do not know which individual sent me the anonymous letter in 1987 from

Digitized by Google
Original from PURDUE UNIVERSITY

Paris, France, detailing the individuals shipping foreign tobacco to Iraq, but the American people truly owe this person a debt of gratitude.

At this point, let me add that U.S.D.A.'s Office of Inspector General is to be commended for their dedication to a full and fair investigation of agricultural credit guarantees involving the country of Iraq. Despite obstacles placed in their path by U.S.D.A. employees, and I believe these obstacles were deliberately placed in their path at the direction of higher authorities, the Office of Inspector General has done a credible and worthwhile job in addressing the concerns I have raised since 1986.

In the fall of 1988, U.S.D.A. took a step that I believe shows the absolute complicity of this government in arms sales to the country of Iraq. Not only did U.S.D.A. change the policy to permit practices which I believe encouraged extra cash or extra sales services, which, ladies and gentlemen, are nothing less than bribes, but U.S.D.A. insulted the intelligence of the American public and American farmers, and Congress, through this effort. Some thirty odd colleagues of mine on the Agriculture Committee joined with me in decrying U.S.D.A.'s blatant attempt to make it easier to violate the tenets of agricultural export programs.

And what was the response of the Secretary of Agriculture? "You just don't understand," was what he told me and my colleagues on the Agriculture Committee. Now where had I heard that before? I must admit that I was intrigued by this rather "common" response from U.S.D.A., and hearing records of the Tobacco and Peanuts Subcommittee beginning in October 1988, dealing with U.S.D.A.'s export credit guarantee programs, are rife with feigned ignorance by U.S.D.A. employees, as well as USDA's assertions that Congress merely failed to understand that there was nothing wrong with Executive Branch dealings with the country of Iraq.

The transcript of hearings I conducted as Chairman of the Department Operations, Research and Foreign Agriculture Subcommittee also show that U.S.D.A. continues to deny the obvious. The discussions concerning the 1990 Farm Bill, wherein high ranking officials from U.S.D.A., attacked me and my staff because we sought to regulate these export credit guarantee programs, further confirm the campaign waged by this government to cover up the extent to which this misuse of U.S.D.A.'s agricultural credit guarantee programs was encouraged, if not fostered, by the Executive Branch of this government. The Administration's opposition in 1990 to legislation, offered by my colleague Dan Glickman, eliminating Iraq's eligibility in U.S.D.A. export programs, also is further confirmation.

Digitized by Google

Original from
PURDUE UNIVERSITY

As I have diligently searched for records, along with U.S.D.A.'s Office of Inspector General and the General Accounting Office, plea bargain arrangements have been struck with individuals who knowingly and willfully engaged in much more than normal agricultural trade. The fact that some of these "pleas" were entered into in my own hometown is even more repugnant to me because they sought to appease my interest in this matter in my own backyard. Thinking that I was merely interested in this matter for reasons of vanity, the Department of Justice even named my Subcommittee, and an obstruction of my Subcommittee's investigation, in the infamous BNL indictment.

My friends, that just doesn't cut it for me. I don't care how many times I am mentioned in their press releases. What I care about is the fact that the Department of Justice has deliberately broken up what may be one of the biggest RICO cases, white collar criminal cases, as Dick Thornburgh called it, and failed to follow through because they know what is hidden behind the curtain.

What I care about is that the U.S. Attorney in Atlanta is on record as saying, to the Associated Press, that he saw no reason to recuse himself from the BNL matter, despite the fact that he had very recently represented Matrix Churchill, a Treasury Department identified Iraqi arms dealer, prior to his appointment as U.S. Attorney.

What I care about is that the Assistant U.S. Attorney in Atlanta supervising the BNL case has written a damaging letter to the U.S. Customs Service which will effectively destroy the federal government's case against Matrix Churchill.

What I care about is various federal law enforcement agencies harassing what I consider to be a very strong, logical, centered, witness, with solid information on Iraqi arms deals involving misuse of agricultural program monies.

What I care about is the failure of this government to vigorously pursue the Matrix Churchill case. I could go on and on, but I think I can identify more of these issues for you in a more cogent fashion when I finish the chronology I have promised you.

My farmers in North Carolina are owed an explanation. I and my colleagues on the Agriculture Committee, and Congress, are owed an explanation. You, Mr. Chairman, are owed an explanation. And what I mean by this, is that we need to know how, when, and why, the decision was made to permit this misuse of agricultural monies to funnel military assistance to the country of Iraq. The families in North Carolina and across this nation who lost their children in the Iraq War are also owed an explanation, because how on earth could this government, namely the Reagan and Bush

Digitized by Google
Original from PURDUE UNIVERSITY

Administrations, create the enemy we would later fight against, and deny it? There is NO logical explanation for this dangerous game, particularly where the stakes were so high.

There is no farmer in my District, or this nation, for that matter, who can afford to arm the country of Iraq, or any country for that matter. This government had no right to do this, especially because we in Congress were misled, and just plain lied to, and the worst of it is that this has continued, and you, Mr. Chairman, know of what I speak.

You can drop 1 million bombs on the U.S. dual use or military use equipment that found its way to Iraq through an agricultural loan guarantee, but the paperwork remains, and when that paperwork is fully and finally examined, this Congress, like the Italian Parliament has done recently, will conclude that "complicity" is a nice term for what transpired between our Executive Branch and the country of Iraq over the last 10 years.

Finally, today's Washington Post carried a story regarding the former manager of BNL in Atlanta, Christopher Drogoul, and I believe we should look to that article for further confirmation of this Administration's efforts to limit disclosure in the BNL case. As the Post stated, the government has apparently offered Mr. Drogoul a 20 year "deal," and this is clearly further evidence of the extent of the coverup. Mr. Drogoul, as the judge, Marvin H. Shoob, so eloquently stated, could not, as a bank branch manager, have moved "$4.5 billion in the fashion that was done without some type of participation by people in this country and outside this country."

Marvin Shoob, a federal judge with many years of experience, knows there is more to this story, and I applaud Mr. Drogoul's efforts to tell the whole story next week. Its time we heard it. I am not comforted by the Department of Justice's hollow promise to pursue inquiries that might arise from Mr. Drogoul's statements next week, because we already know that the government has deliberately chosen not to pursue the BNL case fully in the first instance.

Mr. Chairman, again, I thank you for the opportunity to appear before you today, and look forward to answering any questions you might have.

Thank you.

Digitized by Google

Original from
PURDUE UNIVERSITY

Item# 80 2

A

A

U.S. House of Representatives
Committee on Agriculture
Subcommittee on Tobacco and Peanuts
Room 1301, Longworth House Office Building
Washington, DC 20515

June 11, 1986

Mr. Richard A. Smith
Administrator
Foreign Agricultural Service
U.S. Department of Agriculture
Washington, D. C. 20250

Dear Dick:

At a recent tobacco meeting in my district the attached FAS cable was given to me, regarding Iraqi purchase of U.S. tobacco. Because the issues raised in this cable have been a matter of concern to the Tobacco and Peanuts Subcommittee, I am calling this particular cable to your attention, as well as the attention of your staff in the Tobacco Division.

I wonder if you would be so kind as to ask the particular individual who sent the cable to expand on what he or she meant by the comment "Barazanchi, while pressured to accept the Zimbabwe offer, would rather continue purchasing U.S. tobacco..." Specifically, I would like to know who it is that is pressuring Mr. Barazanchi to purchase Zimbabwe leaf. I understand that the individuals who are designated cooperators with the FAS are responsible for arranging the sale of the Zimbabwe tobacco in question. To that end, I would refer you to a number of questions the Subcommittee submitted for the record at our recent hearing which are directed at the Foreign Agricultural Service.

Additionally, I would also like some further information on the so-called blended tobacco which contained a blend of U.S. and foreign leaf. Could you please direct the consular officer in question to ask Mr. Barazanchi which companies sent him this blended leaf and whether or not the tobacco in question was represented as a U.S. tobacco at the time he purchased it. I would also be curious as to how he determined it was a blended product.

I am sure you would agree with me and the other Members of the Subcommittee that it is imperative that everything possible be done to protect the reputation of U.S. leaf abroad, particularly because of the importance of tobacco balance of trade payments to our economy. As the Subcommittee intends to continue its review of this issue, I look forward to a timely response to the questions I have asked.

Digitized by Google
Original from PURDUE UNIVERSITY

01

In addition, due to the possibility that there may b action here which might be construed as fraudulent, I request that all further inquiries and responses fro Barazanchi be marked as confidential and that they n distributed to your regular mailing list of subscribers to cables.

Thanking you in advance for your attention to my reque

With best wishes.

Sincerely,

Charlie Rose
Chairman

Enclosure
cc: Gary Blumenthal
Molly Eiler

Digitized by Google

Original from
PURDUE UNIVERSITY

United States Department of Agriculture

Foreign Agricultural Service

Washington, D.C. 20250

Honorable Charlie Rose
Chairman
Subcommittee on Tobacco and Peanuts
Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to the questions you raised about Iraqi tobacco purchases in your June 11 letter to this agency.

Thanks to GSM-102, export credit guarantees, the U.S. was able to capture the Iraqi market in 1984 and 1985 from Zimbabwe, a traditional supplier. However, this year, a coalition of Zimbabwe interests offered three-year credit at more attractive terms than GSM-102, and at a lower leaf price. In your letter, you refer to our Baghdad Agricultural Trade Officer's report citing pressure on the Iraqi buyer. The Zimbabwe group obviously is making a very strong bid to retrieve its traditional market in Iraq. In addition, Iraqi Government financial officials are doing everything they can to reduce outflows of scarce foreign exchange and therefore favor lower-cost imports. We believe the Iraqi official took the opportunity of the visit by Mr. Ron Whitehead, of Tobacco Associates to solicit an improved U.S. offer.

In fact, the Iraqi foreign exchange shortage is so severe that the Government is requesting financing of freight on all commodity imports. Although transportation cannot be financed under our GSM-102 program, it would be possible for U.S. companies to do so, and we have discussed this possibility with Tobacco Associates.

The FAS tobacco market development program agreement has always been jointly signed by three cooperators: Tobacco Associates (TA), Burley and Dark Leaf Export Association (BDLEA) and Leaf Tobacco Export Association (LTEA). All three are non-profit associations and none carries out any business transactions. LTEA's members, as tobacco exporters, are an essential part of the sales chain, and LTEA's cooperator role is solely in connection with market development. Some LTEA members also handle foreign leaf, but as stated, FAS involvement with LTEA is solely on the basis of market development. Additional details on this issue are covered in the FAS response to the Subcommittee's questions, which you should be receiving shortly.

Digitized by Google

Original from PURDUE UNIVERSITY

Honorable Charlie Rose 2

We absolutely agree with your comment on the necessity of protecting the reputation of U.S. tobacco abroad. For years FAS has aggressively promoted the United States as a reliable supplier of quality products. FAS officials constantly urge U.S. suppliers to comply with contract quality specifications. We regret that problems occasionally arise, and believe current Congressional interest in quality compliance will be useful.

Concerning the Iraqi complaint about blended tobacco, as you know, commercial transactions under GSM-102 are carried out directly between buyer and seller. FAS provides an export credit guarantee to the lending institutions. The sole information available to FAS is the record of sales registrations under the GSM-102 credit line. In FY 1984, a guarantee of $17 million with three-year repayment terms was approved for Iraq, and sales registrations totaled $16.7 million (4,000 metric tons). The FY 1985 credit line totaled $25 million, and sales registrations equaled $13.8 million (3,000 metric tons). U.S. companies registering sales were Intabex, A.C. Monk, Casalee America and Hofer Tobacco. At Iraq's request, the FY 1986 GSM-102 credit line has been reduced to $3 million.

Our FAS representative in Baghdad has been requested to transmit all future information on this issue in an appropriate manner.

FAS takes very seriously its responsibility to increase U.S. agricultural exports. We appreciate your interest and continuing support.

Sincerely,

Thomas Kay

THOMAS O. KAY
Administrator

Digitized by Google

Original from
PURDUE UNIVERSITY

TESTIMONY OF SAM GEJDENSON

CHAIRMAN

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE

COMMITTEE ON FOREIGN AFFAIRS

MAY 29, 1992

THE SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE HAS, FOR OVER A YEAR, BEEN INVESTIGATING THE RELATIONSHIP BETWEEN THE UNITED STATES AND IRAQ PRIOR TO THE WAR IN THE PERSIAN GULF. THE ADMINISTRATION HAS, AT EVERY TURN, TRIED TO BLOCK, DELAY, OBSCURE AND INTERFERE WITH THIS INVESTIGATION. THEY'VE COME UP WITH MORE DEFENSIVE SCHEMES THAN THE WASHINGTON REDSKINS. AND WHEN I OBJECTED TO THAT TREATMENT, I WAS ACCUSED OF BEING PARTISAN.

NOW THE ADMINISTRATION IS SAYING, 'WELL, WE MADE A FEW MISTAKES WITH IRAQ, BUT THAT'S BEHIND US'. I'M NOT SURE THAT IT IS APPROPRIATE TO BREEZILY DISMISS GEORGE BUSH'S SHAMELESS PRE-WAR CODDLING OF SADDAM HUSSEIN SIMPLY AS A 'MISTAKE'. IT WAS A FOREIGN POLICY BLUNDER OF THE FIRST ORDER. ESPECIALLY SINCE IT WAS FOLLOWED BY A WAR THAT MAY WELL HAVE BEEN AVOIDED.

THE ADMINISTRATION HAS ATTEMPTED TO DENY TO THE AMERICAN PEOPLE ESSENTIAL FACTS REGARDING OUR PRE-WAR EMBRACE OF SADDAM HUSSEIN THROUGH THE CLASSIFICATION OF DOCUMENTS, EVEN TO THIS DAY. LAST WEEK I ASKED THE ADMINISTRATION TO

Digitized by Google

Original from
PURDUE UNIVERSITY

DECLASSIFY 93 INTERNAL DOCUMENTS REGARDING ITS PRE-WAR POLICY ON IRAQ. NEXT WEEK IS THE DEADLINE FOR THE LION'S SHARE OF THE DOCUMENTS TO BE DECLASSIFIED. OUR SUBCOMMITTEE WILL CAREFULLY EXAMINE THE ADMINISTRATION'S RESPONSE AND PURSUE OUR INVESTIGATION.

MR. CHAIRMAN, THE ADMINISTRATION HAS CRITICIZED YOU HARSHLY FOR RELEASING CLASSIFIED INFORMATION. NOW THE ADMINISTRATION HAS PUT ITSELF ON A HOT SEAT. IF THEY CRITICIZE YOU FOR RELEASING DOCUMENTS, AND THEN GIVE ME THE RUN AROUND WHEN I PLAY BY THEIR RULES, THEY WILL HAVE CREATED A CATCH 22 SITUATION AND DEMONSTRATED AN INTENTION TO WITHHOLD INFORMATION FROM THE AMERICAN PEOPLE.

IN RESPONSE TO MY REQUEST, THE ADMINISTRATION HAS, IN THE PAST 48 HOURS DECLASSIFIED A HANDFUL OF DOCUMENTS OR PORTIONS THEREOF. ONE SUCH DOCUMENT IS NATIONAL SECURITY DIRECTIVE 26, WRITTEN TO THE VICE PRESIDENT, THE SECRETARIES OF STATE AND DEFENSE, AMONG OTHERS AND SIGNED BY GEORGE BUSH ON OCTOBER 2, 1989. A COPY OF THE UNCLASSIFIED VERSION OF THIS DOCUMENT IS ATTACHED TO MY TESTIMONY. UNFORTUNATELY, THE WHITE HOUSE HAS REDACTED LARGE PORTIONS OF THIS DOCUMENT.

NEVERTHELESS, THE INFORMATION CONTAINED IN THE UNCLASSIFIED PORTION IS SIGNIFICANT. UNDER THE HEADING OF IRAQ ON PAGE NUMBER 2, THE PRESIDENT MAKES A SERIES OF FAIRLY REMARKABLE STATEMENTS.

Digitized by Google

Original from
PURDUE UNIVERSITY

FIRST, HE STATES THAT "NORMAL RELATIONS BETWEEN THE UNITED STATES AND IRAQ WOULD SERVE OUR LONGER-TERM INTERESTS AND PROMOTE STABILITY IN BOTH THE GULF AND THE MIDDLE EAST". WHAT FOLLOWED THIS ATTEMPT TO ACHIEVE STABILITY IN THE REGION BY MOVING TO NORMALIZE RELATIONS WITH IRAQ? TEN MONTHS TO THE DAY AFTER THE PRESIDENT ISSUED THIS DIRECTIVE, SADDAM HUSSEIN INVADED KUWAIT.

THEN, THE PRESIDENT STATES "THE UNITED STATES GOVERNMENT SHOULD PROMOTE ECONOMIC AND POLITICAL INCENTIVES FOR IRAQ TO MODERATE ITS BEHAVIOR AND TO INCREASE OUR INFLUENCE WITH IRAQ".

THERE WAS VIRTUALLY NOTHING IN PRESIDENT BUSH'S EXPERIENCE THAT SHOULD HAVE LED HIM TO BELIEVE THAT SUCH CODDLING OF SADDAM HUSSEIN WOULD PRODUCE POSITIVE RESULTS. FROM THE TIME THE U.S. TOOK IRAQ OFF THE TERRORIST LIST IN 1982, PROVIDED IRAQ WITH A PANOPLY OF MILITARILY SIGNIFICANT EQUIPMENT AND TECHNOLOGY, AND HANDED OVER $5 BILLION IN CCC AGRICULTURAL CREDITS— IRAQ HARBORED AND SUPPORTED ALL MANNER OF TERRORISTS. AND TEN MONTHS TO THE DAY AFTER THE PRESIDENT ISSUED THIS DIRECTIVE, SADDAM HUSSEIN INVADED KUWAIT.

THE PRESIDENT CONTINUED, "AT THE SAME TIME, THE IRAQI LEADERSHIP MUST UNDERSTAND THAT ANY ILLEGAL USE OF CHEMICAL AND/OR BIOLOGICAL WEAPONS WILL LEAD TO ECONOMIC AND POLITICAL SANCTIONS FOR WHICH WE WOULD SEEK THE BROADEST POSSIBLE SUPPORT FROM OUR ALLIES AND FRIENDS".

Digitized by Google

Original from
PURDUE UNIVERSITY

THE PRESIDENT WAS A BIT LATE. JUST 14 MONTHS EARLIER, WHEN SADDAM HUSSEIN USED POISON GAS ON HIS OWN PEOPLE, KILLING 5,000 INNOCENT MEN, WOMEN AND CHILDREN, THE ADMINISTRATION REFUSED TO IMPOSE SANCTIONS AND FOUGHT CONGRESSIONAL ATTEMPTS TO DO SO.

THE PRESIDENT THEN STATES, "WE SHOULD PURSUE AND SEEK TO FACILITATE, OPPORTUNITIES FOR U.S. FIRMS TO PARTICIPATE IN THE RECONSTRUCTION OF THE IRAQI ECONOMY, PARTICULARLY IN THE ENERGY AREA, WHERE THEY DO NOT CONFLICT WITH OUR NON-PROLIFERATION AND OTHER SIGNIFICANT OBJECTIVES".
SO GEORGE BUSH WAS INTERESTED IN REBUILDING THE IRAQI ECONOMY. AND IN THE FIELD OF ENERGY NO LESS, WHICH TEN MONTHS LATER FUELED IRAQ'S WAR EFFORT AGAINST THE UNITED STATES.

FINALLY, THE PRESIDENT STATED "ALSO, AS A MEANS OF DEVELOPING ACCESS TO AND INFLUENCE WITH THE IRAQI DEFENSE ESTABLISHMENT, THE UNITED STATES SHOULD CONSIDER SALES OF NON-LETHAL FORMS OF MILITARY ASSISTANCE, E.G., TRAINING COURSES AND MEDICAL EXCHANGES, ON A CASE BY CASE BASIS".
AND TEN MONTHS TO THE DAY AFTER GEORGE BUSH SAID THAT WE SHOULD PROVIDE MILITARY ASSISTANCE TO IRAQ, SADDAM HUSSEIN INVADED KUWAIT. IT IS ENTIRELY POSSIBLE THAT AMERICAN SOLDIERS WERE CONFRONTED ON THE BATTLE FIELD BY THOSE TO WHOM THE U.S. HAD PROVIDED TRAINING COURSES.

Digitized by Google
Original from PURDUE UNIVERSITY

PERHAPS WHAT IS MOST REMARKABLE, IS THAT GEORGE BUSH ISSUED THIS DIRECTIVE 14 MONTHS AFTER THE END OF THE IRAN-IRAQ WAR. EVEN TO THE EXTENT THAT A TILT TO IRAQ WAS JUSTIFIED DURING THE IRAN-IRAQ WAR, 14 MONTHS LATER THAT PREMISE NO LONGER EXISTED.

THE CONTINUING CLASSIFICATION OF DOCUMENTS IS ONLY THE LATEST CHAPTER IN A COORDINATED ATTEMPT TO THWART THE SUBCOMMITTEE'S INQUIRY. THE ADMINISTRATION WITHHELD FOR MONTHS DOCUMENTS TO WHICH THE SUBCOMMITTEE WAS LEGITIMATELY ENTITLED, AND DID NOT TURN THEM OVER UNTIL WE ISSUED SUBPOENAS.

SECRETARY OF STATE BAKER ONLY PROVIDED THE REQUESTED DOCUMENTS UNDER THREAT OF SUBPOENA AND AFTER EXTENSIVE NEGOTIATIONS WITH THE COMMITTEE. IN FACT, SECRETARY BAKER VIOLATED PROMISES HE MADE TO THE COMMITTEE:

*THE SECRETARY DID NOT PROVIDE ALL OF THE DOCUMENTS REQUESTED. IN ADDITION, THE STATE DEPARTMENT ADMITS THAT IT WITHHELD RELEVANT PORTIONS OF THE SUMMARIES OF SECRETARY BAKER'S MORNING MEETINGS.

*MANY, IF NOT MOST, OF THE DOCUMENTS PROVIDED HAVE BEEN REDACTED.

IN LIGHT OF SECRETARY BAKER'S WITHHOLDING OF IMPORTANT INFORMATION FROM CONGRESS, IT BECOMES HARDER TO ACCEPT THE STATEMENT IN HIS LETTER TO THE COMMITTEE THAT "... WE HAVE

Digitized by Google
Original from PURDUE UNIVERSITY

NOTHING TO HIDE REGARDING THIS POLICY AREA". A COPY OF THIS LETTER IS ATTACHED TO MY TESTIMONY.

IN ADDITION, IN THIS LETTER, SECRETARY BAKER IMPOSED NUMEROUS CONDITIONS UNDER WHICH CERTAIN DOCUMENTS WOULD BE PROVIDED. SECRETARY BAKER WOULD ALLOW SOME DOCUMENTS TO BE READ BY ONLY FOUR MEMBERS OF THE COMMITTEE. OTHER MEMBERS OF THE FOREIGN AFFAIRS COMMITTEE AND OTHER MEMBERS OF CONGRESS WERE NOT ALLOWED TO SEE THESE DOCUMENTS.

THE ADMINISTRATION HAS ALSO TRIED TO THWART THE SUBCOMMITTEE'S INVESTIGATION BY NOT PROVIDING WITNESSES TO SUBCOMMITTEE HEARINGS, FIRING ADMINISTRATION WITNESSES WHO TESTIFY IN A MANNER NOT TO THE ADMINISTRATION'S LIKING, AND INDUCING AMNESIA ON OTHER ADMINISTRATION WITNESSES.

IN APRIL OF 1991, COMMERCE UNDER SECRETARY DENNIS KLOSKE TESTIFIED BEFORE OUR SUBCOMMITTEE. HE STATED THAT IN THE SPRING OF 1990, HE ATTENDED TWO MEETINGS IN THE WHITE HOUSE AT WHICH HE RECOMMENDED THAT THE UNITED STATES RESTRICT THE FLOW OF TECHNOLOGY TO IRAQ. HIS RECOMMENDATIONS WERE REJECTED. SECRETARY KLOSKE TOLD US PRIOR TO THE HEARING THAT AT THE MEETING, IT WAS STATED THAT NEITHER SECRETARY BAKER NOR PRESIDENT BUSH WANTED TO SINGLE OUT IRAQ FOR SANCTIONS. MR. KLOSKE WAS FEARFUL OF TESTIFYING ON THOSE POINTS PUBLICLY.

Digitized by Google

Original from
PURDUE UNIVERSITY

NEVERTHELESS, WITHIN 48 HOURS OF HIS TESTIMONY, IT WAS ANNOUNCED THAT MR. KLOSKE WOULD BE PARTING WAYS WITH THE ADMINISTRATION. EITHER THAT CONSTITUTED A COINCIDENCE OF MIRACULOUS PROPORTIONS, OR MR. KLOSKE WAS FIRED AS A DIRECT RESULT OF HIS TESTIMONY.

SIX WEEKS LATER, UNDER SECRETARY KIMMITT TESTIFIED BEFORE THE SUBCOMMITTEE. MR. KIMMITT WAS UNABLE TO REMEMBER VERY MUCH ABOUT THE WHITE HOUSE MEETINGS AND WAS EVEN UNABLE TO REMEMBER WHETHER HE HAD TALKED WITH ANYONE REGARDING MR. KLOSKE'S DISMISSAL SIX WEEKS EARLIER.

THE FACT THAT GEORGE BUSH CHOSE TO ROMANCE THE MAN HE LATER COMPARED TO ADOLPH HITLER WAS A HUGE MISCALCULATION. CLEARLY IT IS TIME FOR THE ADMINISTRATION TO END ITS CONCERTED ATTEMPTS TO WITHHOLD INFORMATION FROM CONGRESS AND FROM THE AMERICAN PEOPLE. THIS IS A DEMOCRACY, AND THE PEOPLE AND THEIR DULY ELECTED REPRESENTATIVES HAVE A RIGHT TO KNOW WHAT LED UP TO OUR WAR WITH SADDAM HUSSEIN.

Digitized by Google

Original from
PURDUE UNIVERSITY

UNCLASSIFIED

COVER SHEET FOR NSD 26

ADDRESSEES

TO: THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF ENERGY
THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
THE DIRECTOR OF CENTRAL INTELLIGENCE
THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF
THE DIRECTOR, UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
THE DIRECTOR, UNITED STATES INFORMATION AGENCY

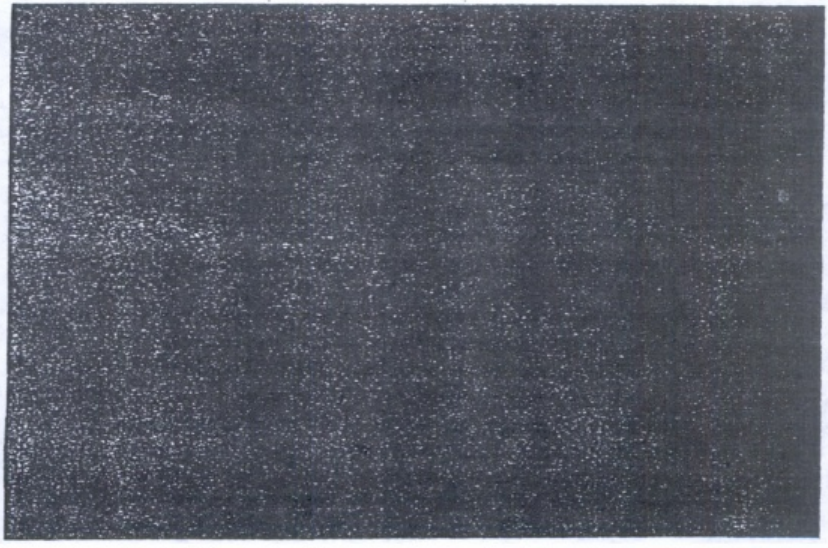
UNCLASSIFIED

Digitized by Google
Original from PURDUE UNIVERSITY

October 2, 1989 UNCLASSIFIED

U.S. Policy Toward the Persian Gulf

Access tc Persian Gulf oil and the security of key friendly states in the area are vital to U.S. national security. The United States remains committed to defend its vital interests in the region, if necessary and appropriate through the use of U.S. military force, against the Soviet Union or any other regional power with interests inimical to our own. The United States also remains committed to support the individual and collective self-defense of friendly countries in the area to enable them to play a more active role in their own defense and thereby reduce the necessity for unilateral U.S. military intervention. The United States also will encourage the effective support and participation of our western allies and Japan to promote our mutual interests in the Persian Gulf region.



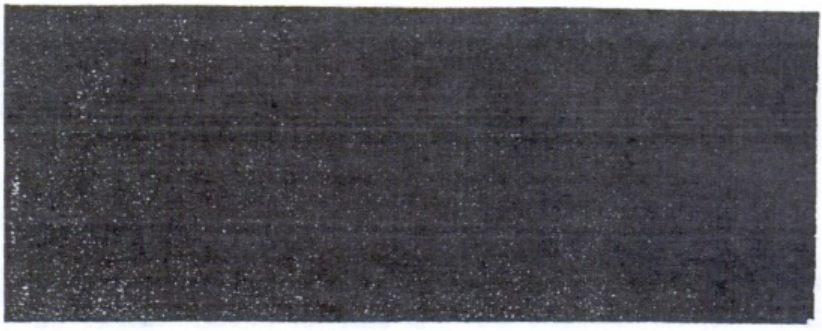
UNCLASSIFIED

Released
Partial Text of
NSD 26

Digitized by Google

Original from
PURDUE UNIVERSITY

UNCLASSIFIED



Iraq

Normal relations between the United States and Iraq would serve our longer-term interests and promote stability in both the Gulf and the Middle East. The United States Government should propose economic and political incentives for Iraq to moderate its behavior and to increase our influence with Iraq. At the same time, the Iraqi leadership must understand that any illegal use of chemical and/or biological weapons will lead to economic and political sanctions, for which we would seek the broadest possible support from our allies and friends. Any breach by Iraq of IAEA safeguards in its nuclear program will result in a similar response. Human rights considerations should continue to be an important element in our policy toward Iraq. In addition, Iraq should be urged to cease its meddling in external affairs, such as in Lebanon, and be encouraged to play a constructive role in negotiating a settlement with Iran and cooperating in the Middle East peace process.

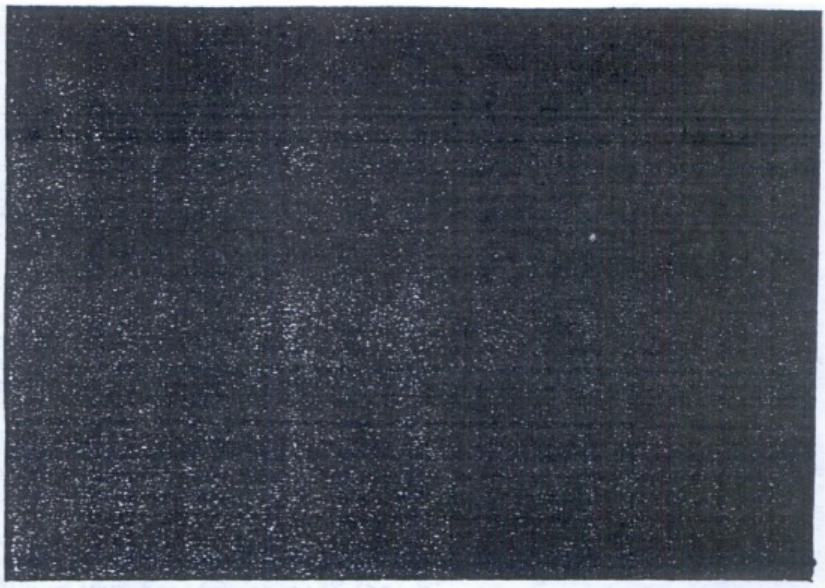
We should pursue, and seek to facilitate, opportunities for U.S. firms to participate in the reconstruction of the Iraqi economy, particularly in the energy area, where they do not conflict with our non-proliferation and other significant objectives. Also, as a means of developing access to and influence with the Iraqi defense establishment, the United States should consider sales of non-lethal forms of military assistance, e.g., training courses and medical exchanges, on a case by case basis.

UNCLASSIFIED

Digitized by Google

Original from PURDUE UNIVERSITY

UNCLASSIFIED



/s/
GEORGE BUSH

UNCLASSIFIED

55-927 O - 93 - 5
Digitized by Google
Original from
PURDUE UNIVERSITY

THE SECRETARY OF STATE

WASHINGTON

July 11, 1991

Dear Dante:

We have discussed several times the request of the Subcommittee on International Economic Policy and Trade for certain State Department documents. I appreciate the way in which we have been able to work together to resolve this matter.

Although we believe that the President could assert executive privilege with regard to several of the documents requested by the Subcommittee, we do not wish to engage in a constitutional confrontation over this matter. I have previously undertaken to deliver or make available all State Department generated documents which are under our control and reachable by subpoena. We have discussed the fact that certain documents would be available in accordance with special procedures followed by the Intelligence Community and that other documents, because of their sensitive nature, would be made available on a limited access basis.

We have made an extraordinary effort to search and review our files for materials on Iraq to meet the Subcommittee's needs and those of several other Congressional and GAO requesters. In order to respond, we have had to collect and review documents from numerous Department offices as well as from federal records centers. We have expended over 3,000 hours in this effort and have worked closely with other Executive Branch agencies to ensure a comprehensive response. Indeed, as I have said to you, we have nothing whatsoever to hide regarding this policy area.

The Honorable
Dante B. Fascell,
Chairman,
Committee on Foreign Affairs,
House of Representatives.

Digitized by Google

Original from
PURDUE UNIVERSITY

We are at the end of our document production for the Subcommittee and have been completely forthcoming in our response. In responding fully to the Subcommittee's request, we have already made available for the Subcommittee more than 1,200 documents. And we stand ready to make available the last 38 documents under special arrangements that provide the Subcommittee with the information it needs to carry out its responsibilities while protecting the sensitivity of these materials. These 38 documents include high-level, executive branch deliberative communications as well as extremely sensitive diplomatic communications and intelligence information.

In our conversation of July 8, we offered the following procedures for protecting the sensitive materials in these 38 documents. We would provide these documents to the appropriate individuals for review (but not retention) whenever requested. Of these documents, 25 would be reviewed by Members and one majority and one minority staff members who possess the requisite security clearances. We offered for review by Members only five documents requested to be so handled by the Intelligence Community, and one document reporting on a Congressional meeting with Saddam Hussein. We offered for review by you and Mr. Broomfield only the remaining seven documents, which relate to sensitive interagency deliberations of various committees and subcommittees of the National Security Council. This recognizes the fact that the process of interagency NSC deliberations is central to providing foreign policy advice to the President.

After further discussion with you, I can now confirm that we will expand the cleared staff access to the 25 documents to include review by two majority and two minority staff members who possess the requisite security clearances. Five intelligence-related documents and the report on the Congressional meeting will be made available to Members and one majority and one minority staff members who possess the requisite security clearances. As we discussed, the Administration feels strongly that the remaining seven documents be viewed only by you, as Chairman, and by Mr. Broomfield, the ranking member of the Committee. However, in response to your concerns, we will make these documents available to Subcommittee Chairman Gejdenson and Ranking Member Roth as well.

I want to stress again, Mr. Chairman, that you, Mr. Broomfield, Mr. Gejdenson, and Mr. Roth will thus have full access to <u>all</u> relevant State Department information. No such information will be withheld. I am glad to confirm with you that these arrangements will satisfy the Committee's request with no need for a subpoena.

Digitized by Google

Original from
PURDUE UNIVERSITY

Because of the sensitivity of the documents requested, I trust that I can count on the Committee to protect the confidentiality of all the materials we are providing. Our ability to carry out diplomatic and intelligence activities and to receive candid advice would be irreparably harmed if these materials were to be discussed publicly.

Mr. Chairman, we have made, and will continue to make, every effort to provide Members with the information they need to fulfill their responsibilities. Because of the unique circumstances involved, we have provided the Committee with an unprecedented amount of information of unparalleled sensitivity. I appreciate your cooperation and understanding.

Sincerely,

James A. Baker, III

Digitized by Google

Original from
PURDUE UNIVERSITY

DOUG BARNARD, JR., GEORGIA, CHAIRMAN
MATTHEW G. MARTINEZ, CALIFORNIA
CARDISS COLLINS, ILLINOIS
HENRY A. WAXMAN, CALIFORNIA
BEN ERDREICH, ALABAMA
ALBERT G. BUSTAMANTE, TEXAS

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
WASHINGTON, DC 20515-6144

J. DENNIS HASTERT, ILLINOIS
ILEANA ROS-LEHTINEN, FLORIDA
DICK ZIMMER, NEW JERSEY
WILLIAM H. ZELIFF, JR., NEW HAMPSHIRE

MAJORITY—(202) 225-4407
FAX—(202) 225-2441

May 28, 1991

Hon. Henry B. Gonzalez
Chairman
Committee on Banking, Finance and Urban Affairs
2129 Rayburn House Office Building
Washington, D.C.

Dear Mr. Chairman:

This is in response to your letter to me of May 27, 1992 inviting me to testify concerning the Commerce, Consumer and Monetary Affairs Subcommittee's experience with the Department of Commerce in the subcommittee's investigation of the Department's role in licensing sales to Iraq from 1985 to 1990. Unfortunately, I will be out-of-town on the date of your hearing into this matter, and consequently will be unable to appear. However, I ask that this letter and all attachments thereto be made part of your hearing record.

In pursuit of its oversight jurisdiction for the Commerce Department, the Commerce, Consumer and Monetary Affairs Subcommittee, which I chair, has had a long and sustained interest in the general subject of exports as well as the export administration programs administered by the Commerce Department. As you know, the Department of Commerce licenses all "dual use" exports to certain countries. These are exports of goods which can have either peaceful or military uses.

When the troubles with Saddam Hussein began, it was apparent that Iraq had obtained much of its war potential from the West, including companies located in the United States. For example, furnaces utilized in the manufacture of nuclear weapons were seized by the Customs Service on the dock in Philadelphia when they were about to be sent to Iraq. In fact, on July 18, 1990, I wrote to Gen. Brent Scowcroft, in his role as Assistant to the President for National Security Affairs, requesting that the President intervene to prevent the shipment of these furnaces. A copy of my letter to Gen. Scowcroft is reproduced at p. 220-1 of the printed record of the hearing held by the Consumer, Commerce and Monetary Affairs Subcommittee on September 27, 1990. Given this and other cases, there was ample reason to hold a hearing on the U.S. government's export control laws, particularly with respect to recent sales and attempted sales to Iraq of materials which might have been used for nuclear, biological, and missile-related equipment.

Digitized by Google
Original from
PURDUE UNIVERSITY

The subcommittee held such a hearing on September 27, 1990 on "U.S. Government Controls on Sales to Iraq." A copy of the printed record of this hearing is submitted and I request that it be made part of your hearing record. The full Government Operations Committee on July 2, 1991 approved a report prepared by the subcommittee on this subject, entitled, "Strengthening the Export Licensing System." A copy of this report is also submitted herewith.

After the hearing, at subsequent meetings of the subcommittee, it was agreed unanimously by the subcommittee members to request documents from the Commerce Department concerning sales to Iraq licensed by the Commerce Department from 1985 to 1990. To reinforce our seriousness about this matter, the subcommittee voted two subpoenas for these documents. The documents concerning "dual use" sales licensed by the Commerce Department were subsequently delivered to the subcommittee during October and December of 1990.

However, the law (Section 12 (c) of the Export Administration Act) prohibits the release to the public, without the approval of the Secretary of Commerce, of data so received by a congressional committee. The ostensible reason for this provision of the law is to protect proprietary information of a company doing business requiring a license. The majority of our subcommittee believed that the public interest in knowing how much and what kind of materials had been delivered to Iraq outweighed any proprietary interest of a particular company. Moreover, the subcommittee majority believed that it was not absolutely necessary to disclose the names of the companies doing business with Iraq, so long as we could disclose sufficient information to the public about what had been delivered to Iraq by American companies during the period before the war.

During this period, extensive negotiations were held between myself, Rep. Hastert, the ranking Republican on the subcommittee, our staffs, and Under Secretary of Commerce for Export Administration, Dennis Kloske, and his staff, concerning the subcommittee's desire to see the public release of at least cumulative data on sales to Iraq which had been licensed by the Commerce Department. Under Secretary Kloske informed us that the decision on release of data was out of his hands and in the hands of the White House. Mr. Kloske informed us that he would be willing to see the release of cumulative data, but the White House had control of this matter, and that any further negotiation should be held with the appropriate White House officials.

Accordingly, the subcommittee directed our staff to begin negotiations with the National Security Council, with a view to as much public disclosure as possible of information which had been supplied to the subcommittee. The following is based on information supplied to me by the subcommittee staff. Mr. Theodore J. Jacobs, the subcommittee chief counsel, discussed this matter with Mr. Richard Barth, a member of the NSC staff. Mr. Barth informed Mr. Jacobs that several meetings of NSC staff had been convened, but Mr. Jacobs got the distinct impression that no solution to this matter would be reached until hostilities were over in the Gulf War. Mr. Jacobs got the impression that the matter was in the hands of then assistant director of the NSC, Richard Gates. Attached is a copy of Mr. Jacobs' letter to Mr. Barth

Digitized by Google
Original from PURDUE UNIVERSITY

of February 12, 1991. I am informed that this letter was "faxed" to Mr. Barth on that date. On March 11, 1991 the subcommittee received the attached letter and print out from Under Secretary Kloske responding to the subcommittee's request for Iraq licensing information that can be made public. Section 12 (c) had been waived.

During October, 1990, at about the time the subcommittee first received printouts from the Commerce Department, the subcommittee received an anonymous telephone call informing us that the caller had been instructed to make certain alterations in the documents before they were delivered to the subcommittee. The fact of this call and the substance of the allegations concerning the alteration of documents subsequently appeared in the media. Because of these allegations in the media, the General Counsel of the Commerce Department asked the Commerce Department Inspector General to review the matter.

By report dated June 4, 1991, the Commerce Inspector General filed a report with then Secretary of Commerce Mosbacher regarding the alterations on the documents supplied to the subcommittee. The Inspector General's Report, a copy of which is submitted herewith and made a part of this statement, finds, among other things, that:

1. Bureau personnel changed information on 68 licenses;

2. A reference to a "military" end use was deleted;

3. The designation "military truck" was changed. This was done on licenses having a total value of over $1 billion, or approximately two-thirds of the total value of the approved export licenses for Iraq for the period under review.

With respect to the changes in "military truck" designations, the Inspector General concluded that the "changes were unjustified and misleading." With respect to the 19 deletions of referral notations to other agencies, the Inspector General concluded, "those actions were not clearly justified." In 31 of 39 additional changes the Inspector General determined that these changes "were not supported by reliable independent documentation."

The Commerce Inspector General, however, did not designate the official(s) responsible for the alterations in the documents, nor did he adequately explore the motivation for the changes in documents supplied to the Congress. Accordingly, on July 10, 1991, in my capacity as chairman of the subcommittee on Commerce, Consumer and Monetary Affairs, I wrote to the then Attorney General asking him to open an investigation of this matter to determine if any law of the United States was violated in the course of the handling of this matter. I subsequently inquired as to the status of this matter, and was informed, on January 31, 1992, that "the investigation is still ongoing" and that I will be notified if the Department of Justice determines that no criminal charges will be brought. Copies of the subcommittee's file on this matter are annexed hereto.

Digitized by Google

Original from
PURDUE UNIVERSITY

The subcommittee staff did receive a visit in August, 1991 from two junior attorneys from the Criminal Division's Public Integrity Section who maintained that they were handling this matter. The staff suggested certain investigative approaches, but, I am informed, subsequent inquiries disclosed that the Justice Department had not followed-up on the subcommittee staff suggestions. In addition, after a subsequent inquiry of the Justice Department, the staff was visited by two Federal Bureau of Investigation agents assigned to this matter. I am informed that the two FBI agents were asking questions of dubious value and were pursuing investigative leads which appeared to be futile.

The above states the extent of my knowledge on this subject and reflects information about which I have been advised by the subcommittee staff. If I can supply any further information, please do not hesitate to contact me.

Sincerely,

Doug Bernard Jr

Doug Bernard, Jr.
Chairman

Digitized by Google

Original from
PURDUE UNIVERSITY

Congress of the United States
Committee on Government Operations
House of Representatives

Subcommittee on Commerce, Consumer and Monetary Affairs
B-377 Rayburn House Office Building
Washington, DC 20515

February 12, 1991

Mr. Richard Barth
National Security Council
Washington, DC

Dear Mr. Barth:

Thank you for your interest in helping to adjust differences this subcommittee has encountered in its dealings with the Commerce Department concerning release of information on licensees of "dual use" items to Iraq.

Enclosed are copies of the subcommittee's letter of October 16, 1990, the Commerce Department's reply of October 30, 1990 and an editorial which appeared in the Augusta Chronicle for February 11, 1991. Also enclosed is a copy of the relevant portion of Section 12 (c) of the Export Administration Act.

As I mentioned on the phone, Commerce has refused to budge from Mr. Kloske's statement, with reference to sanitized data, contained in his letter of October 30, that "I have consulted with relevant Administration officials, and they concur in the judgment that national interest considerations do not warrant such disclosure." You will note that Mr. Kloske also says "It may be possible to provide some cumulative data, and this Department is working with other relevant agencies toward this end." We did receive some cumulative data, but was informed that Section 12 (c) would apply to the cumulative information, as well.

The subcommittee is seriously considering holding a hearing on the issue of whether the national interest requires disclosure of the material supplied. We would then make a recommendation that the full Government Operations Committee vote on the subject. As I said, Mr. Barnard would prefer to avoid this route, and has asked that I explore some compromise with your office.

Please call me at 225-4407 when you have reviewed this matter. Thank you for your concern.

Sincerely,

Theodore J. Jacobs
Chief Counsel

Digitized by Google
Original from PURDUE UNIVERSITY

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 31 1992

RECEIVED
JAN 31 1992
COMMERCE, CONSUMER AND MONETARY AFFAIRS SUBCOMMITTEE

The Honorable Doug Barnard, Jr.
Chairman, Subcommittee on Commerce,
Consumer and Monetary Affairs
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This will respond to your letter to me concerning an investigation of the response of the Department of Commerce to certain subpoenas issued by your Subcommittee. In that letter, you note that attorneys from the Public Integrity Section interviewed your staff about the case, but "did not follow up on suggestions offered to them." You also request that the Subcommittee's Chief Counsel be briefed on the present status of the matter.

I am informed that the investigation is still ongoing, and that interviews of a number of people, including some suggested by your staff, have already been conducted or will be conducted in the near future. Because this is a continuing investigation, our duty of confidentiality does not permit us to divulge further details to you or your staff. Please be assured, however, that you will be notified if the Department of Justice determines that no criminal charges will be brought. In addition, if you have any further information that you wish to be brought to the Department's attention on this matter, please advise the Public Integrity Section.

Sincerely,

W. Lee Rawls
Assistant Attorney General

Digitized by Google
Original from PURDUE UNIVERSITY

MATTHEW G. MARTINEZ CALIFORNIA
CARDISS COLLINS ILLINOIS
HENRY A. WAXMAN CALIFORNIA
BEN ERDREICH ALABAMA
ALBERT G. BUSTAMANTE, TEXAS

ONE HUNDRED SECOND CONGRESS
Congress of the United States
House of Representatives
COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
WASHINGTON, DC 20515-6144

J. DENNIS HASTERT, ILLINOIS
RONALD K. MACHTLEY, RHODE ISLAND
DICK ZIMMER, NEW JERSEY
WILLIAM H. ZELIFF, JR., NEW HAMPSHIRE

MAJORITY—(202) 225-4407
FAX—(202) 225-2441

December 19, 1991

Hon. W. Lee Rawls
Assistant Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Rawls:

On August 20, 1991 I received the enclosed letter from you in response to my request that the Department of Justice open a criminal investigation concerning the documents produced by the Department of Commerce regarding sales to Iraq. The subcommittee staff subsequently met with two attorneys from the Public Integrity Section of the Criminal Division. These attorneys seemed well versed with the case, but subsequent inquiries indicate they did not follow up on suggestions offered to them. The attorneys indicated to the staff that at the completion of their investigation a decision would be made concerning whether a crime had been committed. They further indicated that this decision would be communicated to this subcommittee.

To date, the subcommittee has had no further communication from the Department of Justice. Kindly arrange to brief Theodore J. Jacobs, subcommittee chief counsel, on the present status of this matter.

Sincerely,

Doug Barnard, Jr.
Chairman

Digitized by Google
Original from
PURDUE UNIVERSITY

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 20 1991

AUG 20 1991

COMMERCE, CONSUMER AND MONETARY AFFAIRS SUBCOMMITTEE

The Honorable Doug Barnard, Jr.
Chairman
Subcommittee on Commerce, Consumer
and Monetary Affairs
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515-6144

Dear Mr. Chairman:

This is in response to your letter to Attorney General Dick Thornburgh requesting that the Department of Justice open a criminal investigation concerning the documents produced by the Department of Commerce regarding licensed sales of commodities to Iraq. Your letter and the accompanying materials have been given to the Public Integrity Section of the Criminal Division, who will conduct an appropriate inquiry.

Thank you for sending the information to us.

Sincerely,

W. Lee Rawls

W. Lee Rawls
Assistant Attorney General

Digitized by Google

Original from
PURDUE UNIVERSITY

DOUG BARNARD, JR., GEORGIA, CHAIRMAN
MATTHEW G. MARTINEZ, CALIFORNIA
CARDISS COLLINS, ILLINOIS
HENRY A. WAXMAN, CALIFORNIA
BEN ERDREICH, ALABAMA
ALBERT G. BUSTAMANTE, TEXAS

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
WASHINGTON, DC 20515-6144

J. DENNIS HASTERT, ILLINOIS
RONALD K. MACHTLEY, RHODE ISLAND
DICK ZIMMER, NEW JERSEY
WILLIAM H. ZELIFF, JR., NEW HAMPSHIRE

MAJORITY—(202) 225-4407
FAX—(202) 225-3641

July 10, 1991

Hon. Richard Thornburgh
Attorney General
Department of Justice
Washington, DC 20530

Dear Mr. Attorney General:

This subcommittee has been engaged in an on-going investigation of the activities of various government agencies in connection with licensed sales of commodities to Iraq during the period 1985 to 1990. In this connection, the subcommittee requested and subpoenaed various documents from the Department of Commerce concerning these sales. Allegations were made that various documents supplied to the Government Operations Committee pursuant to subpoena were altered prior to the time they were made available to us.

Because of these allegations, the General Counsel of the Department of Commerce asked the Department's Inspector General to review the situation. The IG's report, dated June 4, 1991 is now available. A copy is enclosed along with a copy of the memo outlining the Bureau of Export Control's response.

You will note that the IG finds that changes were made to the data provided to this subcommittee which were not adequately supported. With respect to the changes omitting the description "military truck," the IG concludes that "the changes were unjustified and misleading." (p. 4, IG report) You will note that the total value of the licensed trucks was over $1 billion, or approximately two-thirds of the total value of the approved export licenses for Iraq for the period under review.

There is no mention in the IG's Report of criminal culpability. Yet I believe that it is a crime to knowingly supply false information to Congress. Accordingly, I would appreciate it if you would have your Department open an investigation with a view to determining if any law of the United States was violated in the course of Commerce's handling of this matter.

If you or your staff have questions, please contact Theodore J. Jacobs, subcommittee chief counsel, at 202-225-4407.

Sincerely,

/s/ Doug Barnard Jr.

Doug Barnard, Jr.
Chairman

Digitized by Google
Original from PURDUE UNIVERSITY

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

RECEIVED
JUL 2 1991
JUL 8 1991
COMMERCE, CONSUMER AND
MONETARY AFFAIRS SUBCOMMITTEE

Honorable Doug Barnard, Jr.
Chairman
Subcommittee on Commerce, Consumer,
and Monetary Affairs
Committee on Government Operations
House of Representatives
Washington, D.C. 20515-6144

Dear Mr. Chairman:

This responds to your letter of June 28, 1991, requesting access to a copy of any report issued by our office concerning the allegedly altered records supplied to the subcommittee by the Bureau of Export Administration (BXA).

We have issued two reports pertaining to this matter: Audit Report No. STD-206-1-0004, Report on Iraqi Export License Information, BXA, dated June 4, 1991; and Inspection Report No. OIRM-323, ECASS Internal Controls, dated June 28, 1991. Copies are enclosed.

Please be advised that these reports are being released to you as an inter-governmental transfer falling outside the scope of the Freedom of Information Act. The reports are being provided for your official use only; any subsequent release of this information should be coordinated with our office.

If I can be of further assistance, please let me know.

Sincerely,

Francis D. DeGeorge
Inspector General

Enclosures

Digitized by Google
Original from
PURDUE UNIVERSITY

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

JUN 04 1991

MEMORANDUM FOR: Robert A. Mosbacher
Secretary

FROM: Frank DeGeorge
Inspector General

SUBJECT: Report on Iraqi Export License Information
Bureau of Export Administration
STD-206-1-0004

At the request of the Department's General Counsel, we reviewed the releases of Iraqi export license information to the Chairman of the Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations. Our review disclosed no evidence that Bureau of Export Administration personnel deleted entire export license records before they submitted the information requested by the Chairman. However, we did confirm an initial report by the former Under Secretary for Export Administration that a small percentage of certain data of the Iraqi export licenses processed were changed in submissions to the Hill.

Bureau personnel, including the former Under Secretary, stated that while preparing printouts for submission to the Chairman, changes were made to selected data on 66 approved export licenses for sales to Iraq. Our review disclosed changes to data on two additional licenses concerning trucks. Bureau personnel also changed permanent records on the Export Control Automated Support System database, compromising the integrity of the Iraqi license records. Neither the changes to the data provided to the Chairman nor the changes to the system database were adequately supported. Our review disclosed that the former Under Secretary concurred with all changes to the data sent to the Chairman, but was unaware of any system database changes. With the exception of changes to five truck licenses to remove a reference to their potential military use, the changes were inconsequential and eliminated apparent inconsistencies in the license information.

This report contains recommendations to ensure the integrity of the export licensing data and any such data submitted to the Congress in the future. These recommendations have been discussed and agreed to by Bureau officials; we are therefore issuing this report in final form. Department Administrative Order 213-5 requires operating units to submit an audit report action plan, including a timetable for implementation of the recommendations, within 90 days of the date of the audit report. Accordingly, we request that the acting Under Secretary of the Bureau of Export Administration be directed to submit such a

Digitized by Google
Original from
PURDUE UNIVERSITY

plan. We are providing a copy of this report to the acting Under Secretary and to the General Counsel.

Introduction

Beginning in September 1990, Congressman Doug Barnard, Jr., Chairman of the Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations, sent several requests to the former Under Secretary for the Bureau of Export Administration for lists of export license information on Iraq from 1985 through 1990. The former Under Secretary responded with computer printouts on October 10, October 24, and December 12, 1990.

The October 10 printouts did not show whether the licenses were referred to other departments under applicable licensing regulations. The regulations require BXA officials to submit certain license applications to the Departments of State, Energy, and Defense. The October 24 printout showed information on the referral to other agencies, but it did not show the other departments' responses or recommendations. The December 12 printouts showed all referral information, including the other departments' recommendations.

On February 8, 1991, the Department's General Counsel asked the former Under Secretary to provide a report addressing whether (1) the printouts were misleading, (2) certain end users of the licensed commodities were deleted or changed, and (3) the characterizations of the licensing information had been materially changed from those originally in the system database. This information was requested because of media-reported allegations that export license information and records were deleted from the Bureau's files. The former Under Secretary provided the report on February 26, 1991, acknowledging that changes were made to the information given to the Chairman.

On March 11, following continued media reports that Iraqi export license information was deleted from the Bureau's files, the General Counsel asked the Office of Inspector General to review this matter.

Purpose and Scope of Review

The purpose of our review was to determine (1) if any changes were made to the information prior to submission to the Chairman, (2) if any changes were made to the export control automated system database records, and (3) the accuracy and completeness of notations indicating the positions of other departments involved in reviewing licenses for exports to Iraq.

We interviewed Commerce officials involved in preparing the responses to the Chairman, including the former Under Secretary,

Digitized by Google
Original from PURDUE UNIVERSITY

and officials from the Defense, State, and Energy Departments. We reviewed the Bureau's support for the acknowledged changes to the printouts furnished the Chairman, and determined whether Bureau personnel had also changed other license information in the export license system database. Bureau officials did not maintain any copies of the printouts provided to the Chairman, so we obtained Iraqi license information stored on magnetic tape as of May 22, 1990, and provided last August by the Bureau to another government agency. The tape did not include archived export license data for fiscal years 1985 and 1986. We also obtained a copy of the printouts from the congressional committee that received the information. We compared the copies of the printouts submitted to the Chairman with the information provided on the May 22, 1990, computer tape. We also compared the data shown on the December 12 printout with the data from the May 22 magnetic tape to determine the reliability of the Iraqi information in the database -- that is, whether export license records were deleted from the database.

We did not examine the internal controls over the input and maintenance of data in the export licensing system. Instead, we have initiated a separate review over these controls and will provide you with a copy of that report when that review is completed.

This review was performed at Bureau headquarters and at the Departments of Defense, State, and Energy in Washington, D.C. Except as noted above, the review was conducted in accordance with generally accepted government auditing standards and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

Bureau Personnel Changed Information on 68 Licenses

In his report to the General Counsel, the former Under Secretary stated that Bureau personnel changed licensing data on 65 of the 1,126 licenses (later amended to 1,130) processed for Iraq from 1985 through August 2, 1990. Bureau personnel acknowledged one additional license data change as we began the audit. During our review, we identified two additional license data changes that were not previously acknowledged, bringing the total to 68.

The license data changes were as follows:

(1) Descriptions of trucks were changed on five license records to eliminate a reference to a design for military use.

(2) Notations were removed on 19 license records that had indicated referrals of licenses to another agency.

(3) Stated positions of other agencies that review or approve

Digitized by Google
Original from PURDUE UNIVERSITY

licenses were changed on 39 license records.

(4) End use statements were changed on five licenses. On four licenses for equipment used in a "magnetic media factory," the descriptions of end uses were expanded. The expansion added the phrase "to [manufacture] video tapes for consumer electronics." On one license, the exporter had inserted a comment that, "According to our information the end user is involved in military matters" in the end use field. Bureau personnel deleted the comment.

Changes to "Military Truck" Licenses Unjustified

The export regulations provide an export control commodity number and general description for each commodity to be exported. Bureau personnel changed the commodity description for trucks from "VEHICLES DESIGNED FOR MILITARY USE" to "COMMERCIAL UTILITY CARGO TRUCKS" or "VEHICLES." The former term is consistent with the terms used in the export administration regulations as the general description of the trucks. We found no changes to general descriptions of other licensed commodities that made them inconsistent with the regulations.

A Bureau official told us the commodity descriptions were changed to clarify that the Bureau does not license the sale of military trucks. The official also said that the description changes were justified by a State Department letter to an exporter in 1983. The letter indicated that the exporter's trucks, which were intended for sale to Iraq, were classified as "commercial utility cargo truck(s)."

We disagree with both reasons for changing the commodity descriptions. The export administration regulations allow the Bureau to approve licenses for the sale of military trucks that are not on the U. S. Munitions List. Such vehicles are primarily transport vehicles designed for noncombat military purposes. Additionally, when we discussed the contents of the 1983 letter with State Department officials, they informed us that the letter provides no justification for the description changes. It merely informed the exporter that the trucks are not on the munitions list and can be licensed by the Bureau. We conclude that the changes were unjustified and misleading.

Bureau personnel changed five licenses for trucks, including the two that we found. The total value of the licensed trucks was over $1 billion, or approximately 2/3 of the total value of the approved export licenses for Iraq during the period under review. In fact, more than 97 percent of the total value of the changed licenses is accounted for by changes to the truck licenses. Although the licenses were approved, Bureau personnel informed us that no licensed trucks have been shipped.

Digitized by Google
Original from PURDUE UNIVERSITY

Justification for Deleting Computer Parts and Components Referrals Not Clear

Bureau personnel deleted 19 referral notations to other agencies; however, those actions were not clearly justified. Nine referrals to the Defense Department for computer parts and components were deleted, and ten other referrals for various other commodities were also deleted. Bureau personnel told us they deleted the notations related to the computer parts and components because the Licensing Officers' Operating Manual stipulates that parts and components licenses should not be referred to the Defense Department.

We reviewed the operating manual and found that it contained conflicting procedures as to whether licenses for computer parts and components should be referred to another agency. A dated procedure could be used to justify the referral notation deletions, but a more recent procedure required that the licenses be referred to the Defense Department for approval. Notwithstanding the position of Bureau personnel that computer parts and components need not be referred to the Defense Department, they were referred and licensing issues were settled among the appropriate agencies. Under the circumstances it would have been more appropriate to have included the referrals in the printouts and explain the resultant positions where necessary.

We did not review the entire manual to see if it contained other conflicting or confusing procedures. However, Bureau officials should perform such a review to ensure that licensing personnel have clear, unambiguous procedures to apply to each license application.

Adequate Documentation for Many Changes Not Provided by Bureau Personnel

We reviewed the 39 changes made to other agency positions to determine whether the changes were well documented and supported. Bureau personnel told us that the changes to other agency positions were "corrections" supported by export licensing regulations and files of original documents.

Our review of the documentation used to support the changes showed that 13 of the changes were based only upon the Bureau licensing officer's written notation that an agency position had changed. We also found that 31 of the 39 changes were not supported by reliable independent documentation. The licensing officers often did not base the changes on independent supporting documentation such as memoranda prepared by officials of other agencies.

Bureau personnel also did not provide adequate support for changes that removed notations indicating referral to other

Digitized by Google
Original from PURDUE UNIVERSITY

agencies. Additionally, each license application must include a statement on the end use of the commodity being exported. Bureau personnel did not provide adequate documentation to support the changes in the end use statements.

Bureau personnel stated that they had discussed all changes with officials of other agencies to confirm that the changes accurately reflected their positions. Bureau personnel further stated that these officials concurred with the changes.

We asked officials at the Energy, State, and Defense Departments to verify statements by Bureau personnel. The Energy Department official disagreed with three of 10 position changes. However, he did not indicate that additional action to correct the record was needed. A Defense Department official stated that approximately 30 percent of the licenses were approved "with conditions," while the Bureau's records indicated that the licenses were simply approved. Another Defense Department official stated that he told the committee staff that he was satisfied with the presentation of the Defense Department's positions on the printout. The State Department did not disagree with the stated positions. As a result of the other agency officials' comments, we consider the changes to the positions and the deletions of the referrals to have had little effect on the Iraqi license information given to the Chairman.

We found that the other agencies did not maintain complete records of the license applications submitted for their review. Defense Department officials told us they depended upon the Bureau's files to support the changes in their positions.

Permanent Changes to the Export Control Automated Support System Were Made Without Adequate Support

The Bureau maintains the Export Control Automated Support System, which provides license processing and historical information on export licensing activities. It also provides the data needed to support enforcement actions for export license violations. The system contains the official license application, the application tracking information, the license, and the follow-up actions.

The system allows changes to applications before they are approved; however, once a license is issued it becomes an historical record and no changes by licensing officers are permitted. The date of final action is entered automatically by the system and cannot be changed. Changes to the database can be made only by computer personnel within the Operations Division with the specific authorization of the Director, Office of Information Resources Management.

We found that Bureau personnel forwarded a list of the previously stated changes to BXA's Office of Information Resources

Digitized by Google

Original from
PURDUE UNIVERSITY

Management, with a request to change the permanent licensing database. OIRM officials acknowledged that they changed the license records solely on the basis of the highlighted list and oral assurances by licensing officials that the changes were justified. They neither reviewed the documentation used to support the changes nor requested copies to maintain in case questions arose in the future.

OIRM officials should have required authorization and sufficient supporting documentation before changing permanent records in the system. Changing system data without support compromises the system's integrity and confidentiality.

Recommendations

We recommend that the acting Under Secretary for Export Administration take the following actions:

1. Ensure that any future changes to export license information submitted to Congress and to the Export Control Automated Support System are authorized and adequately supported with appropriate documentation.

2. Retain complete documentation of the positions of all agencies involved in processing export licenses.

3. Ensure that the system database accurately reflects all agency positions.

4. Clarify the procedures in the Licensing Officers' Operating Manual for the referral to the Defense Department of license applications for computer parts and components intended for shipment to specific countries.

5. Ensure that the Licensing Officers' Operating Manual is reviewed to eliminate other conflicting or confusing licensing procedures.

cc: Wendell Willkie
Joan McEntee

Digitized by Google
Original from PURDUE UNIVERSITY

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Export Administration
Washington, D.C. 20230

March 11, 1991

Honorable Doug Barnard
Chairman, Subcommittee on Commerce,
Consumer Protection and Monetary Affairs
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your request for Iraq licensing information that can be made available to the public, I am enclosing a printout summarizing applications for licenses to export to Iraq processed by the Department in the 1985-1990 period. Also enclosed is a fact sheet that includes a description of the print-out and a one-page summary of Iraq licensing statistics for that time period.

The printout is based on the one provided to you on December 12, 1990, except that it does not include information that could identify exporters or suppliers. Specifically, all the names of license applicants have been removed and, where the end-use information included references identifying suppliers, those references have been deleted.

Under the authority delegated to me by the Secretary of Commerce, I have made the national interest determination required under section 12 (c) of the Export Administration Act to release to the public the data contained in the enclosed printout. The information previously provided to you identifying exporters and suppliers is not covered by the this determination, and therefore, remains subject to the confidentiality provisions of section 12 (c) .

Should you or your staff have any questions, please contact Mark Neuman, Director of Congressional Affairs for Export Administration, at (202) 377-0097.

Sincerely,

Dennis Kloske

Enclosure

cc: Honorable Dennis Hastert
Ranking Minority Member

Digitized by Google
Original from
PURDUE UNIVERSITY

STATISTICS ON U.S. LICENSING FOR IRAQ
1985-1990

Each of these licenses was processed in accordance with the prevailing export policies and interagency procedures described in the BXA Facts - Iraq Export Licensing Fact Sheet.

Licensing Action

	Approved	Rejected	RWA#	Total
License Disposition	771* (68%)	39 (3%)	323 (29%)	1133
Total Dollar Value	$1.5 B**	$27M	$442M	$1.969B

Interagency Review

	Approved***	Rejected	RWA#	Total Reviewed
Defense Position	487 (69%)	20 (3%)	198 (28%)	704
Energy Position	177 (60%)	28 (9%)	91 (31%)	296
State Position	62 (78%)	5 (6%)	13 (16%)	80
SNEC## Position	24 (36%)	12 (18%)	30 (46%)	66

* This figure includes four licenses that were subsequently suspended.

** This figure included $1 billion worth of cargo trucks that were not shipped to Iraq.

*** Included in these approval statistics are those cases in which State asserted that no foreign policy controls applied and returned the license without review; cases in which Defense stated that it had no statutory role in reviewing the license; or in which any agency voiced objections but did not continue to escalate them.

Returned Without Action

SNEC is the Sub-Group on Nuclear Expert Coordination. This is a State Department-chaired committee with representatives of Defense, Commerce, Energy, the Arms Control and Disarmament Agency and the intelligence community.

Digitized by Google

Original from
PURDUE UNIVERSITY

BXA *facts*

FACT SHEET ON EXPORT LICENSING FOR IRAQ

The Commerce Department's export licensing policy toward Iraq has evolved in line with overall U.S. foreign policy and national security concerns about Iraq.

Chronology of Major Export Control Actions

In 1982, the State Department dropped Iraq from the list of terrorist-supporting countries. As a result, there were two principal grounds on which a dual-use item subject to Commerce Department export controls could be denied to Iraq: (1) risk of diversion to the Soviet Union, Eastern Europe or the People's Republic of China (the COCOM-proscribed countries) and (2) items that could contribute to nuclear weapons development programs in Iraq.

In March and September 1984, controls were imposed on exports to Iraq of eight chemical precursors.

In November 1984, diplomatic relations with Iraq, suspended since 1967, were re-established.

In April 1987, foreign policy export controls were expanded to include a list of items that could be useful in the development of ballistic missiles. Since this promulgation of the Missile Technology Control Regime (MTCR), no license applications for any MTCR items have been approved for export to Iraq.

In July 1987, export controls were expanded for chemical precursors for Iraq.

In February 1989, foreign policy export controls were further expanded to include an additional list of chemical and biological agents that could be developed into weapons. Since the establishment of the chemical/biological weapons (CBW) regime, no license applications for any items subject to CBW controls have been approved for export to Iraq.

On August 2 and 9, 1990, President Bush issued Executive Orders suspending all trade with Iraq.

U.S. Department of Commerce • Bureau of Export Administration • Office of Public Affairs • Room 3895 • Washington, D.C. 20230 • Telephone 202 377-2721

Digitized by Google

Original from
PURDUE UNIVERSITY

Interagency License Application Review Procedures for Iraq

The Department of Energy reviews license applications involving items subject to nuclear non-proliferation controls.

The Department of State reviews applications for items subject to foreign policy controls. Further, the State Department chairs the interagency Sub-Group on Nuclear Export Coordination (SNEC), which evaluates the more sensitive license applications involving nuclear non-proliferation issues. In addition to State, SNEC membership includes representatives from the Departments of Defense, Commerce, and Energy, the Arms Control and Disarmament Agency, and the intelligence community. The State Department also chairs the interagency Missile Technology Export Committee (MTEC), which evaluates applications subject to missile technology controls.

The Department of Defense reviews applications involving a select number of technologies to certain destinations to evaluate risk of diversion to COCOM-proscribed countries. DOD also reviews missile technology cases as a member of the MTEC and nuclear cases as a member of the SNEC.

Note: Under the Export Administration Act, foreign policy controls expire annually unless they are extended and Commerce sends an appropriate report to Congress on its implementation of those controls. A copy of the most recent report is available from the Office of Public Affairs, Bureau of Export Administration.

Iraq Licensing History From January 1, 1985, through August 2, 1990

The Export Administration Act and administration procedures require referral of certain export license applications to other agencies. During this period, license applications sent to other agencies were as follows*:

-- Defense: 704
-- Energy: 296
-- State: 80
-- SNEC: 66

* Some of these figures include referrals of cases to more than one agency.

Digitized by Google
Original from PURDUE UNIVERSITY

The applications during this period were acted on in accordance with statutory and procedural requirements. The Department of Commerce approved 771 license applications valued at $1.5 billion.**

362 applications valued at $469 million were not approved.

** Four of the approvals were subsequently suspended. Three of the approvals were for over $1 billion worth of cargo trucks that were not in fact shipped to Iraq.

Digitized by Google

Original from
PURDUE UNIVERSITY

Description of Printout

A summary printout of information on applications for licenses to export to Iraq for the period 1985-90 is available from the Bureau of Export Administration's Office of Public Affairs.

The printout is divided into separate sections for applications approved, rejected, returned without action, suspended, and embargoed on August 2 (and subsequently returned to the applicants). It provides the date an application was received and the date of final action. It shows the name of the importer in Iraq, a general description of the item, a description of the intended end-use, and the value of the proposed export.

The printout also provides the licensing recommendations of other agencies involved in the license review process. In certain instances, the State Department's positions are marked with an asterisk. In these cases, the State Department determined that no foreign policy-based controls applied. In other instances, the phrase "Not Restricted for MTCR, Chemical/Biological, or Nuclear Non-Proliferation" appears. In these cases, it was determined that the proposed export was not restricted by any missile technology, chemical/biological, or nuclear export controls in effect at the time and that referral to another agency was not required.

The printout available from the Office of Public Affairs does not include names of U.S. exporters or suppliers. Those names were included in printouts provided to Congress.

* * *

Digitized by Google

Original from
PURDUE UNIVERSITY

ONE HUNDRED SECOND CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

J. ROY ROWLAND, GEORGIA
RON WYDEN, OREGON
DENNIS E. ECKART, OHIO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JOHN BRYANT, TEXAS

THOMAS J. BLILEY, JR., VIRGINIA
NORMAN F. LENT, NEW YORK
DAN SCHAEFER, COLORADO
FRED UPTON, MICHIGAN

RUSS P.J. STUNITZ, STAFF DIRECTOR/CHIEF COUNSEL
STEPHEN F. SIMS, DEPUTY STAFF DIRECTOR

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

May 28, 1992

The Honorable Henry B. Gonzalez
Chairman
Committee on Banking, Finance and Urban Affairs
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Henry:

Thank you for your May 27, 1992 letter concerning the Committee on Banking, Finance and Urban Affairs' upcoming hearing on Iraq. As you are aware, the Subcommittee on Oversight and Investigations held a closed hearing with the Department of Energy (DOE) and several Intelligence agencies on April 24, 1991 concerning the actions of the DOE in preventing Iraq and other nuclear proliferant countries from acquiring a nuclear weapons capability. You asked that the Subcommittee provide the Banking Committee with an overview of our investigation and a summary of the impediments we encountered.

The Subcommittee has long been concerned that special nuclear materials and sensitive nuclear components -- the means to a nuclear bomb -- be safeguarded from terrorists and kept out of the hands of nuclear proliferant countries. The Subcommittee's hearing last year with the DOE raised a number of important concerns that I conveyed to President Bush in an April 22, 1992 letter. This letter provides a factual account of the Subcommittee's investigation and the concerns that we believe are still unresolved. Enclosed is a copy of this letter, along with a copy of the Subcommittee's recently sanitized record of the April 24, 1991 hearing entitled "Nuclear Nonproliferation: Failed Efforts To Curtail Iraq's Nuclear Weapons Program".

I understand that the Banking Committee has experienced difficulty in obtaining from the Administration information you deem necessary for your investigation on Iraq. The Subcommittee has experienced similar problems with the DOE and the National Security Council (NSC) in obtaining in a timely fashion the information necessary to conduct our inquiry. From the beginning of our inquiry, we have experienced a pattern of delay, misinformation, and lack of cooperation.

Digitized by Google
Original from PURDUE UNIVERSITY

The Subcommittee experienced considerable difficulty in obtaining documents from the DOE and the NSC. Our investigation began on April 6, 1990, when I wrote to Energy Secretary James D. Watkins following media reports of the March 28, 1990 U.S.-British Customs sting at London's Heathrow Airport which apprehended Iraqi agents smuggling nuclear weapons capacitors to Baghdad. At an ensuing DOE briefing on May 1, 1990, the Subcommittee staff was told of a failed effort in the spring of 1989 to warn Admiral Watkins about Iraq's growing nuclear weapons program. Documents pertaining to this matter, which were identified by the DOE participants at this briefing, were requested by the Subcommittee staff. However, the documents were only obtained four months later pursuant to a Subcommittee subpoena. DOE documents obtained through the Subcommittee's subpoena show that Department officials were prepared to furnish the documents to the Subcommittee shortly after the Subcommittee staff requested them, but were blocked by the former Under Secretary.

We also experienced a problem with the NSC in obtaining access to a key Presidential document pertaining to Iraq. On March 21, 1991, the Subcommittee wrote to the National Security Advisor, General Scowcroft, requesting a copy of National Security Directive 26. This document had been specifically cited in a Washington Post Magazine article as pertaining to Iraq's nuclear program and nuclear proliferation. The NSC was told of the Subcommittee's plans to hold a hearing the following month with the DOE concerning Iraq and nuclear proliferation.

Instead of getting the document, General Scowcroft advised that access to the document would be limited to review by Subcommittee Members and Majority and Minority Staff Directors. When told in a subsequent letter from the Subcommittee's Ranking Republican Member and me that the Subcommittee wanted our designated staff to review the document, General Scowcroft, in a June 6, 1991 letter, advised that he could not permit such review. Only after the NSC was told that the Subcommittee would issue a subpoena for Directive 26 did the NSC's Executive Secretary write to the Subcommittee on June 17, 1991 advising "... upon further consideration ... we are now prepared, in a spirit of comity and cooperation, to afford access to the individuals identified in your letter ...." The Subcommittee staff reviewed Directive 26 at the Old Executive Office Building on June 26, 1991.

As I mentioned in my letter to President Bush, "I tend to believe that this October 2, 1989 Directive would have had an entirely different focus had Secretary Watkins been privy to the concerns held by his own staff in early 1989." Not only did the NSC keep the Subcommittee away from Directive 26 until after our

Digitized by Google
Original from PURDUE UNIVERSITY

hearing on Iraq, it attempted to prevent a Committee of competent jurisdiction from having access to a document that had already been leaked to the press. I find this rather curious and in direct conflict with the Executive Branch's oft repeated accusations that it is the Congress who leaks classified information.

In addition to the problems in obtaining documents, the Subcommittee experienced delays in gaining access to individuals so they could be interviewed by the Subcommittee staff. In the case of William Emel, a former DOE intelligence officer who had left the Department to work for a DOE contractor, the DOE refused to bring him to Washington, D.C. so he could be interviewed about Iraq in a classified setting. The staff eventually traveled to South Carolina and conducted the interview, but the investigation was unnecessarily delayed.

Because this refusal to furnish a contractor employee was most unusual, the Subcommittee requested the General Accounting Office (GAO) to determine whether there was any legitimate basis for such refusal. The GAO, in a letter to the Subcommittee dated April 17, 1991, advised that the DOE did not make the necessary determinations as prescribed by its own regulations, but if such determinations were made, "... we would anticipate no basis upon which we would object to the use of DOE's funds to pay for the employee's travel."

The abuse of classification was another problem experienced by the Subcommittee in its Iraq inquiry. Not only did the Subcommittee staff spend considerable time with DOE officials in reversing questionable classification determinations (some of which we still question), we found that the DOE apparently maintains a dual standard for classifying documents: one for the Congress, and the other for public relations.

The Subcommittee was cautioned by the DOE on more than one occasion to protect its numerous classified documents on Iraq in the interests of national security. The Subcommittee complied with the DOE's classification requirements. When the Subcommittee requested declassified versions of certain documents on the Iraqi issue, Admiral Watkins furnished these documents on October 30, 1990 advising, "... classified information has been deleted in order to protect the national security interests of the United States." The Subcommittee incorporated these documents, in their sanitized versions, in the printed hearing record. The classified versions that were locked up in the Subcommittee's safe were stamped by the DOE as "SECRET", "NOFORN", "WNINTEL", "National Security Information".

Digitized by Google
Original from PURDUE UNIVERSITY

Curiously, last month, after the Subcommittee's sanitized hearing print was made public and after The New York Times and The Washington Post reported on the Subcommittee's investigation concerning Iraq's nuclear weapons program, the DOE suddenly declassified two of the documents allegedly containing sensitive national security information that the Subcommittee had diligently been protecting for approximately one and one-half years. We found that the DOE's Office of Public Affairs, reacting to negative newspaper stories, spearheaded the initiative to declassify the documents in an attempt to deflect further criticism. Not only did the Department fail to inform the Subcommittee of this dubious declassification effort, but it clearly illustrates that national security considerations are less important than the Department's public image.

In addition to creating a document problem, delaying our investigation by not making people available in a timely manner, and abusing classification, we believe that DOE officials may have attempted to mislead the Subcommittee concerning their actions regarding Iraq's nuclear weapons program and the treatment of the DOE employees who attempted to sound the alarm in the spring of 1989. The Subcommittee is continuing its inquiry concerning possible inaccurate testimony at the April 24, 1991 hearing and other matters, unsatisfactory responses to written questions, and the misleading portrayal of events in documents furnished to the Subcommittee.

We hope this information is helpful as your Committee proceeds in its investigation. Please let me know if I can be of further assistance.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

JDD:des

Enclosures

cc: The Honorable Thomas J. Bliley, Jr.
Ranking Republican Member
Subcommittee on Oversight and Investigations

Digitized by Google
Original from
PURDUE UNIVERSITY

ONE HUNDRED SECOND CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

J. ROY ROWLAND, GEORGIA
RON WYDEN, OREGON
DENNIS E. ECKART, OHIO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JOHN BRYANT, TEXAS

THOMAS J. BLILEY, JR., VIRGINIA
NORMAN F. LENT, NEW YORK
DAN SCHAEFER, COLORADO
FRED UPTON, MICHIGAN

BUD P.J. STUNTZ, STAFF DIRECTOR/CHIEF COUNSEL,
STEPHEN F. SAUL, DEPUTY STAFF DIRECTOR

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515-6116

April 22, 1992

The Honorable George H.W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

I want to bring to your personal attention a matter of extreme importance. Last year, the Subcommittee on Oversight and Investigations held a closed hearing with the Department of Energy (DOE) on Iraq's nuclear weapons development program. The Subcommittee held this hearing because of its long-standing concern that the technology and materials for nuclear weapons be kept from terrorists and proliferant nations. In the case of Iraq, the Subcommittee's investigation demonstrated that the DOE blundered a unique opportunity to curtail the flow of sensitive nuclear weapons technology to Iraq at a time when it could have made a significant difference.

As early as April 1989, DOE nuclear nonproliferation experts had concluded that Saddam Hussein's threat to construct a nuclear bomb was real and must be stopped. These dedicated career employees were acting with the same "real sense of urgency" that you called for over one year later when you met with the Desert Shield troops in Saudi Arabia on Thanksgiving Day 1990. At that time, you warned "[t]hose who would measure the timetable for Saddam's atomic program in years may be seriously underestimating the reality of that situation and the gravity of the threat." This grave Iraqi threat was the reason why these DOE career employees felt the urgency in 1989 to involve DOE Secretary Watkins, the State Department and the National Security Council to insure that the necessary actions be taken. Incredibly, their efforts to sound the alarm were thwarted.

As the Federal agency with the expertise and responsibility for designing, manufacturing, and testing nuclear weapons, and as a member of the Intelligence Community, the DOE should have been out front in galvanizing U.S. government support to stop Iraq as well as other nuclear proliferant countries. Inexplicably, other issues seemed to have a higher priority at the DOE.

Digitized by Google
Original from PURDUE UNIVERSITY

The significance of the failure to involve Secretary Watkins should not be underestimated. If he had been given the opportunity to act on the recommendations of his staff of experts, who had been watching Saddam's efforts to build the bomb, the widespread and covert Iraqi procurement network, which reached into the world's most sophisticated industrial concerns, could have been significantly curtailed. At the same time, it is entirely possible that Iraqi "scientists" would have been barred from attending an international symposium on explosives detonation held in the late summer of 1989 in Portland, Oregon. A top DOE weapons expert later characterized this symposium, which was sponsored by the United States government, as "the place to be in September 1989 if you were a potential nuclear weapon proliferant."

One month after the Portland fiasco, you issued a National Security Directive on U.S. Policy toward the Persian Gulf. Classification restrictions prevent me from elaborating in this letter on the details of your Directive. However, I tend to believe that this October 2, 1989 Directive would have had an entirely different focus had Secretary Watkins been privy to the concerns held by his own staff in early 1989. If this had been the case, Saddam Hussein could very well have experienced far greater difficulty in acquiring from the world's marketplace the wherewithal for his nuclear weapons program.

It is outrageous that a country such as Iraq was allowed to reach the brink of acquiring deliverable nuclear weapons, particularly with the knowledge and apparent assistance of the United States. Military action, I am sure you will agree, is normally not the preferred method for putting a crimp in a proliferant nation's weapons program. The problem with Iraq was that by the time Saddam invaded Kuwait on August 2, 1990, our options had been greatly reduced. The resultant war with Iraq and the subsequent inspections by nuclear experts under United Nations auspices have hopefully slowed or temporarily eliminated the immediate nuclear threat, although this is more likely due to bad timing on the part of Saddam in his invasion of Kuwait than to an effective policy by the Administration to curb the spread of nuclear weapons.

Mr. President, it is time we stop playing "Russian Roulette" with nuclear proliferants. This past February, the Director of the Central Intelligence Agency publicly stated that proliferation is one of the top threats to our national security. If this is the case, and I have firmly believed this for over two decades, the American people, and indeed the entire world, rightfully expect that the best possible talent will be brought

55-927 O - 93 - 6
Digitized by Google
Original from
PURDUE UNIVERSITY

to bear on these problems by the United States government. Regrettably, I am not confident this is being done. The performance of certain DOE officials entrusted with these critical responsibilities has not been encouraging.

There is another problem I feel compelled to share with you. Top-notch employees will not be attracted to the DOE as long as it subjects its employees to "bureaucratic execution" when individuals, who are concerned about important matters, conflict with others who place a premium on maintaining the status quo. We saw this at our hearing on Iraq, where the nuclear non-proliferation experts who wanted to stop Saddam instead found themselves stopped, and later punished, by the very Department they were diligently trying to serve. This practice is not unique to the DOE. It must change or the American people will not see the results they have every right to expect from their government.

An important step would be your recognition of those DOE employees who tried, in 1989, to warn Admiral Watkins long before it was fashionable to express concern about Saddam's nuclear intentions. This would send a message that you are serious about how this job is performed. Curiously, while not recognizing its own employees, the Department has recognized four DOE laboratory employees who served on the post-war U.N. nuclear inspection teams in Iraq. These contractor employees recently received the Exceptional Public Service Award. While such recognition was undoubtedly deserved, and this Subcommittee is grateful for the important service performed by the teams sent to Iraq, it is ironic that those who wanted to act before the horse was out of the barn are not similarly honored.

We understand that since the Gulf War, there has been some revamping of the Federal Government's nonproliferation efforts. However, as our experience with the DOE has shown, merely reshuffling the same old players into new organizational configurations within the government will not produce the results you may desire.

I am enclosing a copy of the Subcommittee's hearing record. I hope it will be studied carefully as I believe it provides a basis for strengthening our nonproliferation efforts. The lessons that can be learned from what has occurred at the DOE must not go unheeded. Bureaucratic ineptness must give way to sound policy direction, strong leadership, effective communication, and rapid implementation. With bold leadership from the Administration and support by the Congress, our world

Digitized by Google
Original from PURDUE UNIVERSITY

can become a safer place. For our part, please be assured of the Subcommittee's complete cooperation with you and the Executive Branch agencies in this most important and difficult task.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

JDD:des

Enclosure

cc: The Honorable Thomas J. Bliley, Jr.
Ranking Republican Member
Subcommittee on Oversight and Investigations

The Honorable David L. Boren
Chairman
Select Committee on Intelligence
U.S. Senate

The Honorable John Glenn
Chairman
Committee on Governmental Affairs
U.S. Senate

The Honorable Claiborne Pell
Chairman
Committee on Foreign Relations
U.S. Senate

The Honorable Dante B. Fascell
Chairman
Committee on Foreign Affairs
U.S. House of Representatives

The Honorable Dave McCurdy
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives

The Honorable James A. Baker, III
Secretary of State
Department of State

Digitized by Google
Original from
PURDUE UNIVERSITY

The Honorable Richard B. Cheney
Secretary of Defense
Department of Defense

The Honorable Robert M. Gates
Director
Central Intelligence Agency

The Honorable James D. Watkins,
Admiral, USN, Retired
Secretary of Energy
Department of Energy

Digitized by Google

Original from
PURDUE UNIVERSITY

Donnald K. Anderson
Clerk

Steven R. Ross
General Counsel

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

April 22, 1991

MEMORANDUM

TO: The Honorable John D. Dingell
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce

FROM: Steven R. Ross SRR
General Counsel to the Clerk

Charles Tiefer CT
Deputy General Counsel to the Clerk

Morton Rosenberg MR
Assistant Counsel to the Clerk

SUBJECT: Validity of Subcommittee Subpoena

On August 16, 1990, the Subcommittee issued a subpoena duces tecum to Admiral James P. Watkins, Secretary of Energy, for documents, which was properly served on that date and was returnable on September 4, 1991. This followed months of non-cooperation with requests for documents from the Department of Energy (DOE) pertinent to an ongoing investigation into the adequacy of health and safety, and safeguards and security, at DOE's nuclear weapons facilities, including a document pertaining to the unauthorized acquisition of sensitive technology and nuclear materials by Iraq The subject documents were delivered to the Subcommittee on the specified date.

Digitized by Google
Original from
PURDUE UNIVERSITY

During a March 29, 1991, staff interview of John C. Tuck, Under Secretary of Energy, the Under Secretary opined that the August 16, 1990, subpoena was not "a real document, not a real subpoena from the Subcommittee" because it was not an act by the whole House of Representatives. He further commented that "the subpoena confirmed nothing more than a written request by the Chairman." You ask for our analysis on the legal sufficiency of the Under Secretary's position.

The Under Secretary's contention is, of course, completely without merit. The Constitution grants the Congress the investigative power, and the Supreme Court has found the use of compulsory subpoenas to be an "indispensable ingredient" of the investigative powers granted to Congress by the Constitution. Eastland v. United States Servicemen's Fund, 421 U.S. 491, 505 (1975). See also, McGrain v. Daughtery, 273 U.S. 135, 174 (1927) ("[T]he power of inquiry -- with process to enforce it -- is an essential and appropriate auxiliary to the legislative function."). The rationale for this subpoena power is that:

> A legislative body cannot legislate wisely or efficiently in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information--which not infrequently is true-- recourse must be had to others who do not possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.

McGrain v. Daughtery, supra, 273 at 175.

Digitized by Google
Original from PURDUE UNIVERSITY

The Supreme Court long ago established that a properly authorized subpoena issued by a committee or subcommittee has the same force and effect as a subpoena issued by the parent House itself. Thus, in McGrain v. Daughtery, the Court summarily rejected a contention like that propounded by the Under Secretary as "untenable": "The committee was acting for the Senate and, therefore, the subpoenas which the committee issued and the witness refused to obey are to be treated as if issued by the Senate." Id. at 158.

For a subpoena to be validly issued, a committee or subcommittee must act with adequate authority. House Rule XI(2)(m) confers on all standing committees and subcommittees the power to require by subpoena the attendance and testimony of witnesses and the production of documents. Rule XI(2)(m)(2)(A) allows committees to delegate the powers to authorize and issue subpoenas to the chairman of the committee. Rule 21 of the Rules of the Energy and Commerce Committee provides that "the chairman of the full committee many authorize and issue subpoenas under [clause 2(m)(A)] during any period for which the House has adjourned for a period in excess of three days. Subpoenas may be issued over the signature of the chairman of the full committee, or any member of the committee authorized by such chairman, and may be served by any person designated by such chairman or member." A properly issued subpoena receives the seal of the House. Those receiving it know thereby that it carries the full authority by the House.

Digitized by Google
Original from PURDUE UNIVERSITY

Finally, contrary to the understanding of the Under Secretary, a subpoena has more moment and significance than confirming a written request of a committee or its chairman as many officials, high (e.g., EPA Administrator Anne Gorsuch, Interior Secretary James Watt) and low (e.g., Rita Lavelle, EPA), can readily attest. Willful refusal to obey a subpoena can result in a fine of $1,000 and imprisonment for up to one year. 2 U.S.C. § 192, 194 (1988).

Our review of the Subcommittee subpoena issued on August 16, 1990, indicates no doubt that it was properly issued, served, and sealed was in furtherance of an investigation within your Committee's subject matter jurisdiction. Such a subpoena carries Congress's full Constitutional authority. Arguments to the contrary are without foundation.

SRR:CT:MR:kjb

Digitized by Google

Original from
PURDUE UNIVERSITY

ONE HUNDRED FIRST CONGRESS
SECOND SESSION

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

RON WYDEN, OREGON
GERRY SIKORSKI, MINNESOTA
J. ROY ROWLAND, GEORGIA
JAMES H. SCHEUER, NEW YORK
CARDISS COLLINS, ILLINOIS
JOHN BRYANT, TEXAS
JIM COOPER, TENNESSEE

THOMAS J. BLILEY, JR., VIRGINIA
NORMAN F. LENT, NEW YORK
MICHAEL G. OXLEY, OHIO
MICHAEL BILIRAKIS, FLORIDA
ALEX MCMILLAN, NORTH CAROLINA

MICHAEL F. BARRETT, JR.
CHIEF COUNSEL/STAFF DIRECTOR

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

M E M O R A N D U M

DATE: August 16, 1990

TO: Members, Subcommittee on Oversight and Investigations

FROM: The Honorable John D. Dingell, Chairman

RE: Issuance of a Document Subpoena to the Secretary of Energy

After consultation with the Minority, I have issued a subpoena on behalf of the Subcommittee to Admiral James D. Watkins, Secretary of Energy, for documents in the possession of the Department of Energy. The subpoena is being served today (copy attached).

I have done so reluctantly and only after continued foot-dragging and non-cooperation by DOE officials.

The documents being subpoenaed are required in connection with the Subcommittee's continuing investigation into the adequacy of health and safety, and safeguards and security, at the DOE's nuclear weapons facilities. One of the documents pertains to our interest in determining the Department's proper role in preventing the unauthorized acquisition of sensitive technology and nuclear materials by Iraq. Other documents pertain to a serious safeguards and security situation at the Rocky Flats Plant and to allegations that the DOE may be producing nuclear weapons that are unsafe.

For some time, the Subcommittee has had problems obtaining documents and briefings from the DOE. On several occasions, the DOE produced documents only when faced with the alternative of a public hearing to explain the withholding. On three other occasions, the Subcommittee initially requested Admiral Watkins to provide documents but subsequently found it necessary to go directly to DOE field offices and contractor facilities in order to obtain the documents. In yet another instance, the DOE Headquarters declined to brief the Subcommittee staff on the safety of nuclear weapons; the weapons laboratories have agreed to provide this information directly. Subcommittee staff discussions with Under Secretary John C. Tuck, Assistant Secretary Jacqueline Knox Brown, and other DOE officials have not been successful in gaining the Department's cooperation.

The failure of the DOE to cooperate with the Subcommittee will be discussed with DOE officials at a public hearing this fall.

Attachment

Digitized by Google
Original from
PURDUE UNIVERSITY

101-2-23

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To The Honorable James D. Watkins, Admiral, USN, Retired, Secretary of Energy, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

You are hereby commanded to produce the things identified on the attached schedule before the Committee on Energy and Commerce/Subcommittee on Oversight and Investigations of the House of Representatives of the United States, of which the Hon. John D. Dingell is chairman, by producing such things in Room 2323 of the Rayburn House Office Building, in the city of Washington, on Tuesday, September 4, 1990 at the hour of 10:00 a.m.

To Messrs. Jeffrey Hodges and Clifford Traisman

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 10th day of August, 19 90

John D. Dingell
Chairman.

Attest:

Reginald K. Anderson
Clerk.

Digitized by Google

Original from PURDUE UNIVERSITY

101-2-23

A T T A C H M E N T

As used in this Attachment, the term "document" includes all classified and unclassified notes, drafts, memoranda, reports, correspondence, minutes of meetings, telephone logs, computer records or tapes, or other documents in the possession of the Department of Energy (DOE) or its contractors:

(1) (a) Copies of all documents, that were identified by the DOE during the DOE's May 1, 1990, briefing to the Subcommittee staff, referring or relating to actions and/or possible actions by the DOE or any other department within the Executive Branch regarding the attempted unauthorized acquisition of nuclear materials and sensitive technology by Iraq.

(b) Copies of all documents referring or relating to the Subcommittee's requests for the briefing and/or the documents and all documents referring or relating to the Department's action(s) in response thereto.

(2) (a) Copies of all documents referring or relating to the document requested in Chairman Dingell's May 31, 1990, letter to Secretary James D. Watkins pertaining to nuclear materials criticality.

(b) Copies of all documents, including the concurrence copy of Deputy Secretary W. Henson Moore's July 3, 1990, letter to Chairman Dingell, referring or relating to the initial decision not to inform this Subcommittee of the matters discussed in the document cited in (a) above, to the Subcommittee's request cited in (a) above and/or the Department's action(s) in response thereto.

(3) (a) Copies of all documents referring or relating to Chairman Dingell's March 14, 1990, request to Secretary Watkins to have environmental samples that were taken near the DOE's Portsmouth Gaseous Diffusion Plant evaluated by the DOE's Oak Ridge National Laboratory.

(b) Copies of all documents referring or relating to the Subcommittee's requests cited in (a) above and/or the Department's action(s) in response thereto.

Digitized by Google

Original from
PURDUE UNIVERSITY

(4) (a) Copies of all documents referring or relating to the preparation of the June 26, 1990, letter from Under Secretary John C. Tuck in response to Chairman Dingell's June 1, 1990, letter pertaining to nuclear weapons safety, including the concurrence copy of Mr. Tuck's June 26 letter.

(b) Copies of all documents referring or relating to the Subcommittee's request cited in (a) above and/or the Department's action(s) in response thereto.

(5) (a) A copy of the classified document pertaining to safeguards and security vulnerabilities at the Rocky Flats Plant that was used by the DOE to brief the Subcommittee staff on July 23, 1990, at DOE Headquarters.

(b) Copies of all documents referring or relating to the Subcommittee's requests by letter dated July 16, 1990, and orally on July 23, 1990, and all documents referring or relating to the Department's action(s) in response thereto.

(6) (a) Copies of all documents, relating to safeguards and security, and health, safety and environmental responsibilities, requested on behalf of the Subcommittee pursuant to Chairman Dingell's July 16, 1990, letter to Secretary James D. Watkins, during a field examination of the Albuquerque Operations Office and the Rocky Flats Plant during the week of July 30, 1990. These documents include:

(i) A copy of the agreement between the Office of Military Application, the Albuquerque Operations Office, and the Rocky Flats Area Office that was shown to the Subcommittee staff on August 3, 1990, at the Rocky Flats Plant.

(ii) Copies of all documents from Under Secretary John C. Tuck, and the concurrence copies of these documents, which refer or relate to the Department's actions in removing safeguards and security responsibilities at the Rocky Flats Plant from the Albuquerque Operations Office.

(iii) Copies of the classified viewgraphs that were used by the DOE's Albuquerque Operations Office to brief the Subcommittee staff on July 30, 1990, regarding safeguards and security at the Rocky Flats Plant.

Digitized by Google

Original from
PURDUE UNIVERSITY

(iv) Copies of all documents since January 1, 1987, referring or relating to communications between or among: the Security and Nuclear Safeguards Division of the Albuquerque Operations Office, senior Albuquerque Operations Office officials (i.e., the manager, the deputy manager, the assistant manager for safeguards and security, and the assistant manager for management and administration), the Albuquerque Operations Office, the Rocky Flats Area Office/Rocky Flats Plant, and DOE Headquarters, concerning any or all of the following topics: the safeguards and security deficiencies at the Rocky Flats Plant, including the identification of vulnerabilities; recommendations, including requests for resources to correct these deficiencies; and actions that have been taken, including interim measures, to correct these deficiencies.

(b) Copies of all documents referring or relating to the requests cited in (a) above, and the Department's action(s) in response thereto.

Digitized by Google

Original from
PURDUE UNIVERSITY

Subpena for The Honorable James D. Watkins,
Admiral, USN, Retired, Secretary of Energy,
Department of Energy, Forrestal Building,
1000 Independence Avenue, S.W.,
Washington, D.C. 20585
before the Committee on the Energy and
Commerce/Subcommittee on Oversight
and Investigations

Served [signature]
Acting General Counsel
August 16, 1990.

Jeffy L. Hodges, Aug. 16, 1990 10:32 A.M.
Edward R. Jones House of Representatives

U.S. GPO : 67-344

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

[redacted]

U.S. House of Representatives
[redacted]
of the
[redacted]
Washington, DC [redacted]

MEMORANDUM

DATE: April 23, 1991

TO: Members, Subcommittee on Oversight and Investigations

FROM: The Honorable John D. Dingell, Chairman

RE: Closed Hearing on the Department of Energy's Efforts to Prevent Iraq and Other Countries from Getting a Nuclear Weapons Capability

I. INTRODUCTION

On Wednesday, April 24, 1991, the Subcommittee will hold a closed hearing on the efforts by the Department of Energy to prevent the unauthorized acquisition of nuclear materials and sensitive technology by Iraq and other nuclear proliferant countries. The hearing will show that Iraq was making a serious effort in the late 1980's to obtain a nuclear bomb capability, and, of course, the President, in late 1990, cited Iraq's nuclear threat as a reason to go to war.

In May 1989, DOE's Office of Classification and Technology Policy became so concerned about Iraq's activity that it wanted Secretary Watkins immediately warned so that action could be taken. But, this effort was thwarted when the DOE's Intelligence Office would not concur. In the meantime, the careers of those who tried to help keep nuclear technology from Iraq suffered; the careers of those who did not show similar concern prospered. The hearing will also show that other problems exist in the DOE's nonproliferation program. Finally, as the Subcommittee has experienced far too often, the DOE was less than cooperative in important aspects of this inquiry.

II. DOE'S NUCLEAR NONPROLIFERATION ROLE IS CRITICAL

In his February 9, 1989, "Address on Administration Goals Before a Joint Session of Congress," President Bush told the American people: "... the spread of nuclear weapons must be stopped .... Our diplomacy must work every day against the

Deleted

Deleted

Digitized by Google

Original from
PURDUE UNIVERSITY

Deleted

proliferation of nuclear weapons." A senior Pentagon official told the Subcommittee staff that the President considers nuclear nonproliferation one of the top concerns of the Administration. The DOE is given broad responsibilities in nonproliferation by the Nuclear Nonproliferation Act of 1978 and by the Atomic Energy Act. The Energy Secretary is required by statute to license sensitive nuclear technologies that could be exported to nuclear proliferant countries. The DOE also manages the nuclear weapons laboratories, which are an extremely valuable technical resource.

Unfortunately, the Subcommittee staff is finding that nonproliferation has not been a high priority at the DOE. The DOE reviews thousands of Departments of Commerce and State license applications every year to provide technical judgments on the advisability of providing sensitive nuclear bomb-related technologies to foreign countries. However, the DOE has been woefully short on policy direction for nonproliferation, has operated with fragmented organizational responsibilities, and has not done its part to insure that sensitive nuclear technology and information is kept from Iraq and other proliferant nations.

III. IRAQI NUCLEAR WEAPONS THREAT WAS FOR REAL

A. Public Statements

The extensive investigation conducted by the Subcommittee staff shows that in the late 1980's Iraq was making a serious effort to develop a nuclear weapons capability. In addition to the classified details that will be discussed at the hearing, significant public statements by government officials on Iraq's nuclear bomb ambitions show that a serious threat existed and was recognized within parts of the government.

As early as February 22, 1989, the Director of Naval Intelligence, Rear Admiral Thomas Brooks, told the House Armed Services Committee:

> "While few names will be added to the list of Third-World states with a nuclear weapon capability over the next five years, many are working toward this goal. Those actively pursuing a capability include ... Iraq ...."

On November 22, 1990, President Bush, who presumably had access to the full resources of the U.S. government, told the American troops who would soon be going to war:

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

> "Those who would measure the timetable for Saddam's atomic program in years may be seriously underestimating the reality of that situation and the gravity of the threat. Every day that passes brings Saddam one step closer to realizing his goal of a nuclear weapons arsenal. And that's why more and more, your mission is marked by a real sense of urgency.
>
> You know, no one knows precisely when this dictator may acquire atomic weapons, or exactly who they may be aimed at down the road. But we do know this for sure: He has never possessed a weapon that he didn't use...."

B. Iraq's Shopping List

By the late 1980's, Iraq was making an all-out effort to acquire the strategic technologies that one needs to make a bomb. A senior Pentagon intelligence official told the staff that Iraq was trying to buy "almost everything". This included capacitors (used to trigger nuclear weapons), high performance furnaces, neutron generator systems, digital imaging process/display systems, zirconium metal/alloys, numerically controlled machine tools, amplifiers, and lasers. Knowledge of high-explosive technology was also on this list.

On March 29, 1990, U.S. and British Customs officers arrested five persons at London's Heathrow Airport for attempting to export military-grade capacitors to Iraq. The arrests followed an elaborate 18-month undercover sting operation. According to the indictment subsequently filed in U.S. District Court in San Diego, California, the items were:

> "co-axial, high voltage, low inductance capacitors of the same size, weight, energy storage, performance specifications as relating to temperature range, inductance, voltage capacitance, resistance to humidity, vibration and shock, and altitude performance requirements as those used in the detonation of nuclear warheads ...." [Emphasis Added]

Deleted

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

IV. INADEQUACIES IN DOE'S NONPROLIFERATION EFFORTS

A. Critical Action Plan to Curtail Iraqi Access Kept from Admiral Watkins

Iraq's efforts to produce a nuclear weapon were tracked by the DOE's Office of Classification and Technology Policy. This Office -- recently split apart -- was responsible for insuring that nuclear proliferant nations did not get their hands on bomb technology. Bryan Siebert, who headed this Office, had, for quite some time, believed that Iraq was making an all out effort to get the bomb. Other countries were also of concern, but Mr. Siebert felt that Iraq warranted immediate attention.

By the spring of 1989, Mr. Siebert's Deputy, Roger K. Heusser, told the Subcommittee staff he was being "peppered" with calls from export control experts at the DOE nuclear weapons labs and elsewhere who were concerned about Iraq's "shopping list." A nuclear bomb has three major components: nuclear materials, such as plutonium or high-enriched uranium; high explosives; and high-tech components, such as capacitors. Mr. Heusser knew that

Deleted

he and Mr. Siebert felt the situation required Secretary Watkins' immediate and personal attention. Mr. Heusser then worked over the weekend to prepare a memorandum for the Secretary, recommending that Admiral Watkins contact Secretary of State Baker so that action might be taken in the international arena to stop Iraq. The recommendation was sent to Mr. Siebert's supervisor, Chuck Gilbert, who was Deputy Assistant Secretary for Security Affairs in the Defense Programs organization.

Dr. Gilbert immediately shared Mr. Siebert's concerns regarding Iraq and agreed with the approach to the Secretary. However, Dr. Gilbert first wanted his counterpart, Bob Walsh, then Deputy Assistant Secretary for Intelligence in Defense Programs, to review the proposal because, as Dr. Gilbert told the Subcommittee staff, Mr. Walsh was "the most knowledgeable person in the DOE on the Iraqi situation."

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

Two years later, Admiral Watkins would tell the Subcommittee:

> "During my first few months as Secretary of Energy, it became clear that DOE's intelligence program was not effective, not well known or respected in the Intelligence Community, and not responsive to Departmental needs."

Mr. Walsh told Dr. Gilbert he could not concur with Mr. Siebert's and Mr. Heusser's desire to alert Admiral Watkins. Mr. Walsh drafted an unsigned, classified memorandum (recently declassified by the DOE):

> "I am unable to concur with the recommended action by DP-32 [Siebert's Office of Classification and Technology Policy] for Secretary Watkins to initiate immediate policy-level discussions on Iraq .... we would suggest that another approach be considered .... I believe that the present DP-32 recommendation for action by the Secretary may be premature." [emphasis added]

Mr. Walsh felt the information on Iraq developed by Messrs. Siebert and Heusser was "not too good" to justify briefing the Secretary; in fact, he told the Subcommittee staff that he did not want to send the Secretary "raw information" without it being "flushed out." However, Mr. Walsh and Gene Bacher, his top assistant for foreign intelligence, never asked their own staff or personally contacted the intelligence community to find out what Iraq was up to.

The Subcommittee staff's investigation has found that Admiral Watkins was not provided with complete information by Mr. Walsh's office about the seriousness of the Iraqi situation. Mr. Walsh had assured Dr. Gilbert that the Admiral was "well aware of Iraqi activities." However, Dr. Gilbert did not know what information Mr. Walsh was giving the Secretary on Iraq because he never independently verified it. In fact, the little "raw data" on Iraq that Mr. Walsh gave the Secretary never included any recommended courses of action.

When Mr. Walsh objected to alerting the Secretary, Dr. Gilbert backed down from his initial concurrence and returned the memorandum to Mr. Siebert. This is not surprising -- Dr. Gilbert had developed a reputation at the DOE for not wanting to create controversy. The Secretary was not told, and an opportunity for triggering DOE and U.S. government action was missed.

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

B. Nuclear Nonproliferation Policy is Lacking

The Office of Nuclear Nonproliferation Policy, which reports to the Assistant Secretary for International Affairs and Energy Emergencies, is supposed to be responsible for issuing nonproliferation policy. However, the Director of this office has been in an acting capacity for two and a half years. He has no Deputy, and has seen his office lose two professional analysts over this period of time. No proliferation policy has been issued by this "policy office"; in fact, except for Mr. Siebert's office in Defense Programs, the DOE seems to have been unconcerned about the necessity for policy direction.

As late as March 29, 1991, Under Secretary John C. Tuck advised that he was "not familiar" with any specific statement from Secretary Watkins on the DOE's nonproliferation policy. He advised that a formal recommendation to the Secretary as to how nonproliferation should be handled at the DOE has not yet been made. Without the necessary support and policy guidance from senior DOE management, it has been exceedingly difficult to conduct nonproliferation activities effectively, even with competent and dedicated employees.

C. Other Nonproliferation Policy Efforts Have Been Stymied

In 1987, Bryan Siebert was concerned that sensitive nuclear weapons information, including Export Controlled Information (ECI), was being released to the public by the DOE's weapons laboratories. Mr. Siebert was responsible for directing Sandia National Laboratories to review this matter. The resulting study, completed in March 1988, showed that hundreds of documents of potential ECI concern were not receiving adequate protection.

Mr. Siebert's office then prepared "interim" guidelines, which were sent to the DOE's laboratories on January 19, 1989. Because these guidelines relied upon the "cooperation" of the laboratories to protect ECI, it was deemed essential to issue a formal DOE Order, which requires mandatory compliance. When told that the DOE lacked the statutory authority to issue such an Order, Mr. Siebert requested that the DOE's General Counsel seek statutory authority to exempt ECI with a military or space application from public release under the Freedom of Information Act. The General Counsel has not acted.

Mr. Siebert was also concerned that items used for nuclear weapons which also have a commercial application were being removed from export control due to the lessening of tensions with the Soviet Union and Eastern Europe. Mr. Siebert was concerned

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

that such items could be exported by the U.S. and other supplier nations to proliferant countries, including Iraq. Mr. Siebert, without the aggressive high-level DOE backing necessary for obtaining timely action, had been urging the State Department for some time to establish international agreement to control these sensitive items. Last fall, the State Department was successful in putting together an international working group, which is expected to formulate guidelines to restrict the flow of this sensitive technology.

D. DOE Encouraged the Proliferation of Nuclear Weapons Know-How

In August 1989, three Iraqi scientists attended the "Ninth Symposium (International) on Detonation," held in Portland, Oregon. This conference was sponsored by the DOE's three nuclear weapons laboratories and by the Army, Navy and Air Force. The cost of the symposium was paid, in part, by the American taxpayer. Last December, Richard Claytor, the DOE's Assistant Secretary for Defense Programs, wrote: "[i]n a nutshell, the conference was the place to be in September 1989 if you were a potential nuclear weapon proliferant." The failure of the DOE to issue a DOE Order (mandatory guidance that must be followed by DOE offices and DOE contractors) to control sensitive information may have helped Iraq's nuclear weapons program.

V. MANAGEMENT PROBLEMS HURT THE DOE'S NONPROLIFERATION EFFORTS

The DOE has continued its practice, previously noted by this Subcommittee, of hurting the careers of employees who attempt to do the right thing, while at the same time, rewarding those employees whose performance leaves something to be desired. With respect to its nonproliferation responsibilities, the DOE may have further diminished its effectiveness as the result of a recent reorganization.

A. Inverse Rewards and Punishments

(1) Bryan Siebert

As a member of the career Senior Executive Service, Mr. Siebert's performance is rated each year. Ratings are very important to officials in Mr. Siebert's position because they are tied into career advancement and awards. Mr. Siebert received a "highly successful" rating from his immediate supervisor, William

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

Barker, for the period August 1, 1989 to July 31, 1990 (after Mr. Siebert had urged the Secretary be warned about Iraq). A "highly successful" rating is not the best one can get at the DOE. Mr. Barker had told Mr. Siebert he would "push" to get him an "exceptional" -- DOE's highest rating. Mr. Barker told the Subcommittee staff that he recommended to Victor Stello, Deputy Assistant Secretary for Facilities, and Donald Knuth, Deputy Assistant Secretary for Operations, that Mr. Siebert receive an "exceptional" rating along with a bonus. Mr. Barker did not write "exceptional" on Mr. Siebert's rating form because he knew Mr. Stello and Mr. Knuth "did not want this." However, Mr. Stello told the Subcommittee staff that he had said to Mr. Barker: "You ought to give the rating you feel is correct."

Mr. Stello felt Mr. Siebert did a "superb" job in one area of his responsibilities, but did not do as well in other areas. He felt Mr. Siebert "was putting a lot of time and energy" on this one area. Strangely, Mr. Stello admitted in April 1991 that he never spoke with Mr. Siebert about these areas and had only learned of Mr. Siebert's concerns with Iraq in the last couple of weeks. The one area that Mr. Stello felt Mr. Siebert was "superb" -- technology transfer -- was taken away from Mr. Siebert by the Under Secretary in the April 1, 1991 "reorganization."

(2) Roger Heusser

Roger Heusser is also in the career Senior Executive Service. Mr. Heusser was Mr. Siebert's Deputy in the Office of Classification and Technology Policy. Since April 1, 1991, Mr. Heusser remains Mr. Siebert's Deputy. Mr. Siebert wanted to give Mr. Heusser an "exceptional" rating for the same period, August 1, 1989 to July 31, 1990. However, when Mr. Barker told him Mr. Heusser did not deserve such a high rating, Mr. Siebert wrote "highly satisfactory" on Mr. Heusser's form. He felt it would be futile to give Mr. Heusser a rating he knew his superior would not support. Curiously, Mr. Barker must have felt Mr. Heusser was not all that bad. He gave him a $3,960 bonus. Mr. Barker later explained to the Subcommittee staff that it is more important "to get the money," than it is to get a high rating.

(3) William Emel

Bill Emel was responsible for nonproliferation intelligence in Bob Walsh's Intelligence Office. Mr. Emel had tried to get Intelligence to do something about Iraq. Mr. Emel had also supported the Siebert/Heusser initiative in May 1989 to alert the

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

Secretary about Iraq. Mr. Emel left DOE Intelligence in September 1989, discouraged with the lack of support and because there were insufficient resources to do the job that was required. Mr. Emel went to work for Westinghouse at the DOE's Savannah River Site.

Deleted

(4) Robert Walsh

In contrast, Bob Walsh, who did not want the Secretary alerted about Iraq, and whose Intelligence Office received less than high marks by Admiral Watkins, was rated "exceptional" and has been given important management responsibilities. Mr. Walsh's "exceptional" was given by Victor Stello. Under Secretary Tuck's name is on the form agreeing with Mr. Stello, although he did not actually sign the form himself and he does not recall reviewing Mr. Walsh's work. Mr. Stello told the staff that he felt Mr. Walsh was doing "exceptional" work so he rated him "exceptional." He added he was impressed with Mr. Walsh's "ambition, honesty, integrity and knowledge of intelligence." This was probably fortunate for Mr. Walsh because Mr. Tuck said DOE's top echelon was "less than satisfied" with the performance of Mr. Walsh's Intelligence Office. Apparently, the DOE must not have been too concerned with the way Mr. Walsh ran his office. Mr. Walsh later was made Mr. Siebert's and Mr. Heusser's new boss as Associate Deputy Assistant Secretary for Security Affairs under Mr. Barker. The April 1, 1991 "reorganization" has not changed this reporting arrangement.

B. Reorganization May Hinder Development of an Effective DOE Nonproliferation Effort

On March 11, 1991, the Chairman and Ranking Republican Member wrote a letter (attached) to Secretary Watkins expressing concern that a reorganization of Mr. Siebert's office not diminish the effectiveness of the DOE in carrying out its important responsibilities in nonproliferation and other areas.

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

For five years, Bryan Siebert was the DOE's chief line officer responsible for the Department's export control functions. When Mr. Siebert was out of the country representing the DOE in export control negotiations, he learned via a phone call that he was to be removed from all nonproliferation responsibilities at the DOE. Mr. Siebert, who ran the export control office, was not consulted on this plan to take away his important functions. Victor Alessi, who did not run export controls, but rather ran the Defense Programs Arms Control office, was consulted.

Under Secretary Tuck believes the removal of the technology transfer and export control functions from Mr. Siebert "will better serve the Department." Mr. Tuck said the "reorganization" of Mr. Siebert's office is being done because the scope of the activities of the Assistant Secretary for Defense Programs "are too broad to manage." The Under Secretary told the staff that he does not see an "organizational link" between technology transfer and nonproliferation functions such as export control. However, this view is apparently not shared by Mr. Alessi, who may have engineered the removal of Mr. Siebert from Defense Programs. In an October 4, 1990 memorandum to Mr. Tuck, Mr. Alessi recommended that all of Mr. Siebert's nonproliferation functions be placed in his own Arms Control office located, curiously, within Defense Programs.

VI. THE DOE'S LACK OF COOPERATION WITH THE SUBCOMMITTEE REFLECTS RESISTANCE TO ACCOUNTABILITY AND REFORM

The DOE has continued its practice of substantially less than full cooperation with the Subcommittee in important investigations. First, the Subcommittee, after a delay of a few months, was forced to subpoena key documents which proved embarrassing to the DOE. Under Secretary Tuck had refused to listen to the advice of his senior officers and his Deputy General Counsel, whose advice, he told the Subcommittee staff, "is immaterial." Mr. Tuck was delaying by asking for a letter specifically requesting the documents, even though everyone else at the DOE said the documents could go. Mr. Tuck's explanation for his stubbornness: "I like formality." Mr. Tuck has since characterized the subpoena as being nothing more than a written request from the Chairman and, erroneously, said it was "not a House of Representatives subpoena."

Second, the DOE was unwilling to bring William Emel up from the DOE's Savannah River Site in South Carolina so that he could be interviewed in a secure room at DOE Headquarters about Iraq.

Deleted

Digitized by Google
Original from PURDUE UNIVERSITY

Deleted

Because Mr. Emel was now a contractor employee, the DOE felt no obligation to furnish him. Because of the importance of Mr. Emel to this inquiry, the staff interviewed him at Savannah River, but only after a delay of several weeks. The General Accounting Office later told the Subcommittee that the DOE apparently had the authority, under its own regulations, to pay for Mr. Emel's trip to Washington. All the DOE had to do was determine Mr. Emel's trip to meet with the Subcommittee staff was "in the interest of the government." The General Accounting Office reported that the DOE did not make the necessary determination.

Third, petty harassment by the DOE has also occurred. In addition to being delayed from talking to Defense Programs employees because of a "confused" policy statement, the Subcommittee staff had to personally contact Assistant Secretary for Defense Programs Richard Claytor in order to use a secure room at DOE Headquarters. The staff wanted to interview DOE Intelligence Office personnel about Iraq, and such rooms have been routinely provided.

But in this instance, the DOE's Congressional Liaison said a room was not available for two weeks. Jacqueline Knox Brown, DOE's Assistant Secretary for Congressional and Intergovernmental Affairs, tried to help but was not successful. Her reaction: "This appears to be a matter for Admiral Watkins and Chairman Dingell to handle directly." Everyone was blaming Mr. Claytor for the impasse, purportedly because he did not want his Defense Programs space used to accommodate employees from the Intelligence Office. Mr. Claytor told the staff this was not the case, and the room was provided.

Attachment

Deleted

Digitized by Google
Original from
PURDUE UNIVERSITY

ONE HUNDRED SECOND CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

JAMES H. SCHEUER, NEW YORK
HENRY A. WAXMAN, CALIFORNIA
PHILIP R. SHARP, INDIANA
EDWARD J. MARKEY, MASSACHUSETTS
AL SWIFT, WASHINGTON
CARDISS COLLINS, ILLINOIS
MIKE SYNAR, OKLAHOMA
W.J. "BILLY" TAUZIN, LOUISIANA
RON WYDEN, OREGON
RALPH M. HALL, TEXAS
DENNIS E. ECKART, OHIO
BILL RICHARDSON, NEW MEXICO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JOHN BRYANT, TEXAS
RICK BOUCHER, VIRGINIA
JIM COOPER, TENNESSEE
TERRY L. BRUCE, ILLINOIS
J. ROY ROWLAND, GEORGIA
THOMAS J. MANTON, NEW YORK
EDOLPHUS TOWNS, NEW YORK
C. THOMAS McMILLEN, MARYLAND
GERRY E. STUDDS, MASSACHUSETTS
PETER H. KOSTMAYER, PENNSYLVANIA
RICHARD H. LEHMAN, CALIFORNIA
CLAUDE HARRIS, ALABAMA

NORMAN F. LENT, NEW YORK
EDWARD R. MADIGAN, ILLINOIS
CARLOS J. MOORHEAD, CALIFORNIA
MATTHEW J. RINALDO, NEW JERSEY
WILLIAM E. DANNEMEYER, CALIFORNIA
DON RITTER, PENNSYLVANIA
THOMAS J. BLILEY, JR., VIRGINIA
JACK FIELDS, TEXAS
MICHAEL G. OXLEY, OHIO
MICHAEL BILIRAKIS, FLORIDA
DAN SCHAEFER, COLORADO
JOE BARTON, TEXAS
SONNY CALLAHAN, ALABAMA
ALEX McMILLAN, NORTH CAROLINA
J. DENNIS HASTERT, ILLINOIS
CLYDE C. HOLLOWAY, LOUISIANA

JOHN S. ORLANDO, CHIEF OF STAFF
JOHN M. CLOUSER, JR., STAFF DIRECTOR

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

March 21, 1991

The Honorable Brent Scowcroft
Assistant to the President for
National Security Affairs
The White House
Washington, D.C. 20500

Dear General Scrowcroft:

Pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, the Subcommittee on Oversight and Investigations has been investigating the Department of Energy's (DOE) role in preventing the unauthorized acquisition of nuclear materials and sensitive technology by Iraq. The Subcommittee plans to hold a hearing next month with the DOE in connection with this inquiry.

In an article that appeared in the March 17, 1991, issue of The Washington Post Magazine: "Missed Signals In the Middle East", it was reported that President Bush signed National Security Directive 26 in October 1989. According to the article:

> "The directive recognized that there were significant differences over chemical and biological weapons, and important U.S. concerns about Iraq's nuclear program .... Specifically, U.S. Companies would be encouraged to participate in the post war reconstruction of Iraq ... as long as this did not conflict with U.S. concern about nuclear proliferation." [emphasis added]

In view of the importance of the President's Directive to the Subcommittee's inquiry involving Iraq, the Subcommittee requests a copy of National Security Directive 26 and any related guidance by Thursday, April 4, 1991. The Directive has apparently already been released to The Washington Post.

Digitized by Google
Original from
PURDUE UNIVERSITY

Your assistance with the Subcommittee in this matter will be greatly appreciated. If you have any questions, please contact Messrs. Jeffrey C. Crater or Jeffrey L. Hodges of the Subcommittee staff on 225-4441.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

JDD:JCCtc

Enclosure

cc: The Honorable Thomas J. Bliley, Jr.
Ranking Republican Member

Digitized by Google

Original from
PURDUE UNIVERSITY

THE WHITE HOUSE

WASHINGTON

April 17, 1991

91 APR 18 AM 10:08

Dear Mr. Chairman:

Thank you for your letter of March 21, 1991, requesting a copy of a presidential directive. As I am sure you appreciate, congressional requests for such documents raise important issues of Executive privilege.

Based on our continuing effort to accommodate legitimate legislative requests for information while respecting long-established principles of presidential authority, the President's policy is to provide access to relevant directives for personal review by Members of congressional committees, with appropriate jurisdiction, and, if appropriate, by the staff director and minority staff director. In this case, we are prepared to grant your request in so far as it pertains to policy toward Iraq by making available relevant portions of the directive.

Consistent with our established practice, therefore, I should appreciate your designating in writing those Subcommittee Members who desire to review the relevant portions of the directive and whether you desire the staff director and minority staff director also to review them. This information should be transmitted to Virginia Lampley, Senior Director for Legislative Affairs, 395-3055, who will arrange for review of the document.. Notes may be taken, but must be marked for classification by the NSC staff. Copies of the document may not be retained. With respect to the staff director and minority staff director, clearances should be passed to Patrick Gaughan, Security Officer of the NSC, at 395-5127.

Sincerely,

Brent Scowcroft

The Honorable John D. Dingell
Chairman
Subcommittee on Oversight and
Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Digitized by Google

Original from
PURDUE UNIVERSITY

ONE HUNDRED SECOND CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

J. ROY ROWLAND, GEORGIA
RON WYDEN, OREGON
BOBBIG E. SCHAFF, OHIO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JOHN BRYANT, TEXAS

THOMAS J. BLILEY, JR., VIRGINIA
NORMAN F. LENT, NEW YORK
DAN SCHAEFER, COLORADO
FRED UPTON, MICHIGAN

[illegible] STAFF DIRECTOR/CHIEF COUNSEL
STEPHEN F. [illegible], DEPUTY STAFF DIRECTOR

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

May 10, 1991

The Honorable Brent Scowcroft
Assistant to the President
for National Security Affairs
National Security Council
The White House
Washington, D.C. 20500

Dear General Scowcroft:

On March 21, 1991, the Subcommittee on Oversight and Investigations wrote to you requesting a copy of National Security Directive 26 and any related guidance pertaining to U.S. nonproliferation policy. This request was made in connection with the Subcommittee's ongoing investigation of the Department of Energy's (DOE) role in preventing the unauthorized acquisition of nuclear materials and sensitive technology by Iraq. (The Subcommittee held a closed hearing with the DOE on April 24, 1991, pertaining to this issue.) By letter dated April 17, 1991, you advised that access to these documents will be limited to the Subcommittee Members and to the Subcommittee's Majority and Minority Staff Directors.

As Chairman and Ranking Republican Member, we have designated Messrs. Jeffrey L. Hodges, Research Analyst, Jeffrey C. Crater, Special Assistant, and Dennis B. Wilson, Minority Counsel, to review the requested documents on behalf of the Subcommittee. Messrs. Hodges, Crater and Wilson hold active "Q" security clearances granted by the DOE.

We trust there will be no problem with this arrangement. A similar situation arose in October 1989, when the National Security Council initially proposed that access to Presidential decision documents be limited to Subcommittee Members and the Majority or Minority Staff Directors or Counsels. In that instance, you subsequently agreed to permit the staff designated by the Subcommittee, Messrs. Hodges and Wilson, to review the documents.

Digitized by Google
Original from PURDUE UNIVERSITY

The Honorable Brent Scowcroft
May 10, 1991
Page 2

We would appreciate your further assistance at this time. Please have your staff contact Messrs. Hodges and Crater at 225-4441, and Mr. Wilson at 225-3641, to arrange for the Subcommittee staff's review of the documents.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

Thomas J. Bliley, Jr.
Ranking Republican Member
Subcommittee on
Oversight and Investigations

Digitized by Google

Original from
PURDUE UNIVERSITY

THE WHITE HOUSE

WASHINGTON

June 6, 1991

91 JUN -7 AM 11:25

Dear Mr. Chairman:

Thank you for your letter of May 10, 1991, requesting that three members of the Subcommittee staff be permitted to review a presidential directive. I regret that we cannot provide access to those staff members.

As explained in my letter to you of April 17, 1991, the President's policy is to attempt to accommodate legitimate legislative requests for information while protecting national security information and the integrity of the Executive branch decision-making process. When committee chairmen or ranking minority members request access to national security information, we undertake a case-by-case review that considers both the importance of the information to legitimate committee functions and the sensitivity of the information. In most cases involving requests to see presidential directives, our review leads us to conclude that the most appropriate accommodation is to offer access to the chairman and ranking minority member, and, at their written request, additional members of the committee and the majority and minority staff directors or chief counsels.

After reviewing your request of March 21, 1991, we concluded that it was an appropriate case to offer our usual accommodation: access to relevant portions of the directive for Subcommittee Members and for the majority and minority staff directors or chief counsels designated by you. Inasmuch as the three staff members named in your letter of May 10 are neither staff directors nor chief counsels, we cannot provide them access under our policy.

I recognize that in an earlier case we agreed to provide access to another presidential directive for staff members who were neither staff directors nor chief counsels, and that our decision in this case may seem inconsistent to you. I can only respond that any system involving case-by-case review will yield results that appear inconsistent to those not privy to the review, and that we are satisfied that the different facts surrounding this request support a different decision.

Digitized by Google

Original from PURDUE UNIVERSITY

We remain prepared to accommodate your request along the lines described above.

Sincerely,

Brent Scowcroft

The Honorable John D. Dingell
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Digitized by Google

Original from
PURDUE UNIVERSITY

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

91 JUN 17 PM 4:33

June 17, 1991

Dear Mr. Chairman:

I have been authorized to inform you that, upon further consideration of your March 21, 1991, request for access to a presidential directive, we are now prepared, in a spirit of comity and cooperation, to afford access to the individuals identified in your letter to General Brent Scowcroft of May 10, 1991. Specifically, we are prepared to permit Messrs. Jeffrey L. Hodges, Jeffrey C. Crater, and Dennis B. Wilson of the subcommittee staff to review the directive.

I trust that this offer will satisfy your concerns.

Sincerely,

William F. Sittmann
Executive Secretary

The Honorable John D. Dingell
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

55-927 O - 93 - 7

Digitized by Google
Original from PURDUE UNIVERSITY

ONE HUNDRED SECOND CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

JAMES H. SCHEUER, NEW YORK
HENRY A. WAXMAN, CALIFORNIA
PHILIP R. SHARP, INDIANA
EDWARD J. MARKEY, MASSACHUSETTS
AL SWIFT, WASHINGTON
CARDISS COLLINS, ILLINOIS
MIKE SYNAR, OKLAHOMA
W.J. "BILLY" TAUZIN, LOUISIANA
RON WYDEN, OREGON
RALPH M. HALL, TEXAS
DENNIS E. ECKART, OHIO
BILL RICHARDSON, NEW MEXICO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JOHN BRYANT, TEXAS
RICK BOUCHER, VIRGINIA
JIM COOPER, TENNESSEE
TERRY L. BRUCE, ILLINOIS
J. ROY ROWLAND, GEORGIA
THOMAS J. MANTON, NEW YORK
EDOLPHUS TOWNS, NEW YORK
C. THOMAS MCMILLEN, MARYLAND
GERRY E. STUDDS, MASSACHUSETTS
PETER H. KOSTMAYER, PENNSYLVANIA
RICHARD H. LEHMAN, CALIFORNIA
CLAUDE HARRIS, ALABAMA

NORMAN F. LENT, NEW YORK
EDWARD R. MADIGAN, ILLINOIS
CARLOS J. MOORHEAD, CALIFORNIA
MATTHEW J. RINALDO, NEW JERSEY
WILLIAM E. DANNEMEYER, CALIFORNIA
DON RITTER, PENNSYLVANIA
THOMAS J. BLILEY, JR., VIRGINIA
JACK FIELDS, TEXAS
MICHAEL G. OXLEY, OHIO
MICHAEL BILIRAKIS, FLORIDA
DAN SCHAEFER, COLORADO
JOE BARTON, TEXAS
SONNY CALLAHAN, ALABAMA
ALEX MCMILLAN, NORTH CAROLINA
J. DENNIS HASTERT, ILLINOIS
CLYDE C. HOLLOWAY, LOUISIANA

JOHN S. ORLANDO, CHIEF OF STAFF
JOHN M. CLOUGH, JR., STAFF DIRECTOR

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

January 30, 1991

VIA FACSIMILE

The Honorable James D. Watkins,
Admiral, USN, Retired
Secretary of Energy
Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Admiral Watkins:

On September 25, 1990, I wrote to you concerning the investigation being conducted by the Subcommittee on Oversight and Investigations involving the Department of Energy's role in preventing the unauthorized acquisition of nuclear materials and sensitive technology by Iraq. In connection with this investigation, it will be necessary for the Subcommittee staff to interview Mr. William A. Emel, currently employed with the Westinghouse Savannah River Company at the DOE's Savannah River Site. The interview will pertain to matters involving Mr. Emel's previous position at DOE Headquarters, where he was employed as a Physical Scientist in the Office of the Deputy Assistant Secretary for Intelligence.

We are requesting that the DOE arrange for Mr. Emel to be available for the interview at 1:30 p.m. on Thursday, February 7, 1991. Since this interview may involve classified discussions, and in accordance with the manner in which similar interviews have been conducted, we would suggest that the interview be held at the DOE's Forrestal Building. Mr. Emel has been contacted by the Subcommittee staff and he advised that he was available on February 7.

Digitized by Google
Original from PURDUE UNIVERSITY

The continued assistance of the DOE in this matter will be greatly appreciated. Please contact Messrs. Jeffrey Crater or Jeffrey Hodges of the Subcommittee staff on 225-4441, if you have any questions.

Sincerely,

John D. Dingell
Chairman
Committee on Energy and Commerce

JDD:JHdes

cc: The Honorable Thomas J. Bliley, Jr.
Member
Committee on Energy and Commerce

Digitized by Google

Original from
PURDUE UNIVERSITY

The Secretary of Energy
Washington, DC 20585

RECEIVED
91 FEB -7 PM 3:37
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

February 7, 1991

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman: John.

This is in response to your letter of January 30, 1991, requesting that the staff of the Subcommittee on Oversight and Investigations be permitted to interview Mr. William A. Emel regarding the Department's responsibilities with respect to the acquisition of nuclear technology by Iraq.

The Department has no objection to the requested interview. Since Mr. Emel is no longer an employee of the Department, we suggest you arrange the interview at a time and place of mutual convenience. Certification of his clearances, assuming you wish to discuss classified information, will need to be forwarded by his present employer to the interview site to assure he still possesses the appropriate access authorizations.

If I can be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

James D. Watkins
Admiral, U.S. Navy (Retired)

Digitized by Google
Original from
PURDUE UNIVERSITY

ONE HUNDRED SECOND CONGRESS

JOHN D DINGELL MICHIGAN CHAIRMAN

JAMES H SCHEUER NEW YORK
HENRY A WAXMAN CALIFORNIA
PHILIP R SHARP INDIANA
EDWARD J MARKEY MASSACHUSETTS
AL SWIFT WASHINGTON
CARDISS COLLINS ILLINOIS
MIKE SYNAR OKLAHOMA
W J BILLY TAUZIN LOUISIANA
RON WYDEN OREGON
RALPH M HALL TEXAS
DENNIS E ECKART OHIO
BILL RICHARDSON NEW MEXICO
JIM SLATTERY KANSAS
GERRY SIKORSKI MINNESOTA
JOHN BRYANT TEXAS
RICK BOUCHER VIRGINIA
JIM COOPER TENNESSEE
TERRY L BRUCE ILLINOIS
J ROY ROWLAND GEORGIA
THOMAS J MANTON NEW YORK
EDOLPHUS TOWNS NEW YORK
C THOMAS MCMILLEN MARYLAND
GERRY E STUDDS MASSACHUSETTS
PETER H KOSTMAYER PENNSYLVANIA
RICHARD H LEHMAN CALIFORNIA
CLAUDE HARRIS ALABAMA

NORMAN F LENT NEW YORK
EDWARD R MADIGAN ILLINOIS
CARLOS J MOORHEAD CALIFORNIA
MATTHEW J RINALDO NEW JERSEY
WILLIAM E DANNEMEYER CALIFORNIA
DON RITTER PENNSYLVANIA
THOMAS J BLILEY JR VIRGINIA
JACK FIELDS TEXAS
MICHAEL G OXLEY OHIO
MICHAEL BILIRAKIS FLORIDA
DAN SCHAEFER COLORADO
JOE BARTON TEXAS
SONNY CALLAHAN ALABAMA
ALEX MCMILLAN NORTH CAROLINA
J DENNIS HASTERT ILLINOIS
CLYDE C HOLLOWAY LOUISIANA

JOHN S ORLANDO CHIEF OF STAFF
JOHN M CLOUGH JR STAFF DIRECTOR

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

February 19, 1991

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

The Honorable James D. Watkins
Admiral, USN, Retired
Secretary of Energy
Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Admiral Watkins:

Pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, I have requested that members of the staff of the Subcommittee on Oversight and Investigations visit the Department of Energy's Savannah River Site during the week of February 17, 1991. The staff will need to interview DOE, contractor and subcontractor personnel. These individuals will be identified by the Subcommittee staff, who will also identify documents, including classified and Privacy Act documents, which should be made available to the staff and the Subcommittee.

The Subcommittee staff's review will include matters pertaining to safeguards and security, as well as health and safety. In particular, we request that the staff be briefed on reactor restart upgrades for health and safety, and that the staff receive a suitable orientation regarding the Defense Waste Processing Facility.

This request has been coordinated with Mr. Gary D. Knight, Deputy Assistant Secretary for House Liaison.

Digitized by Google
Original from PURDUE UNIVERSITY

The Department's assistance to the Subcommittee and its staff will be greatly appreciated. If you have any questions, please contact Jeffrey C. Crater or Jeffrey L. Hodges of the Subcommittee staff on (202) 225-4441.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

JDD:JHtc

cc: The Honorable Thomas J. Bliley, Jr.
Ranking Republican Member
Subcommittee on Oversight and Investigations

Digitized by Google

Original from
PURDUE UNIVERSITY

ONE HUNDRED SECOND CONGRESS

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

JAMES H. SCHEUER, NEW YORK
HENRY A. WAXMAN, CALIFORNIA
PHILIP R. SHARP, INDIANA
EDWARD J. MARKEY, MASSACHUSETTS
AL SWIFT, WASHINGTON
CARDISS COLLINS, ILLINOIS
MIKE SYNAR, OKLAHOMA
W.J. "BILLY" TAUZIN, LOUISIANA
RON WYDEN, OREGON
RALPH M. HALL, TEXAS
DENNIS E. ECKART, OHIO
BILL RICHARDSON, NEW MEXICO
JIM SLATTERY, KANSAS
GERRY SIKORSKI, MINNESOTA
JOHN BRYANT, TEXAS
RICK BOUCHER, VIRGINIA
JIM COOPER, TENNESSEE
TERRY L. BRUCE, ILLINOIS
J. ROY ROWLAND, GEORGIA
THOMAS J. MANTON, NEW YORK
EDOLPHUS TOWNS, NEW YORK
C. THOMAS MCMILLEN, MARYLAND
GERRY E. STUDDS, MASSACHUSETTS
PETER H. KOSTMAYER, PENNSYLVANIA
RICHARD H. LEHMAN, CALIFORNIA
CLAUDE HARRIS, ALABAMA

NORMAN F. LENT, NEW YORK
EDWARD R. MADIGAN, ILLINOIS
CARLOS J. MOORHEAD, CALIFORNIA
MATTHEW J. RINALDO, NEW JERSEY
WILLIAM E. DANNEMEYER, CALIFORNIA
DON RITTER, PENNSYLVANIA
THOMAS J. BLILEY, JR., VIRGINIA
JACK FIELDS, TEXAS
MICHAEL G. OXLEY, OHIO
[illegible], FLORIDA
DAN SCHAEFER, COLORADO
JOE BARTON, TEXAS
SONNY CALLAHAN, ALABAMA
ALEX MCMILLAN, NORTH CAROLINA
J. DENNIS HASTERT, ILLINOIS
CLYDE C. HOLLOWAY, LOUISIANA

JOHN S. GILMORE, CHIEF OF STAFF
JOHN M. CLOUGH, JR., STAFF DIRECTOR

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

March 5, 1991

The Honorable Charles A. Bowsher
Comptroller General of the United States
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

The Subcommittee on Oversight and Investigations recently requested the Department of Energy (DOE) to arrange for a former DOE employee (now a DOE contractor employee working at the DOE's Savannah River Site) to be interviewed at DOE Headquarters by the Subcommittee staff. The Department's role in preventing the unauthorized acquisition of nuclear materials and sensitive technology by Iraq is under review by the Subcommittee, and the individual's duties while at DOE Headquarters related to this issue.

The Department declined the Subcommittee's request to make the individual available for interview at the DOE's Washington, D.C. Headquarters. The DOE told the Subcommittee that because the individual was no longer a DOE employee, the Department was not obligated to pay his travel expenses.

It has been the Subcommittee's understanding that the Secretary of Energy is responsible for all employees in the DOE system, including contractor employees. In fact, the DOE has previously arranged for DOE employees and DOE contractor employees to travel to Washington, D.C. to participate in Subcommittee hearings and to be interviewed by the Subcommittee and its staff.

The Subcommittee would appreciate receiving a written GAO response to the following questions:

-- Whether the DOE is required to arrange for the travel of DOE contractor employees when requested by the Subcommittee;

Digitized by Google
Original from PURDUE UNIVERSITY

-- If not required to arrange for such travel, whether the DOE has authority, either expressed or implied, to arrange for that travel; and

-- Whether the DOE is prohibited from arranging for the travel of DOE contractor employees when requested by the Subcommittee.

The Subcommittee would also appreciate an analysis of the contracts between the DOE and the Westinghouse Savannah River Company (the government-owned, contractor-operated company where the individual is now employed), with respect to the payment of travel for DOE contractor employees.

Your assistance to the Subcommittee in reviewing this matter will be greatly appreciated. It will be helpful to the Subcommittee if we could receive your report by April 18, 1991. Messrs. Jeffrey L. Hodges or Jeffrey C. Crater of the Subcommittee staff can be contacted on 225-4441 to answer any questions you may have.

Thank you for your continuing assistance to the work of the Subcommittee.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

JDD:JHtc

cc: The Honorable Thomas J. Bliley, Jr.
Ranking Republican Member

Susan W. Irwin, Esquire
Attorney Advisor
Office of General Counsel

Digitized by Google
Original from
PURDUE UNIVERSITY

Comptroller General
of the United States
Washington, D.C. 20548

B-243336

April 17, 1991

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This is in response to your March 5, 1991, letter requesting, by April 18, 1991, our views on the Department of Energy's (DOE) authority to arrange and pay for the travel to Washington, D.C., of DOE contractor employees for the purpose of being interviewed by the Subcommittee. In addition, you asked whether DOE is authorized to pay the travel expenses of a certain former DOE employee, currently employed by a DOE contractor, for such an interview about matters related to his prior DOE activities. This employee now works for Westinghouse Savannah River Company (Westinghouse), DOE's contractor for the operation and management of the Savannah River Site. We understand DOE declined the Subcommittee's request to make the individual available for the interview and to pay his travel expenses, including transportation, subsistence, and lodging while in Washington.

Under clause I.73 of DOE's contract DE-AC09-89SR18035 with Westinghouse, contractor employee travel expenses in connection with performance of work under the contract are considered an item of allowable cost. This cost provision would permit DOE to reimburse the contractor for travel expenses of a Westinghouse employee who was asked by DOE to brief a congressional committee staff about contract activities. However, the contract does not provide a basis for DOE to reimburse Westinghouse for the travel expenses of an employee to brief congressional staff on a matter outside the scope of the contract.

Aside from the terms of DOE's contract with Westinghouse, there is the question whether DOE has the authority to use its funds to pay these travel expenses directly. In general, of course, agencies may use appropriated funds only for authorized purposes. 31 U.S.C. § 1301(a). In applying this rule, we have long held that a given expenditure is permissible if the agency determines that it is reasonably necessary to accomplish an authorized purpose or function of

Digitized by Google
Original from
PURDUE UNIVERSITY

the agency, or will contribute materially to the effective accomplishment of an agency function, and if it is not otherwise prohibited by law. See, e.g., 69 Comp. Gen. 38 (1989); 56 Comp. Gen. 111 (1976), and the cases cited therein. Similarly, the Federal Travel Regulation (FTR), which by its terms applies only to travel of government employees, authorizes only that travel that is essential to the purposes of the government and for the accomplishment of the agency's mission. 41 C.F.R. § 301-1.4(b)(2) (1990).

Under our authority to determine whether agencies' funds have been spent properly, we have in some instances approved the use of appropriated funds to pay travel expenses of non-government employees, when the agency reasonably determined the expenditures were necessary to the accomplishment of an agency program. E.g., 69 Comp. Gen. 38, supra, where we upheld an agency determination that it would further the purposes of an award ceremony to pay the travel expenses of the spouse of an employee award recipient so she could be present for the award. However, we have not addressed the question whether an executive department or agency has the discretionary authority to use its appropriated funds to pay the travel expenses of a former employee to be interviewed about his former responsibilities by congressional committee staff.

Under DOE regulations, DOE payment of non-government employee travel expenses, including transportation, lodging, and subsistence, may not be approved or authorized except in five situations. 10 C.F.R. § 1060.101. Thus, the travel expenses of a non-DOE employee may be authorized (1) to confer with DOE officials on essential matters, (2) to be interviewed for a position at GS-16 or above, or its equivalent, (3) to appear and testify, and to produce documents, pursuant to a DOE subpoena, (4) to serve as an attendant for a handicapped individual authorized to travel, and (5) for other agency-related travel which the DOE General Counsel determines is authorized by statute and which a principal officer of DOE determines in writing is in the interest of the government.

On the basis of the limited information available to us, none of first four exceptions appears to fit the facts of this particular case. With respect to the fifth, DOE did not make the necessary determinations. However, should DOE make the required determination of governmental interest, on the facts of this case as we know them, we would anticipate no basis upon which we would object to the use of DOE's funds to pay for the employee's travel.

Digitized by Google
Original from PURDUE UNIVERSITY

We trust this information will be helpful to you. If you have any additional questions, please let us know.

As agreed in discussions with your staff, this opinion will be available for general distribution 30 days from today, unless you publicly disclose it sooner.

Sincerely yours,

for Comptroller General
of the United States

Digitized by Google
Original from
PURDUE UNIVERSITY

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

September 25, 1990

The Honorable James D. Watkins,
Admiral, USN, Retired
Secretary of Energy
Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Admiral Watkins:

On May 1, 1990, the Department of Energy briefed the Subcommittee staff on the DOE's role in preventing the unauthorized acquisition of nuclear materials and sensitive technology by Iraq. This briefing was requested in my April 6, 1990 letter and was prompted by media accounts of last spring's seizure by Customs officials of components destined for Iraq that could be utilized in nuclear weapons.

During the May 1 briefing, documents pertaining to the Subcommittee's interests concerning Iraq were cited by DOE officials. The Subcommittee staff requested that these documents be promptly furnished to the Subcommittee. However, because of the Department's unwillingness to cooperate with the Subcommittee in this extremely important and sensitive matter, we did not receive the documents until September 4, 1990 -- four months later -- and only after the Subcommittee issued a subpoena.

Our initial review of the documents is discomforting. It appears that back in May 1989, certain senior DOE officials had concerns about Iraq that they felt warranted your personal attention. Other senior DOE officials apparently felt that these concerns should not be brought to your attention. The documents do not show whether you were ever advised of the concerns these DOE officials had at that time.

I am directing the Subcommittee staff to continue with this investigation. It will be necessary for the Subcommittee to interview DOE and contractor personnel and to review documents, including classified documents and documents subject to the Privacy Act. The individuals and documents will be identified by the Subcommittee staff. I anticipate the Department's complete cooperation with the Subcommittee and its staff.

Digitized by Google
Original from PURDUE UNIVERSITY

I would also appreciate receiving as soon as possible a declassified version of the classified documents on the Iraq issue that were furnished to the Subcommittee pursuant to our subpoena.

If you have any questions, please contact Jeffrey Hodges or Jeffrey Crater of the Subcommittee staff on 225-4441.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

JH:tc

Digitized by Google
Original from
PURDUE UNIVERSITY

The Secretary of Energy
Washington, DC 20585

October 30, 1990

NOV 01 1990

The Honorable John D. Dingell
Chairman, Subcommittee on
Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of September 25, 1990, regarding the Department of Energy's (DOE) documents pertaining to Iraq nuclear proliferation concerns. In your letter, you requested that the DOE provide you with an unclassified version of the classified documents. A member of the Subcommittee staff has already reviewed the classified documents. The enclosure provides the unclassified documents from which classified information has been deleted in order to protect the national security interests of the United States.

The Department will continue to cooperate fully with your Subcommittee in its inquiry regarding this matter. If you have any additional needs, please feel free to contact me.

Sincerely,

James D. Watkins
Admiral, U.S. Navy (Retired)

Enclosure

Digitized by Google

Original from
PURDUE UNIVERSITY

PANEL NO. 2

Digitized by Google
Original from PURDUE UNIVERSITY

United States General Accounting Office

GAO

Testimony

Before the Committee on Banking, Finance and Urban Affairs, House of Representatives

For Release on Delivery
Expected at
9:30 a.m. EDT
Friday
May 29, 1992

AGRICULTURE'S EXPORT CREDIT PROGRAMS

Delays in Accessing Records Relating to Iraq

Statement of Allan I. Mendelowitz
Director, International Trade and Finance Issues
General Government Division

GAO/T-GGD-92-47

GAO Form 160 (12/91)
OPR:OEMC/PCC

Digitized by Google

Original from
PURDUE UNIVERSITY

Mr. Chairman and Members of the Committee:

We are here today to discuss our efforts to obtain information and documents concerning our ongoing reviews of the Atlanta operations of the Banca Nazionale Del Lavoro (BNL) and Iraq's participation in the Commodity Credit Corporation's (CCC) General Sales Manager (GSM) 102 and 103 export credit guarantee programs.[1] We are performing our reviews at the request of this Committee as well as others in the Congress. As I will describe later, our work has been delayed significantly due to the reluctance of some government agencies to provide us with timely and complete access to the information we require.

GAO's basic authority to access records is contained in 31 U.S.C. 716. This statute grants GAO access to executive agency records for the purpose of conducting GAO's audits and evaluations. Generally, we do not encounter problems in accessing records in the course of most of our work. However, this was not the case in conducting our ongoing reviews of Iraq's participation in the CCC's export credit guarantee programs and issues involving the Banca Nazionale Del Lavoro. We have recognized from the outset that the work requested of us concerns issues of considerable sensitivity, some involving alleged illegal activity. However, in such instances, it is always our policy to avoid interfering with

---

[1]The Banca Nazionale Del Lavoro is a bank that is largely owned by the Italian government. The Atlanta operation made almost $2 billion in CCC-guaranteed loans to Iraq without higher level bank authorization. Iraq has defaulted on almost $350 million of these CCC-guaranteed loans.

Digitized by Google

Original from
PURDUE UNIVERSITY

ongoing criminal investigations. Furthermore, we have procedures in place to protect classified and confidential information.

Nevertheless, we have not received full cooperation from the agencies from which we have sought information. In April 1991 White House Legal Adviser Nicholas Rostow convened meetings consisting of representatives from the general counsels of a number of executive branch agencies. The meetings were held to determine how the agencies should respond to congressional requests for information and documents pertaining to U.S.-Iraq policy prior to August 2, 1990.[2] Procedures were established whereby the agencies' general counsels would review all such requests, requesters would be permitted only to read some documents rather than receive copies, and alternatives to providing documents would be explored. In addition, Treasury reported at one of the Rostow group meetings that it was not even permitting the taking of notes on the contents of classified documents.

Our experiences at the agencies were consistent with the results of these meetings. Typically, GAO works with program officials in identifying and obtaining records relevant to our reviews. However, during our BNL and export credit guarantee reviews, different procedures were adopted. At most of the agencies at which we were conducting work, we were instructed to direct our requests for information to the agencies' general counsel offices.

---

[2]On August 2, 1990, Iraqi forces invaded Kuwait.

Digitized by Google

Original from
PURDUE UNIVERSITY

Some of the experiences we encountered at the various agencies include the following:

--Generally, the Department of Agriculture (USDA) has cooperated with our requests for access to its records. However, there was one issue about which we had problems in obtaining timely information. We were not permitted to review the workpapers supporting USDA's May 1990 Administrative Review of the GSM programs until we had submitted several oral and written requests. This process created a delay of about 5 months.

--We also faced considerable delay in meeting with officials and obtaining access to documents at the Department of Justice. We requested all Justice Department correspondence with other agencies on the BNL matter and all other relevant documents. To date we have only been allowed to review five documents. Furthermore, we were not allowed to either photocopy the documents or take extensive notes. This limited access to documents cannot be considered sufficient for audit purposes.

--At the State Department the Office of the Legal Adviser explained that it was concerned about grand jury secrecy rules and would, therefore, screen all documents we requested to avoid inappropriate disclosure. The Office

Digitized by Google

Original from
PURDUE UNIVERSITY

of the Legal Adviser at State permitted us to read and take notes from, but not copy, 26 cables that were determined by that office to be both relevant to our review and not related to the grand jury investigation of BNL. The Office of the Legal Adviser informed us that there were other documents, but that the office was withholding them from us because they contained information that might be covered by grand jury secrecy rules. Despite the fact that the Assistant U.S. Attorney handling the BNL case had informed us that documents not in her possession are not subject to secrecy rules, State advised us to get clearance from the Justice Department to gain access to these documents. We have asked Justice for this clearance and the matter is still under consideration at this time.

Furthermore, we were not able to determine for ourselves which cables were relevant. This fact is particularly troublesome in light of Deputy Secretary of State Eagleburger's testimony before this Committee last week in which the Deputy Secretary stated that over 4,000 documents relating to Iraq had been turned over to the Committee. The State Department never informed us of the existence of this vast amount of documents.

--In December 1991 we visited Rome to meet with BNL and U.S. embassy officials. That trip was coordinated with and

Digitized by Google

Original from
PURDUE UNIVERSITY

approved by the State Department. In notifying the embassy of our visit, the State Department cable reminded the embassy that it is the Department's policy to be of assistance to GAO and to be as helpful as possible. Nevertheless, the U.S. embassy refused to give us access to its files on the BNL/Atlanta issue. We met with the Deputy Chief of Mission, who told us that he had not been instructed by Washington on how to respond to our request to review documents. He said he believed that all requests for documents were being coordinated in Washington. He said that in any case, the embassy would have limited information because its only efforts in the BNL matter had been to monitor Italian press reports. Subsequently, we learned that more substantive reports on the issue had been prepared and transmitted by the embassy to the Department of State in Washington.

--The Department of the Treasury did not permit us to photocopy any of the minutes from the meetings of the National Advisory Council on International Monetary and Financial Policies during which interagency discussions about the export credit guarantee programs for Iraq took place. Some of those minutes were classified. In those cases, we were not permitted to take notes either. The minutes in question covered almost a decade and included a substantial amount of material. It is not reasonable to expect that GAO could adequately review, analyze, and

Digitized by Google

Original from
PURDUE UNIVERSITY

report on such a substantial body of information on the basis of the auditors' memory, supplemented by limited notes. In addition, Treasury has still not complied with our outstanding request for relevant correspondence.

--The Central Intelligence Agency (CIA) has given a briefing on BNL to House Banking Committee staff. We asked CIA for a similar briefing, but officials told us to obtain the information from the House Banking Committee since it requested us to conduct our review. We asked CIA to reconsider its denial because (1) the House Banking Committee is only one of several requesters of this work and (2) GAO's policy is to conduct its work independently of congressional committees, even when the committees are our requesters. We were recently told that our request is being reconsidered and that no determination has been made yet.

In summary, Mr. Chairman, our principal concern is with the delay that we have experienced in resolving these issues. This problem was particularly acute in this instance given the number of agencies involved. We are committed to providing Congress with the information it needs in as timely a manner as possible. Our ability to do so can be frustrated when--as here--we have less than the full cooperation of the executive agencies.

Digitized by Google

Original from
PURDUE UNIVERSITY

- - - - -

Mr. Chairman and Members of the Committee, this concludes my prepared statement. I would be pleased to respond to any questions you may have.

(483630)

Digitized by Google

Original from
PURDUE UNIVERSITY

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20877

Orders may also be placed by calling (202)275-6241.

Digitized by Google

Original from
PURDUE UNIVERSITY

PANEL NO. 3

Digitized by Google

Original from
PURDUE UNIVERSITY

STATEMENT BY
THE HONORABLE JEANNE S. ARCHIBALD
GENERAL COUNSEL OF THE DEPARTMENT OF THE TREASURY
BEFORE THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 29, 1992

Mr. Chairman and members of the Committee:

I am pleased to be able to testify before the Banking Committee this morning. As you requested, I will discuss my activities relating to several inter-agency meetings I attended in 1991 in which it was considered how to respond to Congressional requests for Iraq-related information and documents. In doing so, I hope to dispel unfounded suspicions and incorrect assertions that these meetings were intended to impede Congressional review of these matters.

The facts are that these meetings were nothing more than an effort to provide a mechanism for consultation and coordination among Executive branch agencies which were receiving numerous requests for Iraq-related information and documentation. The focus of these meetings was to determine means by which the Congressional requests for information could be met in a manner consistent with the Constitutional and statutory responsibilities of the Executive branch. Certainly, at none of these meetings did anyone suggest explicitly or implicitly that we should "cover up" embarrassing or illicit activities, nor did anyone suggest that there were any such activities.

Digitized by Google
Original from
PURDUE UNIVERSITY

There is nothing unusual or improper about such consultation and coordination. Indeed, it has been my experience that it is common in the Executive branch for agencies to consult with one another with respect to similar or overlapping document requests from Congress. This is particularly so where, as here, documents in the possession of one agency may have originated with or concern activities of other agencies. In such cases, those other agencies are best able to determine if a document request raises legitimate confidentiality concerns.

Nor should improper motives be imputed simply because an agency reviews documents requested by Congress to determine whether their disclosure will interfere excessively with the agency's performance of its responsibilities. Treasury has received Congressional requests for a variety of sensitive information, such as grand jury or other information on open criminal investigations, business confidential information, deliberative process information, and information about the financial transactions of private citizens. It is entirely proper in such cases to consider appropriate ways of providing the access Congress needs to fulfill its responsibilities while preserving the confidentiality needed to ensure the Executive branch's efficient and effective administration of the laws for which it is responsible. The need for mutual accommodation between the branches is an essential element of the separation of powers under the Constitution.

Digitized by Google

Original from
PURDUE UNIVERSITY

Having said this, it is important not to lose sight of the fact that Treasury has been very responsive to the Banking Committee's requests for documents relating to Iraq and Banca Nazionale del Lavoro (BNL). We have made available approximately 175 documents relating to the National Advisory Council on International Monetary and Financial Affairs (NAC) and its review of Commodity Credit Corporation and Export-Import Bank financing for Iraq.

The Customs Service has provided the committee with approximately 525 pages of documents relating to BNL and to Matrix-Churchill. During an initial meeting with Committee staff, Treasury counsel explained that a large number of documents, which might otherwise be responsive to subpoenas issued by the Committee, were considered by Customs and Justice to be Justice Task Force documents, some of which related to an on-going grand jury. Committee staff and counsel concurred and noted that the subpoenas did not cover Justice Department documents.

During the course of subsequent discussions with Committee staff, numerous documents were identified which related to on-going law enforcement investigations or prosecutions, which disclosed sources and methods, which identified agents, informants or potential targets or witnesses or which were provided by foreign sources under promises of limited confidentiality. In each instance, the individual document or class of documents was identified and discussed with Committee staff.

Digitized by Google

Original from
PURDUE UNIVERSITY

Throughout the process, efforts were continuously made to provide as much information and as many documents as possible, at least in redacted form, to aid the Committee's inquiry.

In addition, Customs gave a member of the Committee staff access to approximately 50,000 documents which were located at its Cleveland office and which Customs had obtained from Matrix-Churchill's office in Solon, Ohio. Moreover, a photocopy machine was made available to the staff member.

That staff member was also licensed by Treasury's Office of Foreign Assets Control to enter the Matrix-Churchill premises and have access to the documents on the premises.

Now, let me respond in order to the four specific questions contained in your letter to me of May 4, 1992.

I do not require authorization by any other Treasury Department official to accept invitations such as the one Nicholas Rostow extended to me, and I did not seek any authorization to accept Mr. Rostow's invitation. I chose to attend these meetings because I believed it would be useful to coordinate with other agencies on the topic of requests for documents relating to Iraq.

My records indicate that I attended meetings convened by Mr. Rostow concerning the Congressional requests for documents

Digitized by Google

Original from PURDUE UNIVERSITY

related to Iraq on April 9, April 15, May 6, and May 13, 1991. The Deputy General Counsel of the Treasury Department, Dennis Foreman, attended one such meeting on June 5, 1991. To the best of his recollection, William Mackay, of Treasury's Office of Legislative Affairs, accompanied me to the April 15 and May 6 meetings.

We have been able to locate two documents that are responsive to your request of May 4, 1992, in our files. One was originated by a National Security Council (NSC) official, and we have referred your request to the NSC. The second document is a set of notes taken by Mr. Foreman at the June 5 meeting mentioned above. We are prepared to make arrangements to make that document available to the Committee for review, with attributions deleted. It is the recollection of Messrs. Foreman and Mackay and myself that all meetings concerned the subject of requests of Congressional committees for access to Iraq-related documents and information.

Except for communications received in the course of coordinating with Justice relating to the criminal investigations of BNL and Matrix-Churchill, which I referred to earlier, I am not aware that Treasury has ever received any communication from the White House, the State Department, the NSC, or any other department or agency asking it to withhold Treasury documents from Congressional committees investigating the Administration's Iraq policy. As you know, if a document originates in another agency,

Digitized by Google

Original from PURDUE UNIVERSITY

the third agency rule followed by the Executive branch calls for the originating agency to make the decision as to whether to make that document available pursuant to a request from Congress or the public.

We have in our files several NSC documents responsive to a request from the Committee, including one that was prepared by Treasury staff but which records the proceedings of an NSC meeting. The NSC has instructed Treasury that these documents should be made available only with the approval of the NSC. This information was relayed to your staff.

You also asked whether the State Department, White House or NSC ever reviewed and/or cleared information that was submitted by the Treasury Department to Congressional committees in response to information requests concerning Iraq or BNL. As a matter of course in dealing with requests concerning documents of the NAC, especially minutes of NAC meetings, we routinely seek the views of the other NAC members and of any other relevant agency. The State Department is a member of the NAC, and accordingly its views were sought. This is a well-established procedure that was being followed before any of the lawyers' group meetings which are the subject of my testimony took place.

In dealing with Congressional committee requests for information, Treasury did coordinate with the White House and the NSC

Digitized by Google

Original from
PURDUE UNIVERSITY

concerning several documents which we considered to be sensitive. With respect to each of these documents, Treasury made the final determination, and we proceeded as we had planned.

In conclusion, Mr. Chairman, I believe that Treasury's coordination with other Executive branch entities concerning its responses to requests by Congressional committees for Treasury documents concerning Iraq or BNL has been appropriate and consistent with our usual practice. We have spent much time and effort in responding to requests from the Banking Committee. We believe our response has been thorough and honest. It has resulted in the Committee's obtaining access to numerous Treasury documents.

Thank you. I would welcome any questions you may have.

Digitized by Google

Original from
PURDUE UNIVERSITY

STATEMENT OF

MICHAEL JOHN CIFRINO
SENIOR ATTORNEY
OFFICE OF THE DEPUTY GENERAL COUNSEL
(INTERNATIONAL AFFAIRS AND INTELLIGENCE)

BEFORE THE
COMMITTEE ON BANKING,
FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 29, 1992

55-927 O - 93 - 8
Digitized by Google
Original from
PURDUE UNIVERSITY

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

I am appearing at the request of the Committee to address my role as the primary Department of Defense official who participated in certain meetings called by the Legal Advisor to the National Security Council to discuss proposed departmental responses to written requests from the Chairman, Subcommittee on International Economic Policy and Trade (Committee on Foreign Affairs) House of Representatives, for documents regarding US Government export policy for Iraq from 1979 through 1991.

Your invitation to me dated May 22, 1992 to testify today posed a number of questions which I will be pleased to answer. Attached to that invitation was a memorandum dated April 8, 1991, to Terrence O'Donnell, the General Counsel of the Department of Defense, and other Executive departments' legal counsel. While I subsequently attended other meetings for Mr. O'Donnell, I did not attend the April 8th meeting.

On April 19. 1991 the Secretary of Defense received a letter from the Chairman, Subcommittee on International Economic Policy and Trade requesting a wide range of intra-agency and inter-agency documents regarding US Government export policy for Iraq and seeking a response by May 13, 1991. On May 6, 1991, at Mr. O'Donnell's request, I attended a meeting held at the Old Executive Office Building that was chaired by Mr. C. Nicholas Rostow, Special Assistant to the President and Legal Advisor to the National

Digitized by Google
Original from PURDUE UNIVERSITY

Security Council. To the best of my recollection, the purpose of the meeting was to coordinate the responses of the various Executive agencies that had received similar written requests from the Subcommittee. The major topics of discussion that I recall were the extremely burdensome nature of the requests for documents, whether or not the issuance of a subpoena was likely, and the issue of Executive privilege.

On May 13, 1991, I attended my second meeting called by Mr. Rostow. The discussion that I recall dealt with the issue of whether the National Security Council would represent all Executive departments that had received document requests from the Subcommittee in discussions with the Subcommittee staff or whether each department would discuss the release of its documents directly with the Subcommittee staff. It was decided that, as a practical matter, each Executive agency would deal directly with the Subcommittee.

On June 5, 1991, I attended my third, and I believe last, inter-agency meeting on this subject. The meeting was initially addressed by Mr. Boyden Gray, Counsel to the President, who emphasized the importance of maintaining the institutional prerogatives of the Presidency through the use of Executive privilege where appropriate. There was discussion regarding the types of documents that should be considered for a claim of Executive privilege. The meeting closed with a request that

Digitized by Google

Original from PURDUE UNIVERSITY

Executive departments immediately provide to the NSC staff any documents for which the departments were contemplating a claim of Executive privilege.

In response to the specific questions posed in your letter inviting me to testify today:

1. I attended the first meeting I have described above at the direction of the DoD General Counsel and the two subsequent meetings at the invitation of Mr. Rostow. I attended these meetings to ensure that the Department of Defense response to the April 19th letter from Subcommittee Chairman Gejdenson would be legally consistent with the responses that would be provided by other Executive departments that had received similar letters.

2. I have described above the three meetings I attended and, to the best of my recollection, the topic of each meeting. I am providing separately three memoranda dated May 8, 1991, May 14, 1991, and June 5, 1991 which I drafted for my immediate superiors subsequent to each meeting.

3. At no time during the course of my participation in the process of responding to the Subcommittee Chairman's letter of April 19, 1991, did I receive any communication from the White House, the State Department, the NSC or any other Executive department asking me to withhold information from any Congressional

Digitized by Google

Original from PURDUE UNIVERSITY

Committee.

4. Subsequent to the receipt of a Subpoena Duces Tecum dated June 27, 1991 from the Chairman, Committee on Foreign Affairs, House of Representatives, at least three documents were provided to the NSC staff for consideration of a claim of Executive privilege. To the best of my recollection, access to all of those documents was subsequently provided to the Subcommittee on International Economic Policy and Trade.

I would be pleased to respond to any questions the Committee may have at this time.

Digitized by Google

Original from
PURDUE UNIVERSITY

For Release Only By The
Committee on Banking, Finance
and Urban Affairs

STATEMENT OF COLONEL FRED K. GREEN

OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

BEFORE THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

HOUSE OF REPRESENTATIVES

MAY 29, 1992

Digitized by Google

Original from
PURDUE UNIVERSITY

Good morning, Mr. Chairman. I am Colonel Fred K. Green, Legal Counsel to the Chairman of the Joint Chiefs of Staff. I have reviewed your letter of May 4, 1992 requesting my appearance and would like to provide this committee with the following information in response to the questions posed in your letter.

I recall attending only one interagency meeting of lawyers on the topic that you mention. This was held on April 8, 1991. I know this because I noted the meeting on my personal calendar. I was invited to attend the meeting by the NSC Counsel's office. I did not request specific authority from any Department of Defense office to attend, nor was I directed to attend.

To the best of my recollection, the National Security Council memo of April 8th that you enclosed with your letter accurately summarizes the April 8th meeting. Operations Desert Shield and Desert Storm had been particularly busy times for me and my office, and even with the ground war over I was still attending numerous meetings weekly on a variety of subjects. The April 8th NSC meeting was just one more. As I recall, there were a number of people there, several of whom I did not know. I did not retain any notes, nor do I remember making any remarks at the meeting.

Digitized by Google

Original from
PURDUE UNIVERSITY

When I returned from the April 8th meeting, I gave no direction to any members of the Joint Staff and took no action as a result of the meeting. Later in June 1991, the Joint Staff responded to a Subpoena Duces Tecum signed by the Chairman of the House Foreign Affairs Committee to the Secretary of Defense for documents pertaining to the export or reexport to Iraq of equipment or technology controlled for national security or foreign policy purposes. Several responsive documents were located in Joint Staff files and provided in their entirety to the Office of the General Counsel of the Department of Defense for use in responding to the subpoena. The Joint Staff had no further involvement in the matter until I received your letter concerning this hearing.

In reviewing events for the purpose of preparing for this hearing, I learned from personnel in the Office of the General Counsel of the Department of Defense that other interagency meetings of lawyers on the same topic occurred on May 6 and 13, and June 5, 1991. I do not recall being invited to these meetings or attending. I have no personal notes or calendar entries that would indicate my attendance on those dates.

I do not know if the Department of Defense has ever received a document from the White House, State Department, or NSC asking or directing that information be withheld from

Digitized by Google
Original from PURDUE UNIVERSITY

Congress on the Administration's Iraq policy. I do not know if the White House, State Department, or NSC ever reviewed any information submitted by the Department of Defense to Congress concerning the matters you indicated. I was aware, based on the April 8th meeting, that the NSC counsel wanted to ensure that any decision by any executive agency to withhold a document based on executive privilege was coordinated in advance with the NSC before the privilege was asserted.

I trust the foregoing is fully responsive to your questions, Mr. Chairman. I will attempt to respond to any further questions from the committee.

Digitized by Google

Original from
PURDUE UNIVERSITY

Statement by
Alan Charles Raul
General Counsel
U.S. Department of Agriculture
before the
Committee on Banking, Finance and Urban Affairs
U.S. House of Representatives
May 29, 1992

Mr. Chairman and Members of the Committee, at your request, I am here to respond to questions enumerated in the Chairman's May 4, 1992, letter. The letter inquires about meetings conducted in the spring of 1991 by agency lawyers and legislative affairs officials to discuss the various document requests regarding Iraq that had been submitted to numerous agencies by multiple Congressional Committees. The following responds to your questions.

The Agriculture Department attended these meetings because it is entirely routine to establish and participate in an inter-agency process when more than one agency is involved in an issue. Participation did not require authorization. I attended meetings on April 9, 15, May 6, 13, 31, and June 5, 1991. Representatives of numerous agencies also attended. Issues involving overlapping and related Congressional document requests regarding Iraq were discussed.

In a letter dated August 21, 1991, Chairman Gonzalez requested documents from USDA. USDA cooperated fully with this request and, on September 27, 1991, USDA submitted approximately 3,700 pages from Department files. All requested documents were provided except for a limited number of documents which had been originated

Digitized by Google
Original from
PURDUE UNIVERSITY

outside USDA by other agencies of the Federal government. With regard to that limited group of documents, we referred the Committee's staff to the originating agencies (i.e., the Treasury Department and Justice Department) to obtain copies directly.

When it was learned that the Committee was publishing classified documents, the issue of providing classified materials was raised since it appeared that readily available declassification procedures were not being followed or requested. In any case, USDA is not an "intelligence agency" and does not typically create or initiate significant quantities of classified information. Nonetheless, in a February 24, 1992, letter, Chairman Gonzalez requested information about "intelligence documents." On April 2, 1992, Secretary Madigan responded that "[w]hile USDA wishes to cooperate in every way possible with your request, USDA is not in a position to release information about classified documents which were originated by intelligence agencies. We respectfully suggest that you direct your inquiries about classified documents to the intelligence agencies that originated them."

It is customary for USDA, and all other agencies, to consult with other agencies and/or provide draft or final materials for information, review, comment or clearance by other agencies having an interest in the subject. In the case at hand, apart from the classified information imbroglio of which the Committee is well aware, I have no knowledge that any agency, including the State Department and the National Security Council, ever directed or requested that we not provide any document to this

Digitized by Google

Original from
PURDUE UNIVERSITY

Committee, or any other Committee of Congress.

I trust this responds to the Committee's questions. In closing, I should state that consultation among agency lawyers working on the same issue at the same time is entirely principled. Indeed, not to do so would be almost unprofessional. Effective legal counsel depends on the ability of lawyers to consult freely with colleagues and clients.

Mr. Chairman, if you or members of the Committee have any further questions, I am prepared to answer them.

Thank you.

Digitized by Google

Original from
PURDUE UNIVERSITY

Statement of Elizabeth R. Rindskopf
General Counsel, Central Intelligence Agency

Before the Committee on Banking, Finance and Urban Affairs
U.S. House of Representatives
29 May 1992

Mr. Chairman, I am here today at your request to discuss CIA's role in providing the Committee with information concerning the Iraqi procurement network and Banca Nazionale del Lavoro (BNL). When the Committee first contacted the Agency for this information, we responded that we would be pleased to provide access to whatever intelligence we had on these topics. I understand that officers from our Office of Congressional Affairs sat down with members of the Committee staff to work out procedures for doing so. We have been working with you and your staff ever since, and we have tried to be helpful. I know that the Director appreciates the positive comments you have made at previous hearings and on the floor of the House concerning CIA's cooperation with your Committee on this investigation.

Your concern today appears to be whether the White House had some role in deciding what documents or information we would provide the Committee during this investigation. My answer to your concerns is a direct and simple "No." In particular, you have asked whether the CIA received any communication from the White House, the State Department, the

Digitized by Google
Original from
PURDUE UNIVERSITY

NSC or any other department asking the Agency to withhold information from congressional committees investigating the Administration's Iraq policy. You have also asked whether the State Department, White House or NSC reviewed and/or cleared information that was submitted by the CIA to congressional committees in response to information requests concerning Iraq or BNL. To my knowledge, the answer to both of these specific questions is "No." The Agency officials who worked with your staff to provide relevant information followed our normal policies, and they received no directions from the White House, the NSC, or any other agency to withhold CIA information.

You have asked, in addition, about a meeting that was hosted by the NSC staff on 8 April 1991 concerning congressional requests for information pertaining to U.S.-Iraq policy prior to the Gulf War. I did not attend that meeting, although I did attend a later meeting where I believe this subject was mentioned. My memory of those discussions is not especially vivid, but my general impression is that they followed the routine that occurs whenever many agencies have to respond to similar congressional requests--the NSC reminds agencies to coordinate the release of third-agency information, and the NSC asks to be informed of any possible need to invoke executive privilege. I can say with certainty that I was never directed to withhold CIA information on these topics from congressional investigators.

I would be happy to answer any questions you might have, although as I have indicated, my personal knowledge in this area is quite limited.

Digitized by Google

Original from
PURDUE UNIVERSITY

STATEMENT OF
EDWIN D. WILLIAMSON
LEGAL ADVISER
U.S. DEPARTMENT OF STATE
BEFORE
THE HOUSE COMMITTEE ON BANKING,
FINANCE AND URBAN AFFAIRS

MAY 29, 1992

Digitized by Google
Original from
PURDUE UNIVERSITY