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[H.A.S.C. No. 100-26]

**TOWER BOARD—NSC FUNCTION HEARING**

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**JOINT HEARING**

OF THE

**INVESTIGATIONS SUBCOMMITTEE**

AND THE

**DEFENSE POLICY PANEL**

OF THE

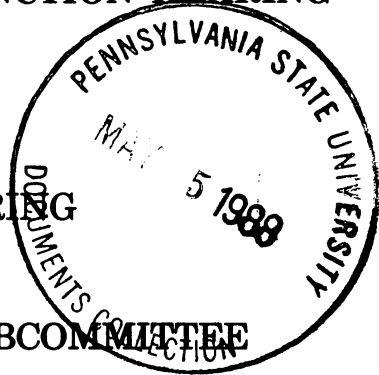
**COMMITTEE ON ARMED SERVICES**

**HOUSE OF REPRESENTATIVES**

**ONE HUNDREDTH CONGRESS**

**FIRST SESSION**

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**APRIL 30, 1987**



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## TOWER BOARD—NSC FUNCTION HEARING

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
DEFENSE POLICY PANEL AND THE  
INVESTIGATIONS SUBCOMMITTEE,  
*Washington, DC., Thursday, April 30, 1987.*

The panel and subcommittee met in joint session, pursuant to call, at 10:18 a.m., in room 2118, Rayburn House Office Building, Hon. Les Aspin (Chairman of the Defense Policy Panel) presiding.

### OPENING STATEMENT OF HON. LES ASPIN, A REPRESENTATIVE FROM WISCONSIN, CHAIRMAN, HOUSE COMMITTEE ON ARMED SERVICES

The CHAIRMAN. The meeting will come to order.

Let me announce here, at the outset, to our witnesses and to the people here that we are considering the Trade Bill. We finished debate on an amendment, except for about 10 minutes on it, and then we're going to have a vote this morning. So we will have a short time, have another vote, and then we should have a little bit of a gap. But I think we ought to get started here this morning.

Let me begin by welcoming our witnesses here this morning, the members of the Tower Commission; and say that the Armed Services Committee, by some fluke of parliamentary legislation or leg-erdemain, happens to be the place in the House of Representatives where legislation is referred that would change the NSC structure. I think it's because the NSC was created as part of the DOD Reorganization Act in 1947. Anyway, in the House, we get all the bills that come over—for example, if somebody wants to make the head of the NSC confirmed by the Senate, we get that kind of legisla-tion.

One of the things our committee is going to be doing—in particu-lar, it's going to be the Policy Panel, which I chair, and the Investi-gations Subcommittee, which the gentleman from Alabama, Bill Nichols, chairs—we are the people who are going to be working on this. It is our intention just to hold one day of hearings with you gentlemen, because you have the first report on the operations of the NSC. It would be my intention that we would probably hold some more hearings after the Senate and House investigation com-mittees are finished, and then at that time we would decide what, if any, legislation we thought was appropriate to bring to bear on the NSC subject.

Our first witnesses this morning are people who not only are going to be able to help us by virtue of their report—which was really an excellent piece of work and very, very interesting—but

also, because of their extensive and diverse backgrounds, could help shed some light on how the NSC works, what changes you think are important, and what role, if any, you think Congress ought to play in those changes or in whatever we might recommend.

Let me welcome all of you gentlemen here this morning, and let me at this point turn it over, for some comments, to the gentleman from Alabama, the chairman of the Investigations Subcommittee, Bill Nichols.

**STATEMENT OF HON. BILL NICHOLS, A REPRESENTATIVE FROM ALABAMA, CHAIRMAN, INVESTIGATIONS SUBCOMMITTEE**

Mr. NICHOLS. Thank you, Mr. Chairman.

I just want to echo what you have said about the people who are going to appear before us this morning. I commend you, Mr. Chairman, and your two colleagues here, on an excellent and thorough report, a report that certainly exemplifies the fairness of the American system. And I respect the tremendous amount of knowledge and know-how and expertise that each of you have. I want to join Chairman Aspin in welcoming you to the committee.

Mr. Chairman, I just have a few very brief remarks. I thought the committee might be interested in discussing with the members of the Board corrective actions that are needed. I would also like to make a few comments about the history of the National Security Council which I believe are important to keep in mind.

Despite the objection of the Truman administration back in 1947, Congress created the National Security Council—40 years ago this particular year. To some extent, then, it is my judgment that the National Security Council is a creature of the Congress. Congress should be aware that the legislation that was passed 40 years ago is somewhat outmoded. For example, the legislation lists National Security Council member positions that have long ago been abolished. Moreover, there is ample evidence that the National Security Council system has not worked in certain instances. Of course, of immediate concern to the committee, and to the country, is the fact that the legislation, as presently written, does not reach the issues involved in the arms-for-Iran case—NSC staff members undertaking operational missions, making and implementing policies of their own, and so on.

In short, because Congress created the National Security Council, and because it is clear from experience that there have been problems with the National Security Council system, I believe Congress has a strong responsibility to reassess the law and to ascertain what needs to be changed, if necessary.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Let me now recognize the ranking Republican member of the Investigations Subcommittee, the gentleman from Kentucky, Larry Hopkins.

**STATEMENT OF LARRY J. HOPKINS, A REPRESENTATIVE FROM  
KENTUCKY, RANKING REPUBLICAN OF THE INVESTIGATIONS  
SUBCOMMITTEE**

Mr. HOPKINS. Mr. Chairman, thank you very much. I join you in welcoming the respected members of the President's Special Review Board and look forward to receiving their expert testimony this morning.

Mr. Chairman, having just completed years of effort on the landmark reorganization of the Department of Defense, under the able guidance of Chairman Bill Nichols, this committee, in my opinion, should have a deep appreciation for the amount of work involved in legislative reform.

The fact that the 1947 National Security Act has resisted change since its inception doesn't, however, in my view, mean that it couldn't stand for perhaps some adjustment. However, I trust any changes by Congress would come only after a comprehensive review of the possible implications to our national security apparatus and its associated functions. So I look forward to a productive discussion today and join you in welcoming our guests before our panel.

Thank you.

The CHAIRMAN. Thank you, Larry.

I would now like to turn it over to the members of the Tower Board, Senator Tower, Brent Scowcroft, and Ed Muskie, and let you gentlemen give any opening statements or anything that you all would like to say. Then we would like to ask you some questions. Senator Tower.

**STATEMENT OF HON. JOHN TOWER, CHAIRMAN, PRESIDENT'S  
SPECIAL REVIEW BOARD**

Mr. TOWER. Thank you, Mr. Chairman. I appreciate the opportunity to be here today and to testify before this committee that I have come to respect a great deal over the years, having belonged to its counterpart in the Senate, and having come out on the short end of conference after conference on military authorization bills. [Laughter.]

So I feel somewhat intimidated—

The CHAIRMAN. There's a lot of skepticism about that statement, Senator. But go ahead with your statement. [Laughter.]

Mr. TOWER. I'll try not to sound too intimidated today.

I do appreciate the opportunity to comment on various proposed legislative changes. None of us have any prepared statements today and my remarks will be very brief and rather general in nature. We are here primarily to answer your questions.

I think the recommendations contained in chapter 5 of our report pretty much speak for themselves and they do reflect and represent the collective views of the members of the President's Special Review Board.

Let me say at the outset that the function of the National Security Act of 1947, as I see it, although it was a congressional creature, was to provide the President with the proper tools for the formulation and implementation of foreign policy. I think Congress should consider very carefully the extent to which it chooses to intrude on

the flexibility that a President should have in the formulation and implementation of policy. The President must take a long view; he must think in terms of a long-term, coherent, cohesive foreign policy, and it should not be subject to frequent change by whim, or based on the popular wave of emotion at the moment.

We concluded in our report that no changes were required in the National Security Act of 1947, and that is a view that I still hold very strongly.

Let me say that sometimes there is a tendency on the part of Congress—and I have been a part of that process myself—of perhaps institutionalizing disagreement with, or dissatisfaction with, the President of the moment without considering what the long-term implications are. I think we all recognize the President must have advisors around him that he can trust, that are his people. I think the extent to which you make them subject to congressional accountability tends to limit their effectiveness and tends to limit the flexibility that the President has.

I might say that too much in the way of a proscription of the national security organization, of the national security process, might result possibly, for example, in the President going beyond that process. He is not obliged to look to the National Security Council for his advice. He can look elsewhere for it. Hopefully, he will not. We want him to work within the process. But I think, to encourage Presidents to work within the process, you have to give them some degree of flexibility and not try to too narrowly proscribe what they do.

Let me further note that what you do in this connection will have very little impact on this administration. There may be no more than 18 months to a year left in this administration when you finally act on any of these proposed legislative matters. So what you have to think in terms of is how this impacts on future Presidents. The big impact is going to fall, I would think, on whoever the next President of the United States is. So I think we have to think in terms of the long-term effect.

As far as the confirmation of the National Security Advisor, I think that that would be a mistake, because I do believe he should be the President's man and should be an advisor to the President and not subject to having to report to the Congress periodically, like the operational principals of the Secretary of Defense and the Secretary of State, who can, should, and do report with regularity to the Congress.

Furthermore, there was a feeling on our part in that the principal foreign policy spokesman for the country should be the Secretary of State; that to subject the National Security Advisor—actually, to create his office and make him subject to confirmation by the Senate—would tend to increase the natural tension that ordinarily exists between the National Security Advisor and the Secretary of State. That, in my view, would be unfortunate.

So, having said these things, I would like to defer to my colleagues on the Special Review Board for whatever comments they have.

**STATEMENT OF HON. EDMUND S. MUSKIE, MEMBER,  
PRESIDENT'S SPECIAL REVIEW BOARD**

Mr. MUSKIE. Mr. Chairman, I suspect that we're still in collective agreement on the broad question as to whether or not statutory changes in the 1947 Act have to be made. The chairman has already, I think, made most of the points that I would make at the outset, but let me just emphasize a couple.

Number one, among other things, this Board interviewed all of the living former Presidents, all of the living former Secretaries of State and Defense, I believe all of the living former National Security Advisors, and others, in order to supplement the literature that exists, on the operation of the system since 1947, with the actual experience of these gentlemen.

It was interesting to us that, notwithstanding the great variations in the ways in which they used the National Security Council system when they were in office, there was pretty general agreement on this point—that there was really no need to change the statutory base.

That does not mean that there are no issues that this committee and the Congress as a whole should not consider. Obviously, there are. Some of them are related specifically to the Iran/Contra affair, others being ideas that have been floating around for a long time—for example, confirmation of the Advisor. This seemed to be an appropriate time to consider all of those kinds of issues, and I think that's appropriate.

President Truman was not enthusiastic about the National Security Council until he became involved in the Korean war, and then he began to respect it somewhat more. But all other Presidents have used it differently. Some have, in the view of some critics, over-bureaucratized it, others have used it too loosely. But, in any case, whatever their management style—a euphemism that perhaps this Board has created—whatever their management style, they all found it possible to use it within the framework of the present statute. I think that's an important thing to remember.

The second point I would make is that the President, of course, has issued an Executive order directed to the recommendations of this Board, NSD-266, which was issued on March 30. I find in that Executive order that it virtually copies our recommendations, so that the President has accepted in that Executive order the specific recommendations that we suggested. But I think, even more importantly than that, he has accepted the model that we undertook to describe in the beginning of part 5 of our report.

We found that to be the easiest solution to the question that we had constantly before us: is the system wrong, or was it improperly used? We found that there were so many mistakes in the use of the system that the best way to deal with it was not to try to build a laundry list of specific recommendations but to describe how the system ought to be operating. So our first and most important recommendation was the model which we described. You could not set that out in a statute at all. But the possible statutory issues, I think, are very clear, and I would hope there would be exhaustive and comprehensive discussion of those. You may not come up with the same conclusion we did, as to whether statutory changes are

needed, but I think at least the issue ought to be exposed and discussed and understood. So I compliment the chairman and the committee for getting into this matter.

**STATEMENT OF HON. BRENT SCOWCROFT, LIEUTENANT GENERAL, USAF (RETIRED); MEMBER, PRESIDENT'S SPECIAL REVIEW BOARD**

General SCOWCROFT. Mr. Chairman, it is a special pleasure for me to participate in these hearings, especially to be able to talk about something other than the MX missile.

I have little to add to what my colleagues have said. I do agree with Mr. Nichols, that the NSC system was set up through the wisdom of the Congress with some reservations by the Executive. I think that was a very wise thing and, therefore, we should not think it's immune from change by the same wise inspection.

But I would underscore what Senator Muskie has said about the nature of our deliberations and our own examination. That is, so far as I know, we are the first official review specifically designated to look over the operation of the system over its 40 years. We did that not only by talking to all of the participants and distilling their judgments as to how they thought the system had worked and what they would do if they were to come back in, what they would like to see different, but also by selecting a dozen crises that the system dealt with. We tried to pick crises that stressed the system in one way or another, to examine where it worked and where it didn't work.

In the specific case of the Iran affair, it was our judgment that it was less a problem of the system itself than the fact that it wasn't used. Therefore, I would say that our judgments, which as Chairman Tower said speak for themselves, are not simply our own three judgments. They're the distillation of a fairly exhaustive examination into the way the system has operated over the past 40 years.

Thank you.

Mr. TOWER. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank you gentlemen very much for your opening comments. I would now like to call on various members of the committee for some questions. But let me just start out with one question.

Essentially it is your view, as I understand it, that really you get the right people and you use the system, that that's what you need, and we shouldn't change the regulations or the law in any way. Basically, I find myself in a great deal of sympathy with that. But let me raise a question, and then I'll let some of the other people raise others.

One question occurs to me, that when you have an NSC that is operating for the President and without any regulations, there could be a temptation—and I'm not sure; I would like to know whether you think it was in this case—to use that apparatus, the NSC apparatus, to do things where it would be awkward to use the operating agency. In particular, if you use the CIA, the CIA has a lot of regulations that have been passed over the years on the operation of the CIA, where certain things are illegal and other things



have to be reported to Congress, et cetera. If you used the NSC to do that—well, you could do things that are illegal, but I don't think that's the major issue. I mean, these are mostly honorable men. But I would think the temptation to use the NSC in order to avoid reporting to Congress would be a pretty heavy temptation.

If you want to conduct a kind of covert operation, and your normal covert operator is the CIA and they have this reporting requirement to Congress, but you've got an NSC staff that doesn't have any reporting requirement to Congress, I would think that that's a big temptation for any administration to try and run the operation through the NSC.

It was always my suspicion that that's why Ollie North got involved in this operation in the first place; that, for one thing, Ollie North was not subject to an awful lot of congressional reporting requirements and congressional oversight. We couldn't call him up, and he didn't have to report to Congress what he was doing. I don't know whether it was your conclusion in looking at this, that that's one of the reasons, or maybe the reason, why Oliver North was running the operation out of the White House basement rather than the CIA doing it.

But it seems to me the temptation, as long as you're going to have a situation where laws inhibit the operating agencies—I mean reporting to Congress and things like that—it seems to me that that's going to always offer a temptation. And unless we change something here, some subsequent administration is going to succumb to that temptation to run the operation off the NSC staff so that they don't have to report it to Congress.

Mr. TOWER. Mr. Chairman, I would see no difficulty in not permitting the NSC staff to do anything that other agencies were not permitted to do. However, I would caution strongly against trying to define what "covert operations" are, or what "operations" are, for that matter, and what would be proscribed as far as the activity of the NSC is concerned.

Now, there is no perfect system. You can fine-tune this legislatively all you want to and that's not going to protect you against errors in judgment and flawed policy. It is made by Presidents and it is made by Congress from time to time. That's why we amend and repeal laws from time to time, because very often we have made mistakes in the past. So there is no perfect system.

But to try to define "operations", for example, you don't want to include something like what we might call "quiet diplomacy". I'm thinking there in terms of the Kissinger opening to China. In fact, the original intent here appeared, at least on the part of some, to be to try to start a strategic opening to Iran, which I think most geo-politicians would agree is in the long-term interest of the United States. Now, we concluded what was done was counter-productive to that objective.

But the President traditionally has had primacy in the formulation and implementation of foreign policy, and he is designated by the Constitution as the Chief Executive of the United States. The fact is, American foreign policy must be predictable and it must be reliable.

Now, I think one of the frustrations at the White House was that with respect to the Contra affair, the Congress ran hot and cold;

there was an inconsistency. One day you were permitted to do something and the next day you were forbidden to do it. So this is a frustration that operates on the President: an inability to maintain any long-term consistency in policy that makes us reliable allies or predictable adversaries, and we should be both. Again I would caution against trying to over-legislate in this area.

Really, to carry this thing to its logical conclusion, I suppose you have to make the staff director at the White House subject to Senatorial confirmation and make him responsible to Congress as well. But if you keep moving in that direction, I think what ultimately you might precipitate is a constitutional crisis in this country which might ultimately be resolved by the courts, as to just where the responsibility lies in the conduct of external affairs.

Obviously, the Congress must and should exercise continuing oversight. Sometimes failures in the executive branch have been a result of congressional failure to adequately exercise oversight. There's no question about that. But I think, again, it is essential that some degree of presidential flexibility be preserved.

The CHAIRMAN. Senator Muskie, did you have something to say?

Mr. MUSKIE. Yes. Might I add to what Senator Tower said. I would like to emphasize the point here, that there's been a tendency to speak of the National Security Council and what was intended was the National Security Council staff. There is a difference. People tend to talk about the National Security Council in direct criticism toward the Council, which ought properly to be directed to the staff. Of course, as far as the Council is concerned, the statutory members are heads of the two major national security departments—State and Defense. So they have, as members of the National Security Council, jurisdiction over the operational agencies in the field of foreign policy and national security.

But with respect to staff—and it is that point to which the chairman has addressed himself—the Executive order that I referred to a moments ago, NSD-266, specifically proscribes conduct of covert activities by the National Security Council staff. So I think the point has been made to and accepted by this President, and I suspect it will be accepted by future Presidents, on the basis of this experience. I don't think it needs to be repeated. In this case, in what you referred to as a natural temptation to use the NSC staff instead of other agencies because of congressional involvement, the temptation was enhanced by the fact that the congressional proscription against aid to the Contras left an ambiguity with respect to the NSC staff. It proscribed efforts by the CIA or other intelligence agencies, but somehow that proscription was interpreted by the Intelligence Oversight Board as not including the NSC staff.

We happen to disagree with that opinion and, incidentally, we think the Intelligence Oversight Board ought not to have been issuing legal opinions in any case—that that judgment should have been made by others. In our recommendations, we recommended that the NSC staff have a legal advisor who has a clear responsibility to clear questions of that kind. So, even with respect to the use of the NSC staff in the Contra activities and in the Iranian adventure—that, I think, was not permitted by congressional law as has been interpreted.

With respect to the Iran/Contra affair, both the Iranian aspect and the Contra aspect did involve the CIA at some point. For example, when we got involved in the direct transfer of weapons to Iran, the CIA was involved in the logistics of that operation. Ollie North ran it, and he was not a member of the CIA, of course. But the CIA was involved in it.

But I think the chairman of the committee's point—that there may be a temptation to use the NSC staff—exists; I don't know how you would proscribe it more effectively by statute than it has now been proscribed by NSD-266. So I would suggest that a statutory change may not be necessary.

But, on the other hand, I repeat what I said in my opening comments, that it's a question that ought to be carefully reviewed.

The CHAIRMAN. Brent, did you have a comment?

General SCOWCROFT. I would just add that one of the things that greatly troubled us was the whole issue of Executive-Legislative relations in these very sensitive areas. It seems to me that one of the things we need to look at is how we can improve the willingness of the Executive to share these things and remove at least the excuse that "well, you can't tell them anything up on the Hill because it'll be in the Washington Post the next morning."

Now, we had a few minor suggestions there. But it seems to me that if one can remove at least the arguments that can be made to a President—that here is an operation we have, where lives are at stake and so on, and we simply can't risk going through the notification—if we can deal with that problem, at least there wouldn't be the kind of incentive and kind of arguments that I'm sure are now made in the executive branch for circumventing the reporting requirements.

The CHAIRMAN. Until that time, though, what would we do?

Let me throw out an idea to all of you, and I haven't thought it through. But, Senator, you pointed out that the directive that the President has signed now prohibits covert operations being done by the NSC. That is one way to do it. But I don't know if I would do that. I mean, I can anticipate situations where the President would want—and it depends upon how you define a covert operation, of course—but would want the NSC advisors to do it, or somebody on the NSC staff to do it.

But what if the law said the NSC would be prohibited from doing anything that otherwise would be prohibited in law by another agency? In other words, if the law says that the CIA cannot conduct assassinations of foreign leaders, that same law, in effect, applies to the NSC staff. And if any operation, if conducted by another agency, would have to be reported to Congress, it would also have to be reported to Congress if done by the NSC staff.

I'm looking for a way to give the man flexibility but making sure he doesn't use the NSC staff to end-run reporting requirements or laws that exist on the books now that prohibit an agency—that is, to go away from the agency and use the NSC instead. I mean, if you want to think about it, you don't have to respond right now. Maybe you could let me know later. But give it some thought. I'm looking for some formulation along those lines that might be one thing we might do.

Mr. TOWER. Mention has already been made of ambiguity in the law. You can solve a lot by making the law less ambiguous, without making substantive changes that impact adversely on the flexibility of the President.

The CHAIRMAN. Yes. I think, incidentally, the law will become less ambiguous. I am sure the Intelligence Committees are now going to say you have to report within 48 hours—

Mr. TOWER. The problem you get into with the business of operations is how do you draw a distinction between, say, a quiet or secret or clandestine diplomatic initiative—

The CHAIRMAN. I agree.

Mr. TOWER. An operation. Trying to get a definition is a very tricky business, indeed, and again, you'll find ambiguities.

The CHAIRMAN. I agree.

Mr. TOWER. Unless you make it so tight that the President can't act at all.

The CHAIRMAN. That's why I thought what we would do is bypass all the ambiguities and say look, if it is the opinion of the legal advisors at the CIA that if they did it they had to report to Congress, then if you're doing that out of the NSC, you've got to also report to Congress.

Mr. TOWER. You mean make them subject to the same reporting requirements that they are subjected to?

The CHAIRMAN. Exactly.

Mr. TOWER. I think there is a strong case to be made for permitting some judgment on the matter of informing. We looked at the Iran hostage rescue attempt and we concluded that President Carter was absolutely right in not pre-notifying Congress on that because it was a matter so highly compartmentalized and so terribly sensitive. Now, it did operate within the system. That is to say, an operational agency was used to carry it out. So the system was functioning in that instance. One of the principals in the system didn't like what was done and he left as a result, and my good friend from Maine got a new job. [Laughter.]

But, in fact, the system was working in that instance.

The CHAIRMAN. But in that case—

Mr. TOWER. The failure was an operational failure, not a failure of the system.

The CHAIRMAN. But, John, in that case they notified the next day. Of course, all they had to do was read about it in the paper the next day and they were notified of the operation. But here you had a case where they were using the loophole of not having to give instant notification for a 9-month delay and, indeed, there is some question as to whether it might not have been a longer delay had not the issue started to surface in the press.

Mr. TOWER. Well, we were severely critical of the administration for doing that.

The CHAIRMAN. Yes, I understand that.

I don't want to take up a lot of time on it, but let me just ask you a question on another point. Did you find in your investigations any evidence to suspect that one reason why Ollie North was doing all these operations was that they didn't want to report to Congress as they would have had to had they involved the CIA? I note Ed Muskie said they eventually brought the CIA in, but it was oh so

late, and then they didn't want to report—I mean, there's a lot of evidence, when you lay out the facts of the thing. You come to a very high suspicion that one of the reasons why it was being done out of the political-military affairs subdivision of the NSC staff was to avoid notification to Congress.

Mr. TOWER. Well, I think the point is that you don't necessarily solve it by making narrow legal proscriptions on the NSC, the NSC staff, on how it should be utilized, because the President then might be tempted to go outside that process.

The CHAIRMAN. I agree.

Mr. TOWER. That's exactly what we don't want him to do. We want him to utilize the process. Again, he could go to some of his functionaries within the Executive Office of the President that were not a part of the national security apparatus.

The CHAIRMAN. I agree. You do think one of the reasons why Ollie North was doing this was to avoid reporting to Congress?

Mr. TOWER. I think there are a variety of reasons. I wouldn't speculate on all of them. But I think one thing that was wrong was the kind of horizontal organization that they had over in the NSC staff, with some 55 action officers reporting through one narrow funnel. It is made to order for a very energetic and innovative self-starter to go into business for himself. That's what we want to avoid in the future by making recommendations as to the way the thing should be structured. I don't think you have to proscribe that by law.

The CHAIRMAN. Thank you.

Ed Muskie, did you have something else to add?

Mr. MUSKIE. In answer to your question as to why, especially after we got into the direct transfer of weapons to Iran, the matter was allowed to slip into the hands of Ollie North, I think the answer to that question lies in the mind of Mr. Casey. Clearly, this is in the nature of a covert operation. It should have been handled by the CIA directly. To us, it appeared that Mr. Casey clearly understood what was going on. We didn't have much evidence and, of course, we'll probably never get his testimony. But why he did not, as the Director of the CIA, insist that this came under his jurisdiction, that the CIA would operate it totally, I don't know and we don't know. So I'm not sure that the reason you suggest—to avoid reporting to Congress—was the reason. As a matter of fact, the finding of January 17, 1986, I think, had the President explicitly prohibiting reporting to Congress because of the potential danger to the hostages. The President took care of the reporting-to-Congress matter.

The CHAIRMAN. Brent?

General SCOWCROFT. Well, this issue was never put before the President in these terms. I think it was put only in terms of protection of the hostages and some of the people in Iran who supposedly were cooperating.

I think our recommendations on it are not to prohibit the NSC covert operation but to ensure, whenever they do, that there is no other reasonable way to do it, and that the President makes a conscious decision, in the light of all the arguments, that this is the way it has to be done. I think, had the President been aware of all

of the aspects of it, that it might very well have come out differently. He was not. He was not sure who was running the operation.

The CHAIRMAN. Thank you.

I have taken up an awful lot of time. Let me call next on the gentleman from Alabama, the chairman of the Investigations Subcommittee.

Mr. NICHOLS. Thank you, Mr. Chairman.

I think Senator Tower very effectively made the point that the President doesn't have to use the National Security Council. He is not bound to use it.

Now, I'm not given to making the Ten Commandments, "Thou shalt not do this, thou shalt not do that", but let me call to your attention here, in going back to the 1947 Act, it clearly points out that the purpose of the National Security Council is to advise, is to coordinate, is to assess and appraise, is to consider policies, and is to make recommendations. Nowhere in the language of this Act of 1947 do we talk about anything operational. I think that's what the committee is concerned about here. You've got people who have gone far beyond the intent of the original Act.

Now, if I might address this question, Mr. Chairman, to General Scowcroft. In looking back over the Board's recommendations—and certainly I respect those recommendations—I believe when your report describes how the National Security Council staff should function, it is pretty close to what you recommended in the blue prints you drew up back in 1975 and 1976 under President Ford. That's the way I look at it, and you evidently thought that was a pretty good policy back then.

My question is, can you tell the committee, in your judgment, how you believe the White House is now organized and staffed to assist the President in national security affairs? Number two, in what areas do you believe the National Security Council and its staff, in accomplishing their purposes, have made an "A", and in what areas do you believe they've made an "F"? Finally, what do you think this Congress' role, and this committee's role is, in the oversight of the National Security Council system?

General SCOWCROFT. That's a big question, Mr. Nichols, and it's a difficult one to answer right now, especially as to how the system is operating, because the system has gone through significant change since the first of January. Therefore, I think that a number of ways in which the system had been operating before in this administration no longer still obtain.

But I think the overall assessment of the NSC system in this administration, in my personal judgment—I'm speaking only personally now, not even as a member of the Board—is that, on the whole, the NSC system was too weak rather than too strong. And that the President's inclination toward cabinet government meant that a number of the coordinating functions were not emphasized enough and were not done with enough authority to really provide the President with all the assistance that he needed. As it developed, there was, at the end, partly because of that, a lack of attention to the process, to the procedure, for doing the kinds of things that are designed to not only assist the President to make decisions but to protect from error through inadvertence, omission, or what have you; that a number of those were overlooked because, in the

interest of helping the President, the system became objective-oriented. That overcame the kind of procedural things which are really quite comprehensive with respect to the way the system should operate.

I think those would be the major areas in which I would say the system veered from what you might say is an abstract ideal. I think the President, however, has taken the information in our report to heart—certainly Mr. Carlucci has, and also Senator Baker. And it is my impression that we should all be pleased with the adjustments that have been made since January in the way the system works.

Mr. NICHOLS. I'm familiar with the recommendations that the President has made, in which he virtually put a blessing on all of the Tower Commission's policies. He's putting those into practice, and that's fine and commendable. But there are other Presidents that will come along, General.

General SCOWCROFT. Yes.

Mr. NICHOLS. Are you satisfied that those policies will remain for the next President who might come on board? I think that's the concern of many of us here, that we want to plug up the holes in the bucket, if we can, without being so strict, Senator Tower, as to push the President into other areas to seek advice and counsel.

General SCOWCROFT. What I would like to see, Mr. Nichols—and I say this without any pride in the report and the fact that we wrote it—I would like to see the report required reading for every Presidential candidate because I think not only is it a distillation of the wisdom of the people who have operated before, but it is a case study in how things can get off the track, even though people are operating with the best will and best intention. I think, in that sense, this report is valuable and should be an antidote for repetition.

Mr. TOWER. If I may add a word, I think there is the tendency to devise a remedy that is addressed to the situation of the moment, namely, the Iran/Contra affair. The question is whether that remedy will too narrowly proscribe the President in a future situation in which the Congress might consider it desirable for him to have flexibility, or whether, indeed, it might overlook some other aspect.

They say that the worst time to legislate is in a time of crisis, because you're tending to institutionalize your concerns about that crisis at the moment. Somebody said Congress has the facility—they said it while I was still in Congress, I might say—for legislatively making permanent solutions. But there are some problems that are either temporary or have already been resolved. So, I think this is what you want to avoid. You have to look at this objectively, not just in the context of the Iran/Contra situation, as we did. We looked at it historically, and this is what we came up with. Believe me, we were very close to the Iran/Contra controversy. But we tried to look at it in a historic perspective and think in terms of the future.

Incidentally, in terms of the congressional oversight function, there is nothing to prevent a committee of the Congress from doing a report of this sort, making very strong recommendations to the President, without necessarily legislating those recommendations.

The CHAIRMAN. We have this long-awaited vote. We will run over and be right back. Thank you.

[Whereupon, the meeting was recessed.]

The CHAIRMAN. Let me announce that Senator Tower and Senator Muskie have problems with staying too much longer. Gentlemen, if you have to leave, we want to thank you for whatever time you can spend with us. General Scowcroft, if you can stay, we would like at least to—

General SCOWCROFT. This is my chance. [Laughter.]

The CHAIRMAN. Now we'll ferret out the real splits in the operation. [Laughter.]

Larry Hopkins.

Mr. HOPKINS. Thank you, Mr. Chairman.

Here is where I think we find ourselves—that is, this committee, or this Congress. If Congress takes no action, it would imply, perhaps, that we are satisfied with the situation the way it is. I'm not sure that a majority of Congress right now is satisfied, and I'm not sure that a majority of the American public is satisfied with the way things are right now. If Congress takes action, it contravenes the dictums of the Tower Board and risks diminishing, perhaps, the President's flexibility.

Senator Tower mentioned earlier, I think quite properly, that whatever we might do here is not going to affect this administration, so we are talking about the future President, whomever that might be.

I am wondering if you don't think that we should perhaps have the "pistols checked in at the sheriff's office", if you will, occasionally here. I look upon you three gentlemen as being the current vintage of experts on the NSC. You are the "three wise men"—not to be confused, perhaps, with the original ones, and I know you don't mean to imply that we're dealing here with the 11th Commandment. To that end, I wonder if you might tell me, with the expertise that we have here today, if you were going to make one change, I would like to hear from the three of you what that change might be.

Mr. TOWER. Mr. Hopkins, I think we haven't discussed this in those terms—if there are going to be any changes, what should they be—because we set forth our collective judgment which is based largely on what we learned from others. But I would simply say perhaps some fine-tuning to remove some ambiguities from existing proscriptions. I think the point was made of why should NSC staff be permitted to do things that the CIA or the Department of Defense or other agencies are not permitted to do. I think perhaps the removal of some ambiguities so that those proscriptions apply equally might be desirable. But I would not really go beyond that, on fact, because I think then you get into some severe problems.

Now, the fact that the Congress is dissatisfied with the presidential performance on this issue, or maybe on any other issues—maybe on domestic issues—the fact is that we do have a tripartite separation of powers in this country and that's what the Constitution prescribes. It does make the President the chief executive officer and gives him command of the armed forces. So I think it was certainly clearly intended by the founders, and the great body of custom and usage and tradition has held that the President should



have primacy in the conduct of foreign affairs because he's the only one competent to do it on a day-to-day basis. Congress can't do it. So I would not really try to tie the President's hands too much.

I think the Congress does have adequate oversight capability now, and certainly, with the power of the purse, there is a great deal that Congress can do to restrain a President. The Vietnam War went on at the acquiescence of the Congress. We can't blame that on Johnson and Nixon or the men who were present at the time, or even Kennedy, because it started then, but on the fact, that the Congress acquiesced in it. It could have cut the purse strings at any time. In my view, Congress made a mistake by cutting them at the wrong time: after we had achieved the Paris accords, Congress said the President wouldn't be permitted to enforce them. That was the wrong time to do it, in my view. But that, in retrospect, just simply says hindsight is better than foresight.

Mr. HOPKINS. So, Senator, I suppose what you're saying, in answer to my question, is that if there was going to be one change made, your suggestion would be that the authority of the staff might be looked into? Would that be a correct statement?

Mr. TOWER. I think you just treat them like you do any other agency, the CIA in particular, because that's probably the closest parallel we have in this particular instance. The CIA or Department of Defense can't go out on operational binges on their own. They have to have some kind of authority. I'll leave it to my colleagues to comment on that.

Mr. HOPKINS. Yes, sir.

Mr. MUSKIE. I think Senator Tower made a suggestion a while ago that is worthwhile. I see nothing wrong with the Congress, after reviewing this as thoroughly as Congress will—I expect what we heard for 90 days we'll be reading about all summer, and I think that's a good thing. That's the way the system ought to work.

But I would think, at the end of that time, it would be totally appropriate for the Congress to issue a critique of the performance of the NSC and what went wrong from the point of view of the Congress. Then, whatever your conclusion as to what else the Congress might do statutorily, you could at least comment upon the recommendations that we made, for or against, and the changes that have been made in NSD-266. In any case, I think the Congress ought to, at the conclusion, at least critique what was done, what went wrong, in the eyes of the Congress. I would think the question of NSC staff involvement in operations would be very high on that list. But then whether or not you go to a statutory answer to that problem, or to an Executive directive as an answer, is for you to decide. Certainly you ought to make a judgment as to what went wrong.

Mr. HOPKINS. So your answer to my question would be that we should look at the authority of the NSC staff?

Mr. MUSKIE. Yes.

Mr. TOWER. May I add one little thing here? I hope I'm not too bold in suggesting this. But I think from time to time Congress ought to review its own actions in the foreign policy field, as objectively as possible, and make some determination as to whether, indeed, congressional intrusion into the process hasn't been, from time to time, counter-productive. I believe that it has, and I be-

lieved that when I was Chairman of the Armed Services Committee.

Mr. HOPKINS. Yes, sir. I would agree with your earlier statement about the Iran rescue operation being a success. I think what you implied at the time about it by being successful was that it was kept from Congress. I agree with that.

Mr. TOWER. No, actually—Of course, the operation was a failure.

Mr. HOPKINS. Yes, the operation was—

Mr. TOWER. That was an operational hangup and we learned a lot from that. That was not because the system failed to work, because the system did work.

I think Members of Congress were informed in a timely fashion. I was gotten out of bed at 2 a.m., I think. I don't believe Congress should have been informed any earlier, because one leak could have turned that thing into massive carnage.

Mr. HOPKINS. The reason why I think that's important, Senator, is that, as you know, we are now getting into the black programs in Congress. I happen to question that severely, if you will, as to who should know on the basis of need-to-know. So I agree with you totally on that.

General, do you have a comment?

General SCOWCROFT. My chairman took the words out of my mouth.

I think one of the things that needs to be done is to look at the congressional role and the extent to which it may drive the executive branch to circumvention and to ensure that that role is not, in fact, taken by the Executive as being an unwarranted intrusion into an Executive function. It seems to me that this whole issue of Executive-Legislative comity is important.

To get specifically to your question—to me, the practical area where I am most dubious is on the issue of covert operations, of the NSC staff undertaking operations, because I don't think they're staffed that way. To give them that capability really duplicates other agencies which are staffed to do that sort of thing. In addition, if the NSC staff undertakes an operation and it goes wrong, it is right on the President's doorstep. It is not out in an agency somewhere, where he is not so directly affected. We have all seen the effect of that. My problem with a prohibition is that it is so blanket that there may be some times when you would want to do it, when it would make sense, and therefore you would prescribe it.

The other problem is a simple, practical one—that you get into a horrendous argument in defining what an operation is. Therefore, I would still rather put the kinds of proscriptions that it can only be done, you know, with all the red lights flashing for the President, that it shouldn't be done, and if he insists on it being done, he has got to have very good reasons for doing it.

[Senators Tower and Muskie depart hearing room.]

Mr. HOPKINS. Mr. Chairman, if I may just wind up my time by saying I appreciate your saying that, general, because the impression is that the three wise men have looked at the 11th Commandment and said that it shouldn't be changed. So I think what you're saying to me now is that there is some fine-tuning that could be done within the NSC and that we need to be very careful as to how that's done; would that be an accurate assessment?

General SCOWCROFT. It would. But I think the key ought to be on the fine-tuning, and legislation can frequently be a sledge hammer rather than a fine-tuner, and I think that's the real danger. That is really what our major concern was in our whole recommendation that no legislation was required.

Mr. HOPKINS. Thank you very much.

The CHAIRMAN. Bev Byron.

Mrs. BYRON. Thank you, Mr. Chairman.

Let me correlate a little bit. There are no guidelines or written rules on what you should do as a Member of Congress when you come in. It doesn't say that you will do this, you will not do this. There are certain things we're supposed to do.

It's a little bit like that with the NSC. There are no guidelines that say the President must utilize them in such a capacity. They are there. We have seen in the past where certain Presidents have utilized them in a more effective way than others. Some are more comfortable in structuring their utilization with a very high profile. Am I correct on this, that it is the decision of a President on how he uses the organization?

General SCOWCROFT. Yes.

Mrs. BYRON. I think we found recently that there has been more use in recent years, possibly due to the nature of the world situation—more trouble spots—and therefore they have been utilized more. In the past, the CIA has taken many of the roles that we're now finding being utilized with the NSC.

Have we found a heavy increase in the staffing numbers recently?

General SCOWCROFT. No, I don't think so. I think the numbers have varied. For example—well, if you go clear back to the Kennedy days, yes, it has increased sharply. But from the Nixon days, where the peak under Nixon I think was about 55 professionals, it has fluctuated since then between about 30 and 50. So there has not been a sharp increase in the number of professionals.

Mrs. BYRON. Without a sharp increase, have we found that there is a difference in the keeping of records, the accuracy of the records? I think there was a question on some of the things that were being done within the group as far as recordkeeping was concerned.

General SCOWCROFT. Well, there apparently is. There was a considerable paucity of records dealing with the Iranian situation. Some of the recordkeeping has been made more difficult by issues of Freedom of Information and so on, in terms of informal records. That should not be a major problem, however. There's no reason for it to be.

Mrs. BYRON. The fine-tuning that you talk about within the NSC could be done with guidelines for better recordkeeping or more composite—

General SCOWCROFT. I think, clearly, it could. At the outset of most administrations, there is an—well, not an Executive order, but a Presidential directive number one for his NSC system, in which he sets out how the system will operate.

In this case it didn't happen for a year because of a controversy with the Secretary of State over the charter, if you will, for the

NSC staff. But normally speaking, a President sets out, at the outset, the way he wants the system to operate.

Mrs. BYRON. Had that been the case in previous administrations?

General SCOWCROFT. Yes. By and large, yes.

Now, they're very similar—

Mrs. BYRON. In previous administrations there had not been the time lag on setting out the guidelines.

General SCOWCROFT. Normally it's done on Inauguration Day or within a couple of days, yes.

Mrs. BYRON. But in this administration there had been a fairly extensive time lag?

General SCOWCROFT. Yes. It was a year.

Mrs. BYRON. That's extensive.

General SCOWCROFT. Now, I wouldn't want to blame any of the subsequent events on that.

Mrs. BYRON. If I'm listening to the Commission correctly, you feel very strongly that legislation is not the answer; it is fine-tuning within the guidelines of the administration and within the guidelines of stating what should be done and what should not be done?

General SCOWCROFT. Yes, we do strongly feel that way.

Mrs. BYRON. Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Mr. Rowland.

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

Following up on the chairman's line of questioning and some of the thoughts that he had, general, as we all walk our way through this process and through the problem that we faced over the past 6 or so months, I think we're all trying to define the fine line that we want to get to. I believe we face a number of "Catch 22" situations. We all want to avoid the Iran situation, while at the same time we want to allow, as you so adequately point out, the flexibility to carry out projects like the Kissinger trip and perhaps even Mr. Carter's rescue attempt.

But looking to the future, let me play devil's advocate for a moment. If we were to implement legislation which prohibited a great deal of the action of the NSC and/or the staff, is there a distinct possibility of any President in the future formulating for his own goals and his own purposes, a quasi-NSC operation? That is, as time heals wounds and we get farther away from the situation, do you sense that there could be a very real problem of a quasi-NSC operation, not within any jurisdiction, not within any legislative structure, that a President would use to implement some policies, implement some covert actions or activities that, indeed, would be much more secretive than what we have in place now and possibly even counterproductive. Is that one of the fears that we've got to recognize and deal with?

General SCOWCROFT. I think it is a very practical problem. The NSC system, in a sense, is the President's vehicle through which he transmits his own creative urges and instincts on national security policy to the permanent government, to the departments and agencies that are there year in and year out and so on. This is the way the President puts his own policy imprint on them, through the

Council and, of course, through the agency heads that are his people.

If you frustrate, in his own eyes, his ability to do that—given the fact that he is responsible for the execution of the laws and the formulation of foreign policy and so on—he is either going to feel he can't do his job or he is going to figure out another way to do it. There is nothing to prevent the President from—well, let me think a minute. The “plumbers”, for example, that were set up for security purposes in the White House in the seventies. There is nothing to prevent a President from setting up a little ad hoc group to do the kinds of things he feels he has to do. If he feels he is so hemmed in that he can't discharge his function by using the constituted bodies, then our fear is that we will have an even more informal and even less, if you will, regular system, and therefore he may be even more prone to error.

Mr. ROWLAND. So, indeed, you're saying that if we tie those hands and destroy that flexibility, we can create an even worse situation, possibly outside of the Government. While we all obviously have to believe that that would never happen, however, we would be pushing future Presidents into that possibility.

General SCOWCROFT. Yes. It wouldn't be done by design but, in a sense, I think the problem of the “Catch 22” is exactly right. We want to make sure that the President makes his policy decisions, in the light of the best advice he can, of all the considerations that are relevant, but not to tie him down so that he's so frustrated that he seeks another way to discharge his responsibilities.

Mr. ROWLAND. I think it's a very valid point and I appreciate your candidness in addressing what I think could be that Catch 22/devil's advocate situation in the future.

I want to thank you for also being here today and certainly for the many hours and great deal of time you have put into the report. I think it's excellent. As I think you said earlier, it should be required reading not only for the presidential candidates but certainly for anyone involved with any administration and in the legislative body.

Thank you.

General SCOWCROFT. Thank you.

Mr. ROWLAND. Thank you, Mr. Chairman.

Mr. HOPKINS. Will the gentleman yield?

Mr. ROWLAND. I would be glad to yield to the gentleman.

Mr. HOPKINS. General, when you accepted the position of NSC Advisor, you resigned from active duty?

General SCOWCROFT. Yes, I did.

Mr. HOPKINS. Why did you do that, and do you believe that other officers who are on the staff should do the same?

General SCOWCROFT. I did it really for two reasons. At that time, at least, there was a statute that said military officers on active duty may not hold civil office. Nobody really knew exactly whether that was a civil office, but I didn't want to involve the President in any controversy on that.

Second, I think that the position of National Security Advisor itself—not on the staff, not anybody else—that position has to be so closely identified with the President, in a sense as a political person as well as his policy adviser, that it is inappropriate for

someone who is a part of the permanent government, if you will, to hold that position.

That's a personal judgment of mine. But I feel, for the National Security Advisor himself, he has to be the creature of the President in every respect—I mean, in that he doesn't have any ties anywhere else. Therefore, I think it is not appropriate that he be a serving officer, or a foreign service officer for that matter.

Mr. HOPKINS. Thank you.

Mr. SKELTON. Would the gentleman yield?

Mr. ROWLAND. I would be glad to yield to the gentleman.

Mr. SKELTON. General, following on that line of questioning, would you advise us to prohibit by statute any military person, such as Admiral Poindexter, holding that role?

General SCOWCROFT. Well, it wouldn't bother me, but I doubt that you need to. But it wouldn't particularly bother me.

It is no reflection on any officer and on his ability actually to serve. I think I could have served the President as well if I still had a uniform on. It would not have affected me. The Department of Defense never tried to put pressure on me to do things for them, if you will. To me, far more than anything else, it's the political aspect that bothers me just a little. You cannot avoid some involvement with the President as a political person; it's just not possible.

Mr. SKELTON. Well, General, following that line of thinking, someone that wears the uniform and is still in active service should not serve in that role?

General SCOWCROFT. That's a personal judgment of mine.

Mr. SKELTON. Thank you.

General SCOWCROFT. I don't know that I would legislate that.

Mr. SKELTON. Thank you.

Mr. ROWLAND. If I could just follow up with one more question. In the various statements that you and the Board have made, you have indicated that a National Security Advisor cannot serve two masters. Indeed, if that person is military and an NSC Advisor, isn't that, in essence, serving two masters, or couldn't that possibly be the situation? Also, following up on your thoughts, would you also apply that same thinking to the staff?

General SCOWCROFT. There certainly is that potential. While, as I say, in my experience the Defense Department never, never tried to do that, there is also the perspective that the National Security Advisor has to have the trust of all the members of the National Security Council—that he is fairly representing them and their views and so on. I think if, in fact, he is a serving officer of the Armed Forces, the Secretary of State may wonder whether or not he is not likely to sway a little, and if he was a foreign service officer, the Secretary of Defense may feel the same way. Therefore, since to do his job well he has to have the confidence of the other members, I think that that's a consideration. I would not apply that to anybody on the NSC staff. I think the NSC staff benefits greatly by having military officers on it, foreign service officers, detailees from the CIA, and people from outside. I think that a mix of all of those is optimal. I don't think that pertains to anybody but the National Security Advisor.

Mr. DICKINSON. Would the gentleman yield?

Mr. ROWLAND. I yield to the gentleman from Alabama.

Mr. DICKINSON. General, since we're talking about the military in the National Security Council, it has been my observation over the years that the Executive draws rather freely, from time to time, on the military and has them attached to the White House for one purpose or another, not necessarily the NSC. We have seen them do this to get around budget restrictions, for instance, that the Congress puts on what they have to spend, or the numbers of people. So they just draw in people from DOD and attach them to the White House. That's not unique to any administration. I think every administration has done this.

But I was wondering, to what degree does the NSC have the freedom to draw on the military services and have them detached from where they are and attached to the NSC, and to what degree then does the NSC direct and control them? This gets to back to the question you raised, as to where does their allegiance lie. But how freely can they draw on the military and other agencies and have them attached to the NSC and not have them show as an employee at NSC necessarily?

General SCOWCROFT. Well, the last statement, not having them show as an employee, that's kind of a technical aspect. Many of the NSC staffers, of course, are not paid by the NSC but paid by their parent agency. That goes right down to secretaries, as matter of fact, because the NSC budget is minuscule.

Mr. DICKINSON. You mean what we call civilian secretaries, they, too, would come from agencies outside—

General SCOWCROFT. Some of them do come from agencies, yes. A lot of them don't, but some of them do. I think, within the general size of the NSC staff that the President feels is appropriate for his needs, individuals then become a matter for negotiation between the National Security Advisor and the department heads, most of whom don't want to lose the people that the National Security Advisor wants to take from them. It's a highly individual and personal kind of process.

There always is the risk that they still will have ties to their home agency, but that's not always a negative. That's also a positive. It's a great education process for the people who come over there, who see the operation of the national security system from a different perspective and go back to their own departments greatly enriched. And they also bring the kind of practical expertise to the NSC that can only come from involvement, from emersion, in their own department's activities. If we drew everybody from the outside, from academia or what have you, it would not be as good a staff.

Mr. DICKINSON. But they can draw as freely as they wish from the services?

General SCOWCROFT. Not really.

Mr. DICKINSON. What is the limitation there, then?

General SCOWCROFT. Well, I think the basic limitation is the President's decision on how big an NSC staff he wants. Now, are you saying could they get a company of troops to do something they wanted? That's a very separate kind of question. The answer is no.

Mr. DICKINSON. Thank you for yielding.  
Thank you, Mr. Chairman.

The CHAIRMAN. Charlie Bennett.

Mr. BENNETT. Mr. Chairman, I have two pieces of legislation. One of them says no facility, equipment, personnel or funds of the Department of Defense may be used to assist any covert operation or activity conducted by the National Security Council or the staff of the Council. Until I heard the testimony this morning, I thought this was sufficient, but I seem to be hearing the idea that there is something innate in the power of the President to have covert operations in any agency he wants to. So if I were to achieve the objective of cutting off covert operations, which were not in some way in the ordinary establishment, I presume I would have to add to this language "or any covert operation or activity of other Government agencies except the Central Intelligence Agency or the Department of State."

If I introduced that amendment, would it be somewhat in accord with what you believe? That's a great threat. I think there are 13,000 in the CIA—anyway, many thousands of people in the CIA. There are many, many thousands in the Department of State, and there are many, many thousands, or millions, in the Department of Defense. So it looks to me like you're giving enough leeway for the President to find somebody to do this sort of activity.

Would you have any objection to an amendment which made it improper to utilize the NSC or any other organization—it wouldn't cut out the operation of the Department of State or the CIA or DOD, but would eliminate it from the NSC?

I would like to say, before I state that any further, I have studied pretty well the constitutional convention and they didn't have in mind the President having this ability to put our country to war or to do this sort of thing. There is nothing in those meetings to indicate they wanted the President to have the power to put our country to war without consulting us.

But, aside from that, if you were trying to get a grip on how to tighten up this procedure, would an amendment like I suggest be in the right direction at least?

General SCOWCROFT. Mr. Bennett, my problem is legislating such a proscription. I think, as I said before, as a practice, I think it's bad practice for the NSC to be involved in operations.

One of the problems I have with legislating is the definition of what is an operation, and it's not easy to define. By and large, in operations in the sense in which I think you're talking—where you're using money, materials, equipment and so on—the NSC is not equipped to do that and shouldn't do it. But if you're saying the NSC Advisor should not be able to go somewhere in a military aircraft to meet with somebody and try to work something out, then I think that's a mistake—and that could be an operation, because it is—

Mr. BENNETT. Why not use the Department of State?

General SCOWCROFT. Because maybe the President doesn't want to use the Department of State, and I think that's his right. He shouldn't have to—

Mr. BENNETT. Why does he keep a Secretary of State that he can't get along with?



General SCOWCROFT. Because the Secretary of State can't go anywhere without it being known. The National Security Advisor can and has.

Mr. BENNETT. I'm not talking about that. I'm talking about humble people under the Secretary of State that nobody ever heard of.

General SCOWCROFT. Maybe the President doesn't have the faith in them that he has in somebody else.

What you're really saying is you want to legislate who the President can use for sensitive missions.

Mr. BENNETT. No, I'm just trying to see that the President doesn't become an emperor or a tyrant and put our country to war and shed blood without considering the processes that are set up by the Constitution. We've got a Constitution and there is nothing to indicate in this Constitution, or in the background of this Constitution, that they ever contemplated the President would have powers to put our country to war without asking Congress.

General SCOWCROFT. I don't really think that's what we're talking about.

Mr. BENNETT. That's what I'm talking about.

General SCOWCROFT. Well, then, if you used the Secretary of State, you would be happier if we went to war?

Mr. BENNETT. No. I think we should follow the Constitution.

General SCOWCROFT. I think we should follow the Constitution as well.

Mr. BENNETT. Well, maybe we'll get to a field in which we have more agreement. I'm not sure that we disagree on what we just said, but I'll never get to it if I don't get on with the next one. I feel this really comes from what you have said.

Do you feel the President has a concern about the publicity that attaches in going to the present mechanism in Congress? I have introduced a piece of legislation which establishes a Senate/House or inter-House provision, a fairly small group, probably the chairmen of the Armed Services Committees on both sides, chairmen of Foreign Affairs, very senior Members of Congress to be on this. This would be the one that the President would report to, instead of reporting to the current committees, when he has probably not even heard of the members of the committee, with many of them having been in Congress only a short period of time and not having been tested with regard to secrecy and things of that type.

Would you feel that a movement in that direction would probably be a good movement, something that would give the President more confidence, when he shared information, that it wouldn't be spread all over the country?

General SCOWCROFT. I think it would help a lot, because there is a lore in the executive branch—whether it's true or not—that this end of Pennsylvania Avenue is the leaky end. You know, I'm not sure it's any leakier than the other end. But, in fact, as long as you have that sense, there is a reluctance to share. So I think anything up here that could be done to increase the confidence of the President, that he can do what he ought to want to do any in case, but without risking his operation, would be extremely beneficial.

Mr. BENNETT. Thank you.

Mr. ROWLAND. Would the gentleman yield for just a quick follow up?

Mr. BENNETT. Yes, I yield. I don't know if I have the time.

Mr. ROWLAND. With the chairman's indulgence, I would like to follow-up on the first point with regard to your amendment, Mr. Bennett.

If memory serves me correctly, the amendment itself, I think, is in concert with Mr. Carlucci's very first directive when he came into his new position. I think it was literally the exact same intent, and it was his first directive.

I would like to ask the general if he thinks that's true. If memory serves me correctly, I think that's what his first action was.

General SCOWCROFT. The first directive was a prohibition of covert operations by the NSC staff. I would not go that far.

Mr. ROWLAND. You wouldn't even go as far as the directive, and you certainly wouldn't go as far—

General SCOWCROFT. I think the recommendation in our report, that there be a strong prejudice against it, that it only be resorted to when there was no other way to do it, and then, only after the President specifically had analyzed and determined that this is the way he wanted to do it.

Mr. BENNETT. Before I close, do you know of any successful operation, covert or overt, that the NSC has ever undertaken? I don't know of one.

General SCOWCROFT. I don't want to answer that off the top of my head. I expect the answer is yes.

Mr. BENNETT. You know of some, but you can't note what they are?

General SCOWCROFT. I'll talk to you later.

Mr. NICHOLS [presiding]. Mr. Stratton.

Mr. STRATTON. Thank you, Mr. Chairman.

General Scowcroft, the one problem that I find with your report is how you get the page enumerations. It's a little hard to find. But on page V-6, or Roman numeral V, I take it, there is a statement that says:

In connection with Congress, the number of Members and staff involved in reviewing covert activities is large. It provides cause for concern and a convenient excuse for Presidents to avoid congressional consultation. We recommend that Congress consider replacing the existing intelligence committees of the respective Houses with a new joint committee, with a restricted staff, to oversee the intelligence community patterned after the Joint Committee on Atomic Energy that existed until the mid-1970s.

I think that is an outstanding recommendation and I was just wondering whether any effort has been made to move on that suggestion.

General SCOWCROFT. Not that I'm aware of.

Mr. STRATTON. But you do feel it's a complication to have a substantial staff, rather than have a much more knowledgeable staff, I would take it, if it's based on the Joint Committee on Atomic Energy. That's exactly what they had. They had a very large professional staff and a relatively small number of Members.

General SCOWCROFT. Whether it is that specific recommendation or something along the lines that Mr. Bennett suggested, I think

anything which would enhance the willingness of the Executive to take the Congress into its confidence would help the process completely. Congress has a valuable role to play. The more professional their staff is, the better they are able to play that role. The more advice they can give to the President, the more chance that you can avoid the kinds of disasters that could come up. I just think it's a very, very good move.

Mr. STRATTON. Thank you very much.

Mr. NICHOLS. Mr. Kasich.

Mr. KASICH. Thank you, Mr. Chairman.

General, I just want to say that your work, not only on this Tower Commission but on the Scowcroft Board, I think is about as invaluable a bit of intellectual work as I have seen since I've been in the Congress. I want to tell you that I think the contribution you have made to the debate, not just on the whole Iran issue, but also the issue surrounding our strategic activity here in the Congress, has been very, very valuable. You really deserve a great "thank you" from all of us.

I think you're like my father. I think you're a Democrat, isn't that correct? [Laughter.]

I introduced a bill, I guess similar to Charlie Bennett's, and it calls for the establishment of a single committee. It cuts down the staff, and it does one other thing—and I would like to have your view on this. It says that the committee shall be permanent, like the Armed Services Committee. As you may know, we have this revolving Intelligence Committee now, and that is designed to give, I guess, more Members some exposure to the information that is available about our enemies around the world.

My only concern about that is—I don't think it's a bad concept—but if we had an intelligence briefing in the Armed Services Committee today, or, better than that, an intelligence briefing on the floor of the House, you wouldn't have more than 40 or 50 or 60 or 70 Members that would show up.

My question is, do you think there's a need to have that kind of revolving situation, or do you think it makes sense to build a permanent committee, where you would build permanent staff, at lower levels than what we currently have, and expose, in fact, fewer people to the process of oversight?

General SCOWCROFT. I think you can make arguments either way. The revolving aspect does get more Members more deeply aware of the issues, the problems, and what the Executive has to do. That is worthwhile.

On the other hand, a nonrevolving or more permanent kind of a system allows the building up of the kind of expertise and historical memory, if you will, over the course of administrations, which I think is extremely valuable. In many senses, there is more continuity within the Congress than there is in the executive branch, with the change of administrations. I have not thought about it sufficiently, Mr. Kasich, to say which way I would come down.

Mr. KASICH. Let me just tell you that a member of the Intelligence Committee who wanted to change subcommittees was asked by the Speaker of the House not to change subcommittees because they were concerned about who would take his place on that subcommittee. They felt that if there was a replacement on that sub-

committee, it would somehow endanger national security. He then remained on that subcommittee. I won't name the Member.

But isn't that a rather frightening concept, that we actually have people placed on that Intelligence Committee who the leadership of this House doesn't feel comfortable with?

General SCOWCROFT. Well, it is to me, yes. I think that's an internal problem of the Congress, though.

Mr. KASICH. Let me ask you more about this covert issue that Charlie Bennett raises—and I guess John Rowland has brought up, and the chairman has. I don't think anybody objects to people like Henry Kissinger being able to get on a plane and, in secret, fly and conduct negotiations on Middle East affairs or open doors to China. But you could actually foresee grounds on which an actual covert military activity could occur through the NSC, where it, in one way or another, would make sense.

Let me tell you, I read your report thoroughly, and one of the things I gathered from reading your report was that the reason why this thing was such a failure was because the NSC failed to consult those intelligence organizations that need to be consulted in order to have a successful operation. You do envision times when it would make sense to have military activity carried out by that NSC? You don't think—

General SCOWCROFT. No, I don't. No, I don't.

Mr. KASICH. It would be all right if Congress was to flat-out put in a prohibition?

General SCOWCROFT. Well, I certainly think that military operations should not be run by the NSC staff, and I think even some of the kinds of advisory things that apparently Colonel North did in an operational way with some of the Contras are questionable, simply because, again, for those kinds of things, we do have departments and agencies whose role it is to do that, and those people are not normally present on the NSC staff.

No, I have no problem with that. That is a clear case. The only thing I'm talking about are these things where you're talking about—

Mr. KASICH. The gray areas.

General SCOWCROFT. Yes, where you're talking about a diplomatic mission, which is an operation, in fact, and it is the State Department's job to carry it out. But if the President wants to show some kind of personal contact—for example, with the General Secretary of the Soviet Union, he wants to send somebody and says "Look, the two of us ought to have a channel here where we can communicate"—I wouldn't want to bar him from doing that and saying no, he has to use the Department of State or some other agency.

Mr. BENNETT. If I may interrupt for a second, I would just like to say you're defining a lot of things here which Congress has never defined that way. In other words, Congress doesn't define that as an operation. That would be diplomacy. The background of the passage of the amendment, if you had legislation on it, I think would clearly show it was not just a diplomatic operation in that sense. We're talking about covert operations in the context of military assistance. If you wanted to add that to the bill, you could. But that

is the clear purpose of the legislation, to keep from going to war without consulting Congress.

General SCOWCROFT. Well, part of my reservation about legislating was the definition of "operation". If one can—

Mr. BENNETT. Well, we can put that in the law—

Mr. KASICH. Let me—

Mr. BENNETT. The legislative history will show that it's not designed to interfere at all with diplomatic matters.

Mr. KASICH. Mr. Chairman, in order to avoid this struggle, let me reclaim my time here for a second, because there are one or two other areas I would like to pursue, if the chairman would permit me.

Mr. NICHOLS. Mr. Kyl.

Mr. KYL. Mr. Chairman, I have only a comment rather than a question; therefore, for about 3 minutes, I will yield my time to Mr. Kasich.

Mr. KASICH. I appreciate that, but the chairman is going to come back to me when you're finished. I appreciate that very much.

Mr. KYL. General, I simply wanted to make this observation. Much of what was accomplished by the report, by the efforts and the report, and what has been alluded to here this morning, relates to the question of confidence in our system. I think it is important for us just to pause for a moment to reflect on the effect that commissions or boards such as yours have in helping to reestablish the confidence of the American people in our system.

Even though these super entities are not a part of our Constitution, we have, fortunately, dedicated public servants and former public servants who are willing to make their time available and to serve Presidents for as far back as I can recall, in various investigative and reportive capacities, to help clear the air and then make reports generally to the President or to the Congress.

I think it is important for us to recognize the strength that commissions such as yours can bring to the process, and I commend you and your two colleagues for your efforts, and for the report which you have issued to us. I recognize it is now up to the Congress and to the President to act on the recommendations that you have made to us, but I think that we should not forget the contribution which you three gentlemen have made to this specific process and which similar bodies have made in the past. I know that we all join in thanking you for your efforts.

General SCOWCROFT. Thank you.

Mr. NICHOLS. Do you yield the rest of your time to Mr. Kasich?

Mr. KYL. Yes, Mr. Chairman.

Mr. NICHOLS. Mr. Kasich.

Mr. KASICH. Thank you, Mr. Chairman.

General, let me ask you, do you think part of the reason why this operation was conducted by the NSC, which everybody almost unanimously—I can't think of anybody who thinks it had any merit—do you think part of the reason why it was put in the NSC is because of the fear of leaks, both out of the President's shop and also, more particularly, because of leaks out of our shop up here on the Hill? Is that part of the reason why it was put into that NSC?

General SCOWCROFT. You know, I could really only speculate, because one of the people who would be most intimately involved in

the answer to that question is the Director of Central Intelligence, who, of course, has not been available. I think it is a combination, however, in the way it got started, which was principally through the Israelis, and a pattern of management developed when we were only, if you will, peripherally involved. And that when it became a U.S. operation in January of 1986, there was the issue of notification and the President's concern about the safety of hostages and perhaps some people in Iran—again, this is just a supposition—that it was not examined as deeply and thoroughly as it should have been in the context that we're discussing it.

Mr. KASICH. Thank you.

One other area, and that is the conduct of U.S. foreign policy. Is the Congress, in your judgment, getting too active in conducting foreign policy? What is the proper role and what should the Congress do in terms of trying to play a role in the formulation of foreign policy by the Executive?

General SCOWCROFT. A noted constitutional scholar said that the Constitution is an invitation to struggle over foreign policy. I think that's true. I think the successful formulation and execution of national security policy depends heavily on comity between the two branches, which is a difficult commodity to establish.

On the Congress' side, I think that the focus ought to be on policy, on the broad outlines, both in terms of what our defense dollar is designed to produce, what the general outlines of the policy are, and so on.

From the Executive's point of view, I think that the Congress ought to be welcomed to participate more in the formulation of policy, because I think both sides are at fault when it doesn't work well.

Mr. KASICH. Thank you.

Mr. Chairman, Mr. Stratton wanted me to ask this question—I know he wants me to ask this question—and I've got to ask General Scowcroft because we've got a vote coming up next week. I would like to know what your position is—and I know this is a dramatic shift—what your position is on the mobile MX. You know, we had a debate in this committee and I want to get you on the record here because it's critical in terms of the debate next week. Do you think it makes some sense to make the MX mobile? You can answer it just quickly and that's the only question I have about that. I think it's important as to what you think.

General SCOWCROFT. I can't answer that one quickly. If it's the particular deployment, the rail garrison mobile, yes, I think it's worthwhile.

Mr. KASICH. Thank you very much.

Mr. NICHOLS. Thank you, Mr. Kasich.

Mr. Stratton, do you have further questions?

Mr. STRATTON. No questions.

Mr. NICHOLS. Mr. Rowland.

Mr. ROWLAND. Thank you, Mr. Chairman.

Just one follow-up question, General. I don't know if you've had an opportunity to see Mr. Bennett's amendment or—

General SCOWCROFT. No, I have not seen it.

Mr. ROWLAND. It is very simple. It says,

No facility, equipment, personnel or funds of the Department of Defense may be used to assist in the implementation of any covert operation or activity conducted by the National Security Council or the staff.

Now, is it your interpretation—and this is going to be debated later—is it your interpretation that this amendment would have prohibited the Iran rescue attempt by President Carter?

General SCOWCROFT. Probably. I don't know. I wouldn't want to give—I would want to study that further.

Mr. ROWLAND. OK. I think I would like to hear your answer on that at another time.

General SCOWCROFT. I would be happy to, but I would rather give it careful consideration first.

Mr. ROWLAND. Yes. Perhaps you should look at the legal definitions. But I think it is one of the key questions that will come up and I would appreciate hearing your feedback on it in the future as we debate the issue.

General SCOWCROFT. Fine.

Mr. ROWLAND. Thank you, Mr. Chairman.

Mr. NICHOLS. Thank you, Mr. Rowland.

General, I have heard Chairman Stratton say a number of times that he had the opportunity to attend law school for about a week, I believe. That's a week longer than I attended at Auburn University. But let me pursue the matter of the legal advisor to the President.

Now, this President has asked the Attorney General of the United States to sit in, not as a statutory member, but in an advisory capacity. I am curious, in light of all the controversy that has arisen about the Iranian thing, could you tell us who provided legal services to the National Security Council and to the President during all of this controversy?

General SCOWCROFT. During the controversy?

Mr. NICHOLS. Yes, sir.

General SCOWCROFT. Well, I think it was——

Mr. NICHOLS. Not during the controversy, but——

General SCOWCROFT. While the policy was being pursued?

Mr. NICHOLS. Yes, sir.

General SCOWCROFT. There apparently was a general paucity of legal advice. Although the Attorney General was at most of the meetings and apparently was an active participant in those meetings, when it came to specific legal points—and the one which struck us particularly was whether or not the NSC staff could engage in activities relating to the Contras which were forbidden to the CIA and State and Defense. As near as we can discover, the only legal advice came from the IOB, the Intelligence Oversight Board for the CIA, which we thought was a strange way to get advice.

There is the White House Counsel and there is the Attorney General. Even if the National Security Advisor doesn't have his own legal counsel, there is ample counsel available.

Mr. NICHOLS. I would like your judgment as a former National Security Advisor as to whether the Attorney General of the United States perhaps ought to be made, by law, a statutory member of the National Security Council. Certainly I think you would agree

with me that this act and what took place certainly warranted some legal advice and some counsel. How would you look at that?

General SCOWCROFT. Well, I would be reluctant to do that, Mr. Nichols, simply because Presidents get around it one way or another. President Kennedy wanted to have the Attorney General on, so he set up what he called the Executive Committee of the National Security Council. It had more members than the statutory members of the NSC.

This President has gone the other way. He has made several additional people, by invitation, members—he can't make them members of the NSC. Now the NSC has gotten so big that rarely is there an NSC meeting. Instead, it is the NSC Planning Group, which is a smaller group of the statutory members.

So a President, when there are legal things, ought to have his Attorney General there. He shouldn't necessarily have to have his Attorney General there for meetings where it is not appropriate. Therefore, the President is going to do it one way or another, and I think legislation to add certain additional members is really not required or wouldn't necessarily solve the problem.

Mr. NICHOLS. Does staff have questions? Mr. Barrett.

Mr. BARRETT. General Scowcroft, could you help us to clear up some of the confusion about the NSC staffing? Apparently the NSC staffing numbers don't always include personnel, as you have indicated, that are detailed from other agencies.

What was the total size of the NSC staff under Admiral Poindexter and how many were detailed? If you don't have that information, can you provide it for us?

General SCOWCROFT. I think we can provide it. I don't have it at my fingertips. I think one of the problems was an informality in how they account for detailees, whether they were really members of the staff or not. That was not a problem when I was National Security Advisor. If they worked full time on the NSC staff, they were staff members, whoever paid them.

I will see if I can get you that.

Mr. BARRETT. Thank you, sir.

I would like to ask you for one other piece of information, if it is available. You mentioned case studies in the report. Of course, we don't know under what restraints those case studies were prepared. But they would be helpful to the committee, I'm sure, if you could make them available.

General SCOWCROFT. I think that would be no problem.

Mr. BARRETT. All right, sir.

One last question.

You have steadily opposed changing what might be called the heart of the National Security Act, but there are alternatives. One, Congress could enact a statement of policy at the beginning of the NSC legislation, indicating how it felt the National Security Council and its staff should perform, perhaps in accordance with the model you lay out. Another possibility would be to require a formal report each year as a part of the authorization-appropriations process, indicating the staff size, the qualifications of the members of the staff, the number of detailees, whether records are kept and those sorts of things, that you have recommended in your report.



Does your opposition to legislation extend to those sorts of measures?

General SCOWCROFT. It certainly wouldn't extend to a general policy statement as to how the Congress viewed the NSC, so I think that would be very appropriate and a follow on from the National Security Act.

The annual report bothers me a little because I think back to other reports like the Arms Control Impact Statements, which become a great bureaucratic hassle. They are not particularly useful, either to the preparer or the recipient. You know, I'm just not sure you get what you want. I think there are more informal ways that could be developed to make the National Security Advisor more available on the Hill, in ways which would be helpful, informal but helpful.

Mr. BARRETT. Thank you, sir.

Mr. NICHOLS. Thank you, Mr. Barrett.

General, let me just echo Mr. Kyl's remarks. The country owes you a debt of gratitude. Again, your report is thorough. I want to say in closing, on behalf of Chairman Aspin and myself, and the Armed Services Committee, we are deeply grateful to you and your board for coming before us.

General SCOWCROFT. Thank you, Mr. Chairman. It was a privilege to be here.

Mr. NICHOLS. If there is no further business, the committee stands adjourned.

[Whereupon, at 12:20 p.m., the meeting was adjourned.]

