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HEARINGS ON U.S. ACTIONS REGARDING IRANIAN ARMS SHIPMENTS INTO BOSNIA

Y 4. IN 8/19: S. HRG. 104-786

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BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

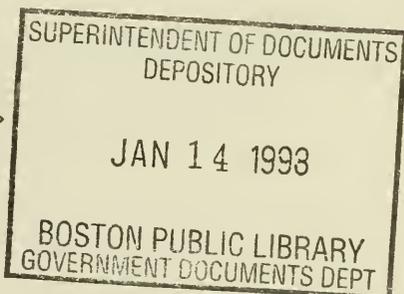
SECOND SESSION

ON

U.S. ACTIONS REGARDING IRANIAN ARMS SHIPMENTS INTO BOSNIA

TUESDAY, MAY 21, 1996
THURSDAY, MAY 23, 1996

Printed for the use of the Select Committee on Intelligence



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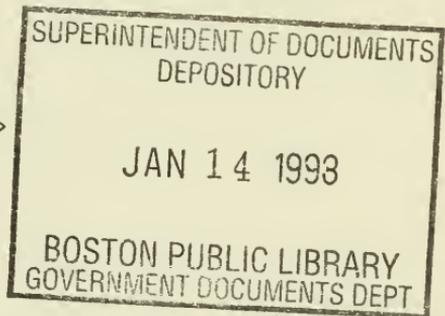
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HEARING ON U.S. ACTIONS REGARDING IRANIAN ARMS SHIPMENTS INTO BOSNIA

TUESDAY, MAY 21, 1996

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 11:41 o'clock a.m., in room SH-216, Hart Senate Office Building, the Honorable Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Kyl and Kerrey of Nebraska.

Also present: Charles Battaglia, Staff Director; Christopher Straub, Minority Staff Director; Suzanne Spaulding, Chief Counsel; and Kathleen McGhee, Chief Clerk.

Chairman SPECTER. We will proceed with the Intelligence Committee hearing at this time. Our hearing has been set for 11:30. Our witness this morning is Ambassador Holbrooke. It's now 11:40. There will be opening statements by at least the Vice Chairman and myself and they will take a bit of time because of the complexity of the issues that we are going to be looking at today, so we are going to start the testimony.

It is a complicated day here in the Senate, because there are meetings of the Democrat and Republican caucuses, which some of us will miss. The budget resolution is on the Floor, and we do have Ambassador Woolsey coming in at 2:00 o'clock, so there is a fair amount to be covered. And as I say, the opening statements may—will be a little longer, at least my will be, than customary because of the complexity of the issues.

The Committee has convened this hearing as the first of a number of public hearings, and we will be balancing whether the hearings can be public or will have to be closed and private. But these hearings are being convened to determine whether there has been Executive branch compliance with the Federal law on covert activities, and the Executive branch's duty to report.

The wisdom of what the Executive branch has done will be before the Senate Foreign Relations Committee.

Welcome, Ambassador Holbrooke. We have just begun some of the opening statements. If you will be seated, we will proceed with the—

Ambassador HOLBROOKE. I went to the Dirksen Building, and I found a sign.

Chairman SPECTER. Well, I can understand. I can understand the confusion. We have a lot of buildings. And we appreciate your coming in this morning and the Vice Chairman and I are going to

make opening statements and we will then proceed to your testimony.

As I was saying, the wisdom of what the policy of the Executive branch has been in foreign relations is for the Senate Foreign Relations Committee. The Senate Intelligence Committee has the responsibility on certain aspects as part of what is structured to be a seamless web so that Congress does have an opportunity for oversight, where, for example, Congress has been considering the issue of the arms embargo and whether it ought to be released and voting on the matter. The Foreign Relations Committee has jurisdiction to consider what the policy ought to be for that which is public. And the Intelligence Committee has a part of this seamless web on what the Intelligence Committee will consider on what is covert action.

Later, during the course of the testimony, we will be considering these matters in some detail, and there are boards, but I am not going to refer to the boards now, but just to define covert action, it means—this is Section 503(e) of the National Security Act of 1947—covert action means and activity or activities of the United States government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States government will not be apparent or acknowledged publicly, but does not include traditional diplomatic or military activities.

The exception as to traditional diplomatic activities has some further definitions which I will not go into at this time, and will be fact for consideration in our hearings.

There has been activity, as the evidence will disclose, with respect to another country—Croatia—a characteristic third party and 503(a)(3), which refers to Findings when there is a covert action, the law requires a specific Finding by the President which is then shown to the Intelligence Committee. And Section 503(a)(3) specifies, quote, “Each Finding shall specify whether it is contemplated that any third party will be used to undertake the covert action concerned on behalf of the United States.”

That raises an implication that if there is a third party, like another nation, that it would be part of covert activity, but there was an effort made in 1991 to make it absolutely clear. And that bill was vetoed by the President and it is worth commenting on very briefly now. In the President’s veto message, President Bush’s veto message, he said, quote, “A request by any department, agency, or entity of the United States to a foreign government for a private citizen to conduct a covert action on behalf of the United States shall be deemed to be a covert action,” close quote, and that was vetoed or not included in the ultimate law. But that still leaves open the question as to whether there is a requirement implicit in existing Section 503(a)(3) that where there is a third party involved secretly, that there is a covert action by the inference that the Findings shall specify whether it is contemplated that any third party will be used to undertake a covert activity or a secret activity.

The covert action has been the principal issue for traditional inquiry by this Committee, as illustrated by Iran-Contra. But there is another requirement in the National Security Act which requires the Executive branch to inform this Committee, and that is Section

501(a)(1) of the National Security Act of 1947, which provides, quote, "The President shall ensure that the Intelligence Committees are kept fully and currently informed of the intelligence activities of the United States." And then 502 makes the specification, quote, "The Director of Central Intelligence and heads of all departments, agencies, and other entities of the United States government involved in intelligence activities shall, number one, keep the Intelligence Committee fully and currently informed of all intelligence activities," and then intelligence activities being further defined in Section 14(a), quote, "As used in this resolution, the term intelligence activities includes, (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement, or other association."

These provisions will be implicated in some detail in our discussion with the witnesses, and I think it important to outline them very briefly at this time.

Our Committee has undertaken very careful preparation on these hearings, so that we would protect national security and sources and methods, and at the same time, we have determined to move with dispatch so that these hearings and inquiry will be completed as promptly as possible. We received a request to conduct the inquiry from the Majority Leader on April 5, and the Committee responded immediately on April 7, with telephone conversations with former Director of Central Intelligence Woolsey, with the Chairman of the Intelligence Oversight Board Harrington, and with a—a conversation with the Deputy Director of Central Intelligence, George Tenet. That was all by telephone.

And then we proceeded to gather a great many records. On April 17, there was an informal session in front of the Committee with Chairman Harrington. Then there was an informal interview with Mr. Holbrooke on April 26, and we were prepared for testimony on April 30, with three members of the U.S. Embassy in Zagreb. And on May 2, we had an informal session with Ambassadors Galbraith and Redman, making sure as we could that we gave advanced indications as to where we were going, and then the next day, May 3, had the closed hearing with Ambassador Galbraith and Ambassador Redman in that hearing. When one question came up that was particularly sensitive, we took it in writing, so that even those present at the hearing wouldn't know about it, but only reference by the Members of the Senate.

And then on May 10, we heard from former DCI Woolsey in a closed session. We tried to schedule these hearings last week and could not do so because of conflicts. And now we are proceeding with Mr. Holbrooke.

We had wanted to file a report so that there would be a record basis of public understanding preceding the testimony because of the complexities of the matter, and that report was submitted to the Central Intelligence Agency and the Department of State last week on May 15. We were assured that we would have it back by noon on the 17th. That assurance was given late in the afternoon on May 16, and we have not received it yet. So that we do not have the benefit of the Central Intelligence Agency or the Department of State or the Department of Defense classifications.

And we believe that it is important that we proceed without further delay. There is no indication as to when we are going to get that unclassified report, and when we get it we will then make a judgment as to its release. But the statements of facts, as I say, have been very carefully prepared by our staffs who are the individuals who are experts in the classification of the issues.

I think it important to make a comment about the way this Committee has been hampered by lack of timely compliance. And one is their failure, as noted, to give us back the declassified report so that we could make it public. Secondly, the Intelligence Oversight Board has declined to make available to this Committee either its report or the backup material.

And we wrote to them specifically by letter dated May 1, 1996, which has not been responded to. We will make this a part of the record, without objection.

[The letter referred to follows:]

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, May 1, 1996.

Mr. ANTHONY HARRINGTON,
Chairman, Intelligence Oversight Board,
Old Executive Office Building, Washington, DC.

DEAR MR. HARRINGTON: In our letter to you of April 9, 1996, we notified you that the Senate Select Committee on Intelligence was commencing its inquiry into alleged U.S. support for Iranian arms shipments to Bosnia and requested access to material bearing on this subject in the possession of the Intelligence Oversight Board. We are again requesting this material. In particular, we are requesting copies of background material you may have gathered during the course of your review, including documents received from all government and non-government entities outside of the executive office of the President. We also urge the Administration to reconsider the decision to assert executive privilege to deny this Committee a copy of your report.

PRIVILEGE SHOULD BE NARROWLY CONSTRUED

The concept of executive privilege is relatively recent in origin and it was not until the Watergate crisis that the courts first began to define the constitutional contours of presidential privilege vis-a-vis congressional demands for information. The most thorough treatment of executive privilege by the Supreme Court is found in *United States v. Nixon*, 418 U.S. 683 (1974). The opinion notes that "[a] President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications." 418 U.S. at 708. The IOB Report was not part of process of shaping policies but an investigation into whether those policies already adopted and implemented violated the law.

The Court in *Nixon* emphasized that privileges frustrate fact-finding and so should be sparingly applied. "Whatever their origins," the Court said of privileges, "these exceptions to the demand for every man's evidence are not lightly created nor expensively construed, for they are in derogation of the search for truth." 418 U.S. at 710.

PRIVILEGE INAPPLICABLE TO BACKGROUND MATERIAL

Cooperation with the request for background material should not be hampered by concerns about possible executive privilege, since these are not "Presidential communications." It is our understanding that while some of these may reflect conversations involving diplomatic personnel, these are primarily conversations with other executive branch personnel, not communications to the President.

Moreover, while some of these documents may contain national security information or confidential conversations with foreign governments, security concerns are clearly not a legitimate reason for refusing to give the documents to this Committee. The Select Committee on Intelligence was established, with strict security policies and practices, specifically to ensure that classification issues would not impede

Congress's equally legitimate need for this kind of information in order to fulfill its constitutional legislative and oversight functions. This information is essential to the Committee's ability to determine the effectiveness of existing laws regarding covert action and evaluate the need for additional legislative direction in this area. The courts have found that while executive concerns about protecting national security information are legitimate, "the degree to which the executive may exercise its discretion in implementing that concern is unclear when it conflicts with an equally legitimate assertion of authority by Congress to conduct investigations relevant to its legislative functions." *United States v. American Telephone and Telegraph Company*, 567 F.2d 121, 128 (D.C. Cir. 1977)

EXECUTIVE PRIVILEGE IS NOT ABSOLUTE

Even where an assertion of executive privilege might be justified, the courts have recognized an equally legitimate constitutional prerogative for Congress to seek information it needs to fulfill its constitutional responsibilities. In a 1977 case in which the executive branch asserted privilege based on national security grounds, the United States Court of Appeals for the District of Columbia emphasized that this privilege is not absolute:

The executive would have it that the Constitution confers on the executive absolute discretion in the area of national security. This does not stand up. While the Constitution assigns to the President a number of powers relating to national security, including the function of commander in chief and the power to make treaties and appoint Ambassadors, it confers upon Congress other powers equally inseparable from the national security, such as the powers to declare war, raise and support armed forces and, in the case of the Senate, consent to treaties and the appointment of ambassadors.

More significant, perhaps, is the fact that the Constitution is largely silent on the question of allocation of powers associated with foreign affairs and national security. These powers have been viewed as falling within a "zone of twilight" in which the President and Congress share authority or in which its distribution is uncertain.

United States v. American Telephone and Telegraph Company, 567 F.2d at 128. Given the level of public concern about the events reviewed by the IOB, the publication in the media of the details of these events, the significance of the allegations, and the need for Congress to determine whether existing laws in this critical area are adequate, we believe the balance tips in favor of disclosure to the Committee.

PRIVILEGE CANNOT BE A "SWORD AND A SHIELD"

Finally, when documents are publicly used to justify an action it is no longer appropriate to assert executive privilege to shield those documents from review. It is fundamentally inequitable to cite the IOB Report as exonerating the Administration of any wrongdoing, but then refuse to let anyone outside the Administration review the Report or the materials upon which it relied. The courts have held, for example, that a witness cannot claim to have relied on the advice of counsel to justify an action while refusing to reveal the substance of that advice on the basis of attorney-client privilege. *Hyde Construction Company v. Koehring Company*, 455 F.2d 337, 342-43 (5th Cir. 1972); *Garfinkle v. Arcata National Corporation*, 64 F.R.D. 688-90 (S.D.N.Y. 1974). The court in *Garfinkle* held that background documents for an opinion letter that had been delivered to the adversary were not protected, saying that "the defendant simply cannot use the letter as both a sword and a shield." 64 F.R.D. at 689.

PRIVILEGE SHOULD NOT BE USED TO CONCEAL WRONGDOING

If the IOB Report and background material does not exonerate the actions and policies of the executive, that is even more reason not to assert executive privilege to prevent its disclosure to Congress. A Justice Department Memorandum Opinion for The Attorney General, dated October 17, 1984, states that executive privilege "should not invoked to conceal evidence of wrongdoing or criminality on the part of executive officers. The documents must therefore be reviewed for any evidence of misconduct which would render the assertion of privilege inappropriate. . . . The greatest danger attending any assertion of executive privilege has always arisen from the difficulty, perhaps impossibility, of establishing with absolute certainty that no mistake or wrongdoing will subsequently come to light which lends credence to congressional assertions that the privilege has been improperly invoked."

PRECEDENCE FOR EXECUTIVE COOPERATION WITH CONGRESSIONAL INQUIRY

In a context such as this where there is great public concern and the President has publicly stated his commitment to cooperate fully with Congress on this inquiry, we hope the White House will follow the example of the Reagan administration when it declined to assert executive privilege in the Iran-Contra inquiry. While these two inquiries are different in many ways, both involve allegations of covert action in violation of the law. Turning over all relevant documents, including those for which there is a potential ground for assertion of privilege, is the most effective way to address suspicions in the minds of the public and ensure a prompt resolution of this issue.

We applaud your willingness to be forthcoming in your off-the-record testimony before this Committee during a closed hearing on April 16. We urge you not to put form over substance by reflexively asserting privilege to protect these documents despite having revealed their contents.

SPECIFIC PRESIDENTIAL CLAIM REQUIRED

It is our understanding that this Administration is abiding by the long-standing policy, articulated in a November 4, 1982, Memorandum signed by then-President Reagan, that each assertion of executive privilege must be specifically authorized by the President and the requesting Congressional body so advised in each case. If the President intends to assert executive privilege with respect to any of these documents, therefore, we expect a communication from him stating the specific basis for the assertion as to each one. Only if the basis for the assertion is provided can the claim be balanced appropriately against Congress's need for the information in order to ascertain the facts and fulfill its constitutional responsibilities.

Sincerely,

ARLEN SPECTER,
Chairman.

J. ROBERT KERREY,
Vice Chairman.

Chairman SPECTER. And we then wrote to President Clinton personally on May 15, 1996, and wouldn't have expected a reply by this date, but that letter will also be put in the record, and we hope to have a prompt response on that inquiry.

[The letter referred to follows:]

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, May 15, 1996.

The PRESIDENT,
The White House,
Washington, DC.

DEAR PRESIDENT CLINTON: On May 1, 1996, we sent a letter to Anthony Harrington, Chairman of the Intelligence Oversight Board, reiterating our request of April 9, 1996, for access to material relevant to the inquiry of the Senate Select Committee on Intelligence into alleged U.S. support for Iranian arms shipments to Bosnia. In particular, we were seeking copies of the background material gathered by the IOB in the course of its review and its final report. We still do not have a reply. We urge you to authorize the immediate release to the Committee of all relevant documents in the possession of the executive branch in order to ensure prompt and accurate resolution of the issues raised by these allegations.

As explained in our May 1 letter, it is our sense that executive privilege does not preclude providing the relevant documents to the Committee, either because the privilege does not apply, has been waived, or is outweighed by the legitimate needs of Congress. If you decide, nevertheless, to assert executive privilege as a basis for withholding any documents to this Committee, we would expect prompt notification of your decision, pursuant to long-standing executive policy, and the specific basis for the claim.

The Committee has attempted to address the issues raised by these allegations in a prompt, careful, and non-partisan manner. Having held a number of hearings, reviewed some of the documentation, and undertaken additional fact-finding, we are optimistic that this inquiry can be concluded in the near term if the Committee is

provided access to the remaining relevant documents. Thank you for your cooperation with this effort.

Sincerely,

ARLEN SPECTER,
Chairman.
J. ROBERT KERREY,
Vice Chairman.

Chairman SPECTER. Senator Kerrey made an important Floor statement on the Intelligence Oversight Board, which he may or may not want to comment about today. But the law, we believe, is reasonably clear that there is a duty on the part of the Executive branch to turn over these kinds of materials. The report of the Intelligence Oversight Board itself, when they make it public, and the backup materials, no reason at all not to have that public. And I think it important to lay the foundation on that by brief reference to the key Federal law on this point, before yielding to Senator Kerrey.

In an important case involving the United States versus the American Telegraph & Telephone Company, decided by the Court of Appeals for the District of Columbia Circuit back in 1977, the Court said this on the subject of Executive Privilege, quote, "The Executive would have it that the Constitution confers on the Executive absolute discretion in the area of national security. This does not stand up. While the Constitution assigns to the President a number of powers relating to national security, including the function of Commander-in-Chief and the power to make treaties and appoint ambassadors, it confers upon Congress other powers equally inseparable from the national security, such as the powers to declare war, raise and support armed forces, and in the case of the Senate, consent to treaties and the appointment of ambassadors.

"More significant perhaps is the fact that the Constitution is largely silent on the question of allocation of powers associated with foreign affairs and national security. These powers have been viewed as falling within a zone of twilight in which the President and Congress share authority or in which the distribution is uncertain." close quote.

In that case, the Court of Appeals denied the government claim of absolute Executive Privilege, and ordered negotiations on the documents on a balancing of the respective interests of the Executive branch and the Congress. We hope that it will not be necessary to present this issue to the Courts, but let it be clear that this Committee is determined to get all the facts and all the information so that we can find out precisely what happened.

On this state of the record, no conclusions have been reached as to whether there has been covert action. On this state of the record, there is a reasonably strong inference that the Committee has not been provided with all intelligence activities, but we are still waiting to hear from the Executive branch in detail on that, to see whether or not that initial inference is well founded. As I say, on the covert activity, that is a matter we have to look into.

There is a considerable body of additional factual material which ought to be on the record before the witnesses begin, but I want to yield at this time to the distinguished Vice Chairman of the Committee for his opening statement.

Vice Chairman KERREY. Thank you very much, Mr. Chairman. First of all, I join you in welcoming Ambassador Holbrooke. But before we hear from him, which we will eventually, I assure you, Ambassador, I would like to make some observations both about the inquiry and the way that this Committee has conducted the inquiry thus far and the way that I expect we are going to continue to conduct this inquiry.

First, none of what we are discussing today bears upon the question, has this mission been successful. I was—as you know, Mr. Ambassador, I was in the region not much more than nine months ago, just a day or two after the Croations had attacked in the Krajina Valley. I visited that area, as I said, within 36 hours of that successful military operation which resulted in the largest emigration movement of refugees on the European continent since World War II—it was a rather spectacular moment. And I remember as well that I was in Belgrade 24 hours before the Administration succeeded in persuading NATO to respond with very effective air strikes within 24 hours of my departure in Belgrade, and you, I believe, were on your way in from Paris to Zagreb at the time. The President pressed NATO to increase and use air strikes against the Bosnian Serbs around Sarajevo because of the hostage taking situation, but also I suspect in response to our having lost three of our public servants and your friends trying to make it over Igman Road into Sarajevo.

So from that moment—and I was asked when I got back, do I think Ambassador Holbrooke has any chance of being successful in negotiating an agreement, and I said I thought the chances were pretty remote. And when you selected Dayton, Ohio, I'm not anti-Buckeye or anything, I just didn't believe at that time, given what I had seen and heard from President Tudjman and President Milosevic and the scene, particularly in the Krajina Valley and in Split that there was much chance of your success. You did succeed, in short.

I was skeptical and still am about the time line and nervous about the size of the force and nonetheless, you can now travel in Bosnia, you can go to Sarajevo, it is much safer than it was when I was there just nine months ago. And Americans should feel proud of the fact that regardless of how this thing may come out in the end—there was a lot of killing going on over there nine months ago that is not going on today. So congratulations on success.

These hearings are not intended to try to subtract or to focus on that part of it. I think it is very important to say that at the outset, because I, like the Chairman, am concerned by what I see as some reluctance to provide this Committee with information. And I do think the Administration would make a mistake if they have slow release of information and interviews and so forth. Our purpose is to try to discover, if there's mistakes made, can we do a better job in the future. I mean, we are trying to find out, A, has the law been violated, either intentionally or unintentionally, and if so, are there ways we can adjust fire in the future and do a better job in the future.

Let me say secondly that the Chairman has conducted this inquiry in a very and completely bipartisan fashion. He has invited me to every background meeting that he has had with witnesses,

he's tasked a single group of professional staff to gather information, and has shared all the information fully, not just with myself, but with all Members of the Committee.

And this leadership is very important and is in spirit with the founding document of this Committee, which is S. Res. 400, which entrusts the oversight of very sensitive intelligence matters to a group of Senators who have been chosen by the Majority and Minority Leaders and whose numbers almost perfectly balance between the two parties. This balance, and the fact that much of our work takes place in closed session makes the Intelligence Committee one of the least partisan institutions in Congress. It's a good forum for discussing sensitive national security matters for which there is not a partisan right answer.

So I am very pleased that the Chairman has conducted this inquiry in this fashion, and I am also pleased that the Majority Leader, Senator Dole, asked the Committee to get the facts and investigate the possibility of covert action in the flow of Iranian arms to Bosnia. In my judgment, the Majority Leader came to the right place.

Senator Dole undoubtedly knew that this was an issue that was highly charged with potential partisanship and the Republican Presidential candidate was asking questions concerning the integrity and legality of the foreign policy decisions of this opponent, a Democratic President. Nonetheless, these were serious and legitimate questions that deserved a straight, non-partisan answer.

This Committee's first and continual task, then, has been to keep partisanship out of its work. It's not easy to do. The temptation toward knee-jerk reaction, to defend the President and his Balkan policy team or to attack him and them, is ever present. The temptation gets even stronger in an open session, with tape running. If we succumb to that temptation today and in our subsequent open hearings, the Intelligence Committee will have failed in its mission.

There are other Committees, including one recently created in the House, which can be more partisan in their approach to the Iranian arms shipments, and, dare I say it, less reliable witnesses. The Intelligence Committee's charter is narrower, centering on covert action and on the former Majority Leader's questions. For the record, I would like to review Senator Dole's questions of April 5 and what I believe you and I agree, Mister Chairman, are the answers.

First, the Majority Leader asked us, was your Committee notified of a covert operation to provide Bosnian forces with arms from Iran? The answer is no, period. Neither was the Committee notified of the U.S. decision not to object to the flow of Iranian arms to the Bosnians.

Two. Was the Central Intelligence Agency aware of Iranian arms shipments to Bosnia and/or involved in making them happen? The answer again: the Central Intelligence Agency was aware of Iranian arms shipments to Bosnia and regularly reported on them. The Committee has found no evidence of CIA involvement in the arms shipments.

Number three. What other agencies or individuals in the Executive branch were involved in this decision and in carrying out this policy? Again, the answer: the decision not to object to the arms

flow appears to have been made by the National Security Advisor, probably with the approval of the President, and with the knowledge of at least some senior State Department officials. The Department of Defense and the CIA do not appear to have been aware of the decision, which was carried out principally, if not wholly, by State Department personnel. The Committee needs access to additional Defense department information before we can definitely state the extent of defense involvement, if any.

Number four. Did any U.S. officials have contact with Iranian officials on the matter of providing arms to the Bosnians? The answer: the Committee has found no evidence of such contacts.

Number five. What answers, if any, were given to your Committee in response to any and all questions regarding Iranian arms shipments to Bosnia? Answer: the Committee was briefed, from time to time, on the situation in Bosnia, and these briefings included discussions of the Iranian and the other arms flows. No questions were asked regarding U.S. policy toward the arms flows, however, and no information was volunteered regarding the unannounced change in U.S. policy.

Number six. What were the findings and conclusions of the Intelligence Oversight Board which reportedly conducted an investigation into this matter? The answer: although the Chairman of the Intelligence Oversight Board has appeared before the Committee and has met with Committee staff to discuss the investigation, the Committee has not been permitted to see the IOB report. As the Chairman stated, based on the IOB report, the White House counsel found there had been no covert action and violation of law.

As to the IOB itself, I should say for the record here—I have said it for the record on the Floor—I believe this board is improperly named. It implies it has no oversight function. It does not have an oversight function. It implies that it is similar to a Congressional Oversight Committee. It is not similar or parallel to an Oversight Committee. It is, as I see it, an entity that is supposed to serve the function of providing the President, the Commander in Chief, with confidential information about what went on and what happened in a particular situation. And as I have said, if the Administration holds to that observation and downgrades the importance of the IOB's report, if they do not say we've been vindicated by this Board, which some have sort of implied, then I think there is a right to Executive Privilege. But the minute we start to elevate the IOB in the eyes of the citizens, and claim that it is an oversight board and independent and all that sort of thing, the more that occurs, then I think the more we are justified, not just in asking for the background information, as the Chairman indicated, but the entire report as well.

With the exception of the third question in which we need to review defense documents to make our answer complete, and the sixth question in which the Administration denies us the IOB report, this Committee has answered Senator Dole's questions. But more work remains before us.

The events surrounding the Iranian arms shipments provide a case study on the applicability and completeness of current law on covert action. The Committee's job is to make sure the laws governing intelligence activities reflect American values, are clearly un-

derstood by policymakers, and are applicable to current circumstances. So I support the Chairman's plan to continue the Committee's work on this matter with a goal of a complete report to the public as soon as possible. Mister Chairman, I hope the report can be out by the middle of June.

Chairman SPECTER. Thank you. Thank you very much, Senator Kerrey.

I, too, hope that the report can be out by the middle of June, but I think that that timetable will depend upon the cooperation of the Executive branch and the availability of witnesses and how we're able to proceed through document examination. The staff has done an extraordinary job, working through thousands of pages of documents which we have not been able to get copies of, but have had to copy in many instances, worked the last weekend to prepare the report that I referred to, which was submitted to the Department of State and the Central Intelligence Agency on the 13th, a week ago today, with the revisions being made and submitted on the 15th, on last Wednesday. And as I had said earlier, I had been ensured that we would have the report by noon last Friday and now we are at Tuesday past noon and we still have not gotten the views of the Executive branch on what would be a declassified report.

The staff has gone through with great care to provide a summary of factual material which is deemed necessary in order to set the foundation as to what the Committee knows at this time, sensitive to the national security concerns and sensitive to sources and methods, and this is the carefully prepared summary of the facts as prepared by staff on what the Committee has learned to date.

The U.S. Ambassador to Croatia, Ambassador Galbraith, considered covert U.S. help to the Bosnians, by December 19, 1993, and encouraging others to propose covert actions by March 1994. And we again state that there has been no evidence that any covert actions—we do not know at this time whether any covert actions were actually undertaken.

In April 1994, Ambassador Galbraith wanted to send a more explicit signal to the Croatians that the, quote "no instructions," unquote, message he ended up delivering. Ambassador Galbraith also wanted instructions to warn Croatia against getting too close to Iran, given Iran's likely role as the major arms supplier. Ambassador Galbraith apparently received no instructions on that point.

In early May 1994, Director Woolsey asked the National Security Advisor, Lake, the Secretary of State and the Deputy Secretary, what was going on regarding U.S. policy towards arms shipment. Deputy Secretary Talbott advised Director Woolsey that Ambassador Galbraith was going beyond his instructions, but he did not tell the Director that there was a new U.S. policy.

In order to avoid any characterizations of the testimony by former DCI Director Woolsey on this important point, we are going to present the specific testimony of Mr. Woolsey, quote, "Mr. Talbott," skipping a little, "said that Ambassador Galbraith had—was of the view that the United States should show, as he put it, the amber light to such deliveries, that he had been told clearly and tartly that the Ambassador should simply say that he had no instructions and that he should not hint that he had wiggle room.

And Mr. Talbott said that the State Department would convey this message strongly again to the Ambassador."

On May 6, 1994, Deputy Secretary Talbott told Ambassador Galbraith that the Administration did not want the word to get out that the United States had given the Croats a, quote, "green or amber light," close quote, to proceed with arms shipments. Ambassador Galbraith replied that anything short of a forthright U.S. objection would be perceived by Croatia as a green light no matter how it was phrased.

In early May 1994, Mr. Lake told Ambassador Redman that no written report should be made of the no instructions policy. On May 6, Mr. Talbott told Ambassador Galbraith that he could send a cable but not until after one of the Deputy Assistant Secretaries called Galbraith back, and no such call ever came.

Also, on May 6, a Deputy Assistant Secretary of State phoned Ambassador Galbraith to reprimand him, but the reprimand was delivered in a way that invited him to disregard it, and a State Department official was quickly convinced that Ambassador Galbraith was in fact doing what Washington had instructed him to do.

A few days later, a Bosnian convoy was held up by Bosnian Croats. Given the timing of that convoy, it may well have contained arms in addition to humanitarian supplies. The Bosnians appeal to U.S. diplomats to help get the Croatian government to intercede with the Croats, while no U.S. diplomat recalls assisting in this effort, the Intelligence Oversight Board concluded that Ambassador Redman probably did so, but there is no evidence that he thought that he was aiding a possible arms convoy.

In October 1994, National Security Advisor Lake told DCI Woolsey that the United States was, quote, "standing mute," close quote, as arms went in. Here again to avoid the characterization issue, Mr. Woolsey's direct testimony is, quote "He," referring to Mr. Lake. "says it was his understanding that the United States could always stand mute and that this would not cross the line. But he believed that was all that was being done and that was well short of the line that had been defended by President Bush's veto. I," referring to Mr. Woolsey, "said fine, it may well be that this is all being done entirely properly, but it might be a good idea for the NSC lawyers to have a look at whatever is doing and ensure that everybody understands that the line cannot be crossed."

In September 1995, Croatia cut off arms shipments to Bosnia. Croatian officials have said that they then gave into U.S. pressure to resume the shipments.

On this state of the record, there are two issues which may involve affirmative action by the United States personnel. One involves aid to the convoy. The facts are incomplete on that. Another involves the release of the shipments of the three missiles in the later referred to incident.

That briefly summarizes some of the background facts necessary to have some understanding as to what the testimony will be, and we summarize them in that manner because the witnesses we have heard so far cannot appropriately be produced in the public session at this time.

Ambassador Holbrooke, would you now stand and raise your right hand to be sworn.

Do you solemnly swear that the testimony you will give before this Senate Intelligence Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ambassador HOLBROOKE, I do.

Chairman SPECTER. Thank you, Mr. Holbrooke. You may be seated.

I would like to recognize Senator Kerrey again at this point.

Vice Chairman KERREY. I have no additional comments, Mr. Chairman.

Chairman SPECTER. Mr. Holbrooke, we have—I welcome Senator Kyl who has joined the Committee.

Senator Kyl, we'd be delighted to hear from you if you have any opening comments to make.

Senator KYL. Well, Mr. Chairman, actually I have been here the whole time and would simply echo the importance of what you said and also what the Vice Chairman of the Committee said. Most of that is not anything that Ambassador Holbrooke can do anything about, but the importance of it, nonetheless, needs to be stated both on the record and continued to be conveyed to the Administration, and I appreciate that.

I would simply like to make one point to anyone who might be wondering why we are doing this. My view is that the problem with the policy encouraging Iranian arms shipments is the continuing Iranian presence in Bosnia, which has two negative implications. One, the very real threat of terrorism against U.S. and NATO troops. And two, an impediment to legitimate arming and training of Bosnian government military by appropriate nations, which of course was at least implicitly committed as a result of the Dayton Accords.

Keeping Congress informed throughout this process might have avoided these two very negative implications. I think that is why we are interested in getting to the bottom of the matter, and why again, I commend everyone to what you had to say about the necessity of getting all of this information in public.

Chairman SPECTER. Well, thank you very much, Senator Kyl, for those comments. There is no doubt that it was known publicly that Iranian arms were being shipped to Bosnia. What was not known publicly was that there had been activity by the United States government which would be perceived by the Croats as being a green light. And when this was going on, the Congress was in active debate as to what our policy should be with respect to the arms embargo, and many in the Congress, including this Senator, took the position that we ought to remove the arms embargo. And had it been a matter of declared U.S. policy, and there are obviously complications on that, arms could have been shipped to Bosnia from sources other than the Iranians. And there is no doubt that it was well known publicly that arms were going into Bosnia, Iranian arms. But what was not known was the U.S. involvement there. And had that been known, had that been a matter of our known policy, the Senate had a 50 to 50 vote on the subject. It was broken—it wasn't broken by the Vice President who voted simply present and the Senate then did not carry a motion to eliminate the arms embargo. So these are obviously very, very important questions and very sensitive questions.

Mr. Holbrooke, I join Senator Kerrey in his comments to you about the work which you did as ambassador on those extraordinarily difficult negotiations and the historic Dayton Agreement, and I, too, have been in Bosnia, have been in Tuzla, have seen what is going on. Really miraculous the way the United States can move an army half way around the world and trying to set the stage for a stable government there.

Mr. Holbrooke, if any questions are asked of you—Ambassador Holbrooke, if any questions are asked of you that you feel should not be answered in open session, just say so and we will reserve all of those for closed session. We will give you absolute discretion to make the judgment.

We have prepared this hearing a little differently from most, where at least at the outset I am going to be reading from questions prepared by the staff, which is an effort to limit the scope of the questions. There obviously will be some followups, but we want to be very sensitive to your judgment on sensitivity.

We thank you for coming and the floor is yours, Mr. Ambassador.

TESTIMONY OF HON. RICHARD HOLBROOKE, FORMER ASSISTANT SECRETARY FOR EUROPEAN AND CANADIAN AFFAIRS, DEPARTMENT OF STATE

Ambassador HOLBROOKE. Mr. Chairman, Senator Kerrey, Senator Kyl, I am delighted to be here with you this morning. As you know, as you mentioned, I was available to your Committee within 24 hours of your first call, informally, and appear before you today at your request, but with my own strong support for your investigation. I think it is very appropriate that you analyzed what the Intelligence Act means, and I am here to assist you in that.

First, a few personal comments about my own role in the situation, which is somewhat limited, and therefore you may find that some of the issues that you are looking for are ones in which I only have secondary information.

I left my post as Ambassador to Germany in September of 1994, and took up active duty as Assistant Secretary of State for European and Canadian Affairs, on or about September 20, 1994, and left that job on February 21, 1996, exactly three months ago. Therefore, what happened prior to September of 1994 are matters on which my knowledge is second hand, although I do have some and I will share with you fully.

Secondly, with your indulgence and bearing in mind what you and Senator Kerrey have said, and I thank you both for your personal comments about my own participation in the Clinton Administration's successful effort to bring the war to an end, I think it is absolutely essential as we begin this very important public hearing, that the context of the situation that existed in the spring of 1994 be set clearly before us; the consequences of the policy you're investigating be equally analyzed.

I want to stress that at the time—in the beginning of 1994, the Croats and the Moslems were engaged in a horrendous struggle with each other for control of Mostar, Donji Vakuf, and other towns where the Croat and Moslem parts of Bosnia meet. The Administration, led by Secretary Christopher, Ambassador Redman and Ambassador Galbraith, and strongly backed by President Clinton,

forged a federation between the Moslems and the Croats. As we all know, that federation is under extreme tests today, but it was an achievement in March of 1994.

Immediately after that, the Croatian government approached Ambassador Galbraith, as you have outlined, Mr. Chairman. Now, it is very important to recognize that there have been supplies to the Bosnians and the Croats, from outside sources, of which Iran was only one, prior to this situation, and that all the countries of the region, in the breakup of Yugoslavia, were getting arms, one way or another, illegally. You and your colleagues who supported Senator Dole and Senator Lieberman's amendment, were trying to rectify an imbalance. The Administration opposed the unilateral lifting of the embargo because it would have opened the door for violation of other sanctions regimes against Iraq, Iran, Libya and so on. And also because it would have torn the alliance apart.

But when President Tudjman has his conversations with Ambassador Galbraith, and the instructions he was given were roughly as you outlined it, although I will leave to the actual participants the details, I have been asked by you and others where I would have been had I been Assistant Secretary of State at that time, and I want to state clearly that the—although I would have—I might have disagreed with some tactical aspects of it—that's what bureaucracies and bureaucrats do—although I might have done it a little differently, the fundamental policy was absolutely correct, and without it, the Bosnian government would never have survived the winter of 1994-95, and we never would have gotten to Dayton. It is as simple as that.

Sarajevo was in desperate shape at that point, having barely survived its war with the Croats, and being under continual assault from the Serbs.

Now, you have talked about the fact that the main source of supply was Iran. Your comments suggest it was the only source. But a lot of other evidence suggests otherwise. I will leave it to the intelligence officials to discuss that with you in closed session. But I would simply stress that the whole world knew what was going on, it was well reported, and briefed to the Congress. A tough choice had to be made, and everyone knew that the Bosnian government—

Vice Chairman KERREY. Mr. Holbrooke, if I could interrupt you just at that point. The Congress was not—we were briefed on many things, but I want to make it clear that I do agree with much of what you have said and in fact I want to clear the record on some things that were said publicly that relate to the increase in influence of Iran. This Committee does not have evidence if there is an increase in influence of Iranian involvement today, but that Iran was fishing in troubled waters prior to the change of the policy. The Committee has been briefed, but we were not briefed on all aspects of the change in policy.

Ambassador HOLBROOKE. Let me be clear, Senator Kerrey, it is my understanding that the Congress was as aware as the Executive branch of the covert shipments, which were also reported in the papers. What Chairman Specter is discussing is whether you were briefed on the Galbraith-Tudjman conversation. That precedes my arrival on the scene. But I know that I, for example, discussed

these issues when they appeared in the press regularly when I took the job.

The issue I want to stress here, however, is not that issue. The issue is the point that Senator Kyl made, which is a very important one, about Iranian influence as a result of this policy. And I think we should start with that because it has policy consequences.

Chairman SPECTER. Ambassador Holbrooke, let me interrupt you for just another moment again. When you said you discussed these issues, are you saying that you discussed the issue of a U.S. green light to have the Croats allow Iranian arms to go to Bosnia?

Ambassador HOLBROOKE. No, I did not discuss that. That policy took place in April and I—my first contact with these Committees was in the fall and was—and did not concern that issue.

Chairman SPECTER. Thank you.

Ambassador HOLBROOKE. I want to address Senator Kyl's point and then get back to what the Congress was doing. It is a very important issue as to whether or not turning a blind eye, so to speak—you use the phrase green light, but I would not call it a green light, I would call it a policy of not having a policy—

Chairman SPECTER. Ambassador Holbrooke, let me be specific, that the green light is not my expression. That is an expression of Ambassador Galbraith, who testified that he said to Mr. Talbott that the state of the record would be perceived by President Tudjman of Croatia as a green light unless the specific contrary statement were made, and no such statement was made.

Ambassador HOLBROOKE. That is between you and other witnesses, Mr. Chairman. I am merely saying—

Chairman SPECTER. No, no, no, it's not between me and other witnesses.

Ambassador HOLBROOKE. Well, Mr. Chairman, I—

Chairman SPECTER. Now, just—now just—

Ambassador HOLBROOKE. Mr. Chairman, allow me to make my statement—

Chairman SPECTER. I will; I will.

Ambassador HOLBROOKE [continuing]. Concerning what the—

Chairman SPECTER. I am going to preside at this hearing, Ambassador Holbrooke.

Ambassador HOLBROOKE. I was responsible for the policy—

Chairman SPECTER. I am going to preside at this hearing, and when you say it is between me and other witnesses, it is not. It may be something that you are not a party to, but it is on the record. The perception of a green light is the testimony of Ambassador Galbraith.

And now you may proceed.

Ambassador HOLBROOKE. During the period I was responsible for the policy, I never used, never would use the phrase green light to describe what you are describing. What Peter Galbraith did or did not say to other people at a time prior to my coming into this job is for you to pursue. I wish simply to address the issue that Senator Kyl has raised, because that is one of the aspects of this hearing which has day to day consequences, and we are now, as we approach the mid-point of NATO's year in Bosnia, we are at a critical juncture in the implementation of the Dayton Agreements. And there's three or four key issues, and this is one of them.

Senator, we were quite aware—at least certainly I was when I returned, of the risks you cite. Policy sometimes requires you to make difficult choices. This was a difficult choice. I would have unhesitatingly have supported it had I been part of it at that time. In retrospect, I still think it was absolutely correct.

However, we were very aware of the risks you outlined, and we didn't like them. It was for that reason that in the Dayton negotiations, in Annex 1-A, we went out of our way to write an absolutely unambiguous set of statements requiring all foreign forces to leave. When we felt, in February of this year, that the Bosnian government was slow to get the Iranians out, Admiral Smith, exercising his authority under the Dayton agreements, conducted a raid against an Iranian safehouse. The best intelligence estimates are that the number of Iranians left in the country is in the very low double digits. They are not consequential at this point. And on the other hand, we are pursuing this as an enormously critical issue.

Point number two, Mr. Chairman. As you well know, because you supported it strongly, only a few months after these actions, the Congress passed an amendment to the Defense Authorization Act, the Nunn-Mitchell Amendment, which actually required the Administration to act in a way that turned—that is completely consistent with the Galbraith-Tudjman conversation. That is, under Nunn-Mitchell, no funds, personnel, or U.S. activities of any sort could be used to enforce the arms embargo.

This amendment, which I felt was a very good amendment and I am very glad you passed it, nonetheless caused enormous problems with the British and French. And you will all recall—it was a matter of public documentation at the time—how angry some of our closest allies in London and Paris and Brussels were. So I would say that basically what Galbraith did was consistent with the law as it was about to be passed.

One last point. we are discussing what happened in April 1994 and its consequences. I think that it is enormously important. But I would like to stress that we are meeting at a time when the situation on the ground in Bosnia shows that the policy as followed was correct, and what we must do now is make Dayton work.

Thank you very much, Mr. Chairman.

Chairman SPECTER. Thank you very much, Ambassador Holbrooke.

We are now going to proceed to questions, and we will use a ten minute light. And these questions, as I had suggested earlier, at least at the outset will be one prepared in advance.

In the summer of 1994, you were Assistant Secretary of State-designate. You, so I am advised, visited the Balkans in early September 1994 and met with Balkan officials in New York later that month. At the time, the U.S. government was figuring out to avoid being forced to unilaterally lift the arms embargo, or what to do if Congress forced it to take that action.

The Executive branch was also supporting the Croatian transshipment of arms to the Bosnians, whether tacitly or explicitly. On April 26 of this year, the New York Times reported that in September 1994, you discussed a plan with Bosnian President Haris Silajdzic—

Ambassador HOLBROOKE. Prime Minister, not President.

Chairman SPECTER. All right. Thank you for the correction. My information is to the contrary, but so be it.

Under which Bosnia would stop pressing the U.S. Congress to lift the arms embargo. In return, the United States would urge friendly third countries like Turkey, Pakistan and Saudi Arabia, to send heavy weapons to Bosnia.

Ambassador HOLBROOKE. No, not heavy weapons. Simply weapons.

Chairman SPECTER. We can check the news report and see.

Ambassador HOLBROOKE. I am just telling you—I am just correct—what the newspaper says is one thing; I am just trying to clarify what actually happened.

Chairman SPECTER. Well, that's fine. I am going to ask you to both do that and give a response. But it is okay with me if you interject and make a correction as we go along.

Ambassador HOLBROOKE. Is this a quote from the New York Times piece?

Chairman SPECTER. This is a staff summary of it.

Ambassador HOLBROOKE. I see; okay.

Chairman SPECTER. I want to be sure I ask this question properly. Otherwise I take my chances on asking it properly. This goes on with the staff preparation.

The story says that you, quote, "drew up a proposal to begin to pitch it hard," close quote. And we have the text of the story which we can show you if there is any need to. The New York Times story cited, quote, "White House and State Department officials." A similar story with similar sourcing appeared the same day in the Washington Post. So there is an assumption, whether founded or not, that the stories were based on an authorized disclosure of declassified information.

I am going to give you a series of questions with that background. This is not customarily my style. I like to ask them one at a time. But let me give them to you. Staff has prepared it and you can then handle them as you see fit.

First, what role—let's give Ambassador Holbrooke a copy of the questions.

What role did you play in developing any covert action plans or proposals in the summer of 1994?

Was the New York Times story an accurate account of your efforts?

Did you ever go beyond the idea of soliciting third countries to send in arms and instead talk about, quote, "doing an Afghanistan."

What did the United States do in Afghanistan? Didn't we provide arms to the Mujahadeen?

What were your objectives at the time and how would a covert action program have secured them?

What happened to any ideas you put forward?

Did you merely get a general idea for a covert action and then give up when it was rejected, or did you first make an active effort to flesh it out and discuss it with Croatian or other foreign officials who would have to go along with it.

Did you at any time tell those foreign officials or let them believe that this was a done deal, and that the United States was indeed

prepared to provide, directly or indirectly, heavy weapons and training to the Bosnian army if Bosnian President Izetbegovich would suspend for six months his demand that the UN arms embargo be lifted.

Did you ask Lieutenant General Wesley Clark or coordinate with him on Bosnian covert action ideas.

Did he have any role in fleshing out your covert action proposals or the ideas from others?

What do you know about his August 1994 trip to Bosnia?

Now, Ambassador Holbrooke, as you see, that is quite a compendium of the subject matter. And ordinarily we like to take the questions one at a time. We'd go through about one question and a half in 10 minutes. And I think the more orderly way in this unusual circumstance is to let you have all of our thinking and all of the inquiries which we have in mind and let you respond to it in your own way.

Ambassador HOLBROOKE. There are several ways I can respond, Mr. Chairman. I can take the sentence by sentence and just tell you where I—

Chairman SPECTER. Why don't you do that. If you take the sentence by sentence that would be fine.

Ambassador HOLBROOKE. Your first sentence is correct. In the summer of 94 I was Assistant Secretary-designate.

The second sentence is correct. I visited the Balkans and officials.

The third sentence is correct. It is a statement—

Chairman SPECTER. You say the first sentence is correct?

Ambassador HOLBROOKE. The first three sentences are correct. This is what you call the Holbrooke initiative.

Chairman SPECTER. Okay. Well then—excuse me. The first sentence is what role did you play in developing any—

Ambassador HOLBROOKE. I'm sorry; I was dealing with the text here, because I don't agree with the characterizations.

Chairman SPECTER. Oh. Well, no, come all the way down to the bullets.

Ambassador HOLBROOKE. Oh, all right. Okay.

Chairman SPECTER. And pick it up there.

Ambassador HOLBROOKE. Let me take then your questions.

Number one. What role did I play in developing any covert action plans or proposals in the summer of 1994.

Let me be clear on this and clear as black and white. I was—when Prime Minister Silajdzic approached us and asked if we would support his existing—and I want to stress the word existing—requests to countries for assistance to keep the government alive through the winter of 94–95, I believed that that request deserved a favorable reply, provided it did not constitute a covert action.

Now, I therefore must respectfully reject the entire concept of the question because I played no role in developing a covert action plan or proposal, nor did anyone else in the United States government in the summer of 94. I spent a considerable amount of time with experts inside the government about the law which you have up here on the screen—or both laws, the 1947 Act and the final version of the Intelligence Authorization Act and including specific at-

tention to President Bush's veto and the reasons for his veto which took on an added importance in this context.

And the parameters for the discussions of how to respond to Prime Minister Silajdzic's proposal from me in conjunction with Secretary Christopher and others were very simple. On one hand, nothing that would constitute a covert action as defined by the law. And on the other hand, nothing that would be against the law. We looked for the—we looked for the window between those two things and we discussed it.

Now, in the actual event, Mr. Chairman, nothing happened. It was decided after extensive discussions and in the wake of the passage of Nunn-Mitchell, which we knew would create a firestorm with our European allies, not to proceed favorably on Prime Minister Silajdzic's proposal.

As a result of that, we are not discussing something which didn't happen. Had it happened, would say it wouldn't have been a covert action. But we would have gone through it again and again and again. But since it was decided not to proceed, we are discussing something which never happened.

Now, in the U.S. government we have many discussions every day, just as you do on the Hill, where different people take different points of view. This was an area where we had some internal discussions.

That is my answer not only to your first question, but to much of the rest of your questions.

Was the New York Times story an accurate account of my efforts? Some of it is accurate, some of it isn't.

Chairman SPECTER. Which part is inaccurate?

Ambassador HOLBROOKE. Well, you want me to go through it sentence by sentence?

You know, I feel very uncomfortable getting involved in analyzing an article which has implications which I wouldn't use. For example, the first sentence of Elaine Sciolino's article talks about ways to circumvent the arms embargo. I wouldn't use that phrase. But it is certainly accurate that I was looking for ways to respond positively to a formal request by the Prime Minister of the government of Bosnia-Herzegovina.

Chairman SPECTER. Well, Ambassador Holbrooke, didn't in fact the—

Ambassador HOLBROOKE. The next paragraph is correct in that article.

Chairman SPECTER. Didn't in fact the policy of facilitating arms to go to Bosnia from Iran circumvent the international arms embargo.

Ambassador HOLBROOKE. Mr. Chairman, I am sorry, I am getting confused. We've been talking about something that your questions call the Holbrooke Initiative. That took place in the fall of 94, the discussion, and no such initiative ever occurred. That is what I have been answering.

You are now asking a question about events which long preceded my coming back to Washington—

Chairman SPECTER. Yes, I did—

Ambassador HOLBROOKE [continuing]. And which, as I said in my opening statement, I can only give you second hand testimony.

Chairman SPECTER. Well, I do because I think this is important where you say you are reluctant or disturbed to comment about—

Ambassador HOLBROOKE. No.

Chairman SPECTER [continuing]. Well, let me finish the question. Characterizations in the newspaper article that, quote, "Holbrooke began searching for ways to circumvent the international arms embargo against Bosnia, according to White House officials," close quote.

Now, let's leave out Ambassador Holbrooke's activity. You've already said you didn't do that and that is your answer. But wasn't the effort to send Iranian arms to Bosnia a circumvention of the international arms embargo?

Ambassador HOLBROOKE. To the extent that any country—Iran or any other country sent arms to Bosnia or Croatia or Serbia, or for that matter Slovenia or the former Yugoslav Republic of Macedonia, all of which were covered by that dreadful U.N. Security Council Resolution, which you and I both opposed, but which was supported twice in 1992 by the United States, to that extent, any arms flowing in—and they came from everywhere, was a circumvention of the U.N. Of course it was. The United States did not participate in this.

Chairman SPECTER. Well, I take that as a yes answer, and that is the only point. Would you go ahead with the balance of the article?

Ambassador HOLBROOKE. Oh, you want me to go through this article?

Chairman SPECTER. Let's not do it now.

Ambassador HOLBROOKE. It's really—it gets into a lot of nuance about what the reporter wrote, and if you compare it to the other article, which is not here, but my memory is it appeared the same day and was written by Walter Pincus, then you get in to the different nuances. I would—with great respect, I would rather just stick to your questions.

The article in the times is essentially in the right ballpark. But—

Chairman SPECTER. Ambassador Holbrooke, let me yield to Senator Kerrey now. My red light is on and what to do is cover the substance, and I want to find a way to do that substantively as opposed to any longer route, and so let's let Senator Kerrey have his turn and then Senator Kyl. We'll come back to the substantive issues.

Vice Chairman KERREY. Ambassador Holbrooke, in the beginning you started to do something and I think I may have actually been the one that interrupted you and lost your train of thought there and went on to something else. But I would like, if you could, you were designated Assistant Secretary of State for European Affairs in the summer, I believe, last summer, and then because, I think you said, the 22nd of September.

Could you, relatively briefly in my ten minutes here, give us the context. What were the conditions of the Muslim forces at that time?

Ambassador HOLBROOKE. They were in desperate shape. They had survived the winters of 92-93 and 93-94. If you go back and

read your own testimony in hearings at that time, you'll see that no one thought they would survive two winters, let alone three.

I was, frankly, nearly desperate with a concern they might not make it through a third winter. And that was the context of all of the policy prior to the moment at which the United States was able to change the ground rules and force two things simultaneously, an all out diplomatic effort and NATO bombing. And that didn't happen until August of 95. So you are talking about an 11 or 12 month period in which no—in which the Intelligence Community didn't think the government was going to survive, and they did. And it is only because of that that we have a fragile peace on the ground today, which didn't involve the annihilation, the near genocide of the Bosnian Moslem population.

Vice Chairman KERREY. It's fair, it seems to me, the other context was there was a lot of pressure coming from Congress to—to lift, and as you reference the amendment by Senator Nunn and Mitchell in the Defense Authorization Bill, I want to make it clear that the fact the Washington Times talks about a wink, that there were discussions in the press were aware as well as a consequence of our having changed the law to say that we're not going to enforce an embargo, that doesn't mean that we were informed, that the Committee was informed of a change in policy which is what I would like to get to in my questioning.

When President Bush vetoed the State Authorization Bill in 1990, it was for 1991, I believe, that he was doing the vetoing—he did it because, he said at the time, that to classify traditional diplomatic activities as covert would send some—I think the words were chilling—have a chilling effect on our diplomatic efforts, our capability of carrying out diplomatic missions. did you agree with President Bush's veto? Do you think that was sound?

Ambassador HOLBROOKE. Yes, I—I did not really go into the legislative history in detail until I came back as Assistant Secretary, and when I sat down with the officials who had worked on this and indeed had drafted that veto message, I was frankly very impressed. I believe that President Bush's former duty as Director of Central Intelligence and his extensive foreign policy experience had made him sensitive to a critical issue here, and I think we all owe President Bush a debt of gratitude for vetoing it and requiring a colloquy with the Hill which produced the right outcome.

The—had the bill gone through in its original form, almost any confidential discussion between governments might have been interpreted at some future date as constituting covert action. So I am very glad he vetoed it.

I would also like to stress that we are talking about two different issues, Senator Kerrey. One is did action X—say the Galbraith-Tudjman conversation—constitute a covert action under the definition of the law. And the second is if the answer to question one is no, as I absolutely believe it to be, were you informed of it in the routine way we brief the Hill. And the answer to that also appears to be no.

But I think it is very important for purposes of what Chairman Specter said is the purpose of this hearing to distinguish between two issues—what the law requires, and normal consultative processes.

Vice Chairman KERREY. Let me open up that because I am not sure I agree with you on the first one, where you say absolutely no. But I emphasize I am not sure. I have reached no conclusion myself. And I think again the idea here is not just to find fault and discover mistakes, but to find ways to prevent similar mistakes, and Congress may have made some as well. Perhaps the language of the amendment should have been more explicit that in lifting the embargo we did not want weapons to come from Iran. Maybe Congress should have done something differently in 1994.

But my own beliefs is that we moved way—again, I am not sure it classified as a covert and deserved a Finding, but I think we had moved—my—we appear to move away from traditional diplomatic activity when the diplomacy involves a nation against which we have US law—that is, you know, our statues dealing with Iran. We have United Nations sanctions. And we have an international agreement as well dealing with Iran.

I mean, we have got, it seems to me, a situation here with Iran that at least causes us to ask the question, is this a traditional diplomatic activity. This is hardly the kind of thing it seems to me to classify something that we want to do on a regular basis.

Ambassador HOLBROOKE. I certainly agree with that last comment, Senator, and I also think that one of the benefits of these hearings, if they are conducted the way I know you and Senator Spector and your colleagues are conducting them, will be so that in the future everyone on both sides of Pennsylvania Avenue are more sensitive to this kind of issue.

But I want to go back to your comment. No—under the law, as I understand it, this was not a covert action and cannot be deemed a covert action because: A, no American personnel were involved: B, no U.S. funds, no U.S. advice, no U.S. participation, no U.S. oversight. The entire American involvement was a diplomatic exchange between an Ambassador in the country to which he was accredited in which the Ambassador said he has no instructions. I think that was exactly appropriate to the circumstances.

And it did not involve the Intelligence Community precisely because to involve the Intelligence Community would have had a presumption that there was something covert about it and here the distinction between covert and normal confidential diplomatic action, the very distinction President Bush focused on, is very relevant.

Vice Chairman KERREY. But—Congress sits—you know, we'll read newspapers, watch the news accounts, try to figure out what's going on out there, and certainly you don't want us reaching a conclusion every time we pick up the newspaper or hear a news account of something that something terrible is going on, a knee jerk—particularly when it's a foreign policy question. And the reason for delivering information to this Committee and its counterpart in the House is so that Members of Congress have the precise information upon which to make policy judgments. And I would ask you, again, without—I am not trying to point a finger, I am not trying to say—I am just saying in the future, don't you think if you've got a situation where Congress is debating whether or not to lift the embargo, and you know that the impact in 1994 was rather dramatic—in late 1994, early 1995, was difficult for our allies, and

we know that our allies was saying, you know, if you guys lift the embargo, we're going to get out of here. The British and the French were saying, we're the ones—we've got our people dying over here, you don't have anybody dying over here yet, we're ready to pull the plug and get out of here. If you guys want to have a vote and lift the embargo, that's fine with us, but just give us a little bit of warning so we can, you know, clear our people out of harms way if that's the case.

So we know, you know, that in the Congressional debate, those of us who voted the other way were expressing that concern. And the purpose of delivering information to Congress, as was done repeatedly throughout the deliberations of the Gulf War is so that we can make, you know, a good run at making an informed decision. So the question is, do you think in retrospect that at least delivering that information, saying look, we are attempting to get this job done, we are attempting to try to get arms through. We know that the Bosnian Muslims are in a very precarious position here. We know you're seeing the footage and you're seeing the pictures and you're watching what's going on in places that are causing you to react and we're reacting as well, and here's what we're doing. Don't you think it would have provided a more informed debate to have that information delivered to the Congressional leadership?

Ambassador HOLBROOKE. Mr.—Senator Kerrey, I first testified before Congress over 19 years ago. I consider an official of the Executive branch who has been confirmed by the Senate to have an obligation also to the people who confirm him and to the taxpayers of the United States. I have steadily and consistently for 19 years never withheld information when it was asked for by the Congress. I answer you in that context because the issue you are addressing preceded my watch. But I can assured you, and you and I have worked together long enough so you know this is not just rhetoric, that I believe that the Congress should have and I know the Congress can handle classified material without leaks when it is so marked sensitive, I believe the Congress should be informed of those things that the Executive branch are doing on a timely basis. I still, however, and I hope you will forgive me for repeating this point, but it's terribly important to me, I still, however, want to make a distinction between that generic point and what constitutes a covert action under the law. And in that regard, there never was a covert action, we never considered one, not prior to my arrival in this job nor during it.

Vice Chairman KERREY. Well, let me just close out here and then I'll pick it up again in the second round. I mean, I personally—whether—and again, I am not reaching a conclusion myself as to whether or not the action justified a Finding, a written Finding and a covert operation accordingly. But I do think in good faith that the debate on the Hill would have been much different had Congressional leadership been pulled in and said, look, here's what's going on over here. You need to know it. It's a very ticklish and difficult situation for us. Here are the risks. We understand what the risks are. We think that we can get this job done if you'll support us in executing this policy. I mean, that is what happens—generally speaking, that is what a Finding is supposed to accomplish. And even where a Finding isn't present—I mean, the Bush

Administration didn't file a Finding when they came to Congress and provided information leading up to the Gulf War that wasn't asked for. They didn't wait for Congress to ask a question. They came up and said we need to provide you with information about what is going on that might make it easier and more likely that you'll make a good decision.

Chairman SPECTER. Thank you very much, Senator Kerrey.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. I am going to move away from the issue of covert action per se for a moment, back to the policy question which I raised in my opening statement.

You've testified eloquently to the need for arms and training during the winter of 1994-1995. Do you think it was a good thing that the Iranians supplied those arms and provided training for the Bosnian military?

Ambassador HOLBROOKE. Two part answer, Senator. First of all, it wasn't just the Iranians.

Senator KYL. No, I understand that. I am saying though, to the extent it was the Iranians, do you think their participation—

Ambassador HOLBROOKE. Is the least bad of a lot of lousy choices. When the patient is on life support systems, you make sure that the oxygen gets through to the patient first. Then you worry about the source of the oxygen. That was the whole core of the negotiation in Dayton and it was the core of the Nunn-Mitchell amendment, and finally, it has been a major part of our policy from the moment we were able to get that horrendous arms embargo reversed in the UN which took place right after Dayton.

Senator KYL. The fact of that, you emphasized the importance of Annex 1-A to the Dayton Accords, suggest to me that the Administration did consider the Iranian arms shipments to be a problem.

Ambassador HOLBROOKE. Of course.

Senator KYL. So the Administration was aware during the time that we are speaking of here, that the Iranians were among the countries shipping arms and providing training of the Bosnian military?

Ambassador HOLBROOKE. The whole world was aware. It was on the front page of every major newspaper in the world.

But I would go further, Senator. It was one of my highest concerns that in bringing the fighting to an end in Bosnia, which the Administration did in three pieces, from September through the end of Dayton, that we not lay the basis for a future influence in the Balkans and southeastern Europe of the Iranians. And therefore, we have made it a major policy goal in the period since Dayton. The interior minister has been removed. Other officials have been removed. There was that raid that Admiral Smith conducted which I mentioned earlier. The numbers have dramatically dropped. I would refer you, in closed session, to the Intelligence Community for the specifics. We knew what a problem this was.

But I repeat, policy sometimes offers you only lousy choices. And we took the least lousy choice and I believe that the outcome more than justified the decision.

Senator KYL. That argument, of course, was given by Lieutenant Colonel North and others in the other matter involving Iranian arms.

Ambassador HOLBROOKE. But they violated the law. We operated strictly within it.

Senator KYL. Well, there is still this fine line between the end justifying the means that will always cause trouble when everyone is not fully informed and participating in the decisionmaking process.

Let me ask you if you would agree with this. That to the extent—and the question is specifically qualified by the term to the extent—that Iranians in Bosnia posed a threat to U.S. and NATO troops, and to the extent that the Iranian presence inhibited the arming and training of the Bosnian military by responsible nations—just use that phrase—that the Iranian weapons were more of a problem than a benefit?

Ambassador HOLBROOKE. No. I honestly cannot share that conclusion because I think that the military record—and again, I would ask you to have a detailed time line discussion with the Intelligence Community in this, the record will show that the decisions of April 94 resulted in the survival of the Bosnians through the winter of 94–95, and into the summer, and nobody—a year ago today, sitting in this room and other rooms like it—nobody thought that the Bosnians would survive much longer and nobody thought we would ever forge a peace. This was a component of the policy which got us there. It wasn't the nicest part of the policy. But policy, as I keep stressing, throws up very difficult choices.

I will defend this policy in its macro sense, even though I don't agree with every detail the way it was conducted, nor do my colleagues. This was bitterly debated inside the Executive branch. It was a tough call. But thank God it was made.

Senator KYL. I appreciate your professional judgment and obviously reasonable people can differ. But what you are saying then is notwithstanding the considerable threat that was understood by the United States government to the U.S. and NATO troops, and notwithstanding the difficulties which you acknowledged in the work that you did in Dayton in providing arms and training to the Bosnian military by the so-called responsible nations, notwithstanding those two concerns posed as a result of the Iranian involvement in providing arms and training, that the benefits of their involvement outweighed the two detriments that I mentioned.

Ambassador HOLBROOKE. Very substantially.

You know, Senator, if I could be permitted what may seem at first a very long historical reach, as we negotiated—

Senator KYL. No too long, because I have one more question, but go ahead.

Ambassador HOLBROOKE. Okay.

As we negotiated we often thought of historical analogies. The one that came to mind here was Winston Churchill's famous comments about why Britain made common cause with Stalin against Hitler. I don't want to put this up into the era—the level of the same level of history. But it was a legitimate decision for Churchill and he knew full well the consequences. Here at a much smaller scale, this was done. And as soon as—as soon as the cease fire was in place, as soon as we got to Dayton, we dealt with it. And it has been dealt with. What I am really saying, Senator, is we share the concern behind your questions. We were aware of it, we dealt with it. I am

sorry we hadn't had these colloquies a year ago, because I think you would have seen how sensitive we were to that.

Senator KYL. My final point is I, too, was in Tuzla and in Sarajevo and I think I was there on the day 45 mark or day 44, really, the day before the removal of some of the Serb elements from Sarajevo itself. That was before the raid on the ski resort which you mentioned. And you would acknowledge, would you not, that at least at that time there was a considerable concern about the numbers which were orders of magnitude—an order—at least an order of magnitude greater than you testified is the situation today—

Ambassador HOLBROOKE. Yes.

Senator KYL [continuing]. Of the Iranian presence. And that there was a significant concern, at least at that time, about the threat to the United States troops as a result.

Ambassador HOLBROOKE. You were there about the second week in February, is that about right?

Senator KYL. That's correct.

Ambassador HOLBROOKE. Okay, the same time as Secretary Christopher and myself. Yes—

Senator KYL. Just after.

Ambassador HOLBROOKE. On that trip, which I made with Secretary Christopher, Warren Christopher's number one issue on that trip was this issue. And we—and when the actions were not taken, the raid took place within seven, eight days. And there have been changes in personnel in Bosnia.

Senator KYL. So these concerns were very real and—

Ambassador HOLBROOKE. Absolutely.

Senator KYL [continuing]. Of great concern to American officials at that time?

Ambassador HOLBROOKE. Absolutely.

And let me say, on a personal note, there is no one in the US government more sensitive to the Iranian issue than my colleague over two Administrations, and boss, Warren Christopher, for reasons you all are aware of. He feels passionately on this issue.

Senator KYL. Well, I will just summarize by noting again that your professional judgment on this is an important contribution to the information that this Committee will obtain. It would have been, I think we all agree, better had that judgment been presented at the time that we were engaged in the debate here in Congress on whether or not the United States should take a position publicly opposing the lifting of the embargo. Because at that time there was a lot of concern about who was supplying the arms. And those of us who were taking the position contrary to the Clinton Administration position that it ought to be lifted, were concerned about who was providing the arms. And we had hoped that they would be provided by more responsible nations, and that the risks—that we have agreed existed here—although we disagree about the relative importance of those risks—could have been avoided had more responsible nations than the Iranians been providing the arms.

Ambassador HOLBROOKE. More responsible nations than the Iranians were also doing things.

Senator KYL. Yes. No. And we all understand that point, that it would be better if the Iranians had not been in the mix of nations providing the arms.

Ambassador HOLBROOKE. Senator—Senator—Mr. Chairman, just permit me to respond in the same spirit of an honest exchange with Senator Kyl.

Chairman SPECTER. Go ahead. Take your time, Ambassador Holbrooke.

Ambassador HOLBROOKE. I completely share the point that you have brought to the table here. But—and I do not know at this moment, and I apologize for this—whether you voted for Nunn-Mitchell or not. But if you did, let me be clear, that under Nunn-Mitchell, you and your colleagues did not distinguish between sources for the arms. You simply instructed the Pentagon not to allow any military personnel or resources or funds to be used to enforce the embargo.

Let's just put this to test. That meant, in theory, that if a ship with a big sign on it saying Arms For Bosnia, were to have come up the Adriatic, the British or French could have intercepted it, but we not only couldn't have intercepted it, but in a famous argument, which you will all recall, we couldn't even give the intelligence to our NATO allies and if that ship had a flag, whether it was Iranian or X or Y or Z, you had instructed the Pentagon not to intercede.

I am not criticizing you for this. I think it was the right vote on Nunn-Mitchell. I only wish to share—to make clear to you that leaving aside the semi-famous Tudjman-Galbraith conversation, we have here an instruction from your body, only a few months later, instructing us not to distinguish between sources. And yet, Warren Christopher and myself, and particularly Warren Christopher because of his background, really cared about it, we knew how serious it was. We didn't like it. And the minute we could, we tried to deal with it. I believe successfully.

Senator KYL. Mr. Chairman, if I could just respond so that it is clear to the Ambassador, I entered the Senate in January—

Chairman SPECTER. Senator Kyl, go ahead and take whatever time you need.

Senator KYL. No, I just want to make it clear so the Ambassador will know, I entered the Senate in January of last year and—

Ambassador HOLBROOKE. So you're—

Senator KYL. And so your use of the phrase, you, I know was meant to refer generally to the body, not to me personally. But I would make the point that there is a distinction between using US dollars to enforce an embargo on the one hand and conveying a policy of hands off, green light, amber light, however one wants to characterize it, on the other, a policy which clearly did not distinguish between the nations that were providing the arms and you yourself have said that notwithstanding the difficulties of the Iranian provided arms, the net result in your view was still beneficial—

Ambassador HOLBROOKE. Absolutely.

Senator KYL. So we may just have a disagreement about—

Ambassador HOLBROOKE. No, I don't think we are disagreeing, Senator. But I do want to stick—I apologize for embracing you in the vote which preceded your tenure as Senator. But any Senator

who voted for Nunn-Mitchell, was voting for a policy without distinction as to sourcing. That is the only point—

Vice Chairman KERREY. Do you believe that?

Ambassador HOLBROOKE. Of course.

Vice Chairman KERREY. Do you believe the Administration said, gee, now we can use Cuban arms, we can use Iranian arms, there is no distinction there?

Ambassador HOLBROOKE. Senator, with all due respect, the law was airtight and unambiguous and we and the Pentagon spent an enormous—

Vice Chairman KERREY. Mr. Ambassador, with all due respect, we have passed laws that are airtight and definitive in the past, and Administrations ignore. So please don't pick one selectively and say that gee, now Congress is—

Ambassador HOLBROOKE. I am really not, Senator. I am only pointing out that the Nunn-Mitchell Amendment was very clear and your body, the Armed Services Committee to be specific, insisted that the Pentagon come up and brief in detail on exactly how it was going to be implemented. And these briefings, which were extremely difficult, resulted in a tightening, at Congressional urging, of any possible loop holes. The intelligence point I mentioned earlier. The initial interpretation, the Pentagon felt that under NATO rules they ought to keep sharing intelligence. The Congress said that is not what we meant. I am only telling you what happened here. I don't want to make a big—a big debating point.

Vice Chairman KERREY. Well, you are making a big debating point when you turn to me—I voted for Nunn-Mitchell.

Ambassador HOLBROOKE. And I think you made the right vote.

Vice Chairman KERREY. And I don't believe that that law—I don't believe that Congress needs to explicitly say, except for those nations where we have an international embargo, except for those nations where we have UN sanctions, except for those nations where US law prohibits. Do we need to do that? Do we need to say—

Ambassador HOLBROOKE. Senator, I—first of all, I stress—

Vice Chairman KERREY. Should Congress have, with Nunn-Mitchell, if they wanted to exclude nations where we had other laws saying we are not to deal with these nations, as a consequence of our concern with terrorism, should Congress explicitly have put, in the Nunn-Mitchell language, did Senators Nunn and Mitchell make a mistake in not putting explicit language in there prohibiting it?

Ambassador HOLBROOKE. I don't think you made a mistake. I think Nunn-Mitchell was a very creative solution to a horrendous problem. But the distinction was understood by the drafters. The drafters of that knew that they were prohibiting interdiction of sources which included Iran. Everyone knew that, Senator. And I, as a strong supporter of the vote, and very appreciative of your own role, I assumed that everyone knew what Nunn-Mitchell meant. The Pentagon certainly knew what they were being told to do. This is an issue on which I would urge, if you want to pursue it, it's a little off where we started, talk to the people who had to figure out what Nunn-Mitchell meant.

My only point here is that you are discussing April—Tudjman-Galbraith—by November the Congress had put the Administration under a law which the Administration did not object to, which made in effect the no position—

Vice Chairman KERREY. As a consequence of the Administration not coming to Congress and informing the leadership of what was going on. Were Senator Nunn and Mitchell informed that Ambassador Holbrooke and the Administration had changed its policy? The answer is no.

Ambassador HOLBROOKE. I don't believe I changed policy. You're talking about April 94, I wasn't around.

Vice Chairman KERREY. Well, I appreciate that. But the Administration is the Administration. The Administration did not inform Congress of a change in policy.

Ambassador HOLBROOKE. I have to defer to other people in what preceded my arrival, but I don't feel that Nunn-Mitchell was a mistake. I feel it was an essential component of the success that led to Dayton.

Vice Chairman KERREY. But Nunn-Mitchell was a piece of legislation that was enacted by the Congress with an insufficient amount of information from the Administration. The Administration was not bringing to Congress the information—the full information. And it's not—it's not accurate, Mr. Ambassador, to say that as long as the Washington Times carries a story about it, the New York Times carries a story about it, that the whole world knew about it. And certainly it is not accurate to say that Congress was informed as a consequence of that reporting.

Chairman SPECTER. Ambassador Holbrooke, coming back to the discussion as to the line of questioning that I was asking at the end of the last round, the New York Times story which cites State Department and White House sources says that, quote, "He," referring to you, "was already aware that Mr. Clinton had already sent a message to Croatia through the American Ambassador, Peter Galbraith, that the United States would do nothing to stop them from transshipping arms to Bosnia in violation of the arms embargo," close quote.

Is that correct?

Ambassador HOLBROOKE. I'm sorry, this is in the—

Chairman SPECTER. It's on the third column over right at the top starting, quote, "He," referring to you, "was aware, etc."

Ambassador HOLBROOKE. Yes, that is correct.

Ambassador Galbraith briefed me on the events of April 94 when I visited Zagreb in September of 94. So that sentence is essentially correct.

Chairman SPECTER. The third sentence in the story says, quote, "With the approval of his superiors," referring to you as his, "his superiors, he drew up a proposal and began to pitch it hard, White House and State Department officials said."

Is that correct?

Ambassador HOLBROOKE. Well, pitch it hard is a journalistic phrase. I am not going to say I pitched it hard unless, you know, I can throw a softball or a change-up, too.

I—I—what happened was very clear. Prime Minister Silajdzic talked to us in the U.N. General Assembly in New York and asked

us to support his existing—and I stress that word existing—requests to other countries other than Iran. It seemed to me to be a pretty good idea, consistent with the previous policy, but defusing the Iran component.

He also—he also discussed it with other members of the Administration.

Chairman SPECTER. Whom did he discuss it with?

Ambassador HOLBROOKE. He discussed it with, for sure, Secretary Christopher, and White House officials, possibly Ambassador Albright, certainly Ambassador Galbraith and Ambassador Jackovich, who was then our ambassador to Bosnia. And I felt it was worth an affirmative response, so I began to staff it out with my deputy, Robert Fraser and other people. And as you know, it was decided not to proceed.

Chairman SPECTER. When it says that you had the approval of your superiors, whom did you have the approval of?

Ambassador HOLBROOKE. I don't know what the approval of my superior means. My job was to staff out this proposal and my involvement in this was fully discussed with my colleagues on the seventh floor. You know, we're talking about something here that was turned down. I have always felt that internal discussions among colleagues need to have a degree of confidentiality, and I would like to maintain that—that veil, but in this case I can certainly say that everything I did was discussed in detail with Secretary Christopher, who was fully supportive of the process and ultimately concluded it was not desirable to proceed. And I respect that, respected it then, and respect it now.

Chairman SPECTER. And were there other countries involved in the—

Ambassador HOLBROOKE. We never—that's a very important point, I am glad you raised it, Mr. Chairman.

Chairman SPECTER. Let me just finish the question.

Ambassador HOLBROOKE. Yes, sir.

Chairman SPECTER. Were there other countries involved in the proposal to send arms to Bosnia?

Ambassador HOLBROOKE. Prime Minister Silajdzic had other countries in mind. The key question was whether we would approach them, and the answer is we never did. Never; not once; never.

Chairman SPECTER. Did Prime Minister Silajdzic specify which countries he wanted to approach?

Ambassador HOLBROOKE. Yes, he did.

Chairman SPECTER. Would you mind specifying those?

Ambassador HOLBROOKE. You know, since we are talking about a process that did not bear fruition, we are talking about a non-policy, I think it would be best if I submitted that to you in closed session.

Chairman SPECTER. That would be fine. If you choose to do that, that would be fine.

Ambassador HOLBROOKE. Although for better or worse, there is a certain amount of speculation which is not entirely inaccurate. But I think it is better to keep a veil here.

Chairman SPECTER. We would respect that request.

Ambassador HOLBROOKE. Thank you.

Chairman SPECTER. On the second column of the story, the third full paragraph, "Among other things, they want to know if any Administration official facilitated third-country arms shipments or even urge governments to send arms to Bosnia, charges the Administration denies."

Taking the phrase, facilitating third-country arms shipments, would you agree that what was done by Ambassador Galbraith with President Tudjman constituted facilitating an arms shipments?

Ambassador HOLBROOKE. No. That is for you to characterize. I would never use that word to describe the Galbraith-Tudjman conversion. Nor did we urge governments to send arms to Bosnia—the second part of the sentence.

That is specifically what Prime Minister Silajdzic asked us to do, and specifically what it was decided we would not do.

Chairman SPECTER. Do you think that would have constituted covert action?

Ambassador HOLBROOKE. No, sir, I do not. But since it didn't happen, we are talking about something that didn't happen and had it—had there been—had it proceeded, there would have been further discussions on that point.

Chairman SPECTER. Referring now to the question, the final one on the sheet that I gave you, did you ask Lieutenant General Wesley Clark or coordinate with him on Bosnian covert ideas? Or let's rephrase that. What contacts, if any, did you have with General Clark on this subject?

Ambassador HOLBROOKE. Well, first of all, a general point. General Clark was my closest colleague on the negotiating team, the only other survivor of the crash on Mt. Egmon. He was privy to everything that we did. However, the August 1994 trip is—precedes my return to this job and I have absolutely no memory of it, as you ask me about it. I don't—I certainly wasn't involved in it. I don't ever remember discussing with them. I don't know what that's about.

But from the point that we began to work together, it was the closest—it was the closest JCS-State Department collaboration that I have been involved in in 34 years in and out of the government. But this particular trip, I honestly don't know what it's about. I was still Ambassador to Germany. And the Senate Foreign Relations Committee was very clear that as Ambassador to Germany, I should not get involved in anything to do with my next job until I was confirmed. I was—I don't even—I didn't even know about this trip until you mentioned it.

Chairman SPECTER. The Foreign Relations Committee was emphatic on that. Was the State Department equally emphatic?

Ambassador HOLBROOKE. About what?

Chairman SPECTER. About not being involved on anything about your next job?

Ambassador HOLBROOKE. Yes; absolutely.

The only thing I did prior to confirmation—with the permission of the Committee—as Ambassador to Germany, was make a fact finding trip but taking no positions, on Labor Day weekend of 1994, in order to facilitate a fast start. And that was pre-cleared with the Committee. The Assistant Secretary-designate, Barbara

Larkin, was involved in clearing that trip, and that was it. And we were very, very rigorous on that.

Chairman SPECTER. Ambassador Holbrooke, reverting now to the next question prepared by staff, in the fall of 1994, according to the Los Angeles Times story of April 26, 1996, you, quote, "sought a legal opinion from the State Department attorneys to determine how far US diplomats could go legally," "could legally go to encourage the development of an alternative to the Iranian arms pipeline," close quote.

Ambassador HOLBROOKE. That's exactly correct. That is precisely phrased the way I would want to phrase it.

Chairman SPECTER. Do you have any—

Ambassador HOLBROOKE. And the key word here is, could legally go to encourage.

Chairman SPECTER. When you made that contact, did you give them the facts or did you give them a hypothetical on some other country?

Ambassador HOLBROOKE. Hypothetical.

Chairman SPECTER. If you were—

Ambassador HOLBROOKE. May I explain that, sir?

I have them a hypothetical because—Secretary Christopher and I discussed this. We both said we want to know much, much more about the law here, and we sought out the best people involved in this in the Executive branch, and we decided we would cut the salami in two pieces. In phase one, we would just get the legal opinion, and then if we decided to proceed, we would talk about the specifics.

Chairman SPECTER. I am going to proceed for a little longer, notwithstanding the red light. Just Senator Kerrey and I are here—if I have your acquiescence?

Vice Chairman KERREY. You do.

Chairman SPECTER. Ambassador Holbrooke, when a legal opinion is sought, for it to have any validity as a justification for a course of conduct by a client, the facts have to be precise, and they have to be accurate. If you do not share with your lawyer the specifics accurately, the advice you get is not a defense. It may not be a total defense in any event. But if the specifics are given to a lawyer in good faith and the lawyer then gives you a legal opinion, that may present a defense for the conduct of the client.

Now, the legal opinion which was rendered, and I want to come to that, starts off in the preamble saying—well, I won't—well, it starts off saying, quote, "In preparing this general summary, we have not analyzed any particular proposal or actions to determine whether or not it may require such a Finding." And it concludes with the comment, "In light of these requirements, it is particularly important that any specific proposal for action be analyzed on a case by case basis, in accordance with normal department procedures," close quote.

Now, did your State Department lawyers tell you that if you gave them a hypothetical that you couldn't rely on their advice?

Ambassador HOLBROOKE. As I said, in answer to your previous question, Senator, we had decided to cut this salami in two pieces. We would first get a generic statement about the law, and that is the document you are quoting from. And—

Chairman SPECTER. Well, did you—

Ambassador HOLBROOKE [continuing]. Very mindful of the last sentence in that document, we had all agreed that if we decided to proceed to the next level of considering Prime Minister Silajdzic's request, we would then bring the lawyers in and tell them what the situation was. However, based on that document and other factors, including the effect of Nunn-Mitchell, we decided not to proceed. Therefore, we did not need to get the second opinion.

Chairman SPECTER. Well, you just may have made an historic distinction. We have known for a long time the analogy between sausage and the way legislation is prepared. And now you may have given us an historic analogy to the way State Department legal opinions are prepared, like salami.

[General laughter.]

Chairman SPECTER. And my question you didn't really answer—

Ambassador HOLBROOKE. As long as it isn't bologna.

Chairman SPECTER. You said you were slicing the salami into two pieces and my question to you in your verbiage was: Did you tell the State Department that you were slicing the salami into two pieces and were giving only a hypothetical?

Ambassador HOLBROOKE. They knew exactly. The people—Mr. Chairman, the people who wrote that memo knew—and that is why they wrote the last sentence which you quoted—that if we proceeded to the next level, which was to actually consider doing it, we would bring them in, tell them exactly what was involved, and ask them again. But I stress, it was decided not to proceed. Therefore, the project, which you have called here the Holbrooke Initiative, the project was stillborn.

Chairman SPECTER. All right.

Now you have told me that the State Department lawyers knew that you were slicing the salami in two parts and giving only a hypothetical.

Ambassador HOLBROOKE. Sure.

Chairman SPECTER. But my question to you was did you tell them that you were giving them a hypothetical?

Ambassador HOLBROOKE. I told—I told the lawyers in question that we needed a clear discussion of what the Intelligence Act meant in regard to what constituted a Finding on one hand, and what constituted illegal action on the other, so that we didn't blunder. And that I was going to give them a set of hypotheticals and then—

Chairman SPECTER. So the answer is yes.

Ambassador HOLBROOKE. And then at a future date, if we proceeded, we would bring them back in. That, it seems to me, is an entirely appropriate way to receive legal advice. And the Secretary of State himself is a world renowned international lawyer and he and I discussed this at length.

We didn't proceed to the next step because we decided not to proceed with the initiative.

Chairman SPECTER. Ambassador Holbrooke, all I was trying to find out was whether you told your lawyers you were giving them a hypothetical, and you have now said yes. So that is what I was seeking to determine.

Ambassador HOLBROOKE. When you say hypothetical, can you clarify? You're a lawyer and I am not. I just want to be clear on what it is that I—

Chairman SPECTER. Sure, I can, but I don't think you have to be a lawyer to know what a hypothetical situation is. It means that you tell your lawyers a set of facts which are not the true and correct facts that you seek to operate under.

Ambassador HOLBROOKE. Oh, I see. I understand.

Chairman SPECTER. You might say to your lawyer, give me a general statement about what the law is on covert actions, and your lawyer would give you a statement very much like a treatise. But if you say to your lawyer, this is a set of facts that I am concerned about, and if you are going to rely on your lawyer's legal opinion, his judgment as to what is lawful or not, then you must give him the precise facts honestly and accurately. If you, on the other hand, say well, my situation is and proceed to tell him something which it is not—and I think a lawyer would respond differently to saying this is what I need advice on, Mr. Lawyer, as opposed to this is a—I am giving you the facts but they aren't the facts.

Ambassador HOLBROOKE. Thank you for the clarification. I now understand the question and I know exactly what the correct response is in terms of my actions.

I had not been in the government when this law was passed. I needed to be educated on it anyway. I gave the people who drafted that memo about six, what you call hypotheticals, ranging from massive action to no action, and asked them to—again, the salami metaphor—and asked them to define which are clearly covert, which are clearly illegal, which are in the grey area. That memo you are talking about is a response to that point. I never specified that we were talking about Bosnia. I never specified that we were talking about specific countries.

We did however, from that memo, learn exactly what we understood the law to mean, because we talked—the people we talked to were the people that drafted President Bush's veto message.

I hope that responds to your question.

Chairman SPECTER. I am not going to ask you for them now. Senator Kerrey has to leave and wants to make a closing statement, but could you provide us with the six hypotheticals that you asked the State Department—asked the State Department lawyers?

Ambassador HOLBROOKE. I can try to do it from memory. I don't have any notes on it now, but I think I can pretty well reconstruct it, or those five or six.

Chairman SPECTER. All right. I will ask you that when Senator Kerrey concludes.

Vice Chairman. KERREY. Thank you, Mr. Chairman.

I just, before I left I wanted to thank Ambassador Holbrooke for your prompt testimony and for your exemplary service prior to the unwise decision to go back to the private sector. There is no question that U.S. leadership and involvement has dramatically changed, in a positive fashion, the situation on the ground in Bosnia, and in no small part as a consequence of your bull headedness and doggedness in executing the policy.

I do, though, continue to be concerned about the lack of informed information being delivered to Congress and Congressional leadership, and will follow up on Nunn-Mitchell to discover what kind of information they had about this amendment and what it meant or what they were carrying as far as their understanding of what the Administration was doing at that time.

And specifically, you said, quote, "Ambassador Galbraith basically acted consistent with the laws that were about to be passed," end quote, back in late March 1994. And——

Ambassador HOLBROOKE. April, I think.

Vice Chairman. KERREY. Well, April 1994. And you know, which opens up a question, was he alert to—was he basically acting—I mean, it's an unusual thing where it seems to me for a State Department official to be doing, to be saying, gee, I think Congress is going to do this anyway, so we'll act in anticipation of Congress passing a law.

Ambassador HOLBROOKE. Senator, if I left you with the impression that his actions or his instructions were anticipation of Nunn-Mitchell, I think I would have mislead you, because——

Vice Chairman. KERREY. Your precise quote was—it'll be in the record, so if you want it you need to change it—your quote was, quote, "basically consistent with the laws that were about to be passed."

Ambassador HOLBROOKE. Yes, but not taken in anticipation of those laws. I have to defer to Barbara Larkin and others on this because they were here and I don't know what the legislative history of Nunn-Mitchell is. But I don't believe it was in the minds of Peter Galbraith or the people who gave him his guidance in April. And if I left that impression, I wish to clarify it.

What I meant to say was that what Galbraith did in April, under instructions—which is to say I have no instructions—turned out to be consistent with Nunn-Mitchell. I believe the date of Nunn-Mitchell, however, it doesn't come up til about July—if I can just ask Barbara.

[Pause.]

Ambassador HOLBROOKE. June. So I don't mean to mislead you on that.

Vice Chairman KERREY. It was June but the effective date was not until November.

Ambassador HOLBROOKE. It took effect in November, but it was clearly the law the Administration was—the amendment the Administration was going to support in contradistinction to the Dole Amendment, from the early summer on.

Vice Chairman KERREY. But the law was going to be changed. The law was changed in June, effective date November, that we were not to enforce basically a maritime operation——

Ambassador HOLBROOKE. And airplanes.

Vice Chairman KERREY [continuing]. I mean against shipments. And I just—again, it is going to be very interesting to see what other Members thought in terms of this providing authority for bringing Iranian arms in. I means, I do think there is considerable risk any time you are engaged in this kind of operation. I don't—I appreciate the historical reference to Churchill and the pact with Stalin, but that would be like saying that we'd be—Lincoln was

justified in eliminating habeas corpus during the Civil War, thus we would be justified in doing the same. Historical references get a little difficult. And what we are trying to do here is maintain a spirit where regardless of whether you have a Republican President or a Democratic President, or a Republican or Democratic Congress, that when it comes to executing foreign policy, it is done in a bi-partisan fashion. And the only way that we're going to be able to do that is if in the spirit of that bi-partisan cooperation, Congress has a sufficient amount of information upon which to make a decision. And I continue to be concerned, as I examine, particularly the events of 1994, that we did not.

And again, I thank you for your testimony and your service.

Ambassador HOLBROOKE. Well, Senator, I am very grateful for your personal words. I believe in close consultations between the two branches, and I regret that they did not meet your standards in this case. They should have. And I hope they will in the future. And as I said to Chairman Specter at the outset, I hope that that is one of the benefits of these hearings which you have both emphasized are not conducted in a partisan manner, and I appear before you in the same spirit.

Vice Chairman KERREY. Well, very well.

Chairman SPECTER. Thank you, Senator Kerrey.

Ambassador Holbrooke, you have been here for almost two hours. Would you like to take a break?

Ambassador HOLBROOKE. Very much so, Mr. Chairman.

Chairman SPECTER. Let's take five minutes then.

Ambassador HOLBROOKE. Any time; I'm always for breaks.

Chairman SPECTER. We will resume in five minutes.

[A recess was taken from 1:30 p.m. until 1:44 p.m.]

Chairman SPECTER. We will reconvene.

We know of your schedule, Ambassador Holbrooke, to depart again this evening for overseas, and we will try to bring our hearings to a conclusion hopefully by 2:00 p.m., if we can.

You made a comment about providing a half a dozen hypotheticals, and you said you didn't have notes on them but to the best of your ability to recollect, could you specify for the Committee what those half a dozen hypotheticals were?

Ambassador HOLBROOKE. With your permission, I would like to write them out, because I wrote them out at the time.

Chairman SPECTER. That would be fine.

Ambassador HOLBROOKE. I just want to be—in fact, I think they are addressed in the memo you have before you, a copy of which I don't have. But let me try to write it out.

Chairman SPECTER. Which memo now?

Ambassador HOLBROOKE. The one you cited from earlier, the legal opinion to the Secretary of State.

Chairman SPECTER. Well, we do have the legal opinion, but I do not—

Ambassador HOLBROOKE. I think they were—they may have been implicit in that, although I have not seen that document in over a year and a half.

Chairman SPECTER. Well, the legal memorandum talks about being within the letter of the law, suggesting to a foreign country through diplomatic channels, that it might consider a covert action.

And then under a category within the letter of the law but potentially risky from a Hill standpoint, depending on the issue involved, encouraging a foreign country.

Ambassador HOLBROOKE. You see, you can derive my hypotheticals from the things like the difference you suggested.

Chairman SPECTER. Well, I don't know that I could, but you might be able to.

Ambassador HOLBROOKE. I'll be happy to do so, Senator.

Chairman SPECTER. And it then says important to avoid, and then goes through a series where they seek to make a distinction among suggesting, asking, and encouraging.

Ambassador HOLBROOKE. That's right. Those were the hypotheticals I gave. And those are precise responses to the, if you'll pardon the metaphor, the salami slices.

Chairman SPECTER. And then it says, cross the line into covert action, quote, "actually supporting the foreign action through assistance, direction, direct participation, etc."

Ambassador Holbrooke, let me pick you up on the et cetera. If—this is not a hypothetical—if the arms cannot be shipped to Bosnia, if the Iranian arms cannot be shipped to Bosnia unless they go through Croatia, and if the United States says to the Croatian President, President Tudjman, you are correct, we will not disabuse your conclusion on perceiving to see a green light, wouldn't that cross the line?

Ambassador HOLBROOKE. I don't believe so, sir.

Chairman SPECTER. Well, why not, Ambassador Holbrooke?

Ambassador HOLBROOKE. It is not a covert action. It is a response to a diplomatic query. And here, of course, I am answering your question in the spirit you have asked about it and that preceded my tenure as Assistant Secretary, but I did look into it. And the President of Country X asks the American Ambassador to Country X what his opinion is about something Country X is thinking of doing, and I might add, is already doing. And the American Ambassador says, I have no view on that, our government has no position. How can that be con—constitute a covert action under the Intelligence Act?

Chairman SPECTER. Well, I am not saying it is, and I had not intended to ask you about it, but when you talk about your half a dozen hypotheticals, and you say they may be in the memo, and I have studied this legal memo, and we are now talking about it, they have a section here which says, quote, "crosses the line into covert action." And under that it says, "actually supporting the foreign action through assistance, direction, direct participation, et cetera". And my question to you goes really to the heart of the reality of the issue.

Now, I know you are not involved in it in advance, but you are an established—you've had a considerable amount of experience in diplomacy and foreign relations, and you talk to the lawyers and you went through this with them, obviously in greater detail than is presented here. And here you have President Tudjman giving advance warning to Ambassador Galbraith that the question is going to come up. And Ambassador Redman is a party to it as well. And they are just not passing the time of day when President Tudjman is asking this question, you nod in the affirmative.

President Tudjman is very concerned about what the United States reaction is going to be. And very carefully there is an instruction from Washington. First, no instructions because they didn't have time to think about it, and I think they really meant no instructions, or so Ambassador Galbraith said the first no instructions policy was.

And then the State Department, through the Deputy Secretary Talbott comes back and says we're giving you a no instruction policy, but it has been characterized in some quarters as a wink. Now, exactly what it was is hard to say, but it comes into its most crystal form when Galbraith goes back to Talbott and says it will be—what I'm doing, what we are doing will be perceived as a green light unless there is a clear statement to the contrary. And there is no clear statement to the contrary.

Now, bear in mind the collateral circumstances are also that Ambassador Redman goes to Mr. Lake and says should we put a cable on this, because customarily, as we all know, there are cables. And Tony Lake says to Ambassador Redman, National Security Advisor Lake says to Ambassador Redman, do not put it in writing. And then Ambassador Galbraith says to Mr. Talbott, should I make a memo on this. And Mr. Talbott says yes, but only if you hear from A or B, Mr. Galbraith never hears from A or B.

And then Mr. Galbraith becomes apprehensive because his deputy says you'd better make a memo, and he makes a long memo to protect himself on the record. And then—then Mr. Woolsey asks Mr. Talbott about it and Mr. Talbott says Galbraith has no instructions to even allow wiggle room—I read that into the record. And then they call up Mr. Galbraith and feign a reprimand, pretend a reprimand.

And then Mr. Lake says to Mr. Woolsey, our people stood mute. But the fact as Ambassador Galbraith lays it out, not just today, but with the contemporaneous memorandum, that this will be, quote, "perceived to be a green light," unquote.

Now, in that context, where the United States position is really important as to what President Tudjman is going to do, isn't that really—or does that, and I am not going to give you a conclusion across the line—let me ask you this: if you conclude that President Tudjman would not have permitted the Iranian arms to come to Bosnia without perceiving a green light, would that be covert action?

Ambassador HOLBROOKE. Sorry, I didn't understand the—the—

Chairman SPECTER. Well, let me repeat it for you.

Ambassador HOLBROOKE [continuing]. Just the very end of the question.

Chairman SPECTER. If President Tudjman—we don't know this, there's a pretty strong inference Tudjman would not have allowed the arms to come in without receiving a green light, without inferring U.S. acquiescence—if we knew for sure that Tudjman would not have permitted the arms to come in absent Mr. Galbraith's statements of conduct to lead him to, quote, "perceive," unquote, a green light, would that be covert action?

Ambassador HOLBROOKE. Let me try a very quick four part answer.

Number one, on the sequence you describe in April and May, that preceded my return by five months.

Chairman SPECTER. I understand that.

Ambassador HOLBROOKE. Please don't—I cannot verify every detail of what you said.

Secondly, in regard to what the Croatians would have done if Galbraith had given a green light, a yellow light, a red light, a flashing light, whatever, based on my own observations and dealings with the Croatian government, which have been extensive and prolonged, I don't think it is clear—it is not axiomatic that the United States position would have determined the Croatian position. The Croatians have, on occasion, responded to American views, and on other occasions have ignored them.

Chairman SPECTER. That's why I have given you a hypothetical.

Ambassador HOLBROOKE. I understand. And therefore, I am not in a position to answer whether Galbraith's response would have determined Croatian actions, particularly, Senator, since the Croatians were also the beneficiary of these arms.

I just—I just can't—I don't have a view on that. I don't know what the Croatian position would have been. Arms had gone in before this conversation and there are other times when Croatians—

Chairman SPECTER. I am not going to press you to read President Tadjman's mind. You're much too sophisticated a witness to go into that sort of a mine field. And I am not even going to press you to answer my hypothetical question. If Tadjman had said, look Ambassador Galbraith, I'll let these arms go if you give me a green light, my perception is you are giving me a green light, but I want to really know it's green. Would you answer that question, if Tadjman had said that to Galbraith? Now I'm asking you a hypothetical question. but I am not going to press you to answer it.

Ambassador HOLBROOKE. And the question is, would have been considered a covert action?

Chairman SPECTER. Yes.

Ambassador HOLBROOKE. I am not a lawyer. Based on my conversations with the lawyers and my understanding of the law, the answer to your question in my view would be no.

Chairman SPECTER. Well, how, when they say actually supporting the foreign action through assistance, direction, direct participation, wouldn't that constitute assistance?

Ambassador HOLBROOKE. No, sir.

Chairman SPECTER. Okay.

Let me move through a couple of other lines with you here.

There was at one stage, Ambassador Holbrooke, a situation with certain missiles. Would you describe what occurred there and what participation you had, if any?

Ambassador HOLBROOKE. Missiles? I'm sorry; I'm confused.

Chairman SPECTER. Missiles which were found on a shipments of arms to Bosnia?

Ambassador HOLBROOKE. Oh. This was the matter referred to in this morning's Los Angeles Times article? I see nodding behind you, Mr. Chairman. So I will take that—

Chairman SPECTER. You can impute that—you can perceive that to be a green light. You may perceive that to be a green light.

Ambassador HOLBROOKE. Thank you. But it does not—but it was a very overt action, Mr. Chairman.

Chairman SPECTER. Maybe Galbraith's was, too.

Ambassador HOLBROOKE. Some time in our shuttle diplomacy, which began in early August and continued right up to the eve of Dayton—and you will forgive me for being unable to specify when it was, because I don't remember—one of the senior Croatian officials mentioned to me, in private, that there were some canisters, I believe—I don't think he used the word missiles, buy my memory is weak on this—at the airport which he had heard might be chemical or poison or other forms of gas, which raised questions under the rules of war, and he wanted to know if we would check them out.

I asked General Clark, who was with me at this conversation, to immediately investigate. General Clark, to the best of my recollection immediately got on the phone to the European Command in Stuttgart and had a team of our experts from the European command in Zagreb within 24 hours. They investigated these items at the airport, determined that they were not anything as perhaps suggested and that was the end of it.

This entire transaction took about as long as this conversation, and that was my entire involvement in it. It was—I don't know what was in them. I never followed up on it. It was just that I was asked by the Croatian government to give them technical assistance to determine what was in them.

Chairman SPECTER. The Los Angeles Times article that you referred to is datelined Washington. It says last year, as Iran was shipping weapons to Bosnia and Croatia with American acquiescence, U.S. officials in the Croatian capital of Zagreb suddenly became aware of a harrowing threat. Iranian terrorists were stalking them in an apparent preparation for an attack. Hezbollah militants from Lebanon, trained and funded by Iran, had arrived in the Croatian capital and were watching American embassy personnel and their families, U.S. officials said. Some carried video cameras and taped the Americans as they came and went.

Central Intelligence Agency and State Department officials tightened the embassy security fearing the attack was imminent. Quote, "The terrorist threat went right up the scale to the levels you would see in preparation for an attack," said one official.

Do you have any knowledge of any of that?

Ambassador HOLBROOKE. No. The—my question responded to this item later in the same article, at the top of the third column of the photocopy I have, which says, in at least one case the Times has learned that U.S., etc., etc.

This issue—

Chairman SPECTER. There is, on the first column on the following, the fourth paragraph starting, quote, "The terrorist threat faced by American personnel grew exponentially in the months following the green light, said one senior U.S. official."

Ambassador HOLBROOKE. Uh-huh.

And you want me to comment on that quote?

Chairman SPECTER. Would you?

Ambassador HOLBROOKE. I don't know who said it. I don't like the word exponentially. That—as a former math student, I can tell

you that that is a wild exaggeration. If it said grew, and you took out the word exponentially, I would say that was correct. But we dealt with it.

Chairman SPECTER. Well, there is a suggestion there—I don't want to pursue this too far over into the policy, that Iran becomes a greater threat because we have let them in with arms shipments. But let me move on to the—

Ambassador HOLBROOKE. That was clear in my colloquy with Senator Kyl that we were extremely concerned about that.

Chairman SPECTER. And up to the second full paragraph on the second column, another has been making sure that the U.S. role in the smuggling did not become an active one, which would risk a direct violation of the U.N. arms embargo and the U.S. law on covert actions.

Ambassador HOLBROOKE. That's exactly correct.

Chairman SPECTER. In at least one case the Times has learned that the United States found itself close to the line with American officials actually inspecting in September 1995, a shipment of battlefield missiles that were en route to Bosnia to ensure that they were not equipped with chemical weapons. U.S. officials found no signs of chemical warheads, and allowed the shipments to proceed. This involvement, however, suggested something more than merely looking the other way in relation to arms smuggling, as President Clinton's decision had directed.

Ambassador HOLBROOKE. Well, I—

Chairman SPECTER. Parenthetically, Ambassador Holbrooke, when the reference here is to President Clinton's decision, to what extent was the President involved in the decision?

Ambassador HOLBROOKE. This again preceded my watch on the job, so I would defer to other people.

Chairman SPECTER. Well, what had you heard on that subject?

Ambassador HOLBROOKE. Only what you have—I never—it was not an issue to me. The policy had been done.

Chairman SPECTER. Had you heard anything about the President's involvement.

Ambassador HOLBROOKE. Only what I have read, this plane trip to Yorba Linda for Nixon's funeral, these discussions. My knowledge is about the same as your's on this.

Chairman SPECTER. Well, now, wait a minute. You don't know what my knowledge is.

Ambassador HOLBROOKE. No, I mean, what you—what you and your Committee have stated publicly, what's been printed.

Chairman SPECTER. We haven't said anything about it. My question to you is not what appeared in the press, because that is available to me, but whether there was any discussion—it's an important matter if the President himself is involved and my question to you is whether there was any discussion among State Department officials. Did you ever have a talk with anybody about what is in the paper about President Clinton discussing or approving this policy when he flew back from President Nixon's funeral?

Ambassador HOLBROOKE. No.

Chairman SPECTER. Okay.

Ambassador HOLBROOKE. May I comment on the two paragraphs you just read?

Chairman SPECTER. Sure. That's what I want you to do. That is really the point of it.

Ambassador HOLBROOKE. I—this is not an inaccurate discussion of what happened. But I do not believe that it constitutes anything close to the line. The Croatian government asks us whether or not some military equipment at the airport contains dangerous materials which could also constitute a violation of international law. It seemed to me entirely appropriate to request EUCOM to do that, and I undertook that instruction on my own authority, I did not check with Washington. I didn't feel I had to. If there was a possibility, even the remotest possibility, of chemical weapons at the airfield at Zagreb, I felt that it was an immediate issue to be looked into. And so I ask General Clark to arrange for the inspection and he did so.

I—this is the first time I have read this interpretation by James Risen and Doyle McManus, and that's their interpretation. I just don't share it. But I would unhesitatingly do the same thing again.

Chairman SPECTER. And General Clark came back and reported to you what?

Ambassador HOLBROOKE. Clark went—got on the phone, called the European Command headquarters in Stuttgart, said get your best team down here immediately. They were there either that night or the next morning. They inspected this equipment. It was not anything as feared. It was not chemical, there was nothing in to cause concern. They went home, we went on with our shuttle diplomacy.

Chairman SPECTER. And what if anything was done about the missiles?

Ambassador HOLBROOKE. I have no idea. It wasn't my problem. My concern was to—

Chairman SPECTER. But did you know that those missiles were going to Bosnia?

Ambassador HOLBROOKE. I had no idea what they were. I didn't know then, I don't know now.

Chairman SPECTER. Well, what were you told when you made the inquiry as to whether the missiles had chemical warheads?

Ambassador HOLBROOKE. Susak said—Minister Susak said to me, we've got some stuff that's at the Zagreb airport from another country.

Chairman SPECTER. Did he say which country?

Ambassador HOLBROOKE. No.

Chairman SPECTER. Didn't ask him which country?

Ambassador HOLBROOKE. No. He just—

Chairman SPECTER. You didn't ask him which country?

Ambassador HOLBROOKE. No.

Chairman SPECTER. Didn't care?

Ambassador HOLBROOKE. Didn't care. He says he's afraid it's chemical weapons. That's a very serious—

Chairman SPECTER. He says it's chemical weapons, and you don't say where it is from?

Ambassador HOLBROOKE. I figured if it is or isn't, the experts from Stuttgart will figure it out very fast.

Chairman SPECTER. Oh, now ambassador Holbrooke, wouldn't it be relevant where it is from as to what's in it?

Ambassador HOLBROOKE. I think it was—I don't think I needed to ask. I think—we were moving very fast. I know it sounds—it sound odd to you now, Mr. Chairman, but I tell you—

Chairman SPECTER. It just warrants a question or two at least about somebody says we've got missiles and the Iranians are sending arms in and these missiles might have chemical substances and the Ambassador doesn't say where are they from? What do they look like? How big are they? How lethal are they?

Ambassador HOLBROOKE. I didn't have time.

Chairman SPECTER. No question before calling up the General and saying send people down from headquarters?

Chairman SPECTER. I turned it—no, sir. You cannot imagine what the situation was like in September 1995. We had a war raging in the west. We had NATO planes in the air. We were trying desperately to stop the fighting around Sarajevo. We were in 20 hour a day negotiations. We were averaging three countries a day and sometimes four. This was two minutes, I turned it over to General Clark, who with his normal efficiency and speed had it solved in 24 hours. I knew full well that the American military personnel at EUCOM would identify the truth in this, including its origins. I did not need to spend any time on this one. It was really minor stuff unless it had turned out to be true. In which case we would have had a—

Chairman SPECTER. But General Clark had to bring in people from some distance.

Ambassador HOLBROOKE. From Stuttgart. It's an hour and a half away, hour by plane.

Chairman SPECTER. And how many people?

Ambassador HOLBROOKE. You'll have to ask him. My guess is it was probably a two or three man team, at most; at most.

Chairman SPECTER. And there was no further inquiry made except that you heard there were missiles.

Ambassador HOLBROOKE. No. I heard that they weren't chemical and we moved right on.

Chairman SPECTER. No, no. Before you bring this two or three man team down by air from Stuttgart to Zagreb.

Ambassador HOLBROOKE. Senator, I turned it over to General Clark, a truly outstanding general who had my full confidence.

Chairman SPECTER. Well, listen, his qualifications are established, we don't have to qualify him as an expert. What I am trying to find out is a little bit as to the plausibility of no inquiry besides what you have said before you call a general in some state of alarm—

Ambassador HOLBROOKE. The general, I didn't call him. The general was in the room with me.

Chairman SPECTER. Speak to him. Was he right there when the call came in?

Ambassador HOLBROOKE. We were in one of the rooms, somewhere in Zagreb—I can't—

Chairman SPECTER. Was he there with you when the call came in?

Ambassador HOLBROOKE. The call? There wasn't a call. The Croatian—

Chairman SPECTER. Well how—

Ambassador HOLBROOKE. Official in question pulled me aside and said, I got a question for you. I got a concern, I've got a rumor, I'd like you to help us check it out. General Clark is——

Chairman SPECTER. Well, give us a little more background as to your contact with the Croatian official on that day.

Ambassador HOLBROOKE. I don't remember what day it was. We were in Zagreb 25 to 30 times during the shuttle.

Chairman SPECTER. Well, I am not asking you what day it was. You have identified the Croatian official. Would you repeat his name?

Ambassador HOLBROOKE. The Defense Minister, Gojko Susak, S-U-S-A-K.

Chairman SPECTER. All right. Now, when you were talking with Mr. Susak, Defense Minister Susak, was this the first thing he mentioned to you that day or were you talking about other matters?

Ambassador HOLBROOKE. As we talk, I now can reconstruct the physical place this happened for the first time, because of your excellent questions, and I am not being sarcastic. It was at the end of a meeting with President Tudjman——

Chairman SPECTER. These are very fundamental, to ask the surrounding circumstances——

Ambassador HOLBROOKE. This was not—I know it's—I know you may disbelieve this, but this was not a fundamental issue. It was—at the time, but let me respond to your question.

Chairman SPECTER. Thank you.

Ambassador HOLBROOKE. We had finished a meeting with President Tudjman. We were somewhere in the middle of an enormously complicated set of negotiations involving a cease fire in Sarajevo, a cease fire in the west, and the preparations for an international peace conference which ultimately was held in Dayton. As we left the Presidential palace, the minister of defense pulled me aside and said I've got a small problem I'd like to ask your help on. And he described it as I have previously described it.

Chairman SPECTER. Had you heard the Defense Minister Susak was so concerned about these missiles that he threatened to stop all of the arms sales—arms deliveries from Iran to Bosnia?

Ambassador HOLBROOKE. No.

Chairman SPECTER. Never heard about that?

Ambassador HOLBROOKE. No. Because it didn't turn out to be what he feared it was.

Chairman SPECTER. It wasn't a question of whether it turned out to be. It's a question of what he thought it was. You're telling me that you never heard the Defense Minister Susak wanted to stop the whole deal on sending Iranian arms to Bosnia when these three missiles were determined?

Ambassador HOLBROOKE. We never had that discussion that I can remember. He may have had it with someone else. I called General Clark over and I think I called Ambassador Galbraith over, I think we were standing in the bottom of the Presidential Palace, but I'm not sure on that, on our way out. I said Minister of Defense has a problem here, I'd like you to handle it. And I turned it over to them.

Chairman SPECTER. Did Defense Minister Susak talk to General Clark?

Ambassador HOLBROOKE. Yes.

Chairman SPECTER. How long did that conversation last?

Ambassador HOLBROOKE. I have no idea; two or three minutes at most.

Chairman SPECTER. Were you present when the conversation occurred?

Ambassador HOLBROOKE. I turned it over to Wes Clark. I said—

Chairman SPECTER. You told me that. My question to you is were you present when the conversation occurred between Susak and Clark?

Ambassador HOLBROOKE. I think I probably started off with it and then went off to speak to President Tudjman or Foreign Minister Granic, because this was an issue that I knew General Clark and Ambassador Galbraith could handle with dispatch.

Chairman SPECTER. How long had you been in Defense Minister Susak's presence that day before Defense Minister Susak raised the question of these missiles?

Ambassador HOLBROOKE. I have no idea, but this was at the end of a long session with President Tudjman on other issues.

Chairman SPECTER. How long was the session with President Tudjman?

Ambassador HOLBROOKE. I can't tell you because I'd have to check our records, and I don't even know if it is in the records. But the average sessions with President Tudjman ran one to two hours. And Defense Minister Susak usually sat in on the entire meeting.

Chairman SPECTER. Well, what I am trying to get to the bottom of, and we are past time when I had hoped we would conclude—we're now 2:12, hoped to conclude at 2:00 o'clock—is the level of importance without going through an elaborate set of preliminary questions. Here you have three missiles which are suspected of having chemical weapons, chemical warheads, sufficient to bring down a two or three man team from an American base an hour or an hour and a half away, and Defense Minister Susak—

Ambassador HOLBROOKE. Sir, I don't understand that last point.

Chairman SPECTER. Well, you have to send a team from where to look at them?

Ambassador HOLBROOKE. Stuttgart.

Chairman SPECTER. Stuttgart. And that's an hour to an hour and a half away.

Ambassador HOLBROOKE. By plane, yeah.

Chairman SPECTER. By plane.

My suggestion to you is that it is a matter which requires an expenditure of assets to deploy two or three men and to fly them in a plane for an hour to an hour and a half. And I am saying to you that the Committee has other information that Defense Minister Susak, when he noted these missiles, was incensed and threatened to—said we are going to have to terminate the sale—or the transshipment of arms from Iran to Bosnia. And you said you know nothing about that—

Ambassador HOLBROOKE. I have no memory of him saying that.

Chairman SPECTER. You have no memory of him saying that. Okay.

Ambassador HOLBROOKE. That doesn't mean he didn't say it to somebody somewhere.

Chairman SPECTER. Can you speak—can you pull the microphone a little closer. I can't hear you.

Ambassador HOLBROOKE. That doesn't mean that he didn't say it to somebody somewhere along the line, but—

Chairman SPECTER. No, I'm—I'm allowing that leeway. It doesn't mean he didn't say it and you are not responsible for everything he said to anybody else. I am just interested as to whether he said it to you. So what I am doing is examining the surrounding circumstances to try to understand how important this is to Mr. Susak.

From what I hear, he got pretty adamant about it, pretty mad about it, and I am inquiring now as to how long you were with Susak, because if the information I have is correct, if Defense minister Susak sees Ambassador Holbrooke, and he's got these missiles on his mind, he's going to walk over to Ambassador Holbrooke and say, Ambassador, we've got a real problem here. We're accommodating a shipment of Iranian arms to Bosnia, but if those guys are now using missiles with chemical warheads, the whole deal is off. And that is why I would like to know how long you were with him and what you were talking about to President Tudjman. I know you talked to President Tudjman about important matters. And I shouldn't assume that you can't answer what you talked to him about that day, but were you talking to President Tudjman about matters of sufficient importance that Defense Minister Susak would not preempt those discussions and say I want to talk to you about these missiles?

Ambassador HOLBROOKE. I—I cannot date the conversation, but I can tell you flatly that the subject never came up in President Tudjman's hearing, that to the best of my recollection—and here I would really urge you to talk to Wes Clark and Peter Galbraith to see if their memories jibe with mine, because I never discussed it subsequently with either one of them—the conversation took place as we were standing in the—

Chairman SPECTER. We'll do that.

Ambassador HOLBROOKE [continuing]. In the big area outside the conference rooms; that it was a pull aside by Susak to me. He expressed extreme concern at the possibility—

Chairman SPECTER. Well, tell me a little bit about that extreme concern.

Ambassador HOLBROOKE. I think you're—you know, he said that it was—he said that there were some—I don't remember the word missiles, but he said there was something out at the airport that he—

Chairman SPECTER. Was his expression to you consistent with what I have described being very concerned—

Ambassador HOLBROOKE. Close; close.

Chairman SPECTER [continuing]. That he was going to stop the shipment of arms.

Ambassador HOLBROOKE. I do not remember that but I do remember—

Chairman SPECTER. But was the tone of voice similar to that?

Ambassador HOLBROOKE. Well, you have to know Minister Susak to put the tone of voice in context, Senator.

Chairman SPECTER. Well, I don't know Minister Susak, that's why I'm asking you.

Ambassador HOLBROOKE. He is a very—a man of very strong feeling and very blunt words. He's a man of great force and great strength. And——

Chairman SPECTER. Well, he didn't get excited over nothing, did he?

Ambassador HOLBROOKE. He—well, it turned out he was excited over nothing; exactly. Because when the EUCOM——

Chairman SPECTER. Well, it turned out that way, but only you found out the fact. What I want to know was when Defense Minister Susak told you before he knew they weren't chemicals, was he—was he concerned, was he excited?

Ambassador HOLBROOKE. Yes. As I said——

Chairman SPECTER. Was he outraged?

Ambassador HOLBROOKE. He was—how should I put this?

Chairman SPECTER. Well, I'm escalating the scale.

Ambassador HOLBROOKE. He was potentially—he was potentially outraged if in fact what he had heard was correct. He did not——

Chairman SPECTER. But he didn't know it at the time.

Ambassador HOLBROOKE. But Mr. Chairman, it is not as conspiratorial as it seems. It's very simple. He hears a report that there is something at the airport. He doesn't have the technical means to determine it. We do. He asks us for his advice. He asks us—he asks us if we can check it out. He knows that we have the capability in the European Command. That's something the United States Army does brilliantly. We do it as a routine courtesy. These things——

Chairman SPECTER. Okay. So he's concerned, potentially outraged, and you turn him over to General Clark and you do not monitor their conversation and you do not ask Defense Minister Susak anything about the source of the missiles.

Ambassador HOLBROOKE. I said to General Clark, I want you to follow this, it's your project, you're in charge of it, that's the way he and I worked. And he took care of it.

Chairman SPECTER. You've testified to that. My question to you is you didn't say to Susak, do you know where they came from.

Ambassador HOLBROOKE. I have no memory of asking that question. But I frankly didn't need to. I mean, it was obvious what the answer was.

Chairman SPECTER. And you made no inquiry as to what happened to the missiles afterward?

Ambassador HOLBROOKE. No.

Chairman SPECTER. Did you express any concern that the missiles were of such a nature that they might have been later outfitted with chemical warheads, which was Defense Minister Susak's concern?

Ambassador HOLBROOKE. I was told by the military personnel that it was simply a red—a false story, that this was not—this was not a risk. I never—until this question you've asked, I never heard that they could be retrofitted or anything similar.

Chairman SPECTER. I'm not saying they could be. My question is to you did you inquire as to whether they could be retrofitted?

Ambassador HOLBROOKE. I was told flatly by General Clark and his colleagues that this was simply a false rumor and it was dead and we moved on. I stress to you the pace of the negotiations at that point was simply had to be seen to be believed. And once—we were investigating false stories every day, Mr. Chairman. This was just one of them.

Chairman SPECTER. And you made no inquiry as to the fire power of the missiles in and of themselves, even without a chemical warhead?

Ambassador HOLBROOKE. No. It was not my concern. I was sent out to the region with a team to try to get a cease fire and a general peace agreement. And once we determined that these were not chemical, which would have been a major crisis, we proceeded with our work.

Chairman SPECTER. Did you take any action to encourage the Croatians to allow those missiles to be sent on to Bosnia?

Ambassador HOLBROOKE. You know, the truth is, Mr. Chairman, I never discussed them again with Minister Susak or anyone once General Clark told me false alarm, back to business. And that was within 24 hours, to the best of my knowledge. So I would urge you to check with him because he—

Chairman SPECTER. Well, we will. I have already said I will. So the answer is no, you did not take any action to see to it that those missiles were released by Croatia to go to Bosnia?

Ambassador HOLBROOKE. No.

Chairman SPECTER. Do you know either directly or indirectly, through hearsay or otherwise whether any other United States official took action to get those missiles released by the Croatians to be turned over to Bosnia?

Ambassador HOLBROOKE. I have no knowledge of any such action. I can state categorically that my negotiating team would not have done a thing like that. We were a very close team and we knew what everyone was doing. And I have no knowledge that anyone else did such a thing.

Chairman SPECTER. Ambassador Holbrooke, after the fall of 1994, did you engage in any further consideration of possible covert action programs to help the Bosnians?

Ambassador HOLBROOKE. No. If you mean by consideration, did I think about it from time to time, yeah. If you are talking about did I do anything more within the bureaucracy, no.

Chairman SPECTER. Didn't talk to anybody about it?

Ambassador HOLBROOKE. Well, we chatted about it in the informal way we chat in the office. Bob Fraser and I talked about it. Charlie Thomas, a few others. But in the sense of bureaucratic study of it, the kind of thing we were talking about before the break, it was dead. We knew it was dead.

Chairman SPECTER. There have been press allegations, Ambassador Holbrooke, especially in Europe, that the United States was providing direct assistance to the Bosnians and/or the Croatians.

Ambassador HOLBROOKE. I know. It's quite ironic.

Chairman SPECTER. For example, UNPROFOR personnel in Bosnia have said that they saw U.S. personnel with arms, or probably U.S. aircraft landing secretly at night in Tuzla.

Ambassador HOLBROOKE. Well, this is the famous thing which you—you and your colleagues and I have discussed many times. I have never understood it. Can I tell you honestly, I think it was disinformation from some of our allies. But the irony is—

Chairman SPECTER. The allies planted those stories? Our allies? Disinformation from them?

Ambassador HOLBROOKE. Uh-huh.

Chairman SPECTER. Why would they do that?

Ambassador HOLBROOKE. Because they were concerned that it was happening and they either believed it or wanted to prevent it.

Two anecdotes which are very relevant here. On that September Labor Day trip that I mentioned earlier to you, which I took with the permission of the Foreign Relations Committee to prepare myself, I was accompanied by the Deputy Commander in Chief, United States Forces Europe, General Charles Boyd, who now works up near the Hill in a foundation and is an advisor to the Speaker. General Boyd, who is quite well known for his views, and has written an article about them in Foreign Affairs, and I stood in the open market square in Donji Vakuf, had public discussions, and then within a few weeks, newspapers in France were saying that that trip was a covert supply trip. That highly publicized trip was a public trip—was a secret trip to supply them.

Anecdote number two. After these French stories appeared, including some statements taken by French officials in the Mitterrand government, Secretary Christopher sent Under Secretary Tarnoff to Paris to see the foreign Minister, Alain Juppe, and personally assure him that the stories weren't true. And after their meeting, Juppe made public statements which still did not seem to accept fully the accuracy of our statements. But I am here again today, under oath, Mr. Chairman, to assure you that the stories were obviously not true. Had they been true, we would have been in violation of the law, and we don't do that sort of thing.

Chairman SPECTER. What law would you have been in violation of?

Ambassador HOLBROOKE. It would have been a covert action not—not Presentially Found, and notified to your Committee. And that—and that, to me—and you must indulge me for a minute—that to me would be the most serious possible thing a public official could do. And we were stunned at the fact that these reports kept coming up, because they were self-evidently not true.

And you knew—I don't want to put words in your mouth—

Chairman SPECTER. Thank you.

Ambassador HOLBROOKE. We—we—because you would catch me on it. They were not true. We would not permit them. And yet they kept coming up. What can I say? It was the way it was.

Chairman SPECTER. Well, were you in violation of law by—would you have been in violation of international law by aiding and abetting a violation of the arms embargo?

Ambassador HOLBROOKE. I am not talking about international law. I am talking about United States law.

Chairman SPECTER. Well, would you have been in violation of U.S. law by aiding and abetting in the shipment of Iranian arms to Bosnia?

Ambassador HOLBROOKE. Aiding and abetting? If aiding and abetting is understood to mean active involvement of any sort with personnel funds or any oversight, it is my understanding that that would constitute a covert action and require a Finding.

Chairman SPECTER. How about the international law—the international embargo on shipment of arms to Bosnia?

Ambassador HOLBROOKE. I have to defer to people who are experts in international law. Since you are talking about something that never happened, and I made clear earlier that I educated myself on the U.S. law, I did not educate myself on international law for two reasons. It was not relevant to my responsibilities within the policy, and secondly it's a pretty hazy field, anyway.

Chairman SPECTER. Well, there are a lot of things about that we could discuss, but we really don't have time and there are too many other things to talk about. When you cite those two situations where, notwithstanding President Clinton sending a high ranking State Department official to the French, and they continue to make the statements—

Ambassador HOLBROOKE. It was Secretary Christopher who sent them—I want to be clear.

Chairman SPECTER. Secretary. I thought—

Ambassador HOLBROOKE. Secretary Christopher sent Peter Tarnoff.

Chairman SPECTER. I thought you said the President did.

Ambassador HOLBROOKE. No, I said the Secretary.

Chairman SPECTER. Well, did the Secretary carry President Clinton's word, is that what you said?

Ambassador HOLBROOKE. The Secretary sent Peter Tarnoff to state for the United States government that these statements appearing in the French press and with blind close—

Chairman SPECTER. I thought you had mentioned the President being—

Ambassador HOLBROOKE. No, sir, I don't—

Chairman SPECTER [continuing]. Putting his word on it.

Ambassador HOLBROOKE [continuing]. I cannot do that. I want to be very careful.

Chairman SPECTER. Absolutely. I may have misheard you. We have a record on it.

But in any event, the French didn't believe that. Because the French continued to make the same statement.

Ambassador HOLBROOKE. Well, that's two different issues. What the French believed and what they said may not be identical. I can't answer that.

Chairman SPECTER. Very good, Ambassador Holbrooke.

Ambassador HOLBROOKE. Well, many hours before your Committee, I am working towards a law degree, Mr. Chairman.

Chairman SPECTER. It hasn't been that many so far.

I won't pursue this, but how do you think the French would have responded had they known that our Ambassador—specifically Ambassador Galbraith told the Deputy Secretary of State that on the existing state of the record, President Tudjman would perceive that

he had a green light from the United States to allow Iranian arms to go through Croatia to Bosnia?

Ambassador HOLBROOKE. I have no idea how the French would have responded. But your question has to be analyzed in the context of the French charging us with doing something real serious, and had their charge been true, in violation of the law. So I don't know how they would have responded.

By the way, I am a little leery that we have singled out the French for two reasons. One, there was a——

Chairman SPECTER. We didn't single them out.

Ambassador HOLBROOKE. No, I did, I understand that, because there was so much more publicity in France.

But there are two things I ought to say. The general feeling was—the feeling was in other countries and we had to deal with it but it wasn't as public. And secondly, this is under the—under the Mitterand government. When Chirac became President of France, the French policy became a major component in the turn around in Bosnia, and I have elsewhere and repeatedly paid very high tribute to the French for their—for the Chirac policies which were instrumental in bringing the Dayton Agreements about.

Chairman SPECTER. Ambassador Holbrooke, after May 94, did Croatia ever stop the arms pipeline either temporarily or permanently?

Ambassador HOLBROOKE. After May of 94? I do not know, Mr. Chairman.

Chairman SPECTER. Was there a problem in this regard in September 1995 with respect to the pipeline being stopped by the Croats?

Ambassador HOLBROOKE. When?

Chairman SPECTER. September 1995?

Ambassador HOLBROOKE. I have no idea.

Chairman SPECTER. Ambassador Holbrooke, we very much appreciate your coming in. That will conclude our hearing.

Ambassador HOLBROOKE. Thank you, Mr. Chairman.

Chairman SPECTER. I had said earlier that we might have former DCI Woolsey. We will not be doing that this afternoon, but that will be rescheduled at another time.

We stand in recess.

[Thereupon, at 2:30 o'clock p.m., the Committee was recessed.]

HEARING ON U.S. ACTION REGARDING IRANIAN ARMS SHIPMENTS INTO BOSNIA

THURSDAY, MAY 23, 1996

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 10:08 o'clock a.m., in Room SH-216, Hart Senate Office Building, the Honorable Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Kerrey of Nebraska, Glenn, Bryan and Kerry of Massachusetts.

Also present: Charles Battaglia, Staff Director; Chris Straub, Minority Staff Director; Suzanne Spaulding, Chief Counsel; and Kathleen McGhee, Chief Clerk.

Chairman SPECTER. The Intelligence Committee hearing will proceed. This is the fifth hearing by the Committee, three having been held in closed sessions, and this is our second open hearing. We were requested by the Majority Leader, Senator Dole, to make an inquiry, back on April the 5th and we commenced our inquiry very promptly on April the 7th, with telephone calls to former DCI Woolsey, IOB Chairman Harrington, Deputy Director of Central Intelligence Tenet, and then we have had an extensive series of information briefings in addition to the five hearings we have conducted.

We have proceeded with care to inform all of those who have come before the Committee, even in closed session, as to what the scope of the hearing would be so that they would be advised in advance and that we could be careful about the testimony even in closed session. On one occasion one of the witnesses wanted to put it in writing, not even wanting to have those in closed sessions privy to it, which we did.

We met yesterday with Deputy Secretary of State Talbott on an informal session to discuss what we would be having in open session today so that we could be as careful as possible that we not tread on any classified material, any sources and methods. And as I said to Secretary Talbott yesterday and would repeat today, that if there is any question which arises which the Secretary prefers not to respond to in open session, that he will have the discretion to say what he would like to do in closed session, that we will proceed on that basis.

The comment had been made on Tuesday that we have not had timely cooperation, in the opinion of the Committee, from the Intelligence Oversight Board. Chairman Harrington briefed us informally. We had requested the Intelligence Oversight Board report

on the ground that it was not privileged and that if it had been, certainly there was not privilege remaining after Mr. Harrington had commented on it publicly. We met with Mr. Harrington again yesterday and asked for a response to our letter of May 1st, either yes or no, because if it's a no, then the Committee can make a decision on whether to proceed with subpoena.

And while that was not directly relevant to your testimony, Mr. Talbott, I think it important to put that on the record at this time.

The hearings have been convened to determine the Executive branch's compliance with Federal law on two particulars—first, the duty to report covert activities; second, the duty to report intelligence matters. The wisdom of the State Department policy is more a matter for the Foreign Relations Committee, although obviously there is some overlap with what we will be doing here, with our focus being on whether there has been compliance with the National Security Act with respect to oversight responsibilities of the Intelligence Committee.

If we conclude that there has not been a duty under existing law to report, then we will be looking at whether there ought to be a change in the statutes considering what has happened in this matter. There has been a Congressional intent to have what is called a seamless web on Congressional oversight between the Foreign Relations Committee on matters which are in the public domain, contrasted with matters which are secret which are appropriate for oversight by this Committee.

There had been a statement by some in the news media that I had concluded that there was no covert activity. That is not what I said and that is not what I believe. I have an open mind on that subject as to whether there is or whether there was or was not covert action in this matter. I think that is a very serious matter which ought to be reviewed with great care before any judgment is made by this Committee.

With respect to the issue of what is covert activity, covert activity is defined by Section 503(e) of the National Security Act of 1947, quote, "Covert action means an activity or activities of the United States government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States government will not be apparent or acknowledged publicly, but does not include traditional diplomatic or military activities."

In my view, it is apparent on the fact that some of the requirements were met. Whether all were met or not remains to be determined. But certainly we have had activities where it is apparent that they were not to be acknowledged publicly, and also where there was an effort to influence political, economic or military conditions abroad. Whether this is within traditional diplomatic or military activities is a matter for analysis. Whether it is covert action, it is a matter for analysis.

We have already touched upon two incidents, one involving three missiles where we discussed with Ambassador Holbrooke activities of the United States in certifying that they were not with chemical warheads. Whether any action to move them from the possession of the Croatian government to the Bosnian government constitutes covert activity depends upon the particulars, and we will be examining that. There is also an incident relating to a convoy which was

released, and the issue is whether there was activity by U.S. officials on that, with knowledge that it contained arms.

There is subordinate question—really not subordinate, but a different question as to whether the participation by a third party, that is, Croatia, amounts to covert activity, and that is governed by Section 503(a)(3) of the National Security Act which specifies that each Finding shall specify whether it is contemplated that any third party will be used to undertake the covert action concerned on behalf of the United States. On its face it might be said that the action of the Croatian government constituted such third party activity and that the language on a Finding would imply that such action would be within covert action definition.

That is complicated by the 1990 bill which was vetoed by President Bush, where the bill and the subject of the veto said a request by any department, agency, or entity of the United States to a foreign government or a private citizen to conduct a covert action on behalf of the United States shall be deemed a covert action. President Bush vetoed that directly. That was a legislative attempt to make clear what some thought already was clear in 503(a)(3). So it is an open question as to whether third party participation makes it a covert action or whether it does not, and that is one which we will have to consider.

That core issue which we have been examining and came into sharp focus with Ambassador Holbrooke involves the issue as to whether there was action, or as the statute defines it, activities, by virtue of the activities of Ambassador Galbraith and Ambassador Redman in their discussions with Croatian President Tudjman where, as Ambassador Galbraith characterized it, on that state of the record Ambassador Galbraith concluded that President Tudjman, would perceive a green light. And that is a matter we will be taking up in today's hearing in some detail.

On the question as to whether there was traditional diplomatic activity, the issue is raised as to the instruction from National Security Advisor Lake to Ambassador Redman to not have or to instruct Ambassador Galbraith not to put his conversation as to the perceived green light in writing. And a later conversation that Ambassador Galbraith had with Deputy Secretary Talbott as to whether there should be a cable with Deputy Secretary Talbott saying put it in writing, but await a specific instruction from others in the State Department, specifying two individuals, and that instruction did not come.

The question about traditional diplomatic activity is also impacted in significant measure by the relationship of the CIA here and as to whether the CIA was kept in the dark. And this is something which we discussed at some length with Deputy Secretary Talbott yesterday and will be the subject of the Secretary's comment on his, to be fair, comment of a disconnect between what Mr. Woolsey said occurred and what Mr. Talbott will testify to.

And to put that into focus, this was involved in the first hearing, but I think it worth repeating and amplifying just a bit, and we are sensitive to this meeting, but feel that it goes to a core issue as to what happened with respect to all the surrounding circumstances on the issue of covert activity. And this refers to former DCI Woolsey's testimony as follows, quote, "I reported to the three

State Department officials," and he previously identified them as the Secretary of State Warren Christopher, the Deputy Secretary Talbott, and Mr. Phil Wilcox. "I reported to the three State Department officials that Ambassador Galbraith had urged the Station Chief to assist him in conveying to the Croatian government that the U.S. would, in the Station Chief's words, in effect, look the other way about Croatian efforts to facilitate arms shipments from Iran to Bosnia.

"And Mr. Talbott, the Deputy Secretary, was the one who responded. He said that Ambassador Galbraith had—was of the view that the United States should show, as he put it, the amber light of such deliveries, that he had been told clearly and tartly that he, the Ambassador, should simply say that he had no instructions and that he should not hint that he had wiggle room. And Mr. Talbott said that the State Department would convey this message strongly again to the Ambassador.

"My conclusion of all this was that very definitely my Station Chief should not assist in doing what the Ambassador said." And then skipping some less relevant parts which are available, DCI Woolsey continuing, quote, "I was never told that there had been any change in U.S. government policy on this matter, but it was quite apparent from the shipments which were all reported, as much as we knew them, in the intelligence report, that the U.S. government was taking a view that was not opposed to the shipments," close quote.

As I said, Mr. Secretary, we will respect your judgments as to what ought to be said or ought not to be said in open session, and we can reserve for closed session any matters which you think are revealing of sources, methods, that sort of thing.

I would make one additional comment as to our meeting with Mr. Harrington yesterday. He had noted our proceedings on Tuesday and thought that this Committee was proceeding in an objective, appropriate way.

Before swearing in the witness, let me yield to my colleague, the distinguished Vice Chairman, Senator Kerrey.

Vice Chairman KERREY. Thank you very much, Mr. Chairman, and I look forward to hearing and welcoming as well Secretary Talbott to this hearing, and to learning the Washington perspective about the Iranian arms flow. And while I don't expect from the testimony that you are going to say that you have detailed knowledge of either the instructions or the execution or the effects of this policy as it played out in the former Yugoslavia, I do have an interest in how the change was communicated to the DCI, if you have information there, and am also very much interested in the rationale for not coming to either this Committee or to the leadership, given that there was a very important debate going on about the arms embargo at the time.

Again, my purpose in this evaluation is to try to lay down a precedent for future operations. I am not interested in merely finding fault; I am interested in finding, if there is fault, fault for the purpose of improving the execution of both the intelligence gathering and foreign policy in the future.

In addition to our principal purposes today, I hope, Mr. Secretary, that you can shed some light on how well the Intelligence

Community did in its job in the Balkans in terms of getting you the data that you need to make very difficult decisions in Washington, D.C. And to reiterate the reference the Chairman made, I think—I do support the idea of a public hearing. I think it is important for us to show the public that we are pursuing this matter and to let them know the principal lines of inquiry.

However, there is considerable risk in this public environment, risk to sources and methods and risk to intelligence people who are currently still in the field, and I hope that we all understand that risk and will, if you make a judgment that we need to move down the hall, which is a couple hundred meters to your right and behind you, that you simply stop and say I think we should take this into a closed hearing. And likewise, I think Members should as well be alert to that possibility.

Lastly, though, I understand that you are not immediately in the White House. I would like to say, Mr. Secretary, for the record, that the request that the Committee has made for information from the IOB, to get either the report and/or the background information, my fear is that the answer to that is going to be no. And I must say that had mistakes not been made, perhaps no is the appropriate answer. I think mistakes have been made in regards to the IOB, and as a consequence of those mistakes, I hope, if the Administration is considering to answer no, that they will, instead of saying no, enter into negotiations with the Chairman and I to determine what documents we can see.

Let me isolate the two mistakes. One is in implying because it has a name, Oversight Board, that it is an oversight board. It's not. If it's an oversight board, there can be no claim of Executive Privilege. I mean, on its face, I have never heard—I mean, you find another oversight board that claims Executive Privilege. This is an entity, I think an appropriate entity, available to the President to get the facts of the matter so that rather than asking you what happened and asking other people what happened, he can get somebody going out and hold confidential hearings and meetings with people and discuss this thing and say, Mr. President, this is what I think happened.

Instead, there's been some references that the President was vindicated by an oversight board, and that leaves an impression with the citizen that is different than what I think in fact this organization is.

The second mistake was sending Mr. Harrington to the Hill at all. I mean, I really think that he should not have been sent up to Capitol Hill to sit before this Committee with a report that he would read but not be able to leave with the Committee. And the contact with the Hill, once again I think is a mistake. And I think—I say this in the spirit of my earlier comments. What I am trying to do is find fault for the purpose of laying a precedent for future action. I think this entity, though I think it is very badly named as an oversight board, and cannot, under any circumstances, vindicate the President. If there is a claim of oversight—if there is a claim of Executive Privilege and a claim of vindication simultaneously, one of those two has to fall.

And secondly, as I said, the contact with the Hill leads us into acquiring an appetite to see either the report or the documents that support that report.

So I think—my own view is based upon those mistakes, honestly made, actually in the spirit of trying to help us conduct our business, has made it difficult to just lay a blanket down. Now maybe Jack Quinn is going to advise that the answer ought to be yes, but if he is leaning to no, my advice is to open up some negotiation with this Committee, because our interest is not in any kind of a witch hunt here. We've conducted this in a very bi-partisan fashion. The charter of this Committee is to examine and to keep partisan politics out and to examine for the purpose of making sure that intelligence gathering is done in a fashion that both warfighters and policymakers can make good decisions.

Thank you, Mr. Chairman.

Chairman SPECTER. Would you stand and be sworn, Mr. Talbott.

Do you solemnly swear that the testimony you will give before this Senate Intelligence Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Deputy Secretary TALBOTT. I do, Mr. Chairman.

Chairman SPECTER. Thank you.

You may be seated.

Again, Mr. Talbott, anything that you prefer not to respond to in open session, just let us know. The floor is yours.

Senator GLENN. Mr. Chairman, could I make a short statement?

Chairman SPECTER. Yes, of course.

Senator Glenn.

Senator GLENN. Mr. Chairman, as you know from the letter I sent to you on May 13th, I disagree with holding this hearing in public. Just the list of questions that you read off a little while ago are areas of concern, and I don't see how the answers can be given to those questions in public.

The internal documents we have been using for staff and Members, have been marked either Top Secret or Top Secret Codeword. And I don't see how these things can be answered in public. We're talking about sensitive matters dealing with foreign governments, and the internal workings of our government.

And let me add here that I am not for curtailing any of the Committee's investigations. I want to see everything brought out and let the chips fall where they may. I supported the Committee's Ames Report that was sharply critical of the CIA and a Democratically appointed DCI. But that whole process was conducted behind closed doors, and we came out with a final report. And that has been the way this Committee has usually operated. This Committee is not like other Committees where there is a great push for public hearings, and with all due respect to the people at the press tables on each side of the room back here in the press, I know what's going to happen. As soon as Mr. Talbott says, "I can't answer that," for whatever reason, I can just see it tomorrow, the headline on the column will be, "Talbott Ducks Tough Questions of Committee." And I hope that that is not the case, because I think we are setting up an impossible situation here.

Our questions will be based on some of the top secret codeword material that this Committee has, and expecting in public for Mr.

Talbott to publicly give us straight answers. And I don't see how he does it. I really don't. I know he is very gifted, loquacious, shrewd, and a great diplomat, but I don't see how he can do that. The original plan was to issue a preliminary staff report halfway through all this stuff. How on earth do we do that? I don't know whether that is still the plan or not.

And I think to go the route we're going, I think we're making a mistake and I had originally thought I might move to go into closed session and move down to the Committee's hearing room, but I did not get the votes counted to know whether I would prevail on that or not, and so I have decided not to pursue that. But I think Mr. Talbott should feel free to take up Senator Kerrey's offer and move the hearing down the hall at the first sign that we're getting in areas that you feel you should not get into.

And I wanted to express myself and my reservations about the hearing this morning before we started.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Glenn.

The comment has been made a half a dozen times or more that if you feel any question ought not to be answered, you are free to exercise that discretion and as I said, the Committee will defer to your judgment.

With respect to the materials which have been in the public domain, staff has gone over those matters and prepared the opening statement which was the basis for what I used both on Tuesday and today, without any classification which would preclude an open discussion.

Senator Glenn has expressed himself on the view that he had just articulated and I have again checked with staff, and Senator Glenn is the only Member of the Committee who has expressed that view.

Senator GLENN. No, I believe there are two of us, Mr. Chairman. There is a letter from Senator Graham also, I believe.

Chairman SPECTER. Well, the letter from Senator Graham does not object to an open hearing, Senator Glenn. The letter from Senator Graham raises a question about having a report or an interim report, but does not make any reference to an open hearing.

And with respect to the so-called interim report, we had wanted to put on the record the basis for what had proceeded in closed hearings and had communicated to the Central Intelligence Agency and the State Department back on May 13th that report so that we could get your inputs as to what you considered was classified. It was slightly revised on the 15th. We had the hearing scheduled for the 21st, and I was told by DCI Deutch on the 14th that we would have it by noon of the 15th. And we didn't and we didn't have it on the 20th and we didn't have it on the 21st and we have very carefully—as I say, staff moved through the relevant facts and provided to me in my capacity as Chairman the matters for an opening statement. So that we were interested in getting from the Central Intelligence Agency or the State Department any of the recited matters in that report, which might raise some objection to. We weren't going to give you carte blanche, we'd certainly take into consideration anything that you thought ought not to be said in

public session and we did not get any response and that is the matter which goes up to this moment.

I think it is a fair statement to say that these matters are matters of very, very substantial public importance—very substantial public importance. We have here an on-going relationship between the Executive branch and the Oversight Committees where historically the Executive branch has not responded as law requires. We went through that on Guatemala. And one of the senior Members of the Committee reported that it was a flat out lie by the CIA in not disclosing important matters to this Committee.

We have gone through Iran-Contra which is very, very different from Iran-Bosnia, because of all the underlying facts. It was well known that Iranian arms were going to Bosnia. We all knew that. But what we did not know was that there had been conduct which had been perceived as a green light according to Ambassador Galbraith, or would be perceived as a green light by President Tudjman.

And what we have not known is that the CIA was not informed as to what was going on. There may be a disconnect there and we are going to go into that.

But the Congress of the United States took up this question of an arms embargo, and I was one of many—50 Senators who thought we ought to remove the arms embargo so that I favored sending arms to Bosnia. I didn't favor sending Iranian arms to Bosnia, but I favored sending arms to Bosnia. And we had a long debate and had a fifty to fifty vote on the subject. And had the Congress known that the Administration had taken such conduct as to have a perceived green light, we might have had more votes to overrule the embargo and perhaps we could have sent arms which would not have been Iranian arms had we known what was going on.

So these are matters of the utmost importance. And the courts have weighed the issues as to where Executive Privilege lies, and there is a balancing act. And I am in my eighth year on this Senate Intelligence Committee and have some experience with confidential matters in the Senate, in previous governmental experience. And I am very concerned about not crossing the line. But we have important public matters.

And if we file a report at the end of secret hearings, there will be very little public understanding as to what we are doing. And this is the traditional way for the Congress and the Senate and the House to proceed. The House is proceeding on open hearings next week, and I think we are doing it exactly right.

Now the floor is yours, Mr. Talbott.

TESTIMONY OF HON. STROBE TALBOTT, DEPUTY SECRETARY OF STATE

Deputy Secretary TALBOTT. Thank you, Mr. Chairman, and thank you, Senator Glenn, and I hope you, Mr. Chairman, and Senator Kerrey's staff will pass on to him in his absence that I will, or course, convey and underscore to the White House, my colleagues there, his message and advice to the White House.

Mr. Chairman and Senator Glenn, I welcome this opportunity to discuss with you and your colleagues one of the incidents that you

are concerned with in this series of hearings: namely, an episode in the spring of 1994, when the Croatian government asked our view on whether to transship third country arms to Bosnia, and our Administration decided neither to oppose nor to approve the transshipment.

This is an incident on which I have both direct knowledge and in which I had direct involvement. And I look forward to asking—answering your questions.

Let me first, if I may, establish a bit of context here. As you yourself said, Mr. Chairman, in your open statement, the policy context is relevant to the purview of this Committee.

In April of 1994, the Bosnian government seemed to be on its last legs militarily and in some ways politically. The town of Gorazde—an obscure place name that became a household word here in the United States because of the horrors that transpired there—was nearly overrun in April of 1994. Its defenders were virtually out of bullets.

Sarajevo and the other enclaves were surrounded. They were at the mercy of Serb forces who were resorting to the greatest brutality, who were using the cutoff of electricity and water and food as weapons of war. The Bosnian Serbs at this point held 70% of the national territory of Bosnia-Herzegovina. More than half the national population had been uprooted from their homes.

The major powers, the international community, was seriously divided over how to deal with this crisis. The United States for its part advocated a two part strategy. One. Lifting a United Nations arms embargo that we considered unwise and unfair, principally because it discriminated against the Bosnians, who were the principal victims in this war. and second, a more vigorous use of NATO airpower to deter the Serb attacks on the safe areas.

Our European allies who had troops on the ground as part of UNPROFOR, United Nations Protective Force, resisted both lift and strike, because they feared that their forces on the ground in Bosnia would suffer in a resulting escalation of violence.

The only bright spot in an otherwise bleak diplomatic, political, military picture, was the conclusion in March of 1994, of the Washington Accords which established the Bosnian Federation. The Federation brought to an end a terrible war between Bosnian Muslims and Croats, shutting down a war on one of the three fronts on which it had been going on. And it offered the first glimmer of hope that a single multi-ethnic state might emerge after the war.

This fragile new federation, brokered by the United States and backed by Croatia also represented the first shift in the strategic balance against the Serbs. Only weeks after the Federation agreement was signed, we became aware that the beleaguered Bosnian government was pressing its new Croatian allies for help in staving off a military defeat. Bosnia had many friends, particularly in the Islamic world, who were willing to send arms and who in fact had been sending arms since the beginning of the conflict in 1992.

The only way to bring weapons into Bosnia in large numbers was through Croatia. This, Mr. Chairman, Senator Glenn, was the backdrop of the question that was posed to us by the Croats in late April. In deciding how to respond, we had a limited number of choices. We chose what we thought then and believe now was

the best option. Namely, to have our Ambassador tell the Croatians that he had, quote, "no instructions," unquote. That is a diplomatic way of saying that we neither approved of nor objected to what the Croatians were proposing.

We knew that there were down sides to a no instructions decision, the most significant being that if the Croatians permitted transshipments to go forward, the largest supplier of arms would likely be Iran. But after careful consideration we decided that the consequences of any other answer would be worse. If we had said yes to the Croatians, that is, if we had explicitly, affirmatively approved the transshipment it would have put us in the position of actively and unilaterally supporting a violation of the arms embargo. The public disclosure of such a posture would have caused severe strains with our allies who had troops on the ground in Bosnia as part of UNPROFOR and who naturally were giving priority to the safety of their own people on the ground.

Had we gone that course, it would have triggered the precipitous withdrawal of UNPROFOR and that in turn would have required a substantial U.S. troop deployment as part of a potentially very dangerous and costly NATO extraction effort.

Now, let me look at the consequences if we had said no to the Croatian request. That is, if we had explicitly disapproved of the transshipments and if the Croatian government had acted accordingly, i.e., by shutting down the arms to the Bosnians. Had we done that, we would have exacerbated the already desperate military situation of the Bosnians and very likely doomed the Federation of Moslems and Croats.

Now, I realize, Mr. Chairman—and you referred to this in your opening statement—many Members of the Senate felt that there was a fourth option: namely, to lift the arms embargo unilaterally and openly arm the Bosnians ourselves. We in the Administration were convinced at the time, and we remain convinced now, that unilateral lift of the embargo would have been a disaster. It would have put the United States in direct violation of a binding U.N. Security Council resolution. It would have encouraged others to pick and choose the resolutions that they would abide by, such as, for example, sanctions against Saddam Hussein. We also would have precipitated the withdrawal of UNPROFOR, and that, as I indicated earlier, might very well almost certainly would have required the deployment of U.S. troops in very adverse circumstances.

Now, Mr. Chairman, taken together, this chain of events would have touched off the worst crisis in the history of the Western alliance. Some believe, incorrectly, that our decision opened the way to Iranian influence in Bosnia. In fact, the Iranians had been there since 1992. By April of 1994, there were hundreds of Iranian majahadeen and Revolutionary Guards in Bosnia.

So the Croatians question to us in April of 94 was not an invitation to open a door that had been closed to the Iranians. That door was already open. Had we tried to slam it shut, we might very well have also shut down the relationship that was developing between Croatia and the Federation. And that result could have, I believe almost certainly would have kept us from ever getting to Dayton.

It was Dayton that gave us a chance to get the Iranians out of Bosnia. And the Dayton accords, we insisted on and achieved a

commitment to the removal of all foreign forces from Bosnia. While we remain concerned by any remaining Iranian influence in Bosnia to this day, and continue to insist that foreign forces leave the country, very substantial progress has been made on this issue, largely through determined American leadership.

Now, Mr. Chairman, much has also been said about Congress being kept in the dark about the decision. I would point out that Congress knew, as I think you indicated in your opening comments, about Iranian shipments more or less at the same time and in much the same detail that we did in the Executive branch. I would also stress that our answer to the Croats on the transshipment of arms to Bosnia, was consistent with the mood and exhortations that we were receiving from the U.S. Congress, and particularly from this body.

The United States Senate made clear on numerous occasions that it opposed the U.N. embargo for the same reason we did—because it discriminated against the Bosnians. Indeed, starting in June 94, less than three months after our reply to the Croats, Congress began moving to cut off funds for U.S. enforcement of the embargo. In that legislation the Congress, which was well aware of the Iranian connection, made no exception for Iran, and for the same reason that we did not object to the shipment of Iranian arms in April. Namely, keeping the Bosnians alive militarily and the Federation alive politically was more important than keeping the Iranians out of Bosnia at that point. Only when there was peace could we get the Iranians out, and that is exactly what we've done.

So Mr. Chairman, to conclude, in the wake of our 1994 April answer to the Croats—and I would contend partly as a consequence of it—the following happened. The Bosnian armed forces held on and began to counterattack. The Federation survived to become a cornerstone of the Dayton Agreement. We averted a crisis in the alliance. UNPROFOR remained in place, providing humanitarian supplies and helping the Bosnians through another brutal winter. We bought time for a combination of American diplomacy, NATO air power, and Croatian and Bosnian military victories to reach an historic peace agreement under U.S. leadership in Dayton. The U.S. is leading an international effort to arm Bosnia today. The Iranian presence there is down to a handful and increasingly marginalized. In short, Mr. Chairman, a tough decision turned out to be the right decision.

Now, Mr. Chairman, on the issue of public testimony. I am happy to appear before you today in public and I will do my very best—and I will try not to be too loquacious, Senator Glenn—to answer forthrightly all questions that you put to me, and I of course will take you up on your offer to ask for executive session either for me or for more knowledgeable colleagues if that is required.

But I must say, Mr. Chairman, that Secretary of State Christopher, with whom I spoke just before coming up here, and I, have severe concerns on one point in particular. And this has to do with your decision to read publicly, today as yesterday, from testimony that was taken in closed session and testimony that had been classified.

Now, I want to assure you, Mr. Chairman, as I indicated to you when we met privately yesterday, I am prepared to clarify what

happened on the subject that we are discussing here with regard to the meeting that the DCI—the former DCI, Jim Woolsey, had with Secretary Christopher on May 5th, 1994. But I do want, at Secretary Christopher's request, to make clear our concerns on this point.

The Secretary of State's regular private meetings with the DCI are among the most sensitive that occur in the Executive branch of the government. He and I would have very much hoped that this Committee would have kept discussion of this subject confidential.

Now, of course, the current DCI, in reviewing the staff report, was primarily concerned—properly—about sources and methods and protecting his personnel abroad and elsewhere. But the Secretary of State also has equities in this issue. He has equities that concern confidential diplomatic transactions, including, perhaps hypothetically but more than hypothetically, with foreign leaders who are still in office. He also has concerns about the confidentiality of deliberations that take place within the Executive branch.

So quite simply and quite candidly, and in the spirit of openness between us, Mr. Chairman, we very strongly disagree with your staff's decision in this regard.

However, as I say, I discussed the matter with the Secretary this morning and he and I do feel it appropriate for me to provide our recollection of what happened in the May 5th meeting and as a result of it, in open session. We do so, however, on the hope that this case of going public with the proceedings of such a meeting will not in any way set a precedent for the future.

Thank you, Mr. Chairman, and I am happy to try to answer your questions.

Chairman SPECTER. Well, thank you, Mr. Talbott.

Mr. Talbott, let's begin with the definition of covert action. An activity or activities of the United States government to influence political, economic, or military conditions abroad where it is intended that the role of the United States government will not be apparent or acknowledged publicly, but does not include traditional diplomatic or military activities. Is there any doubt in your mind that the activities did intend to influence political, economic or military conditions, with the intention that the role of the United States government not be apparent or acknowledged publicly?

Deputy Secretary TALBOTT. In the case that we are talking about here?

Chairman SPECTER. Yes.

Deputy Secretary TALBOTT. It is our strong view that this instance was by no stretch of the imagination a covert action.

Chairman SPECTER. Well, my question to you, and I am not going to spend a whole lot of time on it, is as to two aspects of the definition. Didn't it proceed to influence political, economic, or military conditions abroad?

Deputy Secretary TALBOTT. The short answer is I do not think that that definition matches what happened here. Let me just review very briefly what happened. The Croatians came to us with a question. The question was, we are thinking about doing thus and such. What is your view on that. Our answer was, we do not have a view. We are giving you a non-answer. So Croatian intentions were quite clear. Croatia I think made very clear what they

were going to do. But I don't see any way that you can construct the episode so that it looks as though we were trying to get the Croatians to do something they weren't otherwise going to do.

As for keeping the transaction, the exchange confidential, of course we wanted to keep it confidential. We would try as best we can to keep much of our diplomatic activity confidential. I can go into the reasons why it was especially important in this case, if you would like.

Chairman SPECTER. With respect to the definition of covert activity, covert action means an activity or activities of the United States government. If—and I do not know what the facts will show—that the agents of the United States government liberated the missiles which had been detained by the Croatian government so that they could be transmitted to the Bosnians, or acted to liberate the halted convoy, knowing that they contained arms, would that constitute covert action?

Deputy Secretary TALBOTT. As a general proposition, Mr. Chairman, I would prefer not to address hypotheticals, and this one in particular. This hypothetical question pertains to—is quite a separate episode from the one we're discussing here. The episode in question occurred in the fall of 1994. I believe that you already have testimony from witnesses, Administration officials who do have direct knowledge of that episode, denying that interpretation—that hypothetical interpretation. But I can really contribute nothing on that subject.

Chairman SPECTER. With respect to the essence as to what Ambassador Galbraith and Ambassador Redman did in their conversations with Croatian officials, where beyond simply saying no instructions, they said—Ambassador Redman said to President Tudjman, consider what we are not saying as well as what we are saying. And the conclusory discussion that Ambassador Galbraith reportedly had with you, that on that state of the record, President Tudjman would perceive that there was a green light. What is your view as to whether that goes in any degree whatsoever beyond simply no instructions?

Deputy Secretary TALBOTT. As you have described it, I think it stays within the framework of what we intended and instructed Ambassador Galbraith to say.

If Ambassador Redman or anybody else in speaking to the Croatians, said consider what we are not saying, that is an amplification, as it were, on no instructions, but it is consistent with no instructions, because what we were not saying was, no, and what we were saying was, yes. We were saying we have no answer for you here.

Now I think the—as I understand the thrust of your question, Mr. Chairman, you are asking if we expected that the transshipments would go forward once our message was conveyed—namely, our no instructions message. The answer is yes, we expected that hearing a carefully considered response from us which was a non-response, the Croatians would go ahead with what they clearly intended to do and what the Bosnian government very much wanted them to do. And in my opening statement I tried to make clear the political, military, and strategic rationale for why we felt that ought to happen, because had the Croatians, for rea-

sons that I can't imagine, interpreted no instructions to mean no, and shut the pipeline down, the immediate result would have been the collapse of the Federation and the military collapse of the Bosnians.

Chairman SPECTER. Had Ambassador Galbraith given a red light to President Tudjman, would the arms have continued to flow through Croatia to Bosnia?

Deputy Secretary TALBOTT. Just so you will understand my own locutions here, I am going to refer only to our communication with the Croatian government, if that is all right.

Chairman SPECTER. That's fine.

Deputy Secretary TALBOTT. Because of points that I made earlier. Had—your question was if the Croatians had understood the response as a red light?

Chairman SPECTER. Had the Croatians understood the response as a red light, would the Croatians have continued to permit Iranian arms to flow to Bosnia?

Deputy Secretary TALBOTT. That is an entirely hypothetical question. It's actually one that I do think, I am quite sure, we debated or discussed among ourselves at the time and we have discussed in the context of the current inquiry. I don't know what the answer is. I have heard that argued around and flat.

My one guess is that had we flashed a red light and made very clear that we were, as it were, throwing our bodies in front of the Croatian desire to pass arms to the Bosnians, they might have not gone ahead with the transshipments. That would have not been a desirable outcome from the standpoint of American interests.

Chairman SPECTER. Well, it is a matter of interpretation which we can all have different views on, Mr. Secretary, as to whether conduct which results in the perception of a green light does or does not constitute activities. But I don't think further discussion is going to shed any further light on it.

Let me move now to the question as to the instruction with respect to a written report. What is the general practice of the State Department with respect to a cable, say, from Ambassador Galbraith to report on what discussions he had had with Croatian officials?

Deputy Secretary TALBOTT. I can generalize beyond that, if you'd like. In general—

Chairman SPECTER. Please do.

Deputy Secretary TALBOTT. A lot of our business is, of course, recorded for the diplomatic record. That is quite usual. I would add, though, I think this is in the spirit of response to your question, that it is not that unusual for instructions to be conveyed orally, for demarches, as we call them, to be delivered orally. That is, a message or exhortation, remonstrance, or approval, to another government, also to be delivered orally, and for an Ambassador or another Embassy person to report back orally. Sometimes there is a follow up on paper, sometimes there is not.

Chairman SPECTER. Well, how about in the context where as here, Mr. Lake told Ambassador Redman not to have a writing. And how about in the context here where Mr. Galbraith asks you and you say yes, put it in writing, providing you hear from one of

my two subordinates, and no such word is received. Is that customary?

Deputy Secretary TALBOTT. I can only testify to the latter of the two points that you raised. I do not have independent knowledge of Mr. Lake's conversation there. But I certainly—I have had my memory jogged, to put it mildly, on my own conversations back at that time. And of course, in particular, a memorandum, to the file that Ambassador Galbraith has made available to you.

As I recall what he asserts that I said when he asked me whether he should send back a written report, I said sure, I don't see any reason why not, but check that with, and then I named two individuals who were in the diplomatic chain of command between him and me. That is the last I thought of it.

Let me just clarify why that is the last I thought of it until, of course, it came up in the context of this inquiry. I had two concerns. First, that we make the right decision. And second—well, maybe three concerns. And second, that the right decision get translated in the right instructions to our man on the scene. And third, that those instructions be properly carried out. I was satisfied on all three points. Whether there was a follow up cable was an operational question.

But I want to be very blunt with you on another point. Another reason that diplomatic transactions and internal deliberations do not end up on paper is because of the extreme sensitivity of the subject matter. What goes down on paper is more likely to come out in public, in inappropriate and harmful ways, harmful to the national interest. And so while I don't know this for a fact, I wouldn't be at all surprised if one reason during this episode that there was a desire to have less on the public—to have less—well, on the public record, to be sure—but less on the written diplomatic record that might get out in public was precisely this concern. We did not want this back and forth between us and the Croatians to become public, for one reason above all. Had it become public, it would have stirred up further relations with our principal NATO allies, which were already quite tense at the time because of our disagreement over lift and strike.

Chairman SPECTER. My red light is on, but I want to cover just two more questions which are directly relevant here. Mr. Secretary, is it unusual for somebody in Ambassador Galbraith's position, having received these kinds of instructions from you, and what's already been described with respect to Mr. Lake's instructions to Ambassador Redman, is it unusual for somebody in Ambassador Galbraith's position to prepare a memorandum, sort of a protective memorandum, self protective memorandum, contemporaneous with the events?

Deputy Secretary TALBOTT. I don't think it is terribly unusual. I wouldn't say it is standard practice.

Chairman SPECTER. Not unusual for an Ambassador in Galbraith's position to be concerned about not having anything in writing and to, at the suggestion of one of his colleagues, put it in writing so he has protected himself?

Deputy Secretary TALBOTT. Here I can only put my mind into Ambassador Galbraith's operating at that time. Among other things, he had gotten a telephone call from me, as you know. And

the thrust of my telephone call to him was to make absolutely sure that he understood what his instructions were and that he was going to convey them in the spirit and the substance intended.

So Ambassador Galbraith, no doubt, was acutely aware that there was a lot of interest in how this was all playing out and may simply have wanted to have made absolutely sure that he had his own personal record of what had happened, what he had been told to do and how he had done it. So I don't find that terribly unusual given the extraordinary pressures that Ambassador Galbraith was operating under at that time.

Chairman SPECTER. Was there a reprimand to Ambassador Galbraith which was really just a feigned or phony reprimand?

Deputy Secretary TALBOTT. I have heard reference to such, read reference to such. I do not, to the best of my own recollection recall certainly myself reprimanding Ambassador Galbraith—I think Ambassador Galbraith was doing a good job in an extremely difficult circumstance. I can really only speak to the tenor, the intention, the content as best I can recall it, of my own conversations with him.

Chairman SPECTER. Well, in the next round I will take up, if intervening questioners do not, the issue as to whether it was normal to have the CIA uninformed and the so-called disconnect there.

And I now yield to Senator Kerrey.

Vice Chairman KERREY. Thank you, Mr. Chairman.

Secretary Talbott, let me first say that you've made some statements that in some cases are better left to a closed session for me to follow. In some cases they are really not the subject of this Committee's interest, so I am not going to pose them. And let me give you an example of the latter one. Both you and Ambassador Holbrooke are citing the specific delivery of Iranian weapons as critical to the maintenance of both the Federation and the Bosnian Muslim resistance in 1994. That may be. I don't personally have a great deal of evidence to lead to that conclusion, and as I said, I don't think it is relevant for this. But I don't want to leave it unmentioned.

Secondly, you say we weren't trying to get the Croatians to do anything they otherwise wouldn't have done, and I would like to pursue that in a closed discussion, in a closed hearing where you can perhaps talk about sources for that conclusion.

What I would like you to talk about instead, and ask you again, and let me make it clear, my purpose here is to try to find fault, but not for the purpose of stopping there, but for the purpose of laying a precedent down for future policy—for future policy where an Executive branch is in a very tight spot, having to make a very tough decision, in a very risky environment. You said this is a tough—your quote is, tough decision turned out to be the right decision. Substantial downside risk in this decision.

And there is a reason for informing Congress, and the reason is to share the risk in this environment. I think it is important that we establish those situations where informing Congress is and should be done, either by law or for the purpose of carrying out the intention of the Executive branch.

You said, Mr. Secretary, your quote was, Congress knew more or less what we knew. Well, I find the phrase more or less to be rath-

er interesting. This is referencing May of 1994. Let me ask you, if you discussed with Senator Mitchell and Senator Nunn what was going on in Zagreb and the no instructions policy. They are the ones that offered the amendment in May of 1994. Did you discuss this with them and was it clear to them—was it clear to Senator Nunn and Senator Mitchell in May of 1994 that when they offered their amendment, that they were including Iranian arms shipments?

Deputy Secretary TALBOTT. Can I first, by way of prelude, say that while you stepped out for a moment or two at the beginning of my opening remarks, Senator Kerrey, I said that I heard you loud and clear on the message and advice you had for the White House and would convey that to the White House.

If you are asking whether in our extensive consultations with Congress during 1994, Senators Nunn and Mitchell were ever briefed on the specific exchange we are talking about here—

Vice Chairman KERREY. Actually it is not—it's more narrow than that. I am talking about the April 29th time period. They offered their amendment in May and yesterday—two days ago when Ambassador Holbrooke was here, he said that, quote, "Galbraith made his decision in anticipation of the law being changed."

Deputy Secretary TALBOTT. Right.

Short answer is I don't know. I doubt however, and I trust you will allow me to check with colleagues and find others who can answer this on the basis of direct knowledge—I doubt that anybody up here—Senators Nunn, Mitchell, or anybody else were briefed on the specific exchange.

Now, the specific exchange, which is to say, our no response response to the Croats was—

Vice Chairman KERREY. Can I—can I—can I just say that my concern is whether or not you were—would have said to Senator Nunn, Senator Mitchell, look, we got a problem here, we got a Federation that we have got to hold together, recently put together, it's in the interest of the Croats and the interests of the Bosnian Muslims that we change our policy to no instruct because we're concerned the Muslims may not survive over the winter and we're going to do this?

Deputy Secretary TALBOTT. Can I pick up just on one phrase in particular that I think will be helpful? I don't think it'll bring you and me in total agreement here on whether there is fault to be found, but I think it will clarify the situation.

You used the phrase, Senator Kerrey, change our policy. It is our honest judgment that the exchange that we had with the Croats in April 1994 did not constitute a change in policy. It was a specific confidential diplomatic exchange that was consistent with and supportive of a policy that had been in place for some time.

Vice Chairman KERREY. Wait a minute; wait a minute.

Deputy Secretary TALBOTT. Can I just—

Vice Chairman KERREY. Yes, sir.

Deputy Secretary TALBOTT. Just to amplify a bit.

United States policy with regard to how to bring peace to Bosnia changed quite dramatically with the change in Administrations. When the Clinton administration came in, there was a new priority on lift and strike, which I have already described in my opening

statement, trying to do as much as we possibly could—more, certainly, than had been done to assist the Bosnians, while not violating the U.N. embargo for reasons that I have discussed before and will talk about again.

And another key component in our change of policy was our fostering of the Bosnian Federation which brought what had been two warring parties together into a single entity, the Muslims and the Croats.

The back and forth with the Croats that we are discussing here was totally consistent with and supportive of that policy. I might add, it was also consistent with the will of the Congress, although of course the Congress would have gone further and broken us out of the arms embargo unilaterally. So we did not at the time and do not now, in retrospect—and obviously we've had a lot of reason to look back and think back about this—regard what happened on April 27th, 28th, 29th, as a change in policy.

Vice Chairman KERREY. Do you think, Mr. Secretary, that you said Congress knew more or less what we knew, do you think that Congress getting its information through what really was half a dozen newspaper accounts in 1994 constitutes knowing more or less what you knew?

Deputy Secretary TALBOTT. No, sir, I am referring also to information which is very much in the purview of this Committee, and if you would like me to amplify, I think we should put that in the first category you set up in asking your question, namely something we should talk about in executive session.

Vice Chairman KERREY. Clearly you have—

Deputy Secretary TALBOTT. You had a lot of the same information available to you that we were operating on within the Executive branch, is what I am saying.

Vice Chairman KERREY. Well, a lot is a key word here.

Deputy Secretary TALBOTT. I understand.

Vice Chairman KERREY. I mean, I can have a lot of the same information you do but not have the critical information. And apparently the answer is either Senators Nunn and Mitchell were either not informed or you don't recollect whether they were informed prior to their offering their amendment in May of 1994. And in your written testimony you went so far as to actually say that Congress didn't prohibit in the Nunn and Mitchell amendment, they didn't prohibit allowing Iranian weapons to go into Bosnia. I mean, it leaves the impression that—that they were informed somehow of what was about to happen. And if they weren't informed, in my judgment, Mr. Secretary, they should have been.

Deputy Secretary TALBOTT. I understand that. I want to make very clear though, what I am referring to here. I am referring to classified information about many things, but including the flow of Iranian arms into Bosnia that was generally available to the Congress more or less contemporaneously to when it was available to us. I am not referring to any briefing for any Members of the Congress on the specific exchange as a result of the April 27th decision.

Vice Chairman KERREY. Well, can you describe to me when you—you know, you say you selected a no instructions policy. That was a conscious decision.

Deputy Secretary TALBOTT. Yes, sir.

Vice Chairman KERREY. Conscious decision. You're saying that is not a change in policy. I mean, I am willing to let some seminar on government figure that out, but it unquestionably is an action taken—no instructions is an action taken because I mean again, you—you say it is a tough decision made that turned out to be the right decision.

Deputy Secretary TALBOTT. Yes.

Vice Chairman KERREY. And I would certainly say that is an accurate statement insofar as the outcome and the end was good, although I would cite the NATO air strikes that the Administration pressed for in August and the Serbian collapse and withdrawal out of the Krajina Valley—

Deputy Secretary TALBOTT. Absolutely.

Vice Chairman KERREY [continuing]. And the embargo on Serbia. I mean, other factors that were there as well. But again, you are absolutely correct in saying it was tough decision but it nonetheless is a decision. And can you tell me why? There must have been a—you must have some recollection of why you would not come either to this Committee or to, as I said, leadership, and say look, you guys are debating this right now, we have the same concerns you have and here is a decision that we have made.

Deputy Secretary TALBOTT. Right.

Vice Chairman KERREY. We have made this decision and we want to inform you of it.

Deputy Secretary TALBOTT. Well, we'll let that same seminar—government seminar decide whether in fact this wasn't an inaction rather than an action, since it was a nonresponse.

Vice Chairman KERREY. Well, let me use your words then. It's a decision.

Deputy Secretary TALBOTT. Yes, sir; absolutely.

Vice Chairman KERREY. You describe it as a decision.

Deputy Secretary TALBOTT. It was a decision and it was accompanied by some judgment calls.

Vice Chairman KERREY. You're saying it was a tough decision that turned out to be the right decision.

Deputy Secretary TALBOTT. Correct.

Vice Chairman KERREY. So it is a decision made, a decision that was relevant to the—to the debate that was going on on—the Hill at the time, and certainly relevant to Senator Nunn and Senator Mitchell as they offered an amendment that you have cited as a reason for saying, you know, Congress basically told us that we could go ahead and do this.

Deputy Secretary TALBOTT. I understand.

It was certainly a decision, and I am not trying to portray it otherwise. We could have said—the decision could have been to say yes or it could have been to say no and we chose to say neither of the above. It was a decision couched in a judgment call, and the judgment call, which I think was correct, was a decision about how to conduct diplomacy, how to respond through diplomatic channels to a diplomatic inquiry. Supportive of, in no way undercutting, in no way changing the overall policy which was very much a matter of discussion and debate at the time. And I certainly understand Senator, and fully respect that you have a different judgment on that. But that was our thinking.

Vice Chairman KERREY. I'd be interested to know, first of all, if in the absence—I'd be interested to know what Senator Nunn and Senator Mitchell's judgment would be as well. I mean, since they were the ones that offered this amendment and the amendment has been cited both by you and Ambassador Holbrooke, it's been cited as giving you permission to make this, we'll call it a decision, since that is your language.

Deputy Secretary TALBOTT. I think my best response to you at this point is to say I take your point.

Vice Chairman KERREY. Thank you.

Chairman SPECTER. Thank you very much, Senator Kerrey. Senator Glenn.

Senator GLENN. Thank you, Mr. Chairman. For all the reasons I gave earlier, Mr. Chairman, I prefer not to ask questions in open session.

I yield back the balance of my time.

Chairman SPECTER. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Mr. Secretary, let me preface my comments by saying that I think the Administration did face some very difficult choices in the context of the decision that was made in April of 1994. I share the concern expressed by a number of my colleagues and by you regarding Iranian influence in that region of the world.

But having said that, I think the decision made was the best that could be made under the circumstances and certainly was a contributing factor to the circumstance that we find today which is much improved than the situation right after the fall of Gorazde in the spring of 1994.

The Chairman has asked you a couple of questions about covert action and I would like to take you through a couple of things and get your response to a couple of my questions, if I may.

Mr. Secretary, as I understand, the Administration certainly did not solicit or recruit the transshipment of arms from Iran or any other country through Croatia, is that correct?

Deputy Secretary TALBOTT. Yes, sir.

Senator BRYAN. The United States did not advocate such action.

Deputy Secretary TALBOTT. Yes, sir.

Senator BRYAN. That is correct as well.

And the United States did not encourage such action, am I correct?

Deputy Secretary TALBOTT. I am going to obviously be precise because we're talking about words as well as the law here.

Senator BRYAN. Uh-huh.

Deputy Secretary TALBOTT. I think the bottom line is, no, we did not encourage. But one reason we are having this discussion today is that there are those who feel that by not saying no, we encouraged. I understand that point of view and we are well aware of that dimension if not danger of the situation at the time, which is the reason, Senator Bryan, that I got on the phone to Peter Galbraith to make sure that he understood that there was to be no English, no spin, no colored lights here, no instructions was to mean no instructions. That is the only one I would kind of put an asterisk next to.

Senator BRYAN. I think all of us understand the position that you've taken with respect to the response, "I have no instructions." One could argue that is an action. I would argue that that is not encouragement even though the consequence of that response would clearly indicate that the probability is that the Croatians would view that, as "Look, it's okay if we go ahead."

Deputy Secretary TALBOTT. If I had either thought of that formulation or my staff had been smart enough to prepare me with that talking point, that is what I would have said.

Senator BRYAN. Now, the National Security Act of 1947 defines covert action meaning any activity or activities of the United States government to influence the political, economic, or military conditions abroad. Our distinguished Chairman asked a series of questions about that. The definition goes on to say where it is intended that the role of the United States government will not be apparent or acknowledged publicly, but does not include traditional diplomatic or military activities. Does not include diplomatic or military activities.

Mr. Secretary, are you familiar with the provisions in the Intelligence Authorization Act of 1990 which sought to expand upon the definition of covert action?

Deputy Secretary TALBOTT. Vetoed by President Bush?

Senator BRYAN. Yes.

Deputy Secretary TALBOTT. Yes.

Senator BRYAN. And again, the operative language that engendered the primary concern by President Bush, and parenthetically I think he was correct, is that covert action under the Defense Authorization Act of 1990, which was subsequently vetoed, would have included, and I quote, "a request by any department, agency, or entity of the United States to a foreign government or a private citizen to conduct a covert action on behalf of the United States shall be deemed to be a covert action." As I read that, not as a diplomat, but a layman who once upon a time had a little experience in the practice of law, that would then expand the definition of covert action to include a request. Is that your understanding of what the purport of that language would be?

Deputy Secretary TALBOTT. Yes.

Senator BRYAN. And it was—

[Pause.]

Deputy Secretary TALBOTT. I was checking with my lawyers; yes. Having had no such experience in my own background, Senator.

[General laughter.]

Senator BRYAN. Let me just say that I am not in any way trying to play games with you at all, but trying to get—

Deputy Secretary TALBOTT. No, I understand.

Senator BRYAN. In other words—if that act had become law, if the President had signed it, or in the alternative, after the veto the Congress would have overridden the President's veto, that clearly would have been a substantial, significant expansion of the National Security Act of 1947's definition of covert action.

Deputy Secretary TALBOTT. And would have had a chilling effect on our ability to conduct diplomacy.

Senator BRYAN. And to share with you, in case your recollection needs some reflection, it was President Bush's veto message that

addressed that concern, when he said, and I quote from that message, "I cannot accept the broad language that was added in conference to the definition of covert action. Section 602," that is the section that I just quoted from, Mr. Secretary, of the bill, "defines covert action to include any request by the United States to a foreign government or a private citizen to conduct a covert action on behalf of the United States. This provision purports to regulate diplomacy by the President and other members of the Executive branch by forbidding the expression of certain views to foreign governments and private citizens absent compliance with specified procedures. This could require in most instances prior reporting to the Congress of the intent to express those views," and President Bush went on to say, "I am particularly concerned that the vagueness of this provision could seriously impair the effective conduct of our nation's foreign relations. It is unclear exactly what sort of discussions with foreign governments would constitute a reportable request."

My point, Mr. Secretary, is that in examining what constitutes covert action, we must rely first upon the language of the law, the 1947 Act, and also the historical experience under that act. And further, as to whether a request or encouragement would constitute covert action, I think it is reasonable to read into that interpretation and understanding the expansive language that was the subject of President Bush's veto in 1990.

And my question to you, sir, is do you agree with that?

Deputy Secretary TALBOTT. I do sir.

Senator BRYAN. Now, there is another provision under the law that has been cited and I want to get your response to that. Under Section 501, and that is displayed on the board there by our distinguished Chairman, Section 501(a)(1), "The President shall ensure that the Intelligence Committees are kept fully and currently informed of the intelligence activities of the United States."

Again, Mr. Secretary, as a layman with no experience in diplomatic matters, I am reading that the operative language is probably the words intelligence activities.

Would that be your reading as well?

Deputy Secretary TALBOTT. Yes, sir.

Senator BRYAN. And I would take it that there is a distinction between intelligence activities and diplomatic activities.

Deputy Secretary TALBOTT. Yes, sir.

Senator BRYAN. And so under the law you would be required, or the President and the Secretary of State and all of his operatives acting under his direction would be legally required to inform of intelligence activities, but not legally required to inform of all diplomatic activities.

Would you agree with the proposition?

Deputy Secretary TALBOTT. Yes, sir.

Senator BRYAN. Now, having said that, there is a question of whether or not it would have been prudent and wise to have informed this Committee and its counterpart in the House of the events that occurred on or about April 29th, 1994. And I take it that reasonable men and women can differ on that proposition.

Deputy Secretary TALBOTT. I believe so and I hope so.

Senator BRYAN. Let me ask finally, as my light is about to expire, what was the rationale, Mr. Secretary, assuming as I do, that there was no legal obligation for you to report that conversation to this Committee, and assuming further in my judgment there was no action that was taken in the context of that conversation that constituted covert action—my interpretation—what was the reasoning process or the rationale for not sharing with the Committee the circumstances of that conversation and what we understand clearly were the probable consequences?

Deputy Secretary TALBOTT. This Committee, Senator?

Senator BRYAN. Yes, this Committee; yes.

Deputy Secretary TALBOTT. This Committee.

The rationale would have been that at issue here was not an intelligence matter but a diplomatic matter.

Senator BRYAN. And I, for purposes of this colloquy, concede the legal interpretation that you give. I think that is correct. Parenthetically, I must say that begs the question in terms of it was a significant action.

Deputy Secretary TALBOTT. Right.

Senator BRYAN. Not in my judgment a covert action, not in my judgment an intelligence activity, as those words of art are used in the National Security Act of 1947, but it was clearly significant and clearly in the context, and parenthetically, I acknowledge that I was one who favored the unilateral lifting of the embargo because I feared that a collapse was imminent. So I am not critical of the action taken, but I want to get the benefit of the thinking.

Assuming that you were not legally required to do so, under either of the two provisions we have cited under the National Security Act of 1947, what was the reasoning process? Share with me to the extent that you can why this information would not have been shared with this Committee and its counterpart in the House, because very clearly this was a contemporaneous issue which riveted attention on the circumstances that were occurring in the Balkans as to what we could do to forestall that collapse. We were all very much concerned about it, Mr. Secretary.

Deputy Secretary TALBOTT. Right.

Senator BRYAN. And I know you were as well.

Deputy Secretary TALBOTT. I'll do the best I can, and I appreciate you walking me through, as lucidly as you have, the legal language, not being a lawyer. I have noted, as I have gotten into this subject intensively in the last several weeks, and that this is one case where the language of the law and common sense and I might add, simple dictionary definitions of words, all coincide and reinforce each other.

You were asking me why we did not consult with this Committee. Do I infer that you are also interested in the Congress more generally or just this Committee?

Senator BRYAN. Well, let's take it a step at a time. And Mr. Chairman, I know that I am slightly beyond my time, if you would be so gracious.

Chairman SPECTER. That's fine, Senator Bryan; you may proceed.

Senator BRYAN. And I appreciate the Chairman's courtesy on this. I think this is relevant. Why not tell this Committee in closed session? You know, we're all on the same team here.

Deputy Secretary TALBOTT. Sure.

Senator BRYAN. I know of no Member of Congress who felt that it would be in our national interest if there was a collapse of the Bosnian government. I don't think I ever heard that debated. There are a lot of differences as to what our policy ought to be and how we should go about securing Bosnia's continued existence, but I don't know of anybody who felt it would be a good idea if the Bosnian government collapsed. So why not share in a closed session with this Committee that indeed, this conversation has occurred, and we would fully expect—we being you and the State Department, that President Tudjman would allow these shipments to go forward.

Deputy Secretary TALBOTT. The short answer—and perhaps I'll preface this with a disclaimer—I am trying best I can—I told Chairman Specter this yesterday when we met privately—to reconstruct events that occurred over two years ago. Now, I've had a lot of memory joggers in the last several weeks, but particularly on a question like this, I am going to have to go into the gray matter here and we'll see what comes out.

Senator BRYAN. Well, you've got ample gray matter, Mr. Secretary; there's been much evidence of this by the quality of your presentation.

Deputy Secretary TALBOTT. I thank you for those gracious remarks.

I think the principal reason was that we felt this to be at the time a genuinely and purely diplomatic exchange, a confident diplomatic exchange. Now, were we aware that it had potential strategic and, indeed, intelligence ramifications, the answer is, of course. But I think the appropriate subject for us to have brought forward to discuss with Members of this Congress and this Committee and its counterpart in the House in particular, would have been substantial changes in the situation on the ground in Bosnia and in Croatia. Now here I simply do not know what briefings occurred and what information was shared with the Committee. I have a colleague with me here today who, in executive session, can go into that. And if you would prefer to take this or would like to take this into executive session, we can. But the answer to your question is we saw this as diplomacy.

Now we saw it—I am sure that your counterparts on the Senate Foreign Relations Committee and the House International Relations Committee are going to have similar questions about why we didn't talk about it with them, this exchange in particular, and we will have an opportunity to answer that question. But the answer is basically the one I gave you earlier. This was a specific exchange that moved our policy in the direction it was already going and in which it was seen to be going. It didn't fundamentally change anything. What would have changed something, big time, would have been if our answer to the Croats had been no, we are flat against your letting these arms flow to the Bosnians. That would have had, we think, disastrous consequences and we would have been up here a lot earlier than now testifying on a much bleaker situation.

Senator BRYAN. Mr. Talbott, if you can tell us—and this is my last question, Mr. Chairman—were you privy to any conversation

or did any conversation to your knowledge occur as to, look, should we inform the Congress in some manner, through either the Intelligence Committees, the Foreign Relations Committee, the leadership of the Congress?

Deputy Secretary TALBOTT. About again?

Senator BRYAN. About the critical event, as I view it, that occurred on April 29th, 1994.

Deputy Secretary TALBOTT. Yes.

I do not recall being privy to such conversations, but that doesn't mean they didn't occur.

Senator BRYAN. Mr. Chairman, I thank you again for your graciousness, as always.

Chairman SPECTER. Thank you very much, Senator Bryan.

Mr. Secretary, in response to Senator Bryan's questions I believe you said that there was an instruction, and I believe you were referring to Ambassador Galbraith, that there be no English, no spin, no colored light. Is that your testimony?

Deputy Secretary TALBOTT. Yes, sir. I am not quoting myself from two years ago. That is a paraphrase, sort of reinforcing paraphrase. I do not know the exact language I used with Ambassador Galbraith, although exact language has shown up in at least one memorandum I have read, and I believe it was something like no instructions means no instructions.

Chairman SPECTER. Well, if the essence of what you said was no English, no spin, no colored light, when he responded to you that what has happened here will be perceived as a green light by Croatian officials, unless there is a specific objection, and you really wanted no English and no spin and no colored light, why didn't you say to him then at that point then do what you have to do to be sure there is no English and no spin and no colored light?

Deputy Secretary TALBOTT. Well, I think what I would have had to have said would have been one of two things. Either—and I do not recall whether we got into this part of the conversation. I would either have to say, Peter, we can't help what the perception of the Croatians is. What we can help is what we say. What we can do something about is what we say. Words matter. And the words here are you have no instructions.

Now, the only way to have eradicated from the Croatians minds the perceptions of a green light would have been to give them a red light, to say no. And earlier in our colloquy today, Mr. Chairman, I have walked you through as best I could the logic of why we felt that would have been a mistake.

Chairman SPECTER. Well, Mr. Secretary, what is the logic in your saying we cannot help what they think, we can only help what we say, when what we say gives them the perception of a green light. You can help what they think simply by saying, when your Ambassador Galbraith says to you on this state of the record, they'll perceive a green light—

Deputy Secretary TALBOTT. Right.

Chairman SPECTER. If you don't want them to perceive that, you can help what they think by simply saying, we are not giving you a green light.

Deputy Secretary TALBOTT. Well, I want very much to get on the same wavelength with you here. We could have said, red light, no.

Anything short of that—and this was really, I think, Peter Galbraith's message to me, and I concurred with it—anything short of a no would have left the Croatians feeling that they could, without having to deal with a blow up from the American side or some kind of a post fact—after the fact American objections, they could proceed with allowing these arms to reach the Bosnians. That's what Peter meant and we recognize that. We recognize that—when we talked through the choice that we faced, which I would describe as a dilemma in some ways, because I think Dick Holbrooke said to you yesterday, there was no ideal option available to us here. We had to look very carefully at the consequences of each option available to us. When we looked at the option we took, we recognized that one of—part of its downside was that it would lend itself to this interpretation. But given the consequences we would have faced had we gone either of the other two routes, this was the way to go, it was the right decision.

Chairman SPECTER. Okay, Mr. Secretary, I can understand your judgment in wanting the flow to continue as you articulate it, I just do not understand your saying that you could not help what they think. Because on—you certainly could help what they thought if you wanted to be explicit about it.

Deputy Secretary TALBOTT. Well, we could have—yes, we had the option of saying—

Chairman SPECTER. All I am raising a question on is that you certainly had the capacity to help what they thought.

Deputy Secretary TALBOTT. Well, okay, and in that sense we did help what they thought.

Chairman SPECTER. That's my only point.

Deputy Secretary TALBOTT. Well, all right. Now that I understand it, let me reply to it. We wanted to make sure that the Croatians heard from us, we are not going to answer your question, we have no position on this. Ambassador Galbraith has no instructions.

Chairman SPECTER. Okay. The conclusion is you did help what they thought and Ambassador Galbraith told you they perceived a green light and you wanted the record to stop at that.

Deputy Secretary TALBOTT. No, I am happy for the record to go on as long as you want, Mr. Chairman.

Chairman SPECTER. No, no. You were happy for the record as the Galbraith discussion with the Croatian officials to terminate at that point. You were not going to have Ambassador Galbraith say something which would alter the perception of the Croatian official that there was a perceived green light.

Deputy Secretary TALBOTT. I think that the perception of the Croatian officials that they should, could, and would proceed with the shipments was pretty much unavoidable even with the firm, crisp, non-amplified, no instructions instructions. So there was no way out of that particular corner of the box. And we recognized it fully.

Chairman SPECTER. U.N. Security Resolution 740 required, quote, "called upon all states to cooperate fully with the Sanctions Compliance Committee, including reporting any violations." Wasn't there a clear cut U.S. violation with this Resolution when the United States did not report violations?

Deputy Secretary TALBOTT. I will get you a carefully thought out and an expert opinion on that. My off the top of the head answer is no. I think our obligation to the Security Council and to the Resolution was to abide by the embargo. Abide by meant not ship arms to any of the former Yugoslav states, not to actively assist others in violating the embargo. In fact, for a period, as you know, we were involved in the enforcement of the embargo, both with the DENY FLIGHT operation and with SHARP GUARD in the Adriatic, although that came to an end later in the year.

Chairman SPECTER. Well, but when the Resolution calls for the including of reporting any violations and the United States knew there were violations and did not report them, isn't that a clear cut violation of the Resolution 740?

Deputy Secretary TALBOTT. I will take the question, Mr. Chairman, and make sure that you have a full answer to that. That obviously is something I would want to get our lawyers and our U.N. people to look at very carefully.

Chairman SPECTER. Well, Mr. Secretary, why is that necessary when the Resolution says that it calls upon all states to cooperate fully with the Sanctions Compliance Committee, including reporting any violations. And here we have a violation which the United States knows, about and a requirement by the Resolution to report the violation. Isn't it pretty clear on its face that there is non-compliance with that Resolution?

Deputy Secretary TALBOTT. It's not clear enough to me for me to be able to give you the crisp answer that I think you want here. Among other things in answering your question and in making sure that you get the best reply as promptly as possible, I am going to ask my colleagues what information in fact we were sharing with the United Nations about possible violations.

Sitting here now, Mr. Chairman, I do not know the answer to that.

Chairman SPECTER. Mr. Secretary, when Senator Kerrey questioned you about whether you told Senator Nunn and Senator Mitchell—but before I get to that, do you know with certainty that the United States military, prior to the Nunn-Mitchell Resolution, do you know with certainty that the United States Military was enforcing the arms embargo against arms going to Bosnia?

Deputy Secretary TALBOTT. As I just mentioned, I know that the United States military was active in the SHARP GUARD operation, which was an interdiction operation in the Adriatic, and of course also DENY FLIGHT. It is also my recollection that the brunt of our efforts was directed against Serbia-Montenegro. But again, I can get you a fuller answer to that.

Chairman SPECTER. Okay, I would appreciate that.

When Senator Kerrey asked you about whether you told Senator Mitchell and Senator Nunn that the lifting of the arms embargo would result in the sale of Iranian arms enabling Iran to gain a foothold or whatever consequences there might be, you said that you did not know whether Senator Mitchell and Senator Nunn were so informed, and you are going to provide an answer on that question.

I can tell you, Mr. Secretary, that Senator Specter didn't know at the time that matter came up for amendment, the Nunn-Mitch-

ell Amendment to lift the arms embargo that Iranian arms would be shipped to Bosnia.

Deputy Secretary TALBOTT. You were not aware that they had already been shipped to Bosnia, they were flowing—that there had been Iranian arms flowing into Bosnia since 1992?

Chairman SPECTER. Well, I had read about it in the paper, but I did not know it; I did not know it. And it was not a focus of my attention that this would facilitate the Iranian arms. Just as Senator Kerrey asked you whether Senator Mitchell and Senator Nunn knew it, Senator Mitchell and Senator Nunn had access to the same newspaper articles that—which I did.

But I think in the context of Senators like myself and others knowing that there had been this perceived green light which we've talked about, and that the removal of the arms embargo was going to maintain that door, perhaps open it wider, there might have been a very substantial difference in our reaction to the whole question.

I started to approach with you earlier the subject of whether there might not have been more than 50 Senators in favor of lifting the arms embargo if we had known that there was a green light for Iranian arms, that the US policy might be interpreted to disregard the embargo, and that had that been the stated US policy, we might have been able to send arms to Bosnia from sources other than Iran, like the United States or some other source, don't you think in that context that there was a better policy of letting Senators like Arlen Specter know what was going on?

Deputy Secretary TALBOTT. I think that in general and on Bosnia in particular this Administration has fully and conscientiously consulted with the Congress, and including with this Committee and with its Chairman. Now—

Chairman SPECTER. How can you say that in the context of your Ambassador saying to you that what I have done here will be perceived as a green light and while we had newspaper reports that Iranian arms were going to the Bosnians, we never knew that the United States government had acted to give a perception of a green light, how can you say you cooperated with us?

Deputy Secretary TALBOTT. Well, first of all, part of my purpose in coming up here to meet with you yesterday and today is not just to speak and to explain Administration policy, it is also to listen, Mr. Chairman, and I have heard your message very clearly in this round of questioning as well as from Senator Kerrey in particular earlier, and I will convey that to Secretary Christopher and to my other colleagues.

You understand because of what I have said earlier in the course of this testimony that I do not entirely share or agree with your characterization of what happened here. We did not act to give a green light to Iranian arms coming into Bosnia. Iranian arms had been coming into Bosnia since 1992. The Congress knew that. This Committee knew that.

What happened in the spring of 1994 was that the Bosnian Federation began to get on its feet. There were several results of that, most of them good. One result that was not good and that we recognized was not good at the time was that increased both—certainly quantitatively the Iranian connection. Our eyes were wide

open to that. And if you would permit me to say the following, I would appreciate, it, Mr. Chairman.

Chairman SPECTER. Proceed.

Deputy Secretary TALBOTT. Since the fall of the Shah in Iran, I don't think any Administration, and certainly no Secretary of State has done more than Warren Christopher not only to alert the American people and the world to the threat posed by the Iranian regime, but also to take concrete action to deter and otherwise deal with the threat that Iran poses to world peace, to the Middle East peace process, to the security and safety of Americans around the world. I think Secretary Christopher in particular has an extraordinary record in this regard, and the Administration does, too.

We were not oblivious of the Iranian connection which had pre-existed the April 27th decision, and obviously was part of the picture—an ugly part of the picture for some time afterwards. But as I said in my opening statement, the only way we could deal with that was to get peace. Instrumental to the peace was the Federation.

[Pause.]

Chairman SPECTER. Well, I appreciate that, Mr. Talbott, and I am glad to have that as part of the record, and acknowledge that and do appreciate it.

But coming back to the core question before your comment about general policy, it is true that there is a difference in characterization as to whether there is covert action by inaction and there is a lot of legal precedent for the conclusion that inaction constitutes action, depending on the totality of circumstances, and this is something we have to come to.

But I have to disagree with you on the point that you shouldn't have told at least the Intelligence Committee what was going on, at least the Chairman and the Vice Chairman, or if you don't like the Chairman and the Vice Chairman, tell the Majority Leader and the Minority Leader, so that they can make a decision on whether other Senators ought to be advised, perhaps in a closed Senate session when we debate the arms embargo.

In 20/20 hindsight, would you have done this differently had you to do it over again?

Deputy Secretary TALBOTT. 20/20 hindsight I would have done things I did yesterday differently.

Chairman SPECTER. Well, let me be more specific. I am not asking you what you did yesterday except for the conversation you had with me.

Deputy Secretary TALBOTT. I wouldn't have done any of that differently, Mr. Chairman.

Chairman SPECTER. Would not have told any of the leadership of Congress or the Chairman or the Vice Chairman about the Galbraith decision with you about the perception of a green light?

Deputy Secretary TALBOTT. I think that my best and most responsible answer to you on that is a reiteration. And that is, I have walked you through and particularly in response to Senator Bryan's question, our logic, our rationale for taking the position that we did, and that position included some things we did not do. And among the things we did not do was come up here and talk to you, you plural and you singularly. I assure you—

Chairman SPECTER. You say you wouldn't do it differently. That's sufficient for me, Mr. Secretary.

Deputy Secretary TALBOTT. Well, but the other thing I am going to reiterate is that obviously this is a back and forth exchange, this hearing, and just as I think Senator Kerrey said in his opening remarks, part of the purpose of this and one reason that you are performing the function that you are as the Chairman of this to make sure that we all examine very carefully an important episode and we ponder upon it, and I assure you we will be doing that in the Executive branch as well.

Chairman SPECTER. Well, this Committee will be and if the current laws on reporting to this Intelligence Committee do not comprehend this kind of a situation, it would certainly be my strong effort to revise the laws so that we do cover it.

You testified in response to Senator Bryan's question that you did not tell the Committee because you considered it a diplomatic activity. And this results in your judgment as to what is diplomatic activity which might be—and I think on this record is substantially different from what the CIA's judgment was as to what ought to be reported to this Committee.

And this brings us to the disconnect as you characterized it yesterday, with what happened in the meeting with then-DCI Woolsey and you, because I think it is a clear upshot that had Mr. Woolsey known what went on, that he would have reported it to this Committee. So that our ability to get oversight is a good bit more in touch with the CIA, which has a lot of contact with this Committee, so that had Mr. Woolsey known what you knew, we would have found out. But the obligation to report goes beyond the DCI. It goes to the President, and you are a President's agent.

Deputy Secretary TALBOTT. Yes, sir.

Chairman SPECTER. So to the extent the President has a duty to report, you, too, have a duty to report. But the Director of Central Intelligence is a lot more sensitive to it because he is here all the time.

So now to the extent you want to comment, Mr. Talbott, what did you tell Mr. Woolsey at this meeting going back to early May 94?

Deputy Secretary TALBOTT. Mr. Chairman, first I want to thank you for giving me an opportunity to reply on the public record to Jim Woolsey's version of events that you have read onto the public record yourself.

Let me first sketch the scene for you. As I mentioned in my opening statement, the Secretary of State does meet on a regular basis with the DCI, always in a very small setting and always with—or almost always—apparently we're making an exception in this case—in conditions of the greatest confidentiality.

Now, with respect to the May 5th meeting, the Secretary of State had been traveling in the Middle East for an intensive diplomatic mission and had returned to Washington after—he reached his home after midnight the night before. So when Jim Woolsey raised with him his concerns about what had been transpiring or what was going to transpire in Zagreb, the Secretary asked me to brief the DCI on the April 27th decision and its execution. I did so.

I explained to the DCI basically the instructions that had gone out, how they boiled down to two words, which is, no instructions;

what the rationale for that was. And the DCI—and here my memory is refreshed by his own recollections—still had some concerns. And his concerns amounted to a worry that perhaps Ambassador Galbraith had gone further than no instructions in what he had actually said to the Croatians. Either at Secretary Christopher's behest or at Jim Woolsey's request, or I volunteered it on my own, I said well, if there is any doubt in your mind about that or any doubt in anybody else's mind, I will personally call Ambassador Galbraith and make absolutely sure that he understands what his instructions are. To the best of my recollection and belief, I had not personally talked to Ambassador Galbraith in the transmittal of his instructions, so I think this was my first encounter telephonically with him on this subject. And I called him the next day and you, of course, have his record of that conversation.

The disconnect is that in the version or the recollection that the staff report contains of Jim's account of things, he left that meeting unclear that a decision had been made and that the no instructions instructions were the only instructions, that that was the end of it. And that is all I mean by way of a disconnect, but I do thank you for the chance to assert very confidentially on the public record that at the Secretary's request I did give Jim Woolsey the essence of what had been decided.

Chairman SPECTER. Well, Mr. Talbott, as noted, Mr. Woolsey said that he was never told that there had been any change in U.S. policy, U.S. government policy, which he did regard as a change in policy when he found out all that had happened.

Now, you had the conversation with Ambassador Galbraith apparently after the meeting with Mr. Woolsey where Ambassador Galbraith told you about this would be perceived as a green light. You didn't go back and tell Mr. Woolsey about that, did you?

Deputy Secretary TALBOTT. I do not, as you know, because we've spent some time on it in this hearing, accept or agree with the proposition that the April 27th decision or the execution of the no instructions instructions constituted a change in policy. Now, I don't think Jim Woolsey in his own testimony to you intended to invest the semantics with that much importance. But I would today, not to mention two years ago, refute the proposition that we had changed policy. We had not.

Chairman SPECTER. Well, there was certainly a difference of conclusion as to what Director of Central Intelligence Woolsey thought was happening contrasted with what you thought was happening on this disconnect. And the disconnect happens to be enormously important because this is something that you did not see fit to report to Congressional oversight, and it is something which I believe Mr. Woolsey would have seen fit to Congressional oversight, and all of that might have had a significant impact on Congressional judgments. But that is a matter for conclusion and a matter we'll have to take up as we deliberate what the conclusions of this Committee are as to whether there was covert activity, whether there was proper transmittal of intelligence information, and what, if anything, we ought to do about it.

Let me take up the question with you as to the desirability of discussing this in open session. I can understand that you would not want to have people know that Mr. Woolsey thought there was

a different policy. But what we are talking about here as to what you and the Secretary and Mr. Wilcox talked to Mr. Woolsey about are matters which have been subject to discussion without objection, and that is what you talked to Ambassador Galbraith about and what had happened in the communication to the Croatian officials. And there had been no objection raised by you about what you talked to Ambassador Galbraith about, had there?

Deputy Secretary TALBOTT. I'm sorry?

Chairman SPECTER. Had you objected to discussing, in an open session, what discussions you had had with Ambassador Galbraith?

Deputy Secretary TALBOTT. I personally have not objected. I think in the dialogue that has been going on between our Department and your Committee, we institutionally, and certainly I personally share in this, have registered several times a concern about discussing in open hearing sensitive diplomatic communications and exchanges.

Now, here I am. I am here before you today, and I have tried to be as forthcoming as I can. But in my—in candor, in the same candor with which I have tried to answer your questions, I must also say that, yes, we do have concerns about a lot of this material being talked about in open. And as to the specific point of the May 5th meeting, I made clear at the outset that I speak for the Secretary of State.

Chairman SPECTER. Well, I understand that and the last question I had asked you—and we can't go on too much longer because they have started the votes some time ago—it's now 12:03—you had registered a specific objection to an open discussion as to what happened in a conversation involving the Secretary of State, you, and the Director of Central Intelligence. And I was just going to the point that there were no sources or methods involved in that discussion, nothing beyond what had happened between you and Ambassador Galbraith, subjects which had been discussed without any objection having been raised. Now I can appreciate that you would rather not have any of it discussed. I can understand that. Publicly, in open session. And that is the judgment which the Intelligence Committee has to make and we did make it. with the dissent of Senator Glenn—his sole dissent.

And there is a concern here, a real concern about—about our capacity to do oversight. And unless there is a public understanding as to what has happened here and beyond that an understanding of the importance of it, in a context of change of law, there won't be any if the American people don't know what is going on. And we made the evaluation and as I say, had submitted that document to you back on the 13th and hadn't gotten any reply by the 21st, and to the extent that we could cull through the record—and staff is very well trained on classification issues and I have had some experience with that myself, going back to being in the Office of Special Investigation with classified material, a very long time ago, and dealing with confidential matters in other public positions as well as this one, and then the—we sought to be specific as to what Mr. Woolsey said so we wouldn't have characterizations. You start talking about characterizations, then you get into a lot of deep water. If you talk about the specifics, then we can deal with it. But that was a judgment we made after a lot of reflection and after

talking to Mr. Woolsey off the record and secretly and he is going to come and testify publicly and talking to you privately and then talking to you publicly, and I think these are very important discussions, Mr. Talbott.

I'll let you reply.

Deputy Secretary TALBOTT. Just very briefly, because I know you have got votes.

Chairman SPECTER. I won't leave before you have had a chance to reply, even if I miss a vote I won't leave.

Deputy Secretary TALBOTT. Okay.

Chairman SPECTER. And we—you and I have dealt with one another going back a long time. When you wrote your book *Endgame*, which I was very much impressed with, what was it, 1983—

Deputy Secretary TALBOTT. Uh-huh.

Chairman SPECTER. Sought you out and sought your advice in connection with the duties that I was undertaking in the Senate at that time. And I have noted your career and I respect your coming into government. It is not easy to be in government, in any capacity. And there are sacrifices, and I appreciate what you have done and I appreciate your coming in here today.

But speaking in my own capacity, I have a very sharp difference of judgment with you on whether there was the perceived green light and the import of that and I am going to reserve judgment on whether there was covert action. That's too important a judgment to make without getting the whole record, getting it all out, and thinking about it and perhaps even talking to you about it and perhaps hearing from the Secretary of State on it. And we still have the question as to what extent the Department of Defense was informed about what was going on.

But I am deeply, deeply concerned when the Director of Central Intelligence says that he did not know what was happening on that disconnect. And you may be right and he may be wrong, and you may be right and I may be wrong, and probably it is going to work out that no one is exactly right and no one is exactly wrong, and this is part of the evolutionary process.

But I was involved in Iran-Contra, and fortunately this was not a policy like Iran-Contra that everybody disagreed with, where the Congress had spoken out against supporting the contras. The Congress wanted to support Bosnia.

But the narrow issue as to whether the Intelligence Oversight Committees were informed is just like Iran-Contra, in my opinion.

The floor is yours, Mr. Talbott.

Deputy Secretary TALBOTT. Thank you. I will not stay on it for very long.

In this hearing we have delved into matters of both substance and process. And my concern about the unilateral declassification of parts of the staff report is to some extent an issue of process. Jim Woolsey testified to you in closed session. I would have felt it more appropriate for me to respond in closed session. I take the point, of course, about your interchange with the DCI, the current DCI John Deutch, who, as you know, is a very, very close personal friend and colleague of mine. John has his equities that he is concerned about in his dealings with you, and those are reflected by the concerns of the Committee itself and its staff, and those have

primarily to do with intelligence work, which is to say protection of sources and methods.

All I am saying and all the Secretary of State has asked me to convey to you today is that we have equities, too, at the State Department. We have a lot of pieces of paper over there with fancy classifications on them, too. A lot of our business involves American security and American lives. And we do not feel that our equities were taken sufficiently into account in the decision to go public with parts of that report. That is all.

You have said some very gracious things to me.

Chairman SPECTER. Why didn't you tell us that when you had the report for—from the 13th to the 21st?

Deputy Secretary TALBOTT. I don't think that that's an outrageously long period of time given the density of the material there. There were a lot of problems with that report, which we will, in due course, have a chance to respond to. I actually was myself, physically, with my own little black pen, working on that report when I got the word that parts of it were already in the public record.

But I did want, since you clearly want to wrap this up, to end on a more positive note. I fully reciprocate the gracious comments that you have made. I have had a lot of respect for you for many years, and I appreciate the way that you've chaired this hearing today, and I'll stand ready to help in any way I can as you continue.

Chairman SPECTER. Thank you very much, Mr. Secretary.

That concludes our hearing.

[Thereupon, at 12:09 o'clock p.m., the hearing was concluded.]



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