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NEED FOR AN INDEPENDENT COUNSEL TO INVESTIGATE U.S. GOVERNMENT ASSISTANCE TO IRAQ

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HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

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FOREWORD

Attached is the transcript of two days of hearings by the full Committee on the Judiciary on June 2 and 23, 1992. The hearings were called to investigate whether the Committee on the Judiciary should, pursuant to 28 U.S.C. § 592(g), request that the Attorney General apply for appointment of an Independent Counsel regarding the United States Government's assistance to the Government of Iraq.

The unedited transcript of those hearings is contained in this committee print. The practice of the Committee on the Judiciary is to circulate transcripts of hearings in order to enable Members and witnesses to review their remarks for accuracy prior to publication. The need for Members to have immediate access to the hearing record, however, must, in this case, take precedence over the usual multiple-stage editing process. While it is possible that certain transcription, grammatical or inadvertent errors may be contained in the committee print, any such errors will be corrected in the permanent hearing record.

I believe that this version of the transcript of the hearings, together with documents submitted for the record, will provide Members with the information which they need in determining whether to make a formal request to the Attorney General for an Independent Counsel.

JACK BROOKS
Chairman

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NEED FOR AN INDEPENDENT COUNSEL TO INVESTIGATE U.S. GOVERNMENT ASSISTANCE TO IRAQ

TUESDAY, JUNE 2, 1992

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice at 10 a.m., in room 2141, Rayburn House Office Building, Hon. Jack Brooks (chairman of the committee) presiding.

Present: Representatives Jack Brooks, Romano L. Mazzoli, William J. Hughes, Mike Synar, Patricia Schroeder, Dan Glickman, Barney Frank, Charles E. Schumer, George E. Sangmeister, Craig A. Washington, Peter Hoagland, Michael J. Kopetski, Jack Reed, Hamilton Fish, Jr., Carlos J. Moorhead, Henry J. Hyde, F. James Sensenbrenner, Jr., George W. Gekas, Howard Coble, Craig T. James, Jim Ramstad, and George Allen.

Staff present: Jonathan R. Yarowsky, general counsel; Robert H. Brink, deputy general counsel; James E. Lewin, Jr., chief investigator; John Cohen, investigator; Daniel M. Freeman, parliamentarian; Chris Cooper, legislative analyst; Allen Erenbaum, counsel; James Rowe, counsel, Subcommittee on Crime and Criminal Justice; Ellen L. Jones, clerk; Ralph T. Doty, clerk; Alan F. Coffey, Jr., minority chief counsel; Raymond V. Smietanka, Peter J. Levinson, and Lyle Nirenberg, minority counsels.

OPENING STATEMENT OF CHAIRMAN BROOKS

Mr. BROOKS. The committee will come to order.

The hearing was called to consider the serious question of whether the committee, in reviewing the Bush administration's policy toward Iraq, should request the appointment of an independent counsel to investigate charges of criminal wrongdoing and conflict of interest among high-ranking officials of the executive branch.

The independent counsel statute was enacted in 1978, amended in 1982, and reauthorized in 1988. The impetus of the legislation derived from the telling lessons surrounding the Watergate affair.

As you will recall, in 1973, President Nixon ordered the Department of Justice to fire Archibald Cox, then serving as a special prosecutor, appointed from outside the Government to investigate allegations surrounding the Watergate affair. The order to fire Mr. Cox came as direct retaliation for the special prosecutor's refusal to halt efforts to obtain necessary evidence in the President's possession. That action stunned the Nation for a simple reason, it was the first public confirmation of a general unarticulated fear that some Government officials considered themselves above the law, that they would not hesitate to twist the institutions of the law to their own ends.

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That instance, and other events in the Watergate affair, led Congress to consider a gap in the structure of good government which has periodically been revealed during the 20th century: The need to provide a fair, impartial means of investigating potentially illegal executive branch actions when the power to investigate is itself reposed within the executive branch.

After lengthy debate, Congress decided that an outside independent counsel should be appointed by a special court of the judicial branch and that such counsel should only be dismissed by the President for good cause. Appropriate checks and balances between the legislative and the executive branches were designed for initiating the process, and this model became the foundation for the independent counsel provisions in the Ethics in Government Act.

This committee and its counterpart in the Senate have a special role in the process, for we are the only bodies vested with the authority to make such requests for Attorney General review of allegations that may warrant the appointment of an independent counsel. At every successive stage of the appointment and prosecution process, there is an escalating burden for moving forward that must be met.

At this stage, a majority of either party of the committee must conclude, from the facts at hand, that certain executive branch officials—name or unnamed—may have committed a Federal crime or that there are political, personal or financial conflicts of interest that make it inappropriate for the Justice Department to conduct such an investigation.

Now, obviously, the power to initiate a request for an independent counsel cannot be taken lightly. That is why I have called this formal hearing.

On the other hand, this authority cannot simply be dismissed on the basis of vague and sweeping assertions, which seem to be in great supply lately. For example, the executive branch is now given to uttering the following statements: That there is no need to pursue the allegations under review because they will be looked into all in good time; that Congress need not worry about official misconduct because that is an enforcement housekeeping matter best left to the executive branch; that whenever there is a foreign policy dimension to any governmental action, that fact alone is sufficient to explain away even criminal conduct by individual officers; that if for some reason there is no foreign policy aspect to be considered, then the executive branch automatically has the fallback of asserting executive privilege as an absolute defense to any charges. Finally, when all else fails, there is always an "ongoing investigation" that will be placed in tremendous jeopardy if the congressional inquiry moves forward.

These are presumptuous assertions that do nothing to shed light, to expedite review, or to show the same good-faith cooperation that has been demanded of Congress by the executive branch very recently.

Finally, overhanging this hearing is an unfortunate series of actions on the Iraqi inquiry taken by a number of executive branch agencies. An attitude seems to be hardening up the street on Pennsylvania Avenue that can only be termed nonresponsive, if not completely destructive, of the work of duly constituted committees of Congress.

I have complete confidence that, if given cooperation, Congress, as a coequal, independent branch of government, can make the necessary findings about possible wrongdoing in the furtherance of U.S. policy tilt toward Iraq. However, if congressional investigations are frustrated, that alternative disappears as a practical matter, only adding greater pressure for impartial scrutiny by an independent counsel with prosecutorial authority. In this light, I

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would certainly hope that the administration will be forthcoming with the committee's inquiry.

The distinguished Members of Congress appearing today have devoted great time and effort as a service to this body and to the American public in uncovering information surrounding the very nonpublic actions of a number of officials in this area. Their investigations did not begin in an election year; and, in most cases, they were initiated as a result of pursuing other matters that would not have normally led one to explore the Iraqi connection.

We are pleased to welcome you today to our committee, and we look forward to your testimony today. I would like to insert in the record at this time a Congressional Research Service statement on the exact procedure for the appointment of an independent counsel, which may be of some interest to the people.

[See appendix I–1.]

Mr. BROOKS. I would yield to my distinguished friend from New York, Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman. I also am pleased to welcome my colleagues to this hearing on U.S. Government activities relating to Iraq.

This subject, although new to the Committee on the Judiciary, is receiving considerable scrutiny in other congressional committees as well as the news media. There is speculation about possible wrongdoing and diversion of funds.

The Judiciary Committee, as always, is interested in the vigorous enforcement of the nation's criminal laws. Criminal investigations often take long periods of time. It is a process that requires painstaking investigation and thorough preparation before a decision on a prosecution can be made, and none of us want to see the Government lose in court because of a premature or precipitous decision.

It is important that we keep this in front of our minds as we probe the Justice Department actions in the BNL case.

The chairman has appropriately reviewed the history of events and the passage of laws that frame our deliberations today. But allegations of misconduct on the part of governmental officials are serious matters. Those who occupy positions of public trust are subject to the rule of law and are fully accountable for their actions. When we are faced with questions about the propriety of governmental conduct, we need to hear directly from the agencies involved. It is my understanding, Mr. Chairman, that the committee will receive testimony from the relevant administration witnesses in the very near future.

Thank you.

Mr. BROOKS. I recognize the chairman of the Subcommittee on Crime and Criminal Justice, who worked diligently on this entire matter, Mr. Schumer. He helped to collate the information we now have available. Mr. Schumer, the gentleman from New York.

Mr. SCHUMER. Thank you, Mr. Chairman. I appreciate your leadership in calling this hearing this morning to weigh the need for an independent counsel to investigate the Government's handling of the BNL affair. This is a complicated matter, and it is my hope that this hearing will sort out what we know from what we have yet to learn about.

One thing is certain, Mr. Chairman. We know that money that was intended for food was diverted to help build Iraq's military machine. The $64,000 question is whether any official of the U.S. Government took part in the diversion or knew about the diversion and looked the other way, or,

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even worse, knew about it and tried to cover it up. Again, the question is whether any official of the U.S. Government took part in the diversion, knew about the diversion and looked the other way, or, even worse, knew about it and tried cover it up.

Here are some things we do know. We know that in 1990, Secretary of Agriculture Clayton Yeutter said no foreign policy pressures were exerted on the CCC program with regard to Iraq. But last week Deputy Secretary of State Eagleburger said the CCC program furthered the U.S. foreign policy goals for Iraq. How do we reconcile these two contradictory statements from two high-level Cabinet members?

We know that the Department of Agriculture did travel abroad to investigate the allegations of improper use of the CCC program. During this mission they were shown voluminous documentation which they did not bother to translate into English or even review. How can we then be sure there was no evidence of wrongdoing?

The best evidence of the true nature and destination of the commodities would be those documents. Why didn't they ask the Iraqis or the U.S. Embassy in Baghdad to help translate those documents?

We know that the administration has sought to frustrate several congressional investigations on this affair. Dating back to 1986, Chairmen Gonzalez, Barnard, and Rose all report a lack of cooperation from the administration.

My own request to GAO to investigate the Justice Department's prosecution of BNL made in January 1990 is still pending, more than 2 years later. What is the reason for this stonewalling? Is it bona fide national security and evidentiary concerns or something more political than substantive?

Today, in Atlanta, the last remaining defendant in the BNL scandal within the U.S. jurisdiction pleaded guilty. But the plea asks more questions than it answers. Why was the indictment that led to this plea delayed 15 months? We have already seen documents that showed that the prosecutors on the job were ready to indict a few months after the summer of 1989. And yet it took 15 months and then the indictment was not larger or more expensive, but smaller.

Why was BNL not named as a defendant? Why were these investigators never allowed to go abroad to interview foreign witnesses and review documents? Was Christopher Dragoul freelancing, or was he working with officials of the Iraqi Government or the U.S. Government?

I, for one, cannot accept the assertion by former Attorney General Thornburgh that BNL was a victim. Apparently neither can the presiding judge in the case, or members of the Italian Senate, all of whom concluded there was involvement at the highest levels of Banca Nazionale de Lavoro.

As I said before, when I look at the facts that were known and conclude that the Bush administration committed the mother of all foreign policy blunders, that is a policy decision. But the question remains whether any criminal laws were broken by Government officials. If there is credible evidence of this, then an independent counsel must be appointed.

It is my belief, Mr. Chairman, that we ought to—we should use our enormous discretion—that we should, rather, use enormous and limited discretion in invoking the independent counsel statute. This is not a decision which we should enter into lightly, or we risk undermining the significance of the law.

However, new facts have come to light that push me in the direction of asking for an independent counsel. On Friday, the Banking Committee heard testimony about the altering of export licenses when they were submitted by the Commerce Department to Congressman Barnard as part of his Government Operations subcommittee.

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It was a matter of record that the Commerce Department's Inspector General called changing the description of cargo trucks to disguise their military use, "unjustified and misleading." The Commerce Department's General Counsel testified on Friday that the alterations were authorized by former Under Secretary Dennis Kloske, and that no one outside the Commerce Department was consulted in making those changes.

We have since learned that Mr. Kloske had admitted previously to Congressman Barnard's subcommittee that the White House was involved in deciding how and when information on the export licenses should be handed over to the Barnard panel. There was no further Commerce Department investigation of these allegations.

It was Congressman Barnard who had to refer this to the Justice Department for criminal investigation almost 1 year ago. And apparently the investigation did not proceed expeditiously. Commerce officials were first questioned about this incident only in the last few months.

Mr. Chairman, in my opinion, and in conclusion, in light of this new information, the burden of proof has now shifted to the administration. Given these facts, they must convince the Congress as to why there should not be an independent counsel. Failing that, I will vote for an independent counsel and urge my colleagues to do the same.

I yield back the balance of my time.

Mr. BROOKS. Mr. Hyde.

Mr. HYDE. I have no statement.

Mr. BROOKS. Mr. Gekas.

Mr. GEKAS. I thank the Chair.

If it has not been made abundantly clear in the implications in the gentleman from New York's statement and the chairman's statement, everyone in the whole word knows this comes from foreign policy decisions made by the U.S. Government in two administrations in which our national interest lay with attempting to balance the equation between Iran and Iraq in that unfortunate episode of war between the two. That was in the best interests of the West and all civilization, really, that either there be no victor in that conflict or that at least Iran would be the losing side. And everybody in the world understood that.

So this is the background against which all of this has emerged. And, in my judgment, if there be any allegations that yet have to be looked at, it may be proper for a special prosecutor. But I don't want anyone to be under the misinformation that the Justice Department is not doing its job in this circumstance. There is no evidence that the Justice Department has not pursued the allegations that will be at the core of what is to be presented to this committee. There is no such evidence.

Too often we stray from the realization that we have a Justice Department, that we have a committed public official sworn in to do his duty to enforce the laws of the Nation and to delve into wrongdoing wherever it may appear. And I, for one, feel that there should be, along with the allegations that are to be presented here, also some kind of evidence or feeling or proof—I know there is plenty of feeling on the other side—of proof that the Justice Department is not doing its job.

We have a whole bank of indictments that have been backed by the Justice Department, a whole series of investigations that are ongoing, even individuals brought to the bar of justice out of all of these allegations that are swirling around this issue. So I am not ready to give up on the concept that the Justice Department, the chief law enforcement agency of the Nation, can

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do the job that is required to uncover wrongdoing in this or any other circumstance.

Here we go again. A special prosecutor with $50 million, perhaps, to be spent in this inquiry, not including the one that is still hanging, with reputations yet to be exposed of decent citizens and people who work for the Government, and at what cost and at what risk? If the Justice Department can do it—and I am confident that it can—why don't we proceed with the orderly form of procedure that has already been established and not have to rely on the political driven execution of a letter to the Attorney General to ask him to step aside?

I yield back the balance of my time.

Mr. BROOKS. Mr. Mazzoli, the gentleman from Kentucky.

Mr. MAZZOLI. Thank you very much, Mr. Chairman. Let me congratulate you for calling these hearings. I am certainly looking forward to hearing from the gentleman from Texas and the gentleman from North Carolina and other Members of Congress on these issues. I think the statements certainly frame the issue.

The gentleman from New York, the chairman of the subcommittee, has suggested that the questions raised should be whether there was knowledge of a diversion which apparently is on the record and whether, even beyond that, there was some attempt to cover up that knowledge of a diversion. And I think this committee, as it has in so many noble ways over the years, and in so many other occasions, has gone to the heart of these issues. I think we have that responsibility.

I guess what really distinguishes this from what might be called a normal investigation is that we just basically, less than 1 year ago, emerged from a war with this country, Iraq. It does seem to me that we might have had, if knowledge was available beforehand and the full measure of what was transpiring was known to the Congress and to the country, a very different situation. We could maybe not have had a war. We could have moved earlier in the anticipation of certain activities and avoided that conflagration, which, of course, the price we are still paying, the environmental effects of which we are still feeling and will feel for many years to come.

So I think it is a very, very heavy step to request the Attorney General to consider the appointment of an outside independent counsel. But certainly from the sketched information today and what I watched and observed on television last Friday in the statements to the gentleman from Texas' own committee, it seems to me we certainly are in the posture of moving forward, of being required to move forward. I think not to do that would be ignoring our responsibility.

So I salute the gentleman from Texas, Mr. Brooks, for calling this hearing, and I certainly look forward to hearing from our colleagues.

Mr. BROOKS. Thank you.

Mr. Coble, the gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, thank you. I will be brief. We are going to be asked to vote upon a balanced budget amendment immanently, and I find that inconsistent with our discussing the appointment of an independent counsel in the same breath.

If an independent counsel is appropriate and needed, by all means let's do it. But what bothers me about these past records that we can examine regarding independent counsels, it seems to open the floodgates to the fiscal arsenal. So and so is appointed independent counsel, and his buddy is named to this post or that post, and nobody watches the meter as it advances.

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It is not uncommon in this body, Mr. Chairman, as we all know, for Democrats to beat up on Republicans and Republicans to beat up on Democrats. That is a given. But I want to go on record as saying I am not a rubber stamp for anyone. If you will recall, I have publicly—in this committee—been critical of two or three past Attorneys General. If I thought he was wrong, I said so in this body. So I come to you not as a fiercely partisan member. But I want to us approach this matter very prudently and deliberately.

I received your letter dated June 1 this morning, Mr. Chairman. I left my office last night and apparently this was delivered sometime after 6. And I am going to just mention two or three matters that give me some concern.

On the second page of the 3⅓-page document, these words appear: "USDA oversight of the CCC programs was highly inadequate." Well, that is a very damaging conclusion, if true, and it may well be true. But I would like to hear the other side.

In the same paragraph, these words appear: "The USDA did not forcefully or actively respond to these concerns." Again, a damaging conclusion, if, in fact, accurate. There surely must be another side to this story.

A third conclusion that bothers me, in the final paragraph of the second page: "In October, 1990, Congressman Barnard requested from the Department of Commerce export licenses to Iraq between 1985 and 1990. The report that he later received contained altered information." A very damaging conclusion if, in fact, true and accurate. But I want to hear the other side, and I assume there is another side.

There has got to be two versions here. And then after we hear the various versions that are presented, I think we will then be in a position to determine whether or not an independent counsel is indeed appropriate.

But I want each of us on this committee, Mr. Chairman, to keep in mind that that fiscal meter starts to crank up automatically when the words independent counsel are mentioned. I want us to be very much aware of that. If it is in order, I think we need to go forward. If it is not in order, I think we need to drop the hook and go on to better things.

Thank you, Mr. Chairman.

Mr. BROOKS. Thank you.

Mr. Hughes, the gentleman from New Jersey.

Mr. HUGHES. Thank you, Mr. Chairman. I will try to be very brief.

Let me just tell you that, like most of the members, I have just received information within the past few days subject to this particular hearing. It is our responsibility under the Ethics in Government Act to make a decision as to whether an independent counsel should be appointed.

I have a number of concerns. There is an ongoing criminal investigation, so obviously it makes whatever we do very sensitive. We have to be very careful that we don't, in fact, impede in any way the criminal investigation.

But, by the same tone, there are a number of allegations that have been made that we need to get to the bottom of.

For instance, I did not realize until recently that when our colleague, Doug Barnard, asked for information from the Department of Commerce that he received printouts that were grossly fabricated, distorted, where information was changed to reflect that instead of agricultural products being exported, that it was, in fact, military products. And because that was especially embarrassing to those in the administration, those facts were changed.

Well, frankly, the FBI, the Department of Justice, has had that information for almost 1 year. I think it will be 1 year in July. Yet no indictments have been returned.

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And that and a number of other instances that appear in the documents before us raises some very serious questions about diversion, which, unfortunately, represent violations of our law at a time when our relationship with Iraq and Iran is supposed to be rather neutral. Although I must say, during that period of time, I am not sure whose side we were on, because one day we were on the side of Iran, the next day the side of Iraq. Some days we were reporting out of the State Department to not advance the interests of either one. And, frankly, the whole thing needs to be looked at, and the question is how can we best do that.

If the Department of Justice is prepared to do that objectively, then I say fine. That is for them to do so. But to date, the track record, I must say, has not been too impressive, and I am going to listen to the information to be presented at this hearing and make a decision on the basis of fact.

It is unfortunate that it happens to come, again, during the political season. That is why, Mr. Chairman, this committee has to be abundantly fair and reasonable and diligent to ensure that we don't do anything that will, in fact, undercut any ongoing criminal investigation or any indictments that might be forthcoming.

Thank you, Mr. Chairman.

Mr. BROOKS. Mr. James, the gentleman from Florida.

Mr. JAMES. Mr. Chairman, I understand that the purpose of today's hearing is to evaluate the need for an independent counsel to investigate the Bush administration's pre-gulf war dealings with Iraq. The purpose is ostensibly to determine U.S. Government officials violated laws in these dealings.

I am sure you are aware that every President and Attorney General have opposed the independent counsel on constitutional and practical policy grounds. The Supreme Court has upheld the Office of Independent Counsel as constitutional. However, the public policy question of whether freelance prosecutors are in the best interests of our country still remains.

I find it fascinating that Representative Gonzalez is calling for an independent counsel. He fiercely opposed turning over House bank records to the special counsel on the grounds that it would violate separation of powers.

I think in light of recent problems in this institution an appropriate question is this: Why doesn't the independent counsel statute apply to the imperial Congress? Why does this body continue to exempt themselves from the laws they impose on others?

As a former criminal defense attorney, I am keenly aware that criminal prosecutions have great power over their targets. I am concerned that the independent counsel's office seriously threatens the civil rights of the targeted executive branch officials.

Since the Office of Independent Counsel was created, there have been nine public independent counsel investigations.

The first investigation targeted Jimmy Carter's top aides for alleged cocaine use in New York's Studio 54. Both aides were eventually cleared. But, tell me, where do they go to get their reputations back?

And, of course, the most recent independent counsel, Lawrence Walsh, has spent $34 million taxpayer dollars investigating and prosecuting Oliver North for, among other things, taking an illegal gratuity in the form of a security fence at his home. Was this really necessary, and what do we have to show for that time and money?

Let me get to what I fear is the real danger of independent counsel and that is that the independent counsel is a political tool of this Congress. This can easily be the case since the law allows the appointment of an independ-

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ent counsel even when solid evidence does not exist. Without the requirement of an investigation, subpoenas or a grand jury, it is too easy for Democratic staffers to criminalize the political differences between the majority of the House and the Republican administration. The only way to avoid this, Mr. Chairman, is to base what this committee does on credible, substantiated evidence, that is, evidence of a crime—not incompetency, but of a crime.

We must distinguish between an administrator's strategy mistakes with Iraq and criminal wrongdoing. I trust this hearing will either produce this kind of evidence or shut the door on what could turn just into another witch-hunt at the expense of the taxpayers.

Thank you so much, Mr. Chairman. I yield back the balance of my time.

Mr. BROOKS. Thank you.

Mr. Synar, the gentleman from Oklahoma.

Mr. SYNAR. Thank you, Mr. Chairman.

One of the essential elements of a democracy is that the branches of government are equal. What is as important is that the decisionmaking branch of the Government has all the facts in front of it. That is what we are here to find out today. When one branch obstructs the other from carrying out its responsibilities, that matter must be challenged.

This hearing is necessary to examine the allegations that have been raised and will not abate until resolved. The Judiciary Committee is the appropriate forum to evaluate whether Congress is able to continue to carry out its investigative functions or if a resolution of the matter can be obtained only through the appointment of an independent counsel.

I do not expect nor want to make a decision about guilt or innocence in this hearing. That is not my responsibility. But it is my responsibility to determine if Congress can exercise its rights and responsibilities. If not, the greater responsibility of Congress is then to ensure that the American public obtains the truth through an independent counsel.

Thank you, Mr. Chairman.

Mr. BROOKS. Thank you.

Mr. Ramstad.

Mr. RAMSTAD. Mr. Chairman, whenever allegations of this nature are made I believe we owe it to the citizens of this country to examine the claims to find out the truth.

However, Mr. Chairman, I am equally concerned that this hearing not degenerate into a partisan political fracas, and I get the feeling I am about to watch a professional wrestling match. I think we will see some sparring of a partisan nature and maybe a heavy blow or two, but I have a distinct feeling that the outcome of this hearing has already been determined.

I am particularly concerned when I hear a distinguished subcommittee chairman state that the burden of proof has shifted to the administration to prove that we don't need to appoint a special prosecutor, before we have even heard from one witness this morning.

Mr. Chairman, hindsight is always 20/20, but I have to wonder, would we be holding this hearing if the presidential election were not 5 months away? I am not so sure we would be.

But, at the outset, I am willing to listen with an open mind, not to shift any burdens of proof, but I trust that no member of this committee takes the appointment of an independent counsel lightly. We owe much more to the American people.

Thank you, Mr. Chairman.

Mr. BROOKS. Thank you.

Mrs. Schroeder, the gentlewoman from Colorado.

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Mrs. SCHROEDER. Thank you, Mr. Chairman. Thank you for having these hearings and thank you to my colleagues who have been so vigilant on this.

Of course, we are looking at this, and it is unfortunate it is a political year, but it takes this long to find out what was really happening. These colleagues that we are going to hear from have been looking at this for a long time and are finally being able to get some facts and some information we can now act on. And I think we need to say that over and over again.

Our duty is way beyond politics. It is to find out what the truth is. And, unfortunately, here the American public is going to be out $2 billion. That is a lot of money anywhere.

Second, the American taxpayer is going to be told originally that those billions of dollars went for food, and if we find out they went for something else and if we find out there has been a coverup or something, these are very serious charges.

This is a time when people's lack of trust in government is at its all-time highest. It is a time when this democracy is teetering. And it seems to me we need to listen to these charges and, if they so merit, we need to pursue getting an independent prosecutor in here to get to the bottom of it. That is what we are here for. If we don't have the guts to do that, we are in real trouble.

So I thank them for working so hard on it.

Mr. Chairman, I find these memos very, very interesting. I hope people look through these whole files, because I don't see how you could reach any other conclusion than that we need to proceed on this.

As you know, I tried to get this on the S&L's, and I think we didn't get it, and I think it is very unfortunate to see how that all turned out. The taxpayers would have been much better served if we had had an independent prosecutor on S&L's. I hope everybody realizes that we are here because the facts have driven us here, and for no other reason.

Mr. BROOKS. Mr. Allen, the gentleman from Virginia.

Mr. ALLEN. Mr. Chairman, what we are here to do is try to figure out whether there is sufficient evidence to go forward with this. One thing that needs to be stated is, notwithstanding the gentlewoman from Colorado's statement on these memos, the minority members didn't receive this information until today or yesterday. All we have had is bits and pieces that we read over the last several months in the newspapers and in the media.

I don't think that this is necessarily the proper way to have a process, in the manner to proceed. Here we have possible political grandstanding, press coverage, and, in the midst of this, we are to investigate in this public hearing without any regard for the innocent.

We have charges of coverup. We have the gentleman from New York, Mr. Schumer, talking about the innocent presumed guilty. They have the burden of proof to show why they should not be held accountable.

It seems to me as the gentleman from Minnesota, Mr. Ramstad, said, the burden of proof really is on this committee to show why we need to go forward. We don't need to be making these broad, subjective accusations and impressions as to what people may or may not have done.

We can ask hundreds of questions. You can have questions as to what the Senate of Italy meant to do. You can have questions going on forever. But we don't need the hyperbole in this.

The key today is if there is evidence presented today, (and I will objectively listen and read the evidence and read these memos that we just received today), and if it is probative and if it is trustworthy, I think we ought

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to proceed, Mr. Chairman, accordingly. But, if it is not, then it is nothing more than political and partisan speculation in the midst of an election year.

Let's not drag this matter out for weeks and months. It would be a disservice, in my view, to Americans and a disservice and abrogation and abuse of the powers of the Congress to do so.

So let's try to keep the hyperbole down, listen carefully to the evidence and see whether or not we ought to stop this today or whether we should go forward if the evidence is probative.

I thank the chairman.

Mr. BROOKS. Mr. Glickman, the gentleman from Kansas.

Mr. GLICKMAN. Thank you, Mr. Chairman.

On July 27, 1990, 1 week prior to Saddam Hussein's investigation of Kuwait, with the help of Mr. Schumer and others, I offered an amendment to statutorily cut off the Department of Agriculture's export credit programs to the country of Iraq. I must say that that amendment was fought by some, including the administration and the State Department.

Nearly 1 year before that vote, my Subcommittee on Agriculture, in conjunction with Mr. Rose's subcommittee and Mr. Brown of California's subcommittee, uncovered several disturbing aspects of the Department of Agriculture's dealings with Iraq, and that is what I would like to talk about for 1 minute.

At that November 16, 1989, joint hearing, the subcommittees reviewed reports from USDA's Inspector General that listed instances of fraud, misrepresentation, kickbacks and other questionable dealings, including the diversion of food shipments and sale of those cargoes for military reasons and the provision of so-called dual-use industrial equipment, that is, goods with ostensible industrial applications that were actually put to military uses.

That information we learned in November 1989, led us to address in the 1990 farm bill several reforms to the program that, we have now come to understand, was the primary feature of the United States/Iraqi relationship during the 1980's and the program which had a large role in the buildup of Saddam's military machine. As a result of the taxpayer financed food exports Saddam received from the United States of America, he was not only able to feed his army during the war with Iran, but use his foreign trade holdings to finance his machine apparently with little regard to the human rights atrocities of the Baghdad regime.

The Reagan administration used the complicated intricacies of this little-known USDA program to finance one of this country's most horrific war machines. At each step of the process, in my judgment, the administration sought to block our reforms, culminating in efforts to block passage of the amendment I mentioned earlier and the denial of other agricultural subsidies to Iraq as well.

In spite of the overwhelming evidence of fraud in Iraq's dealings, much of it uncovered by USDA's own investigators, the administration refused to cooperate with these efforts and persisted in its shortsighted policy of helping the enemy of our enemy.

It is clear to me, as it has been clear to me for a very long time, that we had a policy breakdown with respect to Iraq in the months and years before its invasion of Kuwait. Under cover of helping farmers and promoting agricultural exports, the administration was, in fact, helping underwrite Saddam's military ventures.

I can only speculate at this point how events might have turned out differently and how the political instability of the Middle East that exists to this day because Saddam remains in power might have been different had

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the Congress and the public known from the very beginning how this program was being manipulated.

Whatever the results of this hearing and, if authorized, the investigation of an independent counsel, there are other lessons to be learned here. First, no matter how potentially uncomfortable or embarrassing, the use and expenditure of public dollars must be subject to open and vigorous congressional and public oversight.

Second, we can no longer be so naive and shortsighted not to recognize that any time the U.S. Government provides assistance to a foreign country, it will have foreign policy implications.

For years we have tried to maintain the notion that this program was to be used solely for commercial, nonforeign policy reasons. Yet as this episode indicates, backing as much as $1 billion in loans to Iraq per year—and, by the way, Iraq was next to Mexico, the largest recipient of this program, much to the approval of domestic farm interests who made the sales—had repercussions which stretched far beyond the wheat fields of Kansas and the rice fields of Arkansas.

In an increasingly complicated world in which the United States relies on a multitude of foreign policy tools, there is a growing possibility that the trap we got ourselves into in Iraq will occur again. The first step in preventing a repeat of these mistakes is a complete and open investigation of the episode.

It is my hope that we are on the eve of just such an airing of the facts and dealings that took place before August 2, 1990, and, as importantly, which took place in the months after as investigators have attempted to uncover how the United States got to that fateful date in the first place.

Thank you, Mr. Chairman.

Mr. BROOKS. Mr. Sensenbrenner, the gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. My comments will be brief today.

The concern that I have relating to this hearing is that what was 2 years ago a genuine difference on policy on whether or not credit corporation funds should be used to finance food exports to Iraq is now arising to the level of alleged criminal activity. And I think there has got to be some evidence proven that the criminal statutes of the United States have been violated in order to go ahead with an independent counsel, rather than people who disagree with the policy that was enunciated by both the administration and Congress prior to Iraq's invasion of Kuwait coming back to the Congress and saying that what was done was criminal.

Let me say that what Mr. Glickman says is correct. And that is, 1 week before Iraq invaded Kuwait there was a debate in the House of Representatives on the issue of CCC credits to Iraq. Mr. Glickman introduced an amendment, which I supported, to try to put an end to this practice.

And let's make it very clear that there was bipartisan support and bipartisan opposition to the Glickman amendment. This was not a case of the Republicans voting one way and the Democrats voting the other way.

I think it is very interesting to note that those who supported continuing to use CCC credits to finance Iraq on the Judiciary Committee by opposing the Glickman amendment were the chairman, Mr. Brooks, as well as Messrs. Conyers, Mazzoli, Feighan, Washington, and Hoagland.

On the Republican side, those who opposed the continuation of this practice included Messrs. Fish, Moorhead, myself, McCollum, and James and Campbell.

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The amendment was adopted by the House by a vote of 274 to 175. Later on the people on the losing side regrouped their forces and coalesced behind an amendment that was offered by Mr. Bereuter of Nebraska that undid most of what the Glickman amendment proposed to do.

Those who supported the Bereuter amendment on the other side of the Judiciary Committee included Chairman Brooks as well as Messrs. Mazzoli, Feighan, Sangmeister, Washington and Hoagland. Republicans opposed included Messrs. Fish, myself, McCollum, Gekas, James, and Campbell.

So you can see from these two roll calls, held less than 1 week before Saddam Hussein invaded Iraq, is that there were a number of Democrats who voted in favor of continuing this practice on the Judiciary Committee, and there were a significant number of Republicans on the Judiciary Committee, including myself, who wanted to put a stop to it.

This was and is a policy argument. I disagreed with the policy of the Bush administration and cast my votes for Glickman and against Bereuter, and there are four or five other Republicans that felt the same way. That was not a vote on whether to continue an alleged criminal practice. It was a vote on whether the taxpayers' money should be used to subsidize this type of activity.

The sides on this panel split. And now I think it ill behooves this committee to come on back and revisit this and try to make some people forget about those votes we cast 2 years ago.

Mr. BROOKS. If the gentleman would yield to me—I want to make clear that once the export credit guarantee program for Iraq was underway, a number of American companies understandably wanted to participate in the sale of their commodities—that is, agricultural commodities—with absolutely no knowledge of irregularities, to say nothing of illegalities, involved with the program. And I, for one, joined with another member of the Texas delegation in seeking to clarify why the loan grant program, which had been pushed so vigorously for a period, was held up in the summer months of 1990 without any real explanation.

And it was only then, in response to our letter, that I was told by Under Secretary Richard T. Crowder, in writing, that the program, which I had mentioned was subject to some irregularities—but in his letter back to me he said the program was under review because of unusually high commodity pricing by the Iraqis and requests by Iraq for aftersales services.

Mr. Frank, the gentleman from Massachusetts.

Mr. FRANK. Thank you, Mr. Chairman.

I don't regard this as being at all about who voted how on this particular issue. There are two aspects to this. One is these attacks on the whole notion of independent counsel, including the suggestion that this is the way to balance the budget.

We will be voting on the defense authorization, and I hope that after they are through saving several million dollars on independent counsel, I hope they have a little zeal left over for the B–2.

As far as being considered unconstitutional, one of them, Ronald Reagan, signed it twice. I have never been an expert on the mental processes that guide his decisions, but to twice sign a bill you think is unconstitutional seems to me a rather cavalier attitude to impute to the President of the United States.

The independent counsel statute gets mentioned sometimes and not others. Nobody has mentioned that we now have an investigation going on of the Department of Housing and Urban Development which has already produced some indictments. And anybody who thinks that absent an independent

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counsel the Justice Department would have so zealously pursued that pattern of corruption has a great deal more faith in some things than I do.

The independent counsel statute has been very useful. Independent counsel have in my recollection more often vindicated the people they have been investigating than not. The independent counsel statute is invoked not because we were convinced that laws have been broken but because a threshold has been met in which there is a reason to think laws have been broken, and the entanglement of the Justice Department with that pattern—not necessarily unfortunate, just by the fact of an association—means that you need to go to someone independent.

And that is a pattern that I think has borne out, and, as I said, independent counsel have vindicated some people, and they have moved to go against some others.

Now, why are we talking about this here? First, we ought to say there was some reference to the Iran/Iraq war. All of what we have been focusing on is post the Iran/Iraq war. This is not a situation where we are talking about trying to help Iraq during the war with Iran. The events here focus after that.

As to the timing, the phrase that this is an election year—since every other year is an election year and every other year is the year before an election year, almost everything is capable is being construed as being too close to the election. I know the gentleman from Texas started these special orders early in 1991. Had we then said, well, gee, when he first said this we better move right away, we would have been accused of undue haste.

This is one of your psychological tests to which there is no right answer, and it is an effort to talk about anything but the merits of this case.

The gentleman from Georgia has testified and will testify his subcommittee was lied to about the equipment being sent to Iraq with Eximbank funds. Mr. Barnard's subcommittee was lied to. The Commerce Department altered documents and later acknowledged that those documents were altered to mislead.

We have—on March 30, 1992, the gentleman from Texas, Mr. Gonzalez, who has been outstanding in this whole series of events, cited on the floor a Justice Department recommendation to the State Department that a Jordanian official not be indicted whom the Justice Department did not want to indict, and he was not indicted.

Now, that seems to me to be an example of the kind of thing we ought to be looking into.

We have a pattern in which the funds sent to Iraq were misspent. We have some indictments now. We have a question of the bank that is involved with BNL, which has not itself been indicted, which has been portrayed here as the poor victim, unknowing of these things.

So the pattern is very clear. Justice worked with these agencies, and I don't know if anyone high up committed a crime. We do know many, many people committed crimes. We have got guilty pleas, et cetera.

And the answer, I think, is not—to summarize—are we trying to criminalize policy differences. I think it goes the other way around. We are trying to find out if the administration tried to decriminalize for policy reasons. That is, they had a policy after the Iran/Iraq war of charming Iraq and paying Iraq enough money so they behaved. It doesn't work. And that is not a subject for criminal investigation.

On the other hand, what we have is that, while they were giving the Iraqis the money, the Iraqis were making suckers out of them on two levels, first of all, on the policy level—but also the Iraqis were misspending. They were

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abusing the program. There were violations with the CCC, the banking laws, the Eximbank. That is not disputed.

The question we have is, given the policy drive to be nice to Iraq, did administration officials to some extent look the other way to cover up this criminal behavior?

We have one very clear example presented by Mr. Barnard where his subcommittee was lied to because the information, if correctly shown, would have shown how the Iraqis were using this illegally for military equipment.

That is what we are trying to find out, and that is the accusation the administration has to dispel.

Mr. BROOKS. Mr. Sangmeister, the gentleman from Illinois.

Mr. SANGMEISTER. Thank you, Mr. Chairman.

Along with everybody else, on this side of the aisle at least, I would like to commend you for holding this hearing to determine whether or not the Judiciary Committee is going to apply to the Attorney General for the appointment of an independent counsel. I think it is important to understand we are not here to judge whether or not the administration's Iraq policy ultimately failed. We will leave that to the historians and to the public as a whole to make their own judgment.

I would like to say to the gentleman from Florida, Mr. James, my colleague, that his assessment that the Congress seems to exempt themselves from these types of proceedings—I would remind him that I don't know of anything that Judge Willkie did not receive in the so-called House bank scandal that he wanted. I think the Congress has completely cooperated, and I would like to see, hopefully, that the administration is going to cooperate to get the facts out here.

In an effort with my staff to prepare for this hearing, they did supply me with a U.S. News & World Report edition dated May 18, 1992, which I think is a great summary of what happened out there. Just because U.S. News & World Report publishes it doesn't make it gospel, and that is why it is good to have this kind of a hearing.

I am certainly looking forward to hearing from our colleagues as to what their knowledge is. As I said, I would hope the administration would come forward, whether in a defensive position or in the affirmative position, to set aside the innuendoes that certainly have been raised. I look forward to hearing today's testimony.

Mr. JAMES. Will the gentleman yield, since you invoked my name?

A special prosecutor is in a different category than Mr. Willkie who can be fired at any time. There is a world of difference between people that can be turned loose and those that can't be fired, who go on forever. I just wanted to make that point.

Thank you, Mr. Chairman, for your patience.

Mr. BROOKS. Mr. James, let me observe, "Independent counsel appointed under the chapter may be removed from office, other than by impeachment or conviction, only by the personal action of the Attorney General, only for good cause, physical disability, mental incapacity or any other condition that substantially impairs the performance of such independent counsel's duties."

I think the Attorney General has full authority to can him.

Mr. JAMES. Mr. Chairman, if you will allow me, there is a difference between the independent counsel and Judge Willkie.

Mr. BROOKS. Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman. It is always good to be with you on occasions like this, especially to be faithfully and closely by

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your side. Mr. Chairman, let me join my colleagues in commending you for holding these hearings.

I had originally planned to stay in my office and continue to conduct work until the time that we started to hear from witnesses because I, as usual, had no opening statement, but remarks made by my friend, Mr. Ramstad, compel me to come over this morning, because I spent the better part of the weekend, Mr. Ramstad, reading over thousands and thousands of pages of documents. And I can be as partisan as anybody else when the time and place comes, but I believe that is in the election process.

I think during the time you have come to know me, I hope you will find that I am not by nature a partisan being. I try to be fair in all of my dealings. I try to be a Member of Congress first and perhaps a Democrat last, if at all. And to suggest, it seems to me, that there is some predisposition on the manner in which these hearings are going to be conducted sullies the reputation not only of the Congress but of this very fine, upstanding committee.

If you keep praying for partisanship, I promise you that you are going to get it. But I know most of the people on both sides of the aisle. I think they are intelligent, bright, thoughtful, hard-working beings who happen to be Democrats and who happen to be Republicans.

But every time something comes up that raises a specter of some wrongdoing on the part of someone who happens to be a Republican, you all start hiding behind the thinly veiled skirts of partisanship and making all these protestations that this is only for partisan reasons and all of that kind of stuff. We have got a saying for that down in Texas, but the television cameras are here so I can't say what it is, but I think you have a pretty good idea.

I have an open mind, and I am going to keep an open mind. I didn't spend the better part of my weekend reading over 2,000 pages of documents to be a partisan. I could have walked through the door without pen or pencil, I promise you, and been as partisan as anybody is capable of being. I didn't come to these hearings to be partisan. I came to these hearings to be a Member of Congress and exercise my constitutional and statutory duty to determine whether, under the circumstances, this committee should make a recommendation based on the statute.

And I would suggest that everybody, before they start hollering partisanship, first read the statute, so we will all be on a level playing field. If you haven't read the statute, I don't think you are going to be able to determine what the rules are.

I trust that every member on the Republican side who is hollering and screaming about partisanship has read the statute. I know that you have read the statute. I know you have read every word of it. You understand exactly what it means.

So we can get on with some intelligent discussion on whether the threshold questions that ought to be determined by Members of Congress have been met. When we do, that we will exercise our duty. But if you all want to play partisanship games, I promise you that you will be met with partisanship on the other side.

Mr. BROOKS. Mr. Hoagland.

Mr. ALLEN. Will the gentleman yield?

Mr. HOAGLAND. Mr. Chairman, let me say initially we have had a number of statements this morning that have been very specific and very on point and I think very well done.

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Let me just add one point, and that is what particularly concerns me, having sat through one of Chairman Gonzalez's hearings and reviewed some of the material, is the enormous amount of money that has been involved in these transactions and the virtual lack of controls that appear to see that that money is used effectively and lawfully. Iraq received nearly $5 billion in agricultural credits in the 6 years preceding the gulf war. And the United States today has staggering residual liability under these guarantees on those banks around the world, hundreds of millions of dollars.

And as we look at these transactions, we see that the administration seems, or at least is alleged, to have diverted these agricultural credits for its own purposes so that Saddam Hussein could build up his war machine and leads to the questions that Mr. Glickman and others have raised. Without this phenomenal armament by Saddam, would we have had the war at all?

But, in any event, I think one of the most beneficial aspects of an independent prosecutor's investigation and report is to give us guidance as to what to do with these kinds of programs in the future, to be sure we have appropriate checks and balances, to be sure we have appropriate oversight, to be sure we are not just scattering hundreds of millions of dollars across the countryside for policies that are unexamined, not authorized by Congress, to meet the agenda and the program of some low-level or mid-level people in the administration who are off on the wrong thing with access to nearly $5 million over 6 years.

So I think it would be most economical if the special prosecutor's report gave some guidance, Mr. Chairman, as to what to do in the future to be sure these kinds of programs don't lead to the apparent abuse.

Mr. BROOKS. Thank you.

Mr. Kopetski from Oregon.

Mr. KOPETSKI. Thank you, Mr. Chairman. I want to commend you for your leadership in setting the agenda of this committee.

I don't have an opening statement. I do want to say that there is nothing like sunshine in our Government that provides a good disinfectant to questionable activities by Government officials. I hope we can move forward today and bring some understanding to the issues at hand so that the American people know what their Government officials have been doing and are doing to date in terms of policy, and, as Mr. Hoagland said, in terms of the billions and billions of dollars of all of these transactions.

Mr. BROOKS. Mr. Reed, the gentleman from Rhode Island.

Mr. REED. Thank you, Mr. Chairman. I would like to commend you, Chairman Gonzalez, Chairman Rose, and Chairman Barnard for your efforts to try to get to the bottom of this situation.

The events we will be looking at may have led to an armed confrontation between our country and the country of Iraq. And I am sure for the thousands of American servicemen and women, they were thinking many nights why they were there in the Persian Gulf and probably thinking ceaselessly where all those trucks came from. And maybe we will be able to shed some light on that, and in the specific context of our deliberations today, whether or not we will determine based on the evidence that there is a need to request from the Attorney General an independent counsel.

We are not attempting to displace the Attorney General. He is the only one authorized to request the appointment of an independent counsel, as I understand the law. But this may be the only practical way that we can, in fact, require him to ensure he does take his responsibilities very seriously. I believe with the evidence that is emerging in the last few days this inquiry

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is both necessary and proper, and I am glad, Mr. Chairman, that you are undertaking it today.

Thank you.

Mr. BROOKS. Thank you.

We are going to get to the witnesses. They have been patiently waiting for 1 hour and 15 minutes.

All right, Mr. Allen, the gentleman from Virginia.

Mr. ALLEN. Mr. Chairman, I would like to ask the chairman of the subcommittee, Mr. Schumer, a question. In view of the gentleman from Texas' comments and the nature of this hearing, this issue has come to my attention, and a few others, and I would like to ask the gentleman a question. Is there a letter that has already been circulated requesting an independent counsel, that has already been signed by a majority of the majority party prior to hearing any of this evidence?

Mr. SCHUMER. I would say to the gentleman, first, no, I am not aware of a letter, have not seen a letter, signed a letter. I daresay no other member of the majority has.

Second——

Mr. BROOKS. That is a rotten question. We haven't even written such a letter. What are you talking about?

Mr. SCHUMER. Why don't you, Mr. Allen, focus on the facts here? There are a lot of facts—just as Mr. Washington said. Instead of throwing up all these smokescreens. A lot of us have immersed ourselves in the facts. I for one have resisted special prosecutors in the past, including the situation that involved the Schroeder situation. She knows it. The S&L one. Because I didn't think we had crossed the line.

Mrs. SCHROEDER. I do.

Mr. SCHUMER. Really, I have to tell you, I think that question was out of line. Incorrect to boot.

Mr. BROOKS. I am not going to yield to anybody else. We are now going to go to the panel.

I didn't like that question very much, Mr. Allen. I want to be honest with you. It is improper and obviously was just another red herring you are scattering around, and I don't like that. I haven't done that to you. When I do, I will tell you in advance.

Mr. HYDE. Mr. Chairman.

Mr. BROOKS. Mr. Hyde, my old buddy.

Mr. HYDE. Mr. Chairman, I feel very guilty that you are assailing my good friend, Mr. Allen and Mr. Ramstad for a question that I must say initiated with me. I was informed by an usually unassailable source.

Mr. BROOKS. Who you will not name.

Mr. HYDE. Who I will not name, but he was not from my party. I am told a letter has been prepared and already signed. If that information is incorrect, and I am the source of that misinformation and that disinformation, then I apologize to all of you, whom I thought had already made up your mind on this issue.

But I would say in my own defense to Mr. Washington, that as I read this statute, which you and I both hang over each word with interest, there is really no standard at all. A majority of the majority—that is one of the problems with it, it seems to me. And it is an invitation to politics. But I do not accuse any member of the majority party, even though it is a Presidential election year, of even entertaining a thought about politics. I would never do that.

Mr. Brooks is going to get even madder if he doesn't start.

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Mr. WASHINGTON. I know. I just have one little question. Will that mean that the gentleman will do what any good magistrate will do with respect to that unnamed confidential informant, that is, not believe him any more?

Mr. HYDE. I have no reason not ever to believe him about anything.

Mr. WASHINGTON. You shouldn't have believed him in the first place.

Mr. BROOKS. We have the distinguished Senator from Vermont, Senator Patrick Leahy. Senator Leahy is chairman of the Committee of Agriculture and Nutrition and Forestries.

Next we have Chairman Henry Gonzalez, whose pursuit on the trail of the facts began several years ago, and he has never wavered.

Next we have Charlie Rose from North Carolina, the distinguished chairman of the Committee on House Administration and the Agriculture Subcommittee on Department Operations, Research and Foreign Agriculture. Chairman Rose conducted his initial inquiry concerning irregularities in commodity programs relating to Iraq long before this election, starting in 1986, and has led a determined effort ever since then to try and bring to light important evidence about possible official misconduct.

And finally we will hear from Congressman Doug Barnard, Jr., from Georgia, chairman of the Government Operations Committee, Subcommittee on Commerce, Consumer, and Monetary Affairs, also a senior member of the Banking Committee. It is Chairman Barnard's subcommittee that first examined the administration's policy toward Iraq some 2 years ago.

We will hear from each of the gentlemen for about 2 minutes. Your statements will be put in the record with whatever documents you want to file. We will hear from you in order. Then we will hear questioning from the committee members.

We will introduce Senator Leahy.

STATEMENT OF HON. PATRICK LEAHY, A U.S. SENATOR IN CONGRESS FROM THE STATE OF VERMONT

Mr. LEAHY. Thank you very much, Mr. Chairman. I am pleased to be here with you, and also my other good friend, Henry Hyde, and all the members of the committee. It has been my pleasure to serve with all of you on committees of conference when the Judiciary Committee has met at various times. It is good to be here.

I appreciate you inviting me here to discuss not what the Senate Judiciary Committee has done but what the Senate Agriculture, Nutrition and Forestry Committee has done in its continuing investigation of U.S. aid to Iraq.

Before I start, I want to praise the gentleman sitting next to me, Chairman Gonzalez. He has sought, as we have, to discover what the truth is. A lot has been written about this issue that it is generating significant media attention, news coverage and so forth, but that media attention, in turn, has caused some people, both supporters and opponents, of the administration's policy toward Iraq to try to politicize this issue. That is not what the American people want.

Senator Lugar and I have been very careful in conducting the Senate Agriculture Committee's investigation. We are not out to assign blame. We are simply trying to find out one thing: We want to know how the United States ended up spending $1.9 billion for foreign aid for Saddam Hussein—$1.9 billion is awful lot of money.

We could have spent that money on domestic needs. Instead of covering Iraq's refusal to pay its own debts, we could have bought a hot lunch for 9.5 million school children for every day of the school year. Or our Nation could have afforded to fully fund the WIC program, providing food to 3.8

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million pregnant women and working mothers who in the wealthiest Nation on earth don't get any money now. Instead, we spend the money on foreign aid for Saddam Hussein.

The Commodity Credit Corporation's export guarantee program is sound policy. It has a good goal—to increase foreign purchases of U.S. agriculture products through the CCC, thereby helping American farmers. But the problem starts when this administration, or any administration for that matter, uses the CCC program as some kind of under-the-table foreign aid. And apparently that is what happened here. This was used as under-the-table foreign aid.

I will tell you what happens. Under the CCC program, the U.S. Government doesn't actually write a check up front to a foreign nation. It gets domestic and foreign banks to extend loans by promising to guarantee the loan. The United States pledges full faith and credit.

Now, if the foreign government fails to pay back the loans, guess who does? U.S. taxpayers. They get the bill. They pay the loan.

Now, the $5 billion in credit the United States extended to finance the purchase of farm products, Iraq defaulted on nearly $2 billion since its invasion of Kuwait. Guess what? American taxpayers are left with the bill. We end up paying the tab for Saddam Hussein. And evidence uncovered suggests the administration extended CCC loans to Iraq even though the administration's officials knew Iraq wasn't creditworthy and the U.S. taxpayers might end up paying the bill.

In fact, by mid-1989, no nation on earth except one, the United States, was extending long-term loans of 1 year or more to Iraq because they feared that Iraq after the Iraq/Iran war would default on long-term loans. We were the only nation on earth shoving those loans out there.

I have included in my written statement, which I ask be made part of the record, some of the evidence that the administration officials knew Iraq was not creditworthy when the loans were approved. That is what is the most bothersome thing. They knew. They knew these loans might not be repaid.

The administration likes the CCC program because it requires no congressional approval before specific guarantees are extended. It also allows them to camouflage foreign aid as CCC loans.

When money is disguised as loans to a nation not creditworthy, the administration is not being honest to the American people. That is what is happened with Iraq. For example, they haven't even learned their lesson in that because the administration is planning to use CCC programs to make loans to Russia and other members of the Commonwealth of Independent States without questioning their creditworthiness.

The evidence uncovered so far shows that foreign policy considerations weighed heavily in the administration's decision to extend CCC credit guarantees to Iraq. That, in and of itself, doesn't constitute a violation of law. But the problem is, not only do foreign policy concerns result in bad loans, but the administration may have misled both Congress and the American people about the facts.

At the end of my testimony I have included a chronology of this issue. Let me just summarize a couple of key points.

On February 12, 1990, over 2 years ago, I wrote a letter to then Agriculture Secretary Clayton Yeutter saying—keep in mind, this was more than 2 years ago—I said, "I am also disturbed by rumors that foreign policy pressures have encouraged the department to give Iraq special treatment in this case."

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More that 2 years ago, on February 20, he wrote back and said to me, "You mentioned there were rumors of foreign policy pressures to give Iraq special treatment in this case. To the contrary. Extension of GSM–02 guarantees in connection with sales to Iraq have recently been subject to special scrutiny because of the BNL investigation."

But Chairman Gonzalez has placed into the March 16, 1992 Congressional Record what appears to be an earlier draft of Secretary Yeutter's letter. I think it gives a clear sense of what they were thinking. That draft says, "You mentioned there were rumors that foreign policy pressures have occurred to give Iraq special treatment in this case. I can assure through is no basis for the rumor."

The day after his letter, I asked Under Secretary Rich Crowder before our committee, "I presume you are getting some pressure from the State Department or elsewhere within the administration to loan money to Iraq." He responded, "We are not getting undue pressure from anyone on either side, either for Iraq or for anyone else at this time."

But when you read my chronology, you will find that foreign policy did play a decisive role in the administration's decision to extend these credits, contrary to what Secretary Yeutter and other USDA officials said.

On October 31, 1989, less than 4 months before I wrote to Secretary Yeutter, he was called by Secretary of State James Baker. The talking points for this conversation are in the Congressional Record. The talking points state, "On foreign policy grounds, we support a program of up to $1 billion released in tranches with periodic compliance reviews. We want to get this important program back on track quickly."

According to the February 24 and 25, 1992, reports in the Los Angeles Times, Secretary Baker wrote in his talking points that Yeutter told him during the phone call, "I think we are seeing it the same way you guys are." The loans were extended to Iraq soon there after.

Secretary Baker testified before the Foreign Operations subcommittee of the Senate, I am chairman of that subcommittee, and I asked him about the story in the Los Angeles Times. I said, "They indicate to me the rumors I was hearing were correct. The response given by Secretary Yeutter was wrong, and indeed he was pressured by you, Secretary Baker, or by the administration on foreign policy grounds."

I then said, "Was Secretary Yeutter telling me the truth when he said that foreign policy considerations gave no role in extending credit guarantees to Iraq?" Secretary Baker then confirmed that foreign policy played a role in the decision.

The question still remains, Why mislead Congress and the American people about the reasons it was giving aid to Iraq in the months and years before that nation invaded Kuwait? The goal of CCC is to export U.S. farm products. Iraq was receiving guarantees to buy food, but Saddam Hussein was getting a lot of other benefits at the same time.

At one level, when Iraq was financially devastated, strapped for cash, the administration used U.S. taxpayer money, perhaps inadvertently, to prop up Saddam Hussein and help the dictator rebuild his nation's war machine after the Iran/Iraq war. He needed cash to buy food to feed his people. But by receiving U.S. agricultural credits which bought the food for his people, he could use other money on military weapons and machinery, which he used in the Persian Gulf War. Money is fungible. The money the administration provided to Iraq for food freed up his other money.

On a second level, my committee is going to investigate whether CCC credit guarantees were actually diverted from the purchase of food to other

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uses. We are concerned that in spite of assurances from the department that the export credit guarantees program is not used for military purposes, evidence continues to come to light indicating there was such a connection.

It is well-known the Atlanta Georgia branch of Banca Nazionale de Lavoro, BNL, was instrumental in helping Saddam generate credit between 1984 and 1989 until Federal agents raided it and shut it down.

Just this morning the central and final figure in the BNL figure has agreed to plead guilty to many counts of conspiracy and fraud brought against them. Unfortunately, that means there will be no trial or public hearing in court of the Atlanta bank branch that made over $4 billion in loans to Iraq.

Now, we fault the administration's investigation of this matter. The administration assured us in the Agriculture Committee that the USDA's Inspector General Office was undertaking a thorough investigation. Despite USDA's assurance, it now appears that no thorough investigation was conducted. Instead, the Inspector General only audited the program. This means the IG reviewed the documents rather than vigorously following leads and taking testimony under oath.

In conclusion, let me say this, Mr. Chairman. Because of so many unanswered questions or questions that I think were answered improperly during the last couple of years when I have been asking questions about this, Senator Lugar and I together sent letters on May 22, 1992, to Secretary of State James Baker, Federal Reserve Chairman Alan Greenspan, Federal Reserve Secretary Nicholas Brady and Secretary Madigan, requesting documents to aid our investigation.

Senator Lugar and I have also insisted the Treasury Department cease its delaying actions in blocking access to documents. And I have included in my statement all of that, because when you come down to it, the bottom line is CCC money was used for foreign aid.

Now, I don't know whether this was because of a mistake or because of fraud. But the end result is the same: Whether it was done by mistake or done by fraud, the American taxpayers end up paying a foreign aid bill to Saddam Hussein. And I can't believe there is an American in this country who would be very happy to find out that he or she is paying part of the bill for $1.9 billion in foreign aid to Saddam Hussein.

Thank you, Mr. Chairman.

[See appendix I–2.]

Mr. BROOKS. Senator Leahy is obligated to return to the Senate to a hearing that he has been absent from, but Mr. Schumer wanted permission to ask one question. Then I will give him that opportunity.

Mr. GEKAS. I want to ask a question, too.

Mr. BROOKS. You will get that opportunity. You get one. You, Mr. Schumer, gets one. You get one.

Mr. JAMES. Mr. Chairman, that is an absurd procedure. I would request the opportunity to ask a question. You are about to charge the administration has committed crimes——

Mr. BROOKS. Regular order.

Mr. Schumer, you are recognized.

Mr. JAMES. That is absurd if you have rules like that.

Mr. SCHUMER. Thank you, Mr. Chairman.

I want to ask Mr. Leahy——

Mr. JAMES. That is a joke. There is no order in this committee.

Mr. SCHUMER. In February 1990, in the letter in which Secretary Yeutter disclaimed—it was a letter to you, foreign policy pressures, which has now become famous he also said—this is from page 3 of your testimony—"In

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fiscal year 1990, the export credit guarantee for Iraq was set at a current level of $500 million.''

And he also said on page 5, ''The decision to limit our initial commitment for fiscal year 1990 reflects a product of a go-slow approach under the present circumstances.''

Yet, as Chairman Gonzalez' evidence has shown, the evidence he has put into the record, in November 1989, 4 months before the Secretary testified before you, there had been an agreement to fund $1 billion in two segments, not $500 million, but $1 billion to Iraq.

And the memo of October, the famous memo of the 13th of October 1989, which went through the NAC, was spread throughout the Government, doesn't talk about a go-slow approach; it rather has lines in it like the investigations are at the explosion state, that USDA expectations are the investigation could, quote, ''blow the roof off the CCC,'' and their conclusion is that if smoke indicates fire, we may be facing a four-alarm blaze in the near future.

Now, how would you characterize what the Secretary in his February 1990 testimony—by the way, this is 1990, not 3 months before an election, when Senator Leahy was trying to get at these allegations, and I think it can be shown all of us were looking for this for years—Charlie Rose as early as 1986, Leahy in 1990, Gonzalez in 1988, Barnard in 1990. But given this 1990 testimony and the previous documents which Chairman Gonzalez has made available, how would you characterize the letter that Secretary Yeutter sent to you?

Mr. LEAHY. I must say I have letters of mine going back to 1989, and basically we just want to know where this money was going.

I have always stated, and stated on the floor of the Senate and elsewhere, that I feel that creditworthiness was not responded to on Iraq. If you want to just make it pure dollars and cents, I had problems with sending it to them anyway because of human rights violations and other issues, but in pure dollars and cents we were jeopardizing the American taxpayers.

The response now, when you read all the other things have come out, things that Chairman Gonzalez and others have brought out, things that have been brought out by other committee hearings, is that it was not a forthcoming response. In saying that had $500 million, well, they knew they were going to put $500 million together twice. That adds up to $1 billion. It would have rung even more alarm bells if they had talked about $1 billion. They knew it was going to be $1 billion. They said it was going to be $500 million.

He said there weren't foreign policy considerations and there were. The creditworthiness was more than blinked at; they closed their eyes. I think that is why we are now, Republicans and Democrats alike in our committee, asking for a lot more material, because we were not given fair answers.

Mr. SCHUMER. Thank you, Mr. Chairman.

Mr. BROOKS. Mr. Gekas, the gentleman from Pennsylvania.

Mr. GEKAS. Thank you, Mr. Chairman.

I see no copy of the letter that you and Senator Lugar sent asking for that information.

Mr. LEAHY. I don't have a copy of that package before me, Mr. Gekas, but if there are any letters you want from us, I would be happy to include it.

Mr. Chairman, I ask if there are further questions, if there is further material that we can send to any member, any Republican or Democrat who wants it, I will make sure it is sent over here immediately.

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Mr. GEKAS. In that request that you and Senator Lugar made to the administration that you asked for classified information——

Mr. LEAHY. No, we did not. We asked if there were foreign policy pressures. The basic question I was concerned about, we asked something that could be asked very easily at open hearing: Were foreign policy pressures brought to bear? The answer was no. In fact, foreign policy pressures were brought to bear.

Mr. GEKAS. In that letter, you specifically said that you were not interested in classified——

Mr. LEAHY. No, no. I am saying the basis of my question was whether foreign policy considerations were asked—were involved, and whether the creditworthiness was blinked at. In fact, we were told they were not.

Our policy is that when classified documents are asked for, those are sent and responses are sent to the special office they have in the Senate security office where they are kept. I would not—and if there were classified matters requested, if they requested a classified letter or response, obviously we couldn't talk about it in this committee, in open.

However, I would note that if there are any, they are available for those who have appropriate security clearance in the Senate, in the special provisions we have in the Senate for keeping classified material.

Mr. GEKAS. Would a normal response such as one you expect from the administration signify that X and Y cannot be revealed to you at this time or turned over to you by reason of its classification?

Mr. LEAHY. We have this periodically in the three committees I chair. We often have classified information. We just note there will be classified material to follow. The transcript, of course, is then sealed for that, and is handled in an entirely different manner.

We also, in the letter to him, we asked, it there are any documents that are classified, please let us know, because they will be kept separately.

The question still comes down to one that was asked openly, of course, and answered openly, with no effort to suggest it couldn't be otherwise. Were foreign policy rather than commercial considerations used here, because of the concern raised by many, Republicans and Democrats alike, that CCC is being subverted to a form of foreign policy—I mean, of foreign aid. And there we were told, frankly, not in classified but in open documents, that that was not so. Now it turns out that it was so.

Mr. GEKAS. Senator, if the original program to provide food for the Iraqis were the only result of that decision and actual food products were transferred there by American farmers and American entities with the help of those loans, which everybody agrees has happened, is that not a proper tool of foreign policy? Should it not be used as a weapon of foreign policy, if indeed that would help the Iraqis at that juncture in history fortify against the aggressions of Iran, as the world looked at it, or as our foreign policy viewed it?

Mr. LEAHY. I think the question could be asked this way. Is it a proper part of our foreign policy to ask the American taxpayers to go on the hook for $1.9 billion in foreign aid to Saddam Hussein at a time he was committing genocide against some of his people, and when he used that money to free up other money he could buy weapons with?

That is a debate I will let somebody else make. For me it is easy. As an American taxpayer, I don't want to pay foreign aid to Saddam Hussein. I don't want to at all.

Also, is the CCC program a commercial program? It is not a foreign aid program. At a time when no other country in the world considered Iraq cred-

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itworthy, we were offering a commercial program, which says, in effect, that we, the American taxpayers, think they are creditworthy and will pay it back, and it turned out we found out what apparently every other country in the world knew, that they weren't creditworthy, and as a result the American taxpayers are spending $1.9 billion to pay it back.

Mr. GEKAS. Even if there was a decision that that transaction to provide food was a matter of foreign policy for the United States?

Mr. LEAHY. I am not aware that that was the decision, and we have a regular foreign aid program where we can make that decision. This is a commercial program which is supposed to be done when people are creditworthy. You voted for it, I voted for it, virtually everybody in this room has, on that basis. It was not used for the reason it was intended. It was not used for the reason the Congress authorized it. It was not used for the reason the American taxpayers paid for it.

Mr. BROOKS. Senator, we appreciate your coming over. We appreciate the necessity of your departure. We will submit some questions to you, Mr. Leahy, in writing.

Mr. LEAHY. I would be happy to address them at any time.

Mr. BROOKS. Mr. Gonzalez.

STATEMENT OF HON. HENRY B. GONZALEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GONZALEZ. Thank you, Mr. Chairman, and the members of the Judiciary Committee, for this courtesy.

Since July 1990, the Committee on Banking, Finance and Urban Affairs has been investigating the activities of the Atlanta branch of the Banca Nazionale de Lavoro, the large Italian Government-owned bank. Our investigation was intended to review the effectiveness of United States regulation of foreign banks, and that study has led to major statutory improvements.

I might say our investigation originated prior to 1990. What I speak of is the official committee looking into the matter.

Our investigation has documented how the Bush administration encouraged closer ties with Iraq right up to the Iraqi invasion of Kuwait; how Iraq took advantage of our Government's ambivalent policies; and how the Government of Iraq used BNL and others to operate a secret procurement network in this country and in Europe and other parts of the world.

My primary interest in this investigation is the adequacy of the regulation of foreign banks. The BNL case revealed a totally ineffective regulatory system that invited abuse, with the result that BNL-Atlanta was able to use U.S. Government guarantees to ship billions of dollars worth of agricultural goods to Iraq.

The abuse of the guarantee program was facilitated by a policy that deliberately dismissed concerns about Iraq's lack of creditworthiness. These are matters that can be dealt with through appropriate legislation, and great strides have been made in cleaning up the credit programs.

Our BNL investigation has also displayed how the administration developed a tunnel vision toward Iraq and later sought to obstruct congressional reviews of that policy. Unfortunately, to this day the administration maintains an obstructionist stand.

The review of the BNL case has produced valuable lessons concerning bank regulation. It also should produce valuable lessons about what went wrong with the broader policy toward Iraq. Since that policy failed—and as a result, we went to war against Saddam Hussein—here are clearly lessons to be learned.

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How did it come to pass that the State Department thought Saddam was a man who could be influenced by easy credit? How did it happen that efforts to ingratiate ourselves to Saddam Hussein persisted until the eve of the invasion? Why was it so easy to override regulatory mechanisms intended to prevent abuse of the CCC program? The Congress is the appropriate forum to find answers to these questions.

When the idea of an independent counsel was first raised with me, I reacted positively. If an independent counsel can shed any light on the conduct of U.S. policy toward Iraq so that we can benefit from these lessons, I am fully supportive. Questions like, Was there obstruction of justice, or, Were documents falsified, might yield to the dispassionate inquiries of an independent counsel.

During the fall of 1989 and into 1990 I read a number of newspaper articles about an Italian Government-owned bank in Atlanta, GA, that had allegedly provided illegal loans of over $2 billion to the Government of Iraq to buy U.S. agricultural goods.

At the time the Banking Committee was in the midst of passing legislation dealing with the savings and loan crisis, and the restructuring of our nation's deposit insurance system. These enormous tasks consumed the staff resources of the Banking Committee, but given the peculiar circumstances surrounding the scandal in Atlanta and the magnitude of the loans to Iraq, I thought it important to pursue the BNL scandal as soon as possible.

In July 1990 I directed my staff to begin collecting information regarding the BNL scandal. Just weeks later Iraq invaded Kuwait.

My original goal was to see if foreign banks were adequately supervised. I had played a key role in getting the first Foreign Bank Regulation Act passed in 1978, and felt that the BNL scandal provided a good opportunity to evaluate the system of regulating foreign banks.

After several months, we found that the Federal Reserve and most States did not aggressively regulate foreign banks, nor did they dedicate adequate resources to supervising and regulating these entities.

In addition, the BNL scandal exposed several glaring loopholes in the banking laws. The BNL investigation brought to light the fact that the employees of branches and agencies of foreign banks were not subject to the criminal statutes for crimes such as fraud, embezzlement and bribery, the jurisdiction of this committee. So that, in fact, the Banking Committee, working closely with this committee, closed these loopholes in the omnibus crime bill enacted in November 1990, with the chairman of the subcommittee actually in the forefront.

The BNL investigation also brought to light the inadequacy of the regulatory mechanisms governing foreign banks. I sponsored amendments to the Federal Deposit Insurance Act of 1991 that markedly improved foreign bank supervision.

Much to my surprise, from the time I first announced hearings on the BNL scandal, the administration has attempted to thwart the BNL investigation. When I announced in September 1990, that the committee would hold hearings on the BNL scandal, I received a letter from Attorney General Richard Thornburgh, who falsely claimed that the hearing would permit culpable parties in the BNL scandal to escape prosecution and that the investigation would harm the national security.

Of course, the committee's investigation did not impair the BNL prosecution, nor did it endanger national security. In fact, the committee later found a State Department letter that confirmed there were no national security aspects to the BNL investigation.

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The Attorney General's effort to stop the committee's first hearing was a minor irritation compared to the full court press they threw at us to stop us from getting BNL documents from the Federal Reserve and other agencies.

At the request of the Justice Department, the Federal Reserve withheld hundreds of BNL-related documents from the committee. After the committee was forced to subpoena the documents, the Federal Reserve, at the insistence of the Justice Department, redacted in whole or in part over 80 of these documents.

The committee had to fight the Justice Department and the Federal Reserve—who has always said it is so independent and suddenly it says it has to succumb to the Justice Department's dictates—for 8 months to obtain the unredacted versions of these documents.

The unredacted versions clearly showed that the Justice Department was seeking to thwart the committee's investigation or to withhold information embarrassing to the administration. For example, the redactions concealed: That the BNL indictment was expected in early 1990 and that the Justice Department in Washington was perceived as interfering in the BNL investigation; the indictment was eventually handed down over 1 year later on February 28, 1991. An October 6, 1989 meeting between Secretary of State James Baker and Iraqi foreign Minister Tariq Aziz to discuss the BNL scandal; that BNL was funding Iraqi front companies involved in Iraq's ballistic missile program and nuclear weapons program.

This new information, along with documents received from other agencies, led me to expand the scope of the committee's work to include BNL's role in funding Iraq's secret military procurement network and the effect the BNL scandal had on United States-Iraq relations.

While many agencies have provided information, others have withheld critical information. For example, the Customs Service has refused to turn over hundreds of internal BNL and Matrix-Churchill—a company in Ohio—documents that the committee subpoenaed, without a dissenting vote.

In addition, the committee is currently being denied information from the White House, the State Department, the Treasury Department, the CIA, the National Security Agency, and the Department of Defense.

One possible explanation for these roadblocks is that several Bush administration policymakers misled the Congress about the uses of the CCC program for Iraq. During its investigation, the committee unearthed testimony from several State and Agriculture Department officials that certainly appears misleading as to the foreign policy character of the CCC program for Iraq.

For example, on April 26, 1990, before the House Foreign Affairs Committee, and on June 15, 1990, before the Senate Foreign Relations Committee, the State Department's John Kelly stated, and I quote, "Regarding our agricultural programs, U.S. policy in both this administration and the previous one has been not to single out farm exports as a tool of foreign policy."

In addition, several Agriculture Department officials have misled the Banking Committee about various aspects of the CCC program for Iraq. In October 1990, Mr. Paul Dickerson, a USDA official at the time, stated, and I am going to quote, "It (the CCC program for Iraq) was a market-driven, agriculture-related program without reference to other issues."

The USDA also misled the Senate Agriculture Committee chairman, as Senator Leahy has just testified. Mr. Crowder, the Under Secretary of the USDA, stated, and I quote, "We are not getting undue pressure," as under-

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lined and stressed by the Senator, "from anyone on either side, either for Iraq or anyone else at this time. If we did not agree with it, we would not recommend it. If we thought it was appropriate, we would recommend it."

Mr. Crowder admitted in recent testimony before the Banking Committee that the USDA was under intense pressure from the Congress itself and the agriculture community to approve the CCC program for Iraq. The committee has a dozen or so documents that conclusively show that the above statements by the State and Agriculture Department officials are and have been misleading.

In order for the Congress to make good laws, it must depend on the executive branch to provide truthful and complete information. In the case of the CCC program for Iraq, truthful and complete information would most likely have resulted in a termination or a severe limitation on the extension of credit to Iraq.

The committee has already documented the fact that Iraq was a very poor credit risk, yet the administration allocated 20 percent of the entire CCC program to Iraq. In reality, the administration used the CCC program for Iraq as a back-door means of achieving its foreign policy agenda.

Misleading Congress as to the real use of the program not only permitted the CCC program to grow to $1 billion annually, it also permitted the administration to escape accountability for its Iraq policy. Surely, full disclosure of the character of the program would have raised many warning signs in the Congress.

An independent counsel should make a determination as to why efforts were made to mislead the Congress about the character of the CCC program for Iraq.

The committee has already learned during the course of the investigation that the USDA has never fully pursued a vigorous investigation into charges that the CCC-guaranteed commodities were being diverted by Iraq to pay for military goods. The USDA Inspector General recently testified before the committee that his office found no evidence to indicate that CCC-guaranteed commodities ever arrived in Iraq.

In addition, the USDA issued a report in May 1990 that arrived at a false conclusion regarding the issue of diversion. The report's summary states that the USDA found no evidence of diversion, while the body of the report indicates that no evidence was found to show CCC-guaranteed commodities actually arrived in Iraq.

The committee was informed at a hearing on May 21, 1992, that although the USDA has in its possession numerous Arabic documents that could be used to pursue these allegations, it has never bothered to translate these documents.

I will place the rest of my statement in the record. Also, documents concerning the concerns of the BNL investigation, examples of redactions, waivers for cabinet officials involved in policy decisions.

Let me conclude. To date, the Banking Committee has held five hearings on the BNL scandal and the U.S. policy toward Iraq. And I have contributed over a dozen floor statements on these topics.

On two occasions, members of the Banking Committee voted unanimously to authorize subpoenas for BNL investigation. Thus far, the BNL investigation has resulted in the closing of loopholes in the criminal statutes and restructuring the system of supervising the branches and agencies of foreign banks, but not far enough.

In any free political system, it is essential that people have confidence in government. During our BNL investigation, I have attempted to bring light

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to policies that led to the United States involvement in the war, a war that resulted in the loss of hundreds of thousands of lives and immense economic losses.

It is important that people know the details of how the policy evolved, as it is reflected in our efforts, from our perspective on the Banking Committee.

There are those who would suggest that the BNL investigation is politically motivated. But the facts do not support this assertion. The committee's investigation has been ongoing for over 2 years, really, and predates the war with Iraq.

If I were partisan in this matter, I would insist that no independent counsel be appointed, and that Congress alone investigate. That is as simple as that. The matters that I have discussed today, taken in their entirety, demonstrate the need to appoint an independent counsel, in my opinion.

The Banking Committee is not a prosecutorial nor a judicial body. The appointment of an independent counsel seems to me the only alternative in determining whether or not any crimes have been committed and whether or not any U.S. Government officials or those outside the Government aided or abetted in violating U.S. laws. Only an independent counsel can perform a disinterested review in the matters raised in this extraordinary case.

Thank you, Mr. Chairman.

[See appendix I–3.]

Mr. BROOKS. Thank you very much.

Chairman Rose, you are recognized.

STATEMENT OF HON. CHARLIE ROSE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. ROSE. Thank you, Mr. Chairman.

I would like to ask unanimous consent that my entire statement be made a part of the record.

Mr. BROOKS. Without objection, it is so ordered.

Mr. ROSE. I have also given each member a chronology of 36 items that we have been involved in, and I would like to ask that that be made a part of the record.

Mr. BROOKS. Without objection.

Mr. ROSE. Mr. Chairman, we gave your staff people 75 copies of all of those 36 items, and we have those for whatever you should decide to do with them.

Mr. BROOKS. We got them this morning. Everybody will get a copy of that.

Mr. ROSE. Let me summarize a few points, rather than read my whole statement, Mr. Chairman.

From the perspective of the Commerce Department, and Mr. Barnard will testify about that, what I have seen from looking at the agriculture GSM loan program, from looking at the investigation of BNL in Atlanta, which also led me to a Pennsylvania company called Kennametal, these are some conclusions that I have reached and that I can back up with things that we have established.

Some companies tried to go through the Commerce Department and get export licenses in the normal business procedure. Some of the companies knew they probably couldn't get export licenses if they asked for them, so they sold things to intermediaries that were then transshipped to Iraq, and they would claim they didn't know that the material had a dual use or a military use.

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Those two areas are full of examples of what I can say are illegal activities. It is extremely illegal not to get an export license for a military item that you are going to sell to Iraq. I think we can go into great detail about what evidence we have of that and how the Justice Department has refused to look at it.

As to agriculture, sure, the Agriculture Department has consistently maintained—and Mr. Gonzalez has just brought it out again very clearly—We didn't do anything wrong; we were just selling farm products to those folks over there starving in Iraq, in the desert. They needed our food.

Well, the truth of the matter is that the Iraqis were paying many times the market price for the alleged commodities that they were receiving. They were receiving extra sales services, which are a nice way to call kickbacks in the form of cash, and I have seen cables where American suppliers of agriculture products were told we would like you to send us the following described tractor trailer trucks at no cost to Iraq so we can use them and then we will continue to do business with you.

So what is wrong with the agriculture system was they were paying excessive prices. They were getting kickbacks, and the L.A. Times reports that they went to Jordan and found clear evidence that some of the agricultural commodities that actually got to Iraq were bartered to the Russians for military items. The whole thing screams of, if there was so much background noise, that this GSM program was going wrong, why did you keep it up.

In a hearing I held on October 6, 1988, I asked the General Accounting Office about how these loan guarantees worked. I said: "In other words, I could have an office in Washington as an exporter and if somehow I had a relationship with the foreign buyer, I could get a government guarantee on a loan transaction in which no commodities ever went anywhere; is that correct? Mr. Mendelowitz: That is theoretically correct."

We have later learned that there are some examples that appear to be fraudulent paper transactions for the purpose of shipping money under the GSM program and no commodities ever going anywhere.

I asked Mr. Kay, who was the former head of the Foreign Agriculture Service, did they not check to see whether or not if they bought some rice that it actually made it? He said we didn't check, that was for the marketplace to determine. That is a good word downtown, the marketplace was supposed to check on that. We pointed out the marketplace wasn't guaranteeing the loan, the American taxpayer was guaranteeing the loan.

So the whole thing is full of worms so far as how the administration was dealing with the program.

And then over $3 billion of the $5 billion in GSM–102, –103 loans were funneled by agriculture through BNL Atlanta. That liquidity of government guarantees in that bank in Atlanta gave them a financial power that they never had before and they used it to the benefit of Iraq.

It was widely known they were on Wall Street putting arms deals together for Iraq, BNL Atlanta was in the business of supplying arms to Iraq and they were a corrupt user of the agriculture loan program.

Mr. Sensenbrenner questions breaking the law. All you have got to do is read the BNL indictment and read the newspapers down in my home of Fayetteville where they carried eight tobacco dealers into court because these dealers paid kickbacks and fraudulently reported what they had been shipping to Iraq. They wanted to make me happy, I guess, took the case down to my hometown. All eight of them pled guilty.

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If you read those indictments, there is no question of criminality. One of the interesting companies that pled guilty in Atlanta was a company called Casalee America.

We have documents that we will put in the record on Casalee Belgium that came out of some investigations the Justice Department was conducting in Belgium. This same company had offered to sell 88-millimeter artillery ammunition, mortar bombs, 120-, 35-millimeter quick firing ammunition. That is not tobacco, Mr. Chairman, these are military products that Casalee sold: Mercury proximity fuses, grenade rifles.

The Justice Department had all this information because they had investigated the Belgium part of Casalee, not the American part of Casalee which was the third largest participant in the GSM program so far as selling tobacco to the Iraqis. I want to know why they didn't pull all that together.

There are just a few other items I would like to point out and then I will answer questions.

The U.S. attorney for the Northern District of Georgia Mr. Joseph Whitley was in the information loop regarding both actions taken by the U.S. attorney. Let me talk about that.

Mr. Joseph Whitley—I will read a piece of a September 18, 1989 article.

Joseph Whitley has joined Smith, Gambrell & Russell where he began establishing a white-collar criminal defense practice. The article notes Whitley had been in Washington for 3 years—U.S. attorney in Atlanta, Mr. Chairman, that I am talking about. He had been in Washington for 3 years, serving as Deputy Assistant Attorney General in the Criminal Division and as principal Deputy Associate Attorney General, as well as the number three post in Justice and in the latter job he oversaw Immigration and Naturalization, U.S. Marshal Service, Federal Bureau of Prisons, U.S. Parole Commission Interpol as well as 93 U.S. attorneys.

When asked to comment about his interest in becoming a U.S. attorney for Atlanta, Whitley said I have already done that once. My direction is toward private practice and I am not in the market for it. When he was at Smith, Gambrell, he represented Matrix-Churchill and later he didn't do what he said he was going to do, he actually did become the U.S. attorney.

And when the evidence showed up in Atlanta that there was a company in Pennsylvania called Kennametal that had been dealing with Matrix-Churchill—this was the intermediary, a company in Ohio, but it also had an English component. He recused himself from that case. We have not seen the letter, but he turned that investigation of Matrix-Churchill and Kennametal over to his assistant.

And Customs officials came to me and said his assistant who he gave the case to, Ms. Gail McKenzie, wrote them a letter asking for them to send her some more of the illegally seized evidence in the Matrix-Churchill case. U.S. Customs officials plainly told me all the warrants related to Matrix-Churchill were executed with the utmost concern for the law. Frankly this statement by the assistant U.S. attorney clearly undermined any case which might be brought against this Iraqi arms dealer Matrix-Churchill, and so forth.

Mr. Chairman, I think there is just one other little piece. I have a French news magazine that described, with Saddam Hussein's picture in it and it describes Casalee as one of his arms dealers. Casalee was clearly a major participant in the GSM program and I am here to urge, Mr. Chairman, that you all positively appoint an independent counsel.

I will quit now.

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

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[See appendix I–4.]
Mr. BROOKS. Chairman Barnard. The gentleman is recognized.

STATEMENT OF HON. DOUG BARNARD, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARNARD. Thank you, Mr. Chairman, distinguished members of the committee. I am pleased to be here today to testify concerning the experience of the subcommittee I chair concerning our efforts to obtain documents of the Commerce Department. Mr. Chairman, you are quite familiar with the subcommittee, having been chairman of the Government Operations Committee at least through three terms of Congress when I was chairman of the Commerce, Consumer, and Monetary Affairs Subcommittee.

In pursuit of our oversight jurisdiction for the Commerce Department, the Commerce, Consumer, and Monetary Affairs Subcommittee has had a long and sustained interest in the general subject of exports, as well as the export administration programs administered by the Commerce Department.

As you know, Mr. Chairman, the Department of Commerce licenses all dual use exports to certain countries. These are exports of goods which can have either peaceful or military uses.

When the troubles with Saddam Hussein began, it was apparent that Iraq had obtained much of its war potential from the West, including companies located in the United States. There were allegations that furnaces utilized in the manufacture of nuclear weapons were seized by the Customs Service on the dock in Philadelphia on the verge of being set to Iraq.

In fact, on July 18, 1990, I wrote to General Brent Scowcroft, in his role as Assistant to the President for National Security Affairs, requesting that the President intervene to prevent the shipment of these furnaces. A copy of my letter to General Scowcroft is reproduced at pages 220 to 221 of the printed record of the hearing held by the Consumer, Commerce, and Monetary Affairs Subcommittee on September 27, 1990.

I might say the day after we sent the letter, these furnaces were intercepted by the Customs Service and never reached Iraq. I might also say we never were favored with a reply from Mr. Scowcroft as to our inquiry.

Given this and other cases, there was ample reason to hold a hearing on the U.S. Government's export control laws, particularly with respect to recent sales and attempted sales to Iraq of materials which might have been used for nuclear, biological, and missile-related equipment.

The subcommittee did hold a hearing on September 27, 1990, on "U.S. Government Controls on Sales to Iraq." A copy of the printed record of this hearing is submitted, Madam Chairman.

Mrs. SCHROEDER [presiding]. Without objection.

[The information is contained in Judiciary Committee files.]

Mr. BARNARD. The full Government Operations Committee on July 2, 1991, approved a report prepared by the subcommittee on this subject entitled "Strengthening the Export Licensing System." A copy of this report is also submitted herewith.

[The information is contained in Judiciary Committee files.]

After the hearing, at subsequent meetings of the subcommittee, it was agreed unanimously to request documents from the Commerce Department concerning sales to Iraq licensed by the Commerce Department from 1985 to 1990. To reinforce our seriousness about this matter, the subcommittee voted two subpoenas for these documents. One I might say was unanimous and one lacked only one vote and that was for personal reasons.

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The documents concerning "dual use" sales licensed by the Commerce Department were subsequently delivered to the subcommittee during October and December 1990. I have these with me, and they are contained in the files of the Consumer, Commerce, and Monetary Affairs Subcommittee, in case there is any referral to them. By the way, these documents did not come in all at one time but they sort of dribbled in between October and December 1990.

However, the law—section 12(c) of the Export Administration Act—prohibits the release to the public, without the approval of the Secretary of Commerce, of data so received by a congressional committee. It was not ours to make public. The ostensible reason for this provision of the law is to protect proprietary information of a company doing business requiring a license.

The majority of our subcommittee believed that the public interest in knowing how much and what kind of materials had been delivered to Iraq outweighed any proprietary interest of a particular company.

Moreover, the subcommittee majority believed that it was not absolutely necessary to disclose the names of the companies doing business with Iraq, so long as we could disclose sufficient information to the public about what had been delivered to Iraq by American companies during the period before the war.

During this period, extensive negotiations were held between myself, Representative Dennis Hastert, the ranking Republican on the subcommittee, our staffs, and Under Secretary of Commerce for Export Administration, Dennis Kloske, and his staff, concerning the subcommittee's desire to see the public release of at least cumulative data on sales to Iraq which had been licensed by the Commerce Department.

Under Secretary Kloske informed us that the decision on release of data was out of his hands and in the hands of the White House. Mr. Kloske informed us that he would be willing to see the release of cumulative data, but the White House had control of this matter, and that any further negotiations should be held with the appropriate White House officials.

Accordingly, the subcommittee directed our staff to begin negotiations with the National Security Council, with a view to as much public disclosure as possible of information which had been supplied to the subcommittee. The following is based on information supplied to me by the subcommittee staff.

Mr. Theodore J. Jacobs, the subcommittee chief counsel, who is present here this morning, discussed this matter with Mr. Richard Barth, a member of the NSC staff. Mr. Barth informed Mr. Jacobs that several meetings of NSC staff had been convened, but Mr. Jacobs got the distinct impression that no solution to this matter would be reached until hostilities were over in the gulf war. Mr. Jacobs got the impression as I did that the matter was in the hands of then-Assistant Director of the NSC, Robert Gates.

Attached for the record, is a copy of Mr. Jacobs' letter to Mr. Barth of February 12, 1991. I am informed that this letter was faxed to Mr. Barth on that date. On March 11, 1991, the subcommittee received the attached letter and printout from Under Secretary Kloske responding to the subcommittee's request for Iraq licensing information that can be made public. Section 12(c) had been waived by the Department of Commerce.

During October 1990, at about the times the subcommittee first received printouts from the Commerce Department, the subcommittee received an anonymous phone call informing us that the caller had been instructed to

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make certain alterations in the documents before they were delivered to the subcommittee.

The fact of this call and the substance of the allegations concerning the alteration of documents subsequently appeared in the media. Because of these allegations in the media, the General Counsel of the Commerce Department asked the Commerce Department Inspector General to review the matter.

By report dated June 4, 1991, the Commerce Inspector General filed a report with then-Secretary of Commerce Mosbacher regarding the alterations on the documents supplied to the subcommittee. The report, a copy of which is submitted herewith and made a part of this statement, finds, among other things, that: Bureau personnel changed information on 68 licenses; references to "military" end uses were deleted; the designation "military truck" was changed. This was done on licenses having a total value of over $1 billion, or approximately two-thirds of the total value of the approved export licenses for Iraq for the period under review.

With respect to the changes in "military truck" designations, the Inspector General concluded that the "changes were unjustified and misleading." With respect to the 19 deletions of referral notations to other agencies, the Inspector General concluded, "those actions were not clearly justified." In 31 of 39 additional changes the Inspector General determined that these changes "were not supported by reliable independent documentation."

The Commerce Inspector General, however, did not designate the official/officials responsible for the alterations in the documents, nor did he adequately explore the motivation for the changes in documents supplied to the Congress. Accordingly, on July 10, 1991, in my capacity as chairman of the Subcommittee on Commerce, Consumer, and Monetary Affairs, I wrote to the then-Attorney General asking him to open an investigation of this matter to determine if any law of the United States was violated in the course of the handling of this matter.

Madam Chairman and members of the committee, I understand from the law, the Inspector General is required to refer a matter as this to the Justice Department. This was not done by the Inspector General of the Commerce Department. I did it. I might also say I never received any acknowledgment of my referral to the Justice Department.

I subsequently inquired at the Justice Department as to the status of this matter and was informed on January 31, this year, 1992, that the investigation is still ongoing and that I will be notified if the Department of Justice determines that no criminal charges will be brought. Copies of the subcommittee's file on this matter are annexed here to.

The subcommittee staff did receive a visit in August 1991 from two junior attorneys from the criminal division's public integrity section who maintained they were handling this matter. The staff suggested certain investigative approaches, but I am informed subsequent inquiries disclosed that the Justice Department had not followed up on the subcommittee staff suggestions.

In addition, after a subsequent inquiry of the Justice Department, the staff was visited by two Federal Bureau of Investigation agents assigned to this matter. I am informed that the two FBI agents were asking questions of dubious value and were pursuing investigative leads which appeared to be futile.

Madam Chair, the above states the extent of my knowledge on this subject and reflects information about which I have been advised by the sub-

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committee staff. I would be pleased to attempt to answer any questions you may have on this matter.

[See appendix I–5.]

Mr. BROOKS. Thank you very much. Because of the press of business now, and the number of committee members who have been very interested in this matter, I think we should limit each member to 5 minutes of questioning on the panel. I will take my own 5 minutes—I won't take that much.

Gentlemen, there have been increasing indications U.S. Government agencies knew about BNL's fraudulent activities with Iraq. If this is so, why was nothing done about it until the war with Iraq was consummated? Mr. Gonzalez, would you like to cover that and then maybe Mr. Rose and Mr. Barnard.

Mr. GONZALEZ. I am afraid I am not privy to any information that would indicate what the motivations were and that is one reason I think perhaps adds to the need to have somebody look into that. But all we have is a record, as I explained, of our findings with respect to the international banking ramifications and to the foreign policy aspects or the knowledge that individuals had.

Now, as to the wrongdoing of the bank officials in Atlanta, it was first argued that we had the Georgia commissioner up here. We had the Federal Reserve Board. Their testimony was very definitely showing that there was no adequate oversight, even though that agency in Atlanta is chartered by the Georgia commission.

There was no real oversight or interchange of information or auditing by either agency. But the first charges were that this was a rogue element of employees of the bank in Atlanta and that nobody else knew. Well, we have since good reason to know and have documentation showing that it was more than just a rogue employee acting in a way as to defraud and obstruct from knowledge the Georgia officials.

Mr. BROOKS. Mr. Rose, I also wanted to comment that the Republic of Italy Senate Investigating Committee found the activities of BNL Atlanta could not have occurred in their judgment without the knowledge of BNL Rome, and the U.S. Government. We earlier couldn't get a translation of that, but the CRS has graciously translated that for us and, to quote them, they say, "In the past few days we have received the express admission from President Bush in the face of revelations from Congress and the press that there have been moves to support Iraq dating from the beginning of the Reagan Presidency in the early 1980's through the Bush administration to shortly before the gulf war"—and it goes on.

I would ask unanimous consent to conclude with Mr. Rose.

Mr. ROSE. The Italian Senate Committee that was investigating this—and an interesting footnote—they work right next door to the office of our friend, Senator Orlando, he knew all about it—I talked to him about it the other day.

They concluded that the U.S. Government, the executive branch, had encouraged some of the activity that was going on in BNL. I was—I have had many people tell me—it doesn't take a Philadelphia lawyer to look at the pattern of who was making the GSM–102, –103 loan guarantees to Iraq. It wasn't all little mom and pop banks all over the country. The first $3 billion all went through BNL Atlanta.

Mr. BROOKS. A lot of transactions.

Mr. ROSE. Somebody had to tell them and I am convinced in USDA they were telling people, go down to Atlanta.

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Mr. BROOKS. All the commodity dealers of the first $3 billion all went to that bank for their loan?

Mr. ROSE. Sure.

Mr. BROOKS. I never heard of that bank before that.

Mr. ROSE. One of the interesting little footnotes, in the press release that accompanied the indictment of BNL in Atlanta, Mr. Brooks, Mr. Thornburgh gratuitously offered that the only crooks in this operation were the BNL Atlanta crooks, but that the Rome office knew nothing about it. That was a rather sweeping conclusion that may cost a lot of money to the U.S. Treasury, because if the home office didn't know about it, they can come back and claim that we owe them the money since they weren't involved in the wrongdoing.

Mr. BROOKS. I wanted to take this opportunity to point out that the Associated Press said Drogoul, who was to have pleaded guilty to a 347-count indictment before a Federal judge, did not do that exactly. He equivocated to some extent. He faces a maximum sentence of 390 years imprisonment and he is accused of loaning that $5 billion and presiding at that $5 billion we loaned to the Iraqis.

But the judge was apparently unhappy with that and said at today's court hearing that he believes a special prosecutor is needed—we are having copies made for everybody now.

Did you want—did you have a comment on that question, Mr. Barnard?

I would save some of my time and have four other questions I would like to submit to you in writing, if I might do that gentlemen, in the interest of time.

Mr. Fish the gentleman is recognized.

Mr. FISH. Thank you. Mr. Chairman, I have sat here since 10 o'clock, almost 2½ hours, while four witnesses gave us their very important testimony and I do not see how we would be able to, in 5 minutes, do justice to this complex subject matter. I have listened to imputations of delay and dereliction by the Department of Justice—not by political appointees, but by career prosecutors.

I think this is an extremely complicated bank case. The average time for such an investigation would normally be 2 years or more. This investigation, which began in July 1989 and the indictments came down in February 1991, took a period of less than 2 years.

I would also point out the original draft indictment contained no Iraqi defendants. It was Department of Justice in Washington who extended the investigation to make sure Iraqi wrongdoers would not get off the hook.

With that background, Mr. Gonzalez, can I ask you how you can contend the indictment of the BNL case was delayed for political reasons or by interference of agencies outside Department of Justice? Particularly, when the investigation and prosecution were carried out by experienced prosecutors in Atlanta and the Fraud Section in Department of Justice in Washington.

Is it your contention these career professionals, with decades of combined experience, would participate in or be used by political conspiracies to subvert carrying out their sworn duties?

Second, the indictment returned on February 28, 1991, is more than five times as large as the preliminary draft indictment prepared in 1990 that has been referred to. A preliminary draft that did not include any Iraqi defendants and only a fraction of the charges included in the final. I ask you again, how can you contend what you have contended when the 18 months between the first allegations of wrongdoing at BNL Atlanta and the return of the 347-count indictments reflects a normal and predictable amount of time

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for an investigation of a complex fraud scheme involving $4 billion and spawning three continents over a period of some 4 years?

I wish you would comment on where the delay is.

Mr. GONZALEZ. First, let me say, I base my statement on the documentation we had in which clearly the Federal attorney in Atlanta was instructed from on high in D.C. to postpone and delay, those I have entered into the record. As to your characterization about career Justice employees, well, I don't believe Attorney General Thornburgh was a career Justice employee and he took a direct hand in this matter from the very beginning, ab initio.

Mr. FISH. Do we have documents to back that up, I presume?

Mr. GONZALEZ. Yes, sir, and we have submitted them.

Mr. FISH. I don't recall any documents submitted with Mr. Thornburgh's name on them.

Mr. GONZALEZ. I will furnish those for you, because I am sure.

Mr. FISH. Thank you.

Mr. GONZALEZ. Among other places, they are in the record.

[See appendix I–6.]

Mr. FISH. It is Department of Justice under Mr. Thornburgh that did include the Iraqi defendants.

My next question, Mr. Gonzalez, is how can you contend the decision not to indict the Central Bank of Iraq was politically motivated, when the Rafidain Bank, the commercial bank owned by the Government of Iraq, was indicted? Also, when high officials of the Iraqi Government, including high officials of the Central Bank of Iraq, were indicted when, at the time of the indictment—February 28, 1991—the relationship between the United States and Iraq was a hostile one.

Mr. BROOKS. Do we have a copy of that draft indictment? I didn't have any. We have never seen one.

Mr. GONZALEZ. Mr. Chairman, I wonder if we could obtain a copy. It has been refused us.

Mr. BROOKS. I have not seen it. Do you have a copy of it?

Mr. GONZALEZ. We have been refused a copy of it. If the distinguished gentleman has it, we would appreciate it.

Mr. FISH. We will supply that for the record.

Mr. BROOKS. For the record, we would appreciate it.

[See appendix I–7.]

Mr. FISH. Can you answer any part of that question?

Mr. GONZALEZ. I beg your pardon? I didn't get your question.

With respect to the Jordanian—is that—I believe that was the thrust of your question.

Mr. FISH. I asked how can you contend the decision not to indict the Central Bank of Iraq was politically motivated when the Rafidain Bank, the commercial bank owned by the Government of Iraq, was indicted when high officials of the Iraqi Government including high officials of the Central Bank of Iraq were indicted when, at the time of the indictment—February 28, 1991—the relationship of the United States and Iraq was one of hostility.

Mr. GONZALEZ. I believe you misunderstood. They did play—they were keys in the scheme so, naturally, they would, but what I specifically referred to were the instructions given not to prosecute or even interrogate Jardanah, the Jordanian minister, who had also been an in between in these transactions on behalf of Saddam Hussein.

Mr. FISH. You are not contending the decision not to indict the Central Bank of Iraq was politically motivated.

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All right. Mr. Rose, this question I was going to ask of Senator Leahy, but we have you here as chairman of a subcommittee on the Committee on Agriculture. As I recall, the subcommittee that deals with department operations, research and foreign agriculture.

Mr. ROSE. Yes, sir.

Mr. FISH. If I understood the Senator correctly, the CCC guaranteed program, in his view, amounted to, "an under-the-table foreign aid."

Now, to me, this is a criticism of the program itself. My question is: Hasn't this program always been used for mixed purposes—for foreign policy reasons as well as other purposes?

Mr. ROSE. Yes, it has. Since the program was begun back in the 1980's, there have been $25 billion in loan guarantees extended by the Commodity Credit Corporation and most—$5 billion of that 25 went to Iraq. The National Advisory Committee, the NAC—which is a coordinating committee within State, Treasury, Commerce—review all of these foreign agriculture type credit matters and make recommendations. They were the driving force behind this.

As a matter of fact, it is in the public record that Secretary Baker went to Yeutter and urged him to let another half a billion dollars go to Iraq. I don't know that that, in and of itself, is something illegal, but I don't pretend to be the expert on the illegality in that. It is certainly not the kind of news American farmers are happy to hear. You asked him a question I could give you one piece of an answer to.

Mr. FISH. OK. Please.

Mr. ROSE. In the summer of 1988, the OIG talked to the U.S. attorneys in North Carolina and gave them all of the detail about the illegalities of the tobacco companies that were working through BNL. The U.S. attorneys knew in the summer of 1988 about the crooked activities of BNL Atlanta.

And it was not until March 28, 1991 that these indictments were handed down. And in this press release—this is something I think Mr. Schumer would certainly be interested in, Thornburgh called the BNL indictments the largest white-collar criminal case in the Department's history. These are magic RICO words. Where has been—where is the RICO followup for this?

And who got prosecuted? A couple of dead people. A bunch of foreigners and no friends of anybody—no friends of the administration, no companies who had been dealing with anybody. I think that just screams for an answer.

Mr. FISH. I think the record will show the investigation began in July 1989 when the bank records were seized. But I want to stick with you in your capacity of the Agriculture Committee chairman on my question. I agree with you, this could have been a blunder—a foreign policy blunder, but that is not what you gentlemen are here claiming.

If indeed—you agree with me this CCC guaranteed program has always been used for mixed foreign policy and other purposes, why is it the criticism of you and Senator Leahy is valid against each and every CCC program? You mentioned the 1980's.

We are told that the practice of this mixed motive CCC export programs has existed for three decades. I ask: Where has been the Agriculture Committee of the House and the Agriculture Committee of the Senate who sanctioned this practice until this specific——

Mr. ROSE. The chairman of the oversight committee last year—I have only been chairman through one Congress of the oversight committee, and what first attracted our attention was the fact that foreign commodities were being mixed with United States grown commodities and guaranteed 100 percent as if they were American grown. That is not the reason Congress

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passed this law into effect and we were very critical about that. They had serious problems of not monitoring what was being shipped and how it was being shipped.

Mr. BROOKS. Thank you very much, Mr. Fish.

Mr. Schumer, chairman of the Subcommittee on Criminal Justice.

Mr. SCHUMER. Thank you, Mr. Chairman. Before I begin my questioning, I do want to say that I think the questioning of Mr. Fish is exactly what this hearing is all about. It is about what the facts are and where they will each lead us and they will individually lead us. That is what it is all about. I appreciate that line of questioning, even though I may not agree with Mr. Fish's conclusions.

My question—I first want to say, Chairman Gonzalez, my chairman on the Banking Committee, has just been an incredible, incredibly diligent and hard-working beacon on this issue and I want to also compliment Chairman Rose because he, too, has been at this for a very, very long time. These are not things that popped up in the last few weeks.

My questions—my first round, maybe we will have a second, are directed at Congressman Barnard, because I am particularly vexed by the stuff that has come out under Chairman Barnard and about the alteration of records, et cetera.

My first question is: Who tipped your committee to the furnaces that were utilized in the manufacture of nuclear weapons which were seized by the Customs Service on the docks of Philadelphia in 1990? How did you find out about that? It was your committee that found out and not anyone in the administration.

Mr. BARNARD. Let me say that the export licensing procedure has been flawed for a long time. The confusion that consisted between the granting of these licenses by the Department of State, the Defense Department and Department of Commerce all were involved so there were some problems from the Department of Defense as to certain things that were being exported, where export licenses were being approved. So we were actually notified of these furnaces by the Department of Defense.

Mr. SCHUMER. So, in other words, while the other departments were busy pushing these things through, the only thing the Defense Department could do was notify somebody in Congress, notably you and say try to do something about it. Obviously, they had not.

Mr. BARNARD. We did notify NSC—Scowcroft about this and the furnaces were not shipped. But we did bring it to his attention.

Mr. SCHUMER. Right. Have you come across other examples of questionable exports to Iraq?

Mr. BARNARD. Mr. Schumer, we have these—we have a description and a file here on all these licenses. And I might say some of them included laser guns that were used for manufacturing nuclear weapons and numerous biological materials that were sent to Iraq which could very well have been used for germ and bacteriological warfare.

Mr. SCHUMER. Did anyone ever contact your staff—this is on a different subject—that he or she had been instructed to alter records? We now have testimony to that effect.

Mr. BARNARD. Yes. We had someone who called us on the telephone. We has a NASA designee on our committee at that time. He answered the telephone and he got the information from an insider, so-called, that the records had been altered. And as you know, subsequently, that was leaked to the press.

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Mr. SCHUMER. Right. Normally an unidentified person wouldn't mean much, but this one proved to be true later; is that right?

Mr. BARNARD. Yes.

Mr. SCHUMER. A little more on the White House and National Security Council. Were they involved in the decisionmaking process on how to produce export license record information to your committee?

Mr. BARNARD. Well, we were advised by the Department of Commerce's contact with us, Secretary Kloske, that his hands were tied because the decisions were being made at the White House.

Mr. SCHUMER. OK. Let me ask you: Were you satisfied with the findings of the IG report that came out?

Mr. BARNARD. Well, they were, in our estimation, Mr. Schumer, they were incomplete, mainly because of the fact that, while they cited the alteration of the records, they did not indicate who had done them and what the motivations of the changes were.

Mr. SCHUMER. OK. On that last question I asked you about White House and NSC involvement, did Mr. Kloske, Assistant Secretary Kloske, admit to some of the people on your staff that the decision was, "out of his hands being reviewed by the White House?"

Mr. BARNARD. That question really ought to be set in context. You see what we were doing, we were trying to get public disclosure of the records which did not include proprietary interests and in our negotiations with him, if they fell down, because he said it was entirely out of his hands.

Mr. SCHUMER. Did he say whose hands it was in?

Mr. BARNARD. The White House.

Mr. SCHUMER. OK. You think that the Commerce Department should have made its own criminal referral to Justice in light of its Inspector General's findings that the alterations were, "unjustified and misleading?"

Mr. BARNARD. I do. I think that is required by the law.

Mr. SCHUMER. But they didn't and you had to do it in a letter to the Justice Department on July 10, 1991.

Mr. BARNARD. Right.

Mr. SCHUMER. As I understand it, nothing happened much on that until the last couple of months.

Mr. BARNARD. As I said——

Mr. SCHUMER. Even though you wrote the letter a couple months ago.

Mr. BARNARD. We did not get an acknowledgment from the Justice Department until we followed it up with another letter and that was very general in saying an ongoing investigation was being conducted. That was January of this year.

Mr. SCHUMER. You say in your testimony you are not too satisfied so far with DOJ's investigation. Could you elaborate?

Mr. BARNARD. Because of our work in this field, we felt like we had some very substantive leads we could furnish the Department of Justice which they certainly didn't welcome nor follow up on. The contacts that have been made with us since that time have just been cursory.

They have not been of any substantive things so there is nothing to give us any information that this—the case is being really seriously considered by the Justice Department, the alteration of the records. And yet the Inspector General of the Commerce Department has stated emphatically, I think before this committee, that those alterations were made at the request of an oversight committee of Congress.

Mr. SCHUMER. OK. Were these altered records, by the way, produced to anyone other than your subcommittee?

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Mr. BARNARD. Yes. They were also furnished to Senator Hollings, and I might say this was somewhat subsequent to our request, but even when they did submit them, they were still altered.

Mr. SCHUMER. This was not just a mistake at one point but a permanent alteration of the records.

OK. I have this—has my time expired?

Mr. BROOKS. Your time has expired.

Mr. Hyde, the gentleman from Illinois.

Mr. HYDE. I thank you, Mr. Chairman.

Because of the limitations on time, I am going to have to go rather swiftly and make a comment or two, rather than ask a question. I was very interested in Chairman Gonzalez' expressed pride that he played a key role in getting the first foreign bank regulation act passed in 1978.

I feel that he clearly had a great interest in foreign bank regulation and yet I must say oversight of that seminal bill was laid back at best because you waited 12 years until the BNL came along and exposed several glaring loopholes in the foreign bank regulation: For example, employees of branches and agencies were not subject to the criminal statutes for fraud embezzlement, bribery, et cetera. I think one of the problems is delay in oversight.

I suggest that as a well-wishing observer of the great work of the Banking Committee, I have always been concerned that fault for the S&L scandal, conceding the administration's role, rested with the Banking Committee. Oversight of the high-flyers was equally laid back, but we are not here to talk about that, we are here to talk about this scandal.

As I listen to you gentlemen and get instructed by you, it seems that you are very critical of a policy error made by the administration in attempting to charm Iraq, I think the phrase was used by one of the members, "to acquire a warmer relationship with Iraq when she was really not a very good country to be cozying up to."

So let me read a letter to you, Mr. Barnard, because you didn't sign this letter, but I want to read it to you anyway and ask your opinion. This is dated May 7, 1990, 3 months before the invasion of Kuwait. And it is to Clayton Yeutter. Dear Secretary: "We are writing to inquire about the status of USDA approval of a $500 million GSM–102 export credit allocation for Iraq.

"We understand, due to alleged transaction irregularities committed by an Atlanta branch of an Italian bank involving the GSM credit program, that further allocations to Iraq have been held up by the Department of Agriculture. While we would never want to hurt the integrity of the GSM credit guarantee program, the withholding of these credits will have a significant economic impact on our area.

"As I am sure you are aware, Iraq is the 12th largest importer of U.S. agriculture products and large export market for United States rice and wheat. Not only is the Houston area involved in rice growing, but the Houston ports play a key role in the exportation of rice and wheat, et cetera.

"Thank you for your consideration and timely response. We look forward to coming to an understanding with regard to this situation."

It is signed by our distinguished chairman, Jack Brooks. It would appear to me 3 months before the invasion, Mr. Brooks was solicitous, to put it as gentle as word as I can, on export credit guarantees for Iraq.

Now, I don't even have to ask you if you agree that was solicitude.

Let me read another letter to Mr. Rose here, the chairman. A letter dated August 4, 1989. It is to Mr. Eagleburger. It says, "Mr. Eagleburger, as you

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know, officials at the Volvo-GM Heavy Truck Corp. wish to engage in a joint venture with three subcontractors to build a truck assembly plant in''—that is ''Iraq.

''It is our hope that you will back this project, especially by urging the Export-Import Bank to provide the Government of Iraq with some needed financial assistance that is crucial to the undertaking. The plan calls for American workers to manufacture heavy truck parts which would be shipped to the Iraqi plant for assembly.

''It is also possible that fully-assembled trucks would be shipped to Iraq on a short-term basis until the plant is operational. Volvo-GM, and the three proposed subcontractors firmly believe the Iraqis possess the industrial capacity and potential to make the project a success. Daimler-Benz of West Germany has already submitted a proposal complete with financing, but the Iraqi Government has indicated a preference for United States involvement.

''Needless to say, we would much prefer U.S. workers supply the necessary parts and other services to the Iraqis. The project could mean as much as $130 million to our economy over the length of the contract and would make an obvious favorable impact on our trade imbalance for trucks and many other industrial products, the Middle East and Africa, of the only major opportunities for U.S. exports.

''In recent years, the Iraqi Government has made a concerted effort to court western investments with the West Germans and Japanese being most responsive to these overtures. American corporations are already present in Iraq but, given the business opportunities that exist there, as well as the strategic importance of the Middle East, ''a little foreign policy twist there,'' we believe our Government must help in expanding this presence.

Now, that is signed by Terry Sanford, U.S. Senate; Walter B. Jones, Member of Congress; W.G. (Bill) Hefner, Member of Congress; Tim Valentine, Member of Congress; David E. Price, Member of Congress; Charlie Rose, Member of Congress; Stephen Neal, Member of Congress; H. Martin Lancaster, Member of Congress; James M. Clark, Member of Congress.

So this notion of cozying up to the Iraqis wasn't exclusively that of the State Department, was it, Mr. Rose or Mr. Barnard?

Mr. ROSE. I didn't sign that letter.

Mr. HYDE. Someone forged your signature to it?

Mr. ROSE. My staff signed the letter, but they never checked with me.

Mr. HYDE. You repudiate it?

Mr. ROSE. Yes. How did you get it, Henry?

Mr. HYDE. I am going to follow the Nina Totenberg rule and tell you nothing of where I got them. I am shocked your staff would sign your signature. I hope you take appropriate action.

Mr. ROSE. I have.

Mr. BARNARD. Mr. Hyde, I might say, from my standpoint, regarding the matter I brought to the attention of the committee: Policy is one thing but altering documents is not policy.

Mr. HYDE. I agree and I think, if there is any single point where perhaps an independent counsel is possibly within reasonable contemplation it is that. But I would like to know why the Justice Department can't prosecute the case. Most of those people are pretty cold-eyed professionals and not political people, and they don't take political odds very gently.

All the rest is politics, politics, politics. It took Judge Walsh 6 years and he is still fooling around with Iran-Contra. Eighteen months is not a horrendous delay for the complex bank fraud that went on in BNL, but you guys want a special prosecutor, onward and upward.

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Mr. GONZALEZ. Mr. Chairman, would you be willing to yield a half minute.

Mr. BROOKS. Give him a half a minute.

Mr. GONZALEZ. His initial statement referred to me and my role on the Banking Committee. I want to remind my distinguished colleague he was a member of that committee.

Mr. HYDE. Proudly so. Henry Reuss really would have difficulty measuring up to your standards.

Mr. GONZALEZ. I don't want to make that comparison because Henry Reuss was a very distinguished member and predecessor chairman. What I did want to say, in all fairness to myself, that banking act was a result of the 1975 hearings that I managed the chairman of the proper subcommittee to hold in my district in San Antonio, TX, and it led to revelations of these international transactions with no laws in existence governing and it took 3 years, 1978, before we did get a minimum legislation.

Mr. HYDE. Why was it just minimal?

Mr. GONZALEZ. Because I wasn't chairman. I wasn't the chairman until 1988.

Mr. HYDE. But they held a hearing in your hometown. Chairmen usually get to do that, you know.

Mr. GONZALEZ. I wasn't the chairman at the time. I was just a lowly member down on the totem pole. Let me conclude by saying, since 1978 I would pester annually, every chairman to hold hearings to show the inadequacy of that law. Sometimes I would; sometimes I didn't.

It wasn't until the early 1980's that the chairman then had hearings on the basis of the information I had obtained from the Federal Reserve about heavy cash transactions in the area of Miami, San Antonio, and California and led to some amendment governing cash transactions and reporting thereof.

But I did want to disabuse your mind, my colleague, that there was any laxity on my part. I take justifiable pride in my legislative performance. I came up here to legislate. I didn't come here to politic and I am very proud of the achievements of 30½ years, and this is one of them. And I take very special pride in it.

Mr. HYDE. Mr. Gonzalez, I share your pride. I was proud to serve with you on the Banking Committee the few years I did. My point is simply this: Even the best intentioned people sometimes get distracted over the years. Now, obviously the regulation of foreign banks was inadequate. That was surfaced during this BNL thing. And I am simply saying that once passing the bill and walking away from it maybe isn't the best way to handle things.

Mr. GONZALEZ. I am trying to tell you I didn't walk away from it. I did what I could with the amount of power I had at the time.

Mr. HYDE. Then, you are saying the Banking Committee was unresponsive to your reasonable request——

Mr. GONZALEZ. I think the record will show it was not responsive to my request on that and several other issues.

Mr. HYDE. Well, shame on them.

Mr. FRANK. It should be shame on us. The gentleman is a member——

Mr. HYDE. If the gentleman wishes to assume some shame, I am happy——

Mr. FRANK. I have done it before. But the gentleman was a member of the Banking Committee during that time.

Mr. HYDE. No, I left just in the nick of time.

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Mr. FRANK. The gentleman is simply incorrect. He was a member of the Banking Committee subsequent to the passage of that law. His memory was among the things that is failing him.

Mr. HYDE. It is the 12 years from then until now, and I haven't been——

Mr. FRANK. You were on the Banking Committee in 1981.

Mr. HYDE. That was my last year.

Mr. FRANK. That is since 1978, by my arithmetic.

Mr. HYDE. That is 3 years. That doesn't add up to 12 years. Anyway, thank you for——

Mr. FRANK. I thought the law was passed in 1978. You were talking about oversight of that law.

Mr. HYDE. I had 3 years on the Banking Committee.

Mr. BROOKS. The Chair now recognizes the gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Does the gentleman seek any part of my time now?

Mr. BROOKS. Would the gentleman yield?

Mr. MAZZOLI. I would be happy to.

Mr. BROOKS. The letter my distinguished friend from Illinois referred to was at the request of my constituents and Congressman Mike Andrews, and we talked about the irregularities of the Atlanta bank, that further allocations were held up. I guess some of them went through but some of them were held up.

And we asked them about commodity shipments: That has to do with agricultural products, not military operations. And we wanted to know when the Department of Agriculture foresaw the investigation of the credit guarantee program as it pertains to Iraq coming to a conclusion. And I would ask unanimous consent to include my letter and the reply from Secretary Yeutter, who very clearly went on to say when he replied, that they had problems with Iraq, because they had several problems. One of them was the aftersales service, and unusually high, as you noted, Mr. Rose, unusually high commodity pricing.

[See appendix I–8.]

Mr. BROOKS. So apparently they were buying awful high and taking the float.

Mr. MAZZOLI. Mr. Chairman, first, I welcome my colleagues, and I appreciate your help here. Let me just ask a couple of questions. The staff has circulated to us a summary of the independent counsel provisions of the Ethics in Government Act, and it says: "The statutory mechanisms are initially triggered by the receipt of information by the Attorney General alleging that certain high level officials in the Federal Government have committed a Federal crime."

May I ask each of you in sequence, starting with you, Mr. Chairman, do you agree that based on the evidence, that the trigger has been pulled?

Mr. GONZALEZ. I believe there is good probable cause to believe that infractions of law, both with respect to conflicts of interest as well as others, may very well be involved, and that is the reason we think we ought to have an independent counsel.

Mr. MAZZOLI. Well, before the independent counsel can be actually triggered, there has to be a receipt of information by the Attorney General alleging that certain high level officials of the Federal Government have committed a Federal crime. And I think that before this committee could inform the Attorney General that in his opinion he should begin this preliminary—it has got two or three levels of preliminary. I guess I was just again asking,

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do you think we would today be in the posture, right now, of being able to so inform the Attorney General?

Mr. GONZALEZ. I believe so.

Mr. MAZZOLI. Thank you. Doug——

Mr. BARNARD. If you will notice, in my testimony I have not in any way suggested a special prosecutor. I am not saying one should or should not be appointed. I think the information we have brought is sufficient in itself to see that wrongdoing has taken place; and second, we so notified the Department of Justice about it and nothing has been done. So what we are here today for is to comply with the request of the chairman of the committee to bring you the experience of our subcommittee.

Mr. MAZZOLI. Could I add just one thing, while Chairman Rose is preparing himself, would you think that this material that we have now should be augmented by our own individual efforts, or do you think this is something that should be done by the Justice Department or some other agency? If generally your opinion is that we might not be able to today inform the Attorney General under the terms of the Ethics in Government Act, the additional information you believe is there could be obtained by whom and by what method?

Mr. BARNARD. Well, I think that there has been sufficient information already furnished, regarding the Department of Justice, regarding the Inspector General of the Department of Commerce. I think the General Counsel of the Department of Commerce testified last week, Mr. Willkie, and he brings out, I think, 89 instances where the records have been altered.

Mr. MAZZOLI. Thank you.

And Chuck, if you can answer that same question again, using this as the backdrop——

Mr. ROSE. I think, clearly, there have been false statements made by Government officials, both in writing and in testimony, which is perjury. But the false statements, of course, clearly we have had violations of 18 U.S.C. 1001. We have had violations of the Foreign Corrupt Practices Act that Government officials have participated in and a lot of obstruction of justice. And that is just a first blurb, four areas right there that I think call for the independent counsel.

Mr. MAZZOLI. Do you think, in your judgment, Mr. Chairman, we should act now, or do you think this committee needs to assemble more information, collate it, somehow arrange it, identify people before calling the Attorney General? Do you think we could do that today?

Mr. ROSE. Well, that is not in my purview.

Mr. MAZZOLI. Let me ask you what is in your purview, and I would ask all of you gentlemen, unless I misheard something earlier today, someone said that, basically speaking, all of these CCC loans were somehow brokered through this one bank in Atlanta.

Mr. ROSE. Yes, let me get into that. The key thing—you have to go back to National Security Decision Memorandum 26, which Mr. Gejdenson brought a partially unclassified copy of to Mr. Gonzalez's hearing on Friday; 1989, the President of the United States is saying it is the policy of this country, and he signed it, to economically aid Iraq. Out of that green light go-ahead, a lot of things were done to help Iraq. Some of them were done very sloppily and laws were broken, they were winked at, procedures were not properly followed, and then when, as Eagleburger said, it didn't work, there became an effort to cover up just all that went on that didn't work.

As to the Commodity Credit Corporation transactions, I think there are people at the USDA who know that they were being used as an instrument

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to carry out NSD 26. I believe they have lied about it. They know that some of the transactions, some of the Commodity Credit Corporation transactions, made it straight through to Iraq, and maybe the commodity got there.

Mr. MAZZOLI. My question, and maybe it is inartfully asked because I don't understand the CCC program, is that is it typical and normal to have all kinds of programs for one country going through one bank, and be that itself be some suggestion of manipulation or targeting from above?

Mr. ROSE. Something was rotten because of that.

Mr. MAZZOLI. Chairman Gonzalez, in your experience, and it has been a long one on that committee.

Mr. GONZALEZ. You have to understand these arrangements are also, as somebody said here earlier, money is fungible, and in the handling of these accounts, BNL also syndicates. So, for instance, we read the list of banks that have been paid out, what was it——

Mr. MAZZOLI. So it is fair to say it is not typical——

Mr. GONZALEZ. Almost $1 billion that are related to the arrangement that BNL set up. But BNL is a fiscal agent, it is the one that is handling the letters of credit. You do have to have a bank for that purpose.

Mr. MAZZOLI. Is that unusual, to have one bank being the lead bank to this extent for billions of dollars? Is that unusual?

Mr. GONZALEZ. Yes, it is, and to the extent and amount, and particularly a branch agency, and agency, chartered by the State.

Mr. ROSE. It has never happened before in the history of the whole GSM–102 –103 loan program, that so much money has been funneled through one bank for one country. That is—it is absolutely unprecedented.

Mr. MAZZOLI. One last question, Mr. Chairman, I appreciate your indulgence and everyone's indulgence. As far as documentation for these, is there the usual run of documentation, Doug, Chuck, Henry, on these loans, even though they are going through a single bank and acting as a broker? Is that documentation satisfactory?

Mr. ROSE. What we have got has been very revealing. We haven't gotten everything we asked for. But that is another reason for independent counsel, is to go get these documents that have been withheld.

Mr. MAZZOLI. Mr. Chairman.

Mr. GONZALEZ. I was just going to say, you have got to remember also that these banks, whether they are agency or the principal owners in New York, are Government owned in their respective countries, so that the Senate, the Italian Senate Investigating Committee, whose chairman has been in touch with me from the very beginning, Senator Tarcta, and made possible for us to obtain some of the documentation that the Federal Reserve Board denied us because it said it would injury their reciprocity with this bank, the Government bank in Italy, clearly showed that the Italian Government is also out a little better than $2 billion.

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

Mr. GEKAS. Mr. Chairman.

Mr. BROOKS. Mr. Gekas, the Chair recognizes you.

Mr. GEKAS. Thank you. I, too, am very much disturbed by the allegations of the alterations to which the gentleman from Georgia has alluded, and which has been processed through his subcommittee. That by itself, in my judgment, justifies the full investigation into that sector of all of this.

My problem is that I would vote for a special prosecutor for that purpose alone if I were assured that the Justice Department either refused to investigate it, or showed incompetency to investigate it, or didn't have the manpower to investigate it, or didn't have the will to do so, or some rationale

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that can be offered by the gentleman from Georgia, or anybody else, as to why the Justice Department could not be the vehicle for at least that segment of these allegations.

I have to elongate my question by one point.

Mr. BARNARD. I will give you a short answer, but I will say I am just as frustrated by that as you may be, because time and time again things from our subcommittee have been brought to the Department of Justice and seemingly have been ignored. Not only this hearing, but some other hearings. And I would be delighted to know there is a Committee of Judiciary who has the oversight of the Justice Department, that can get them to do some things.

Mr. GEKAS. If I told you we have a full understanding that the Justice Department is investigating that segment of your problem, and that staff had been assigned to it and investigators, would that satisfy you?

Mr. BARNARD. As long as I know there is going to be some expeditious completion of the investigation. That is the problem. The altered records here, of which the Inspector General has already agreed took place, shouldn't be so extensive that the Department of Justice could not have already done something about it.

Mr. GEKAS. But to appoint a special prosecutor for that who wouldn't begin on 6 months or more——

Mr. BARNARD. I reserve judgment on that. I am just saying it needs to be taken care of.

Mr. GEKAS. I understand. I have no further questions.

Mr. BROOKS. Mr. Synar, the gentleman from Oklahoma.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. Rose, the population of Iran in 1985 was 15 million people. We gave them $1 billion in CCC guarantees. That amounts to about $66 per person.

Mr. ROSE. Is this Iran or Iraq you are talking about?

Mr. SYNAR. Iraq. I am sorry. Fifteen million people in Iraq, $1 billion in CCC credits. That is $66 per person. Did anyone think that was an excessive amount and has that been investigated?

Mr. ROSE. Well, yes, it was an excessive amount, and I think that goes back to the decision based on NSD 26; the President says we are going to help them economically, they picked a sleepy little old program at USDA that nobody looked at very much, and they pumped $5 billion through that funnel. And I think they were very hopeful that Israel would not get wind of all of this. This was one way to get around the public embarrassment over helping somebody that was clearly Israel's enemy.

Mr. SYNAR. Mr. Gonzalez, I would like to go back and pursue that 1990 January draft indictment referred to earlier by Mr. Fish, which apparently has been released to the Republicans despite the Department of Justice's refusal to turn it over to you.

Chairman Gonzalez, did you request that document?

Mr. GONZALEZ. Yes, we had.

Mr. SYNAR. On what grounds was it refused?

Mr. GONZALEZ. Well, in fact, I don't even know if we had anything but sort of a stonewalling. The Attorney General's letter that I received the Friday before last was a clear written statement saying that they were progressing from foot-dragging to stonewalling.

Mr. SYNAR. Well, I hope Mr. Fish will tell us whether or not he got that draft from DOJ when he comes back, because that would be interesting.

Mr. GONZALEZ. We would be extremely interested.

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Mr. BROOKS. That would be interesting, to see how you can legally transmit a draft indictment. It is against the law.

Mr. SYNAR. Yes, I would be interested in seeing how Mr. Fish got that.

Mr. BROOKS. I don't know how he is referring to it if he didn't have it. I guess he has read it. I don't know.

Mr. SYNAR. Mr. Gonzalez, you used a number of times a letter dated April 8, 1991, from the National Security Council, Mr. Rostow. Mr. Chairman, I would ask unanimous consent this letter be made part of the record. I think it is part of what Mr. Gonzalez has used in his investigation.

Mr. BROOKS. Without objection.

[See appendix I–9.]

Mr. SYNAR. I am interested in this letter because it appears to me, as one who does regular oversight and who is in pursuit of documents at all times from a variety of agencies, that this is a game plan by the administration, a simple game plan on how to avoid providing any documents to the Congress. They say in this memo, and I hope that it will be made part of the record, that "after reviewing the request thus far, receipt for information, here is what we recommend you do.

"First, raise issues of executive privilege, deliberative process, foreign relations, national security; second, try to find alternatives to providing documents, should that be explored; third, access to documents may be recommended, but only circulated through this group that will make the decision whether the documents are there; and finally, a recommendation to provide access should be restricted to members only, subject to this condition: No document may be retained, notes may be taken but should be marked for classification by the department or agency in question."

Mr. Gonzalez, do you read this document like I do, that this is a game plan to avoid providing information?

Mr. GONZALEZ. Yes, sir. Clearly, the Rostow gang was set up to do that.

Mr. SYNAR. How many claims of executive privilege have been raised on the documents requested?

Mr. GONZALEZ. The Treasury has interposed, I believe, several.

Mr. SYNAR. Could you provide that for the record?

Mr. GONZALEZ. Yes, sir, I will be glad to.

[See appendix I–10.]

Mr. SYNAR. How often have you and your staff had to review the documents provided by the agency versus receiving copies of those?

Mr. GONZALEZ. Every single agency.

Mr. SYNAR. In other words, they won't give you the documents, only allow to you review them?

Mr. GONZALEZ. We went through the process and eventually did get some, but we have been denied even reviewing documents since the letter from the Attorney General.

Mr. SYNAR. In an attempt to come to the facts, it would be helpful if you could provide an inventory of the things you have been allowed to see and what documents had been provided, because it is very clear from this memo that there has been a conscious effort at the highest levels of the White House and down to make sure the documents are not provided to the Congress and to the public on this issue.

Mr. GONZALEZ. Mr. Rostow and Mr. Gray refused to appear before the committee to testify. We will be glad to furnish that documentation. Thank you.

[See appendix I–11.]

Mr. BROOKS. Mr. James, the gentleman from Florida.

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Mr. JAMES. Thank you, Mr. Chairman. I suppose the biggest question that occurs to me is, what is the difference between this transaction that there is a special attorney to be appointed for, a special prosecutor, and the Russian wheat deal? In other words, why don't we have a special prosecutor to examine why we loaned money to Russia when we knew they were our enemy for lo these 40 years? Why did we engage in that? Why aren't we having a special prosecutor for that, is the first question.

And the second question, and I will ask them because the limitation of time, and perhaps you will choose to answer them, did a single one of you—I assume all of you issued subpoenas in your hearings. Is there anyone that did not issue a subpoena?

Mr. ROSE. Yes.

Mr. JAMES. Chairman Rose, did you not issue a subpoena?

Mr. ROSE. That is right.

Mr. JAMES. And I assume the other two chairmen, Chairman Gonzalez and Chairman Barnard, issued subpoenas. Did any of you have a committee vote on contempt when they didn't comply?

Mr. BARNARD. No.

Mr. JAMES. What about you, Chairman Gonzalez, any contempt vote for failure to yield this specific information you so sorely needed?

Mr. GONZALEZ. As you know, the rule mandates that the committee issue as many as—the committee issued somewhere around 50 document subpoenas.

Mr. JAMES. Yes. Were they all complied with?

Mr. GONZALEZ. Not all of them.

Mr. JAMES. Did you then move for contempt in the committee?

Mr. GONZALEZ. Not as yet, because some of them—in fact, that is what we are asking for, we joined this request—some were—they intervened with the executive privilege plea.

Mr. JAMES. If that be the case, nobody has made an effort—it occurs to me that those who complain, if it was a sufficient passage of time, that specificity of information was omitted, you should at least try to get a vote for contempt, then go—get a vote on the House floor and follow that process——

Mr. GONZALEZ. We may still do that. It remains to be seen.

Mr. JAMES [continuing]. Instead of trying to shortcut it with the special prosecutor. Or perhaps you should be removed if you are not following the rules as chairman of the committee or as Congressman if you feel—if there has been a crime committed and you are not at least trying to find them in contempt for the omission of information before your committee, because it has been months and years you have been complaining about this——

Mr. GONZALEZ. As I said before, the committee is not a judicial or prosecutorial committee. It is not for to us do that. In fact, we have correlative jurisdiction with your committee, so that when that issue comes up, you define it. That is why we are here, for your judgment on appointing a special counsel.

Mr. JAMES. But none of you have taken it seriously enough, this so-called horrendous interference with your committee. Not one of you have asked for contempt as of this date, yet you are here to testify that you have got to have a special prosecutor to charge somebody, you think, with the crime, yet you haven't even used your own powers to find out what are the facts that have been omitted. That to me is appalling, and that is why I find it appalling, that you come here and claim it is not a political process, when you haven't even held anyone in contempt. That is unbelievable.

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Mr. GONZALEZ. That is a self-serving expression, in my opinion.

Mr. JAMES. Self-serving express. I am not even sure what that means, and I am not sure you are aware of what that means. I don't know why you said it. I don't have time to inquire in that.

Mr. BARNARD. Mr. James, for the record, I think that—I don't know whether I ought to be included in your statement——

Mr. JAMES. You are not here, that is correct, to ask for a recommendation that the special prosecutor be named; is that correct?

Mr. BARNARD. Not only that, but the fact is we have taken it as far as we could take it to the Justice Department. Mainly because the fact is the admission of alteration of records was admitted by the Inspector General.

Mr. JAMES. I do agree there is a problem there, but we have to find out what the Attorney General has done. We may need a special prosecutor for that limited purpose of finding out who forged those instruments.

Mr. BARNARD. I want to make it clear why we did not go to contempt.

Mr. JAMES. That is why I got excited when I was not allowed to question Senator Leahy for partisan reasons about any evidence of a crime. He is a very skilled attorney, and yet his sole reason, it appeared to me during his testimony, so the American people had a right to know where that $1.9 billion went. That is what the man said. That is what the Senator said. That was his primary motivation for a special prosecutor. Not once did he or any of you testify about specific crimes that might have occurred based on any facts, other than the ones that the Government has already prosecuted, and other than the ones that Congressman Barnard, Chairman Barnard has testified about, the alterations. Yet not one of you have used any part of your power as chairmen, through the contempt process, or followed up in any way lo these many years and months. That is amazing to me.

Mr. ROSE. Maybe you didn't hear my answer to Mr. Mazzoli's question.

Mr. JAMES. No, but I heard about your letter.

Mr. ROSE. The Department of Agriculture told us early on that we better quit asking all these tough questions or they were going to release these letters about where Members of Congress had tried to take care of the local rice people or whoever they were writing it for.

Mr. JAMES. I see. So you wanted to protect Congress so you didn't use your subpoena power. Is that what you are saying?

Mr. ROSE. No. Mr. James, what we were interested in was not documents. We were interested in people going to jail or getting indicted and not for making policy errors, like you might consider the Russian wheat deal to have been a policy error. We re talking about the illegal use of Federal money. And we think that clearly was what was going on. And the Justice Department is not looking at it, Mr. James.

Mr. JAMES. Chairman Rose, what facts? I have heard not one fact all morning that suggested that occurred, only your naked suspicion. I have heard about the altered documents, but not one single fact other than ones already prosecuted.

Mr. ROSE. Read the 36-item chronology that you have, and the documents that back it up. Just for starters. And——

Mr. JAMES. Give me one example. There are 36. Give me one example that is factually provable that somebody in the administration may have committed a crime based on the facts that would even bring it to the level of probable cause, just one.

Mr. ROSE. Well, I would say that when the head of the Foreign Agriculture Service told me that I didn't know what I was talking about——

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Mr. JAMES. That is a crime? I believe that may be a correct statement in some scenarios.

Mr. ROSE. That is very cute, Mr. James. You are a real bright fellow. Mr. Kaye told us that we didn't understand how the GSM program worked, that these people—the Iraqis were simply trying to get a little bit better deal, there was nothing crooked going on, kind of like that old play down there in Texas that you have heard about, nothing crooked going on. He was lying to our subcommittee. He was obstructing justice in what he was saying to us. And I can go over time after time after time.

Mr. JAMES. Then, you should have found him in contempt.

Mr. ROSE. For what? For lying?

Mr. JAMES. He lied under oath to your committee.

Mr. ROSE. We didn't even find this out, Mr. James, until years later, and he is not even an employee. They fired the brother down at the Department after they found out how bad this thing was getting. He is gone.

Mr. JAMES. Then he is not a member of the Government. He is an individual that should be prosecuted.

Mr. ROSE. I am not a prosecutor. You want me to issue a contempt against an individual, Mr. James; is that what you think I ought to be doing?

Mr. JAMES. If they testified, yes, of course. That is the way you do it in committee.

Mr. ROSE. That is what the American people pay the Justice Department to do, and that is why—well, that is why the people in Pennsylvania made the judgment that they did about who was going to be their new Senator.

Mr. JAMES. Have you made that specific complaint to the Justice Department about that specific individual?

Mr. ROSE. I have complained openly and broadly——

Mr. JAMES. In writing, have you done that?

Mr. ROSE. Yes.

Mr. JAMES. Then, maybe we need a special prosecutor to investigate the failure of Justice to prosecute.

Mr. ROSE. That would be one of many things we need a special prosecutor to do.

Mr. JAMES. If you could demonstrate these facts, it would seem to me you could come in with a special prosecutor to show the Attorney General is specifically negligent of his duty, but not one to investigate facts that are a matter of strategy. And yet what you are asking for is a broad umbrella, asking for things that may or may not have some evidence of crime, but you want the entire process, which is a matter of much—much of which is policy considerations, to turn that loose to a special prosecutor that may last 10 or 20 years. Walsh has been there 6 years.

I am certain, I see my time is up, but I am certainly willing and would like to see a special prosecutor appointed to investigate competent and adequate allegations of failure of anyone, not to prosecute a specific crime, but not just a general allegation saying let's investigate this whole dealings with this country.

Thank you very much. I see my time is up.

Mr. BROOKS. It sure is.

Mr. JAMES. I thank the chairman for his patience in allowing me to go beyond my 5 minutes. I took very specific notice of that and that was very gracious of you. Thank you so much, Mr. Chairman.

Mr. FRANK. Five minutes isn't all the gentleman went beyond. I really want to address what he says. First of all, as to contempt, the notion that Congress has shown its bent for unfair treatment of the executive branch be-

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cause it did not immediately cite members of that branch for contempt is the hardest argument to follow I have encountered since I came here. As a matter of fact——

Mr. JAMES. If the gentleman would yield, that is not what I said at all. You are very intelligent and competent and understand the powers of the committee.

Mr. FRANK. I think the gentleman has had enough time, and I would consider it truly cruel and unusual punishment to yield any more time to him. He used the fact these gentlemen did not initiate contempt proceedings as an example of the partisan motivation.

Mr. Chairman, I would ask the chairman that the gentleman be instructed to stop.

Mr. JAMES. We don't have rules here.

Mr. WASHINGTON. Regular order.

Mr. FRANK. I don't understand why the gentleman does not want what he says subjected to any kind of analysis, but he will have to find some other way to prevent it.

Contempt is not the punishment for lying to a congressional committee that we should be relying on. Maybe the gentleman means that they should have used the power that has not been used in about 70 years of Congress itself, imprisoning someone in the basement of the Capitol, which is still—it has been used, it is not yet done away with, although it ought to be, because it means they shouldn't refer to the Justice Department.

The Justice Department has taken the position they will not prosecute contempt cases in these cases. As a matter of fact, under the prior administration, and I believe this administration has embraced that view. They went to court in the case involving the EPA, and argued that very explicitly in court. In fact, they have said, the chairman of the Banking Committee said they talked about executive privilege. If you say executive privilege, the Justice Department will not prosecute. They simply won't. Yet if, in fact, you want to deal with contempt, the only way you could do it, in fact, if the executive branch on the instructions of the President—or with the complicity or the agreement of the President, "complicity" is the wrong word—declines to testify, you could not get a contempt prosecution without an independent counsel, because the Justice Department simply will not do it.

And there are documents filed by the prior Justice Department that say it. So the contempt business is the silliest scarecrow we have seen dragged out here today.

No, I won't yield.

Mr. JAMES. The chairman tried it 1 month ago. You're calling this chairman silly?

Mr. FRANK. The gentleman doesn't want to hear his argument analyzed. The Justice Department will not proceed under those circumstances, and it would have been fruitless to try to do it with executive branch officials in those particular situations.

The next point I want to make is, the gentleman from Illinois, I am sorry he left too, because his argument was, on the one hand you guys are just trying to politicize—criminalize policy differences, and then his counterattack was to talk about the policy.

In fact, we are not talking about the policy. We are talking about criminal activity. Let's raise a couple of them. We have the question of the alterations, and I notice that the gentleman from Illinois said, with more qualifications than I thought existed in the English language, that they could lead, maybe, perhaps, sometimes, if the sun was right, to an independent counsel.

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But we have got other things. We have the question of the Banca Nazionale de Lavoro itself which has not been, as I understand it, criminally proceeded against, and there is a question as to why not. It is not plausible to me, as you look at these results, that officials of that bank didn't know what is going on. We are talking hundreds and hundreds of millions of dollars over a fairly long period.

We had the statement made by the gentleman from Texas, March 30, 1992, unrebutted, to my knowledge, by the administration, more than 2 months ago, that the State Department intervened to prevent the indictment of a Jordanian businessman, not a Government official, et cetera.

We have State also saying they didn't think the Central Bank of Iraq should have been indicted because that would be a bad precedent; we have no precedent for criminal indictment of a foreign government agency. Maybe that is because we didn't have anything as bad as the Central Bank of Iraq.

We had the testimony today that didn't happen, the dog that didn't bark, Mr. Drogoul, and we didn't get all that information.

The gentleman from Florida was also incorrect when he said you have to come forward with probable cause. That is a blatant misstatement of the independent counsel clause. The standard for triggering an independent counsel is not the standard for an indictment. It is that there may be probable cause to look for probable cause, to put it in layman's terms, so that the gentleman misstates that when he says there if is no probable cause, you can't have independent counsel. That is what an independent counsel finds.

As a matter of fact, the judge in that case asked for an independent prosecutor, he was so frustrated when Mr. Drogoul clammed up. Those who prosecuted Mr. Drogoul did not show the usual prosecutorial zeal to get the facts out.

Mr. BROOKS. Will the gentleman yield? He was indicted for 347 counts, and he negotiated a plea on 60.

Mr. FRANK. And did not say anything.

Mr. BROOKS. So I guess they closed it out.

Mr. FRANK. It is just a minor point, but they tell me Judge Walsh has been an independent counsel for 6 years, somebody had great foresight and appointed this man to be the independent counsel even before we knew about the case, but there have been several examples where we think there was criminal behavior, and the criminal charge we are talking about is very straightforward.

The administration was so obsessive about dealing with Iraq in the post-Iraq/Iran war period that they clearly overlooked criminality. We were told by them, Defense, we heard all these bad things, we are going to give them $1 billion, we heard the money wasn't getting there, we heard they were shaking people down, we heard they might have been selling arms, we got tough and only gave half a billion dollars. Instead of giving them a billion, they only give them half and said, if you are not nice, we won't give you the second half billion, and the only thing that happened was they invaded.

How could all these people look at all of this and not notice that something criminal was happening? If you look at the independent counsel statute, it says not that you need probable cause, but that you go forward.

Why not the Justice Department? In fact, I have no reason to think he did anything wrong, but the head of the Commerce Department, during the period of the alteration, is now the chairman of the President's campaign. It is simply not appropriate for the Justice Department under George Bush to be investigating events in which a high official did something wrong; Mr. Mosbacher, who seems to me to be a man of integrity and may be innocent.

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The reason for the independent counsel is that you don't want to have to guess whether or not somebody did the super human thing of ignoring the fact that this guy was the President's campaign chairman.

Mr. BROOKS. Mr. Sangmeister.

Mr. SANGMEISTER. Thank you, Mr. Chairman. I am trying to get back to some of the specifics here. There are so many areas we can definitely get into this morning. There is, however, one thing that has piqued my interest. I believe my questions will be directed to Chairman Rose.

In your written testimony, as well as in your oral testimony, you refer to Joseph Whitley, the U.S. attorney in Atlanta. Although you state in your written testimony that you are attaching the AP wire stories to your testimony, which probably give some continuity to this, I can't quite figure out when he came and when he left and when he came back, if that is exactly what happened.

Can you go into detail, elaborate about what his relationship was with Matrix-Churchill?

Mr. ROSE. I thank the gentleman for his question. If my staff will tell me the date that he went to work for Smith Campbell, it is item 31. Roughly in September 1989, somewhere in that time frame, Mr. Whitley joined—this is from a Legal Times article dated September 18, 1989, called the News Roundup; Mr. Whitley joined Smith Campbell & Russell, a big law firm in Atlanta, very prominent law firm, and he was in charge of the white-collar criminal defense practice, as of September 1, 1989.

Before that time, he was the number three guy at Justice. He had also been the Deputy Assistant Attorney General. Was Associate Attorney General; he oversaw Immigration and Naturalization, U.S. Marshal Service, Federal Bureau of Prisons, and so forth. And one of his clients at Smith Campbell was Matrix-Churchill, which was both an Ohio company and a British company. And they were an intermediary for another Pennsylvania company, Kennametal, that was getting paid through BNL Atlanta, for what it was sending to Matrix-Churchill.

So Mr. Whitley gets to be U.S. attorney again. He recused himself from the matter of directly dealing with the BNL indictment, knowing that it leads directly to Matrix-Churchill; he puts his assistant in charge it; his assistant sends a letter to the Customs people. I talked to the officer that got the letter, and said, send us some more of your illegally-seized evidence in the Matrix-Churchill case.

Now, this thing smells to high heaven.

Mr. SANGMEISTER. Do you have the year he came back as the U.S. attorney for Atlanta?

Mr. ROSE. I do not. But he came back sometime before March 1991. What number is it?

Mr. SANGMEISTER. Well, it was in the year 1991, then, sometime maybe in the spring of 1991?

Mr. ROSE. Yes.

Mr. SANGMEISTER. And he took over the office at that point?

Now, can anyone tell me, can you, Mr. Rose, tell me? We have got the AP releases today of what is going on as we sit here. Is he now in charge of that office?

Mr. ROSE. Yes.

Mr. SANGMEISTER. Presently, when this——

Mr. ROSE. That is my information.

Mr. SANGMEISTER. So this Mr. Drogoul, who is about to reveal all the matters pertaining to the investigation pursuant to this plea bargaining that

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is going on down there, has been revealing all this information to Mr. Whitley?

Mr. ROSE. Yes. Or his associate.

Mr. BROOKS. Would the gentleman yield? There were 347 counts, charges, which he was indicted for. He said he was going to plead guilty to all of them and tell all that he knew about his higher up connections, of how he got approval for all of that. At that point, he came into court, having told the judge that, and said that he had negotiated a plea with the prosecutors for only 60. But they didn't say anything about him testifying on the higher ups that he had been dealing with, both in the company and in the Government.

So he must have had a lot to say, because they dropped, apparently, by that plea, 287 charges on which he was indicted. It must have been pretty important comments he was going to make, Mr. Rose. He drops 287 charges. That is more charges than most people ever get.

Mr. SANGMEISTER. It appears we may have a fox in the hen house. Is that what it amounts to?

Mr. ROSE. I wish Mr. James were here. I think that clearly in this instance, the Justice Department should have brought in a whole outside team of people to handle the BNL indictment, the investigation of some of the other companies.

Mr. SANGMEISTER. That is my line of questioning. I think that is why we are here today, to find out what is the criteria necessary to be asking for the special prosecutor. And I think the case surrounding Mr. Whitley is good evidence in itself, for that incident alone, that we ought to be doing it. Thank you.

Mr. BROOKS. Thank you.

Mr. Washington, the gentleman from Texas.

Mr. WASHINGTON. Thank you, Mr. Chairman. I have one question for Chairman Gonzalez and then one for Chairmen Rose and Barnard together, if I can do that within the time allotted.

Mr. Chairman, let me focus my attention on several matters, which you have discussed both here and on several occasions you made this information available to the public through the Congressional Record.

I am concerned about a series of letters, not all of which would be included in my question, but I think the four letters that you have brought our attention to, kind of succinctly put into focus some of the concerns, just a minuscule part of the concerns overall. There is a letter dated January 9, 1990, to which I am certain you are familiar, from Mr. Robert L. Barr, Jr. There is a letter dated September 26, 1990, from the Attorney General, Mr. Thornburgh, which raised parenthetically, in addition to other concerns, this notion of national security interest.

I note with interest that some 9 days later there is a letter dated October 5, 1990. The second or third letters are addressed to you, that is, Attorney General Thornburgh's letter and Mr. William S. Sessions, who is Director of the FBI.

I would note parenthetically that you and I are perhaps more familiar with Judge Sessions than most are, that he was U.S. district judge in the Western District of Texas, stationed in San Antonio, and I believe at one time was Chief Judge of that district, a highly respected lawyer and member of the bar as well as a judge.

I note with interest that the language in General Thornburgh's letter is very similar to the language in Director Session's letter, except that Director Sessions makes no claim whatsoever of national security interests. Having

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the background and knowledge that you and I have of Director Sessions and his impeccable reputation, don't you think that that is a flag that he was not going to go along with the program of raising the horrible specter of national security interests where there, in fact, was none?

Mr. GONZALEZ. I do believe so. In fact, I am sure that you have very properly pointed out a significant difference in the director's letter.

Mr. WASHINGTON. And in addition, that is borne out. Of course, hindsight is benefited by 20/20 vision. Later on, 2 months later, on December 18, 1990, in a letter from the State Department authored by Edwin D. Williamson, the fact that the State Department, which I think would be in the best position to make a judgment as to whether national security interests are borne out, because it is clearly set out by Mr. Williamson that the State Department was claiming no national security interests in the very matter you have undertaken to determine. Isn't that correct?

Mr. GONZALEZ. Precisely. Thornburgh's letter was pretty much the antecedent of the letter we received about 2 weeks ago from Attorney General Barr. As you know, Attorney General Barr was sort of an understudy of Thornburgh's. And I think that the significant thing is that if this specter of security is raised, there was no specificity as to wherein the danger to the national security lies. Because there is none. There is absolutely none.

Mr. WASHINGTON. It puts you on the defensive, and you would be unpatriotic if you are unwilling to go along because there is a national security interest involved.

Mr. GONZALEZ. Exactly. That is a good Texas way of describing it.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Chairmen Rose and Barnard, have you looked into the possibility that, with respect to BNL, that there may be a scintilla of suggestion of the laundering of drug money?

Mr. BARNARD. I have not, Mr. Washington. I know the distinguished chairman of the Banking Committee. We have done extensive hearings on laundering of drug money, but he would be in a better position to answer that question than I would be.

Mr. GONZALEZ. Will you yield? That is the most mettlesome and continuing problem facing us on the Banking Committee being and the Nation as well. We had a letter from the chairman of the Federal Reserve Board. We had requested information about banks acting as middlemen in New York, and it was refused on the basis that it was involving possibility of central banks, et cetera, et cetera. However, we later did get the name of this one bank that had about $200 million of this transaction involved, that they raised in New York for Iraq.

The continuing problem, and it is the most serious problem, I just—it is frustrating to find that the perception as to the seriousness of this still hasn't hit anybody, either on the committee or off, apparently, and that is that at this moment that we are congregated here today, there is nobody in the Government, in the regulatory or in the executive branch or in the Congress or anywhere, that can assure you that there aren't about 100 BNL's and BCCI's taking place now, just a little chunk of that trillion dollars of this kind of money that is circulating in our country domestically. I am not talking about the international other trillion; I am talking about domestic, just a little bit of that can be leveraged very highly in such things as drug money laundering, which now is endemic, and rather than lessen, has heightened.

And as long as the policy exists that the Federal Reserve Board follows, it cannot possibly evaluate the proper monetary policies for our country. We have also related to this the offshore transactions that are taking place now

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in billions, hundreds of billions of dollars, from corporations, from banks, from individuals, in order to escape taxation as well as accountability as to their capital structure.

So you hit on the most vital thing that is a continuing—that is ours. That is part of our Banking Committee jurisdiction. That is why we are interested in trying to plug these loopholes. They are very vast. And also, to set up the proper type of regulatory structure, which we do not have, even in minimal form.

Mr. WASHINGTON. Thank you, Mr. Chairman. If I may just have one more question, Mr. Chairman, as we all know, where there is inadequate regulation in one area, that lends itself to the possibility of other areas of wrongdoing, and drug money is one of the easiest ways—it would be a perfect scheme to get drug money filtered through there and out, and untenably have the U.S. Government guarantee the loans.

Chairman Barnard, one question. Almost in tandem with what was going on in the letters back and forth with and to Chairman Gonzalez, and of course you are a member of that committee, you were conducting a separate investigation hearing on September 27, 1990, and I am very much concerned about the testimony of Mr. John C. Kelly. I read your opening statement and the questions that you put to Mr. Kelly.

As you recall, he was a Director of the Strategic Investigations Division of the U.S. Customs Service, and his testimony appeared in the printed record of your hearing on pages 86 through 89.

If you read the preparatory statement he made, a statement which of course was incorporated into the record, but specifically on page 88, at that time it was indicated that over 40 criminal investigations were then under way involving Iraq, and he seemed to suggest in his concluding statement, because of the nature of them, it was not the proper forum for the testimony to be revealed.

My question is, were you, Mr. Chairman, subsequently given the benefit of any details of that? I don't see any claim of national security interest there, but merely to protect the rights of the persons who may be under criminal investigation, and at the same time not to compromise the Government's position. Did the Customs Division, Mr. Chairman, ever follow up by providing you with the specific information relating to the nature of the charges?

Mr. BARNARD. No, they did not.

Mr. WASHINGTON. I find that more than a bit curious. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Washington. And this will conclude today's hearing. I want to personally thank the witnesses, Chairman Gonzalez, Chairman Rose, Chairman Barnard, Senator Leahy, for their excellent testimony. The testimony raises troubling questions about the possibility of illegal diversion of Federal funds and other assistance to Iraq which helped Saddam Hussein rebuild the military war machine prior to the gulf war. More importantly, their testimony raises the possibility that illegal activities may have been supported or condoned by high level officials in the Reagan and Bush administrations at the time, only to be followed in recent days by efforts to thwart or mislead congressional investigators.

This is a Presidential election year. Some inevitably will accuse Congress of playing politics with this issue. But the inquiry by the House Banking, the Agriculture, and the Government Operations Committees started as early as 1989, when the first signs of the BNL scandal were revealed. This com-

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mittee has only entered the picture at this time because of the cumulative impact of a number of damaging documents and admissions against interest.

The continued posture of administration officials to block or restrict an investigation into the allegations only serves to inflame passions, raise a darker cloud of suspicion, and push the American public to deeper cynicism about its institutions of Government.

Let's remember in the midst of a highly charged atmosphere, that the purpose of these hearings is not to conclusively establish guilt or criminality. Under the Ethics in Government Act, the question before this committee is simply whether there is a need for further investigation by an independent counsel of possible Federal criminal law violations and conflicts of interest by executive branch officials.

And I look forward to receiving further testimony, including that of the administration officials, and that may include high officials of the National Security Council, who proposed and implemented our Nation's policy on Iraq prior to the Persian Gulf War.

The committee stands adjourned.

[Whereupon, at 2 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

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NEED FOR AN INDEPENDENT COUNSEL TO INVESTIGATE U.S. GOVERNMENT ASSISTANCE TO IRAQ

TUESDAY, JUNE 23, 1992

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Jack Brooks (chairman of the committee) presiding.

Present: Representatives Jack Brooks, Don Edwards, John Conyers, Jr., Romano L. Mazzoli, William J. Hughes, Mike Synar, Patricia Schroeder, Dan Glickman, Barney Frank, Charles E. Schumer, Howard L. Berman, Harley O. Staggers, Jr., John Bryant, George E. Sangmeister, Craig A. Washington, Peter Hoagland, Michael J. Kopetski, Jack Reed, Hamilton Fish, Jr., Carlos J. Moorhead, Henry J. Hyde, F. James Sensenbrenner, Jr., Bill McCollum, George W. Gekas, Howard Coble, Lamar S. Smith, Craig T. James, Tom Campbell, and Jim Ramstad.

Staff present: Jonathan R. Yarowsky, general counsel; Robert H. Brink, deputy general counsel; James E. Lewin, Jr., chief investigator; John Cohen, investigator; Daniel M. Freeman, parliamentarian; Chris Cooper, legislative analyst; Allen Erenbaum, counsel; James Rowe, counsel, Subcommittee on Crime and Criminal Justice; Ellen L. Jones, clerk; Ralph T. Doty, clerk; Alan F. Coffey, Jr., minority chief counsel; Raymond V. Smietanka, Peter J. Levinson, and Lyle Nirenberg, minority counsels.

Mr. BROOKS. The full committee will come to order.

I called this hearing today to continue the committee's consideration of whether to request the appointment of an independent counsel to investigate possible criminal wrongdoing and conflicts of interest with respect to the administration's dealings with Iraq.

At the heart of this process is determining whether the administration should be investigating itself in these matters. While some have questioned the independent counsel statute for a variety of reasons, few responsible observers have ever suggested that we should simply regress to the point of allowing the executive branch to resume its pre-1978 status as the sole criminal investigator of its own actions.

In view of what we learned at the committee's first hearing on June 2, this cautionary note, I think, is well taken. At that time, four Members of Congress, each vested with the power to conduct oversight of matters within their particular jurisdictions, testified as to how they fared at the hands of the executive branch in examining the administration's policy toward Iraq.

As documented, at almost every step of the way they were rebuffed, delayed, possibly misled, and subject to a highly selective presentation of the

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requested materials, culminating in the transmission to at least one chairman of what appears to be altered documents.

Obstruction of Congress, false statements and perjury are serious charges, indeed, and they should not be trivialized against what the administration calls larger claims of foreign policy, executive privilege and prosecutorial discretion. The same can be said about possible allegations of violations of conflict of interest statutes as well as possible irregularities in the timing and scope of the Department of Justice's response into the BNL matter.

How should this committee respond to a situation where the refusal to provide documents to other committees has now been compounded by a new refusal to provide critical witnesses to us? That is precisely the situation we face today. Citing some unwritten, "longstanding practice," President Bush has declined to send Nicholas Rostow and C. Boyden Gray to explain their actions with respect to a number of lines of inquiry established at the first hearing.

That is indeed unfortunate, because who, if not Nicholas Rostow, should explain why the NSC, an agency set up to run the cold war against the Soviet Union, has now apparently, under Mr. Rostow's direction, taken to running a cold war against congressional requests for information?

Who but C. Boyden Gray should appear before the committee when the Counsel for the President worked closely with Nicholas Rostow in setting up the Rostow gang, in being directly involved in the President waiving conflict of interest statutes for 11 of his senior advisers, and who communicated frequently, if not daily, over matters involving Iraq export licensing, the CCC program and the BNL litigation?

The two empty chairs for Messrs. Rostow and Gray are disquieting symbols of a continuing failure of one branch to speak forthrightly with another. And I should add that Mr. Mosbacher had the decency to call me personally to indicate that while he felt the Inspector General is probably best suited to testify about events at Commerce, he indicated that he would appear at a later time before the committee as a private citizen if needed.

Nevertheless, we are now pleased to welcome the four officials who have come to provide their perspectives on these issues. I trust that their testimony will be very helpful to the members and help lead us to a decision about whether further review of these matters is needed by an independent counsel.

I would yield now to the distinguished head of the minority, Mr. Hamilton Fish, the gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

I am pleased to welcome our executive branch witnesses to this second hearing on U.S. Government activities relating to Iraq.

Earlier this month when colleagues from other committees described their investigative efforts, I emphasized the importance of our committee hearing directly from the agencies involved, and today I look forward to having the benefit of their testimony. And I anticipate, Mr. Chairman, that you will find that their conduct throughout has been honorable, professional, and thorough.

Consideration of whether or not to request that the Attorney General apply for the appointment of an independent counsel is, of course, a very serious matter. We should be careful about allegations of criminal conduct, as we may do unjust harm to innocent, honorable people, and deter good men and women from pursuing careers in public service.

The premise of the independent counsel law is that there may be personal, financial or political conflicts of interest between the Attorney General and high-level executive branch officials, and that these possible conflicts may

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lead to potentially biased investigation or the appearance of a biased investigation.

The independent counsel statute was never intended to be invoked simply based upon allegations of wrongdoing by lower level executive branch employees where potential conflicts are not present. The statute specifies those positions within the executive branch it covers, and yet there is no hard evidence that a covered person under the statute has been implicated in this case, nor has there been a showing of a conflict as to the persons currently suspected of misconduct.

Many are concerned a pattern has developed whereby Congress automatically seeks to bypass the Department of Justice in circumstances where it is neither warranted nor necessary.

Criminal law enforcement should not be allowed to become an ad hoc process that we "farm out" to an array of independent attorneys. Rather, law enforcement should be coordinated, professional efforts to apply uniform prosecutorial standards. Centralized institutional law enforcement promotes efficiency, effectiveness and fairness.

The Department of Justice is the Federal agency traditionally charged with law enforcement-related responsibilities in our system of government. We should depart from the norm of Department of Justice prosecutorial responsibility only under limited, exceptional circumstances, a point that should be kept in mind during today's hearing.

Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much.

No other statements will be heard. We will go directly to the witnesses. But I did want to say before receiving testimony from our witnesses today, I would like to read and then make part of the hearing record a letter I received from Judge Marvin H. Shoob, the U.S. district court judge who presided over the BNL litigation in Atlanta known as *United States* v. *Drogoul*.

[See appendix II–1.]

Mr. BROOKS. As you recall, on the same day that the committee held its first hearing on whether to appoint an independent counsel, Christopher Drogoul entered a plea to a greatly reduced number of counts. He pleaded guilty to 60 instead of 347 charges from the grand jury and decided against making a public statement possibly implicating higher-ups who knew of his scheme.

At that time, June 2, 1992, Judge Shoob publicly called for appointment of a special prosecutor. This is the letter that I received from Judge Shoob dated June 11, 1992, and copies should be made available to all the members of the committee and anybody that wants one.

I would ask unanimous consent to include the letter at this point in the hearing, and ask members to look it over as we go along. I think you will enjoy it.

We will go on with our hearing, but today I would say that I am going to swear in the witnesses who assist in our inquiry into whether an independent counsel on United States dealings with Iraq, should be requested. I do this rather reluctantly. I normally, or very seldom, have sworn in witnesses, and seldom sent subpoenas in my tenure in Congress, because, generally, I think people do come when requested and, generally, they tell the truth.

But in a recent case, before the D.C. circuit court regarding charges against Admiral Poindexter in the Iran-Contra inquiry, the court, through what I thought was a very strange twisting of logic, managed to make lying to Congress not necessarily a crime.

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Well, I trust that perjury is still a crime, even if it is before Congress, and so I believe requiring an oath in these circumstances is a prudent course to follow. And I intend to write a letter to every chairman in the U.S. Congress and explain the import of this particular ruling in court, which means, or may mean, that any witness coming before Congress could lie with impunity, say whatever they want, whatever they dreamed up, and not be subject to perjury.

It is a real danger, and so I think, to be on the safe side, that every congressional committee that has witnesses, if anything of any controversy, should certainly swear in the witnesses.

So today our first witness is Mr. Frank Lemay. If Mr. Lemay will come up.

Mr. FISH. Mr. Chairman, may I inquire as to whether or not prior to this moment the witnesses have been advised that they would be under oath?

Mr. BROOKS. No, but I would think they are fully intending to tell the truth.

Mr. FISH. That is not the issue here. It is the inference that I reject and find offensive, and I do think it is only decent to have inquired of them as to whether or not they would be sworn. That is—in anticipation of their appearance—I did so in the case of the Assistant Attorney General. I am not prepared to speak for the Inspector General of the Commerce Department.

Mr. BROOKS. Well, that is very nice of you.

Mr. FISH. I think, Mr. Chairman, you should have asked them, under the circumstances.

Mr. BROOKS. I think it will be standard procedure from now on.

Mr. FISH. That may well be.

Mr. BROOKS. Mr. Ramstad.

Mr. RAMSTAD. I would ask unanimous consent that my opening statement be included as part of the record.

Mr. BROOKS. Without objection, so ordered.

Mr. RAMSTAD. Thank you, Mr. Chairman.

I think it is unfortunate—I understand the fiat to muzzle some of us by not allowing opening statements, but I think it is unfortunate, especially in a fishing expedition of this nature.

I think we all would be well-advised to heed the words of David Brinkley last Sunday when he talked about the special prosecutor and 5 years and $30 million--

Mr. SYNAR. Mr. Chairman, Regular order. Mr. Chairman——

Mr. BROOKS. We agreed not to have statements. Mr. Fish and myself agreed jointly that we would not have statements by everybody in the interest of getting these witnesses in in a good time.

Mr. RAMSTAD. Mr. Chairman, your opening comments were very provocative, or your followup comments, and I thought, at the very least, they deserved a response.

Mr. BROOKS. Well, your statement will be in the record.

Mr. RAMSTAD. Thank you, Mr. Chairman.

[See appendix II–2.]

Mr. BROOKS. Our first witness is Frank Lemay, a Legislative Management Officer in the Bureau of Legislative Affairs, Department of State. He is a career officer, Foreign Service Officer, whose current responsibilities are Department of State relations with the Congress on multilateral economic policy issues and legislation.

Last year, he was the recipient of the Department's Superior Honor Award for Outstanding Service. He has received the Department's Meritorious

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Honor Award for Excellence in Economic and Financial Reporting, and was nominated for the Herman Salzman Award for Excellence in Economic Reporting.

Mr. Lemay, I want to thank you for appearing before us today. If you would please stand, we will swear you in.

Mr. Lemay, do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth? So help you God.

Mr. LEMAY. I do so swear.

[Witness sworn.]

Mr. BROOKS. Mr. Lemay, we are glad to have you here, and we would appreciate if you would summarize your statement and offer a full statement for the record. Every part of it would be included.

The gentleman is recognized.

STATEMENT OF FRANK LEMAY, LEGISLATIVE MANAGEMENT OFFICER, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF STATE

Mr. LEMAY. Thank you, Mr. Chairman.

Good morning, Mr. Chairman, Mr. Fish, and members of the committee. I am here today at your request to discuss your interest in a memo I wrote on October 13, 1989, concerning a meeting I attended with officials of the Department of Agriculture. I believe the work of this committee is important, and I am prepared to answer your questions to the best of my ability and recollection.

I would like to note that I am a career Foreign Service Officer. I thank you for also noting that. I also thank you for your kind words of introduction.

I have served in the Department of State since 1981 in a variety of positions and capacities. I am currently assigned, as you said, to the Bureau of Legislative Affairs as the Legislative Management Officer responsible for multilateral economic issues.

Prior to this assignment, from September 1988 to August 1991, I was assigned to the Office of the Under Secretary of State for Economic and Agricultural Affairs as a special assistant. In the office, my portfolio primarily involved debt and financial issues, energy policy, and food policy and commodity issues.

I was later asked to handle all environmental economic issues as well. I also covered the Near East and African regional accounts, and issues related to the subcontinent. Shortly before leaving the office, I was awarded the State Department's Superior Honor Award for Excellence in Performance.

In my capacity as a special assistant, I was not a policy maker and I am not here today to discuss overall policy toward Iraq. I responded to direction from Under Secretary Richard McCormack and his executive assistant, Sam Hoskinson. Although I had a degree of discretion as to which issues were my priority at any given time, the scene was always set by what was of interest to, or what the Department felt needed to be handled by, the Under Secretary.

In general, anything I wrote for the Under Secretary was channeled to him through the executive assistant who was in a position to confirm, to criticize, to rewrite, or to order additional research and work. I also reviewed, within my area of responsibilities, all decision documents, cables and briefing papers for the Under Secretary's attention prior to passing them through the executive assistant to the Under Secretary. In some instances, I provided analysis or information directly to the Under Secretary, verbally or in short memos or notes.

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I was also required to ensure that within my areas of responsibilities those issues within, that were within the bureaucratic purview of the Under Secretary, were properly brought to his attention. I also had to ensure that he received information and briefings necessary for scheduled meetings with United States or foreign officials. I did not maintain the Under Secretary's schedule, nor did I maintain or have regular access to his files.

Although we had a cordial, first-name relationship, he did not usually confide in me and generally did not discuss with me his meetings with officials if I was not present in those meetings. Furthermore, I only attended those meetings for which he gave approval or that he requested I attend. This is common practice in the Department.

My relationship with the executive assistant and my special assistant colleagues involved significantly more give and take. We regularly discussed the issues in our portfolios and the issues of economic policy in general.

I would now like to provide you some background on what led up to the meeting of October 13, 1989. It is my recollection that initially the Under Secretary asked the executive assistant to look into the allegations that were surfacing concerning Iraq and the CCC program. I recall that Mr. McCormack had been asked to look into the allegations because our office had a policy overview role in commodity issues and financial issues.

The executive assistant asked me to take over the issue sometime in September or early October. We had a long conversation concerning what he had learned to that point. He asked me to keep him informed of all information that I developed, and I recall that on a number of occasions—and I do not remember exact dates—we compared notes.

Shortly prior to October 13, I was asked by my superiors to arrange with USDA to discuss their views of the rumors and allegations of possible Iraqi misuse of CCC guaranties that were surfacing as a result of the ongoing Justice Department investigation of the Banca Nazionale Del Lavoro's Atlanta Branch. I do not recall whether I or the executive assistant called Ann Venneman of the Under Secretary of Agriculture Crowder's staff to set up the meeting the officials of USDA. Nonetheless, the meeting was convened at our request.

I went, I took careful, sometimes verbatim notes on what was said. I asked for clarifications of points that were unclear to me. I drafted the memo on the date of the meeting from those notes.

I left all of my files on Iraq with the Office of the Under Secretary upon my departure. To the best of my knowledge, the files were not retained in that office. I do not know if they were retired or destroyed after I left, nor do I know what documents that may have been in these files have been made available to the Congress.

Mr. Chairman, I believe the memo accurately reflects the subject matter of the meeting. The memo does not follow the exact chronology of the discussion. I remember the meeting being very free flowing, with a variety of issues being discussed at different times.

When writing the memo, I went through my notes and I grouped similar issues, comments and topics together. I believe this is an efficient way to present information from an unstructured session to a Department principal.

In the meeting, we discussed allegations—and I want to stress—allegations of wrongdoing on the part of the Iraqis. At no time was I presented with evidence or proof that the allegations were correct.

We were faced with a situation where all agencies had incomplete information. I believed the meeting and the resulting memo were important. My

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intent was to highlight for the Under Secretary that there were a great many allegations and a great many uncertainties.

My experiences in analyzing drug money flows while serving in Bogotá, Colombia, told me money and commodities are fungible and that the potential for a serious problem existed.

I provided the memo to the executive assistant. He approved its distribution. I cannot say for certain that it was passed to Under Secretary McCormack, but I recall that it was. I also provided the memo to our staff assistant for distribution.

It was my intention that the memo be sent to all participants and to the additional addressees. I do not know if they received the memo or not. I want to stress that, though, that at no time did I have any intention of excluding anyone from seeing and commenting on the memo.

I would now be happy to reply to your questions and I will try to answer them to the extent that memories now 3 years old will allow.

[See appendix II–3.]

Mr. BROOKS. Thank you very much, Mr. Lemay.

You have received numerous awards from the State Department for outstanding performance and for excellence in economic and financial reporting. Would I be correct in assuming these awards are based, in part, on your ability to provide your superiors a complete, accurate and unbiased account of discussions involving complex and detailed matters?

Mr. LEMAY. Yes, sir, that is the case.

Mr. BROOKS. Mr. Lemay, the Department of Agriculture apparently did not concur with the State Department's assessment of your economic reporting capabilities. For example, in his testimony before the House Banking Committee last month, Mr. Brosch, of USDA's Office of General Counsel, condemned your October 13, 1989, memo as "totally inaccurate" and "totally misleading." What is your response to these charges?

Mr. LEMAY. I was quite taken aback when I read the testimony of my agricultural colleagues. I recalled the meeting. When I first tried to remember what had happened, I remembered in more general terms, but then, as I began reading through the record and looking at my memo, I was quite convinced that the memo was a clear and accurate reflection of what had happened in the course of our discussions.

I then went through and read the testimony of others, including Under Secretary Crowder, and I found that there were a number of comments in those testimonies that supported what I had said in the memo. So I do not understand how Mr. Brosch can say I was totally wrong and did not get anything right.

Mr. BROOKS. Now, Mr. Lemay, your memo raised a number of red flags concerning potential abuse of the CCC program by the Iraqis, including the possible diversion of funds to purchase nuclear-related equipment at a time when the administration was making critical decisions about extending additional loan guaranties to Iraq. How did your boss and other senior Department officials respond to the memo?

Mr. LEMAY. I can only speak for my boss. I do not know how other officials responded to the memo. I believe he took the memo very seriously and used it in his decision process on how he wanted to advise other decisionmakers in the Department.

I had discussed the memo with Mr. Hoskinson. I believe Mr. Hoskinson discussed the memo with Mr. McCormack. So it was not something that was simply plopped on his desk and was not looked at, as far as I can recall.

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Mr. BROOKS. William Safire, a man well-known to both sides of the House, had an essay on this very subject matter, and I would, without objection, put it in the record at this point. It is a short article.

[See appendix II–4.]

Mr. BROOKS. Mr. Lemay, one last question. Has the State Department provided you with access to your files on Iraq to help you prepare for your testimony this morning?

Mr. LEMAY. I did not have access to any of my old files. As I say in my statement, the files were not there.

Mr. BROOKS. Did you ask for them?

Mr. LEMAY. Yes, I did.

Mr. BROOKS. They said they were not there?

Mr. LEMAY. Yes.

Mr. BROOKS. Well, thank you very much.

Mr. Fish, the gentleman from New York.

Mr. FISH. Thank you.

Did you solicit comments from the other participants in this meeting that was held on October 13, 1989? Did you solicit comments from the other participants present on the accuracy of your memo's description of what was said at the meeting?

Mr. LEMAY. No, I did not.

Mr. FISH. Any particular reason why not?

Mr. LEMAY. Well, I expected the memo would have been given the distribution as I had set it out on the cover sheet, which it should have been gone to participants and to the additional addressees. I do not know if that happened. I tried to make that happen.

Mr. FISH. It wouldn't have been a customary practice of yours, when you are being told information by other people and you take notes and you prepare a memo that you don't check with them to be sure that your recollection and your account of the meeting is accurate?

Mr. LEMAY. I generally would not discuss it with another agency, no.

Mr. FISH. But they are the ones giving you the information, aren't they?

Mr. LEMAY. That is correct.

Mr. FISH. And this wouldn't be your practice to check with them and say, "Is this what you said to me?"

Mr. LEMAY. I did not do so in this case.

Mr. FISH. Can you please tell us what was your degree of familiarity with the CCC program prior to the October 13 meeting? How thoroughly had you considered the program, researched it or kept abreast of the program prior to that meeting? Also, how much of its workings were discussed with you by the other gentlemen at the meeting?

Mr. LEMAY. I found—I assume that you are referring to the statement that, by Mr. Brosch, I believe it was, I had come in and I had said I knew nothing about the GSM program?

Mr. FISH. I will repeat my question. Can you please tell us what was your degree of familiarity with the program? You know, of course, that Mr. Brosch has no high regard for your memo, as far as its accuracy is concerned, period. And it is regrettable that he is not testifying today. But I am asking you what is the degree of your familiarity with the CCC program prior to the October 13 meeting; second, how thoroughly had you considered the program, researched it or kept abreast of it prior to the meeting; and, third, how much of its workings were discussed with you by the other gentlemen at the meeting?

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Mr. LEMAY. I was familiar with the general parameters of the CCC program. I had been in the Foreign Service up to that point for 8 years. I had been a Deputy Head of Section in Colombia. At times, when I was Acting Economic Counselor, I was responsible for the work product of the Foreign Agricultural Service people and for the Foreign Commercial Service people.

I believe what I said during the meeting was I was not totally familiar with how an exporter would fully go about getting the documentation for a CCC credit. I do not recall ever saying that I knew nothing about the CCC program.

I had probably—and, again, I am going on very long-term memory here—I had more than likely discussed the CCC program before going over there with our Office of Food Policy. That would have been my general approach to this type of an issue.

I did homework before I went to the meeting. I did not go to the meeting cold.

Mr. FISH. Thank you, Mr. Chairman.

Mr. GEKAS. Mr. Chairman.

Mr. BROOKS. Mr. Schumer, the distinguished chairman of the Crime and Criminal Justice Subcommittee.

Mr. SCHUMER. Thank you, Mr. Chairman.

First I want to thank you, Mr. Lemay, for coming here and for your outstanding record in the State Department.

I think your memo of October 13 was a very important memo. I just wish people would have acted on it then rather than now. Oftentimes you get the best perspective on things from career officials, and I think in your case that is true.

I would like to just ask a few questions to help the committee better understand what was going on at the State Department, and please elaborate. Don't restrict yourself to a simple yes or no.

First, have you discussed your testimony with anyone at the State Department before coming here today?

Mr. LEMAY. No, I have not.

Mr. SCHUMER. So you have no instructions on how to handle it or anything like that?

Mr. LEMAY. I had a meeting with Mr. Williams, the legal adviser, but I did not have any substantive discussions on the testimony.

Mr. SCHUMER. Did they tell you not to volunteer anything, just answer the questions as narrowly as possible?

Mr. LEMAY. It was a conversation with the legal adviser and I probably shouldn't get into that.

Mr. SCHUMER. OK.

Mr. LEMAY. I will say one thing: They told me to tell the truth.

Mr. SCHUMER. I have been advised by my legal advisers here that that really, that question really doesn't fall under the purview of an attorney-client privilege. No one is saying you did anything wrong. In fact, everyone is saying you did everything right and you have come here to testify.

Mr. LEMAY. They did not tell me not to respond to questions. I was warned to be careful about classified information, and that if I was worried about classified information or disclosing classified information, raise it at the time the question was made.

Mr. SCHUMER. Did they tell you not to volunteer anything that wasn't directly on point to the questions at hand?

Mr. LEMAY. No, they said to answer the questions.

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Mr. SCHUMER. The chairman brought up about reviewing your old files on the October 13 meeting and the other files you mentioned, and you said you went there and the files were not there.

Mr. LEMAY. That is correct.

Mr. SCHUMER. Did you try to pursue that and find out where the files were? Is it characteristic that files of such a meeting, in your experience, are just not there?

Mr. LEMAY. The files, by this time, would have been 3 years old, and the staff people who came in after I left would probably have cleaned out the files. Now, whether they just cleaned them out and threw them away, I don't know; or whether they were retired.

Given the level that I was working at, it is unlikely anybody would have taken the time to actually retire the files.

Mr. SCHUMER. So it is not atypical for files from 3 years ago, when you go back and look at them, I am sure this isn't the first time it has happened not to be there.

Mr. LEMAY. No, it is not atypical in my experience.

Mr. SCHUMER. What did you know about Iraq and the CCC program prior to your October 13, 1989, meeting? When you said you had done your homework on it, what was your general view of it before you went into the meeting?

Mr. LEMAY. My general view before going to the meeting was there were a series of allegations and we needed a better handle on what those allegations were.

In discussing and preparing for the meeting, I recall speaking with a number of people in the Department, including officers in the Near East Bureau. I also spoke with Mr. Hoskinson. I recall, again, vaguely, speaking with somebody in the Legal Adviser's Office because they were also involved in looking at the allegations, and because of their connections with other legal staffs were in a position to do so from that angle.

So the basic outline of what I knew was, there were several problems. One was a question of creditworthiness, two were the allegations of the BNL scandal, and the other was the just general question of corruption within the CCC program itself.

Mr. SCHUMER. OK.

Mr. LEMAY. There are no great specifics here. This was general parameters of what I was to talk about.

Mr. SCHUMER. Right. I want to go over again, because it is not just Mr. Brosch but also Mr. McElvain, and they say that they just totally disagree with the contents of the memo.

I want to read to you Mr. McElvain's statement at that same committee hearing. He says: "I can say that, no, I don't recall expressing any, making any comments or having any doubts during that meeting that there was a possibility of any of these commodities being diverted or bartered or whatever, or for military equipment, I believe is the way that the memo was stating. That memo, in my opinion, was the "—and then there is a dash—" the discussions at the meeting were misrepresented very badly.

First, do you recall McElvain, do you recall that being an accurate statement for what McElvain has said?

Mr. LEMAY. I have to stand by the memo. I wrote the memo directly after the meeting from notes which, in large measure, included quotes from what people said.

I am not really in a position to say why Mr. McElvain is saying what he is saying. He probably doesn't remember. It was a long time ago.

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Mr. SCHUMER. Do you remember terms, these terms coming up at the meeting? Diversion?

Mr. LEMAY. Yes.

Mr. SCHUMER. Nuclear-fuel compounder?

Mr. LEMAY. Yes.

Mr. SCHUMER. Nose cone burr.

Mr. LEMAY. Yes. And the reason I remember those is they sort of caught me by surprise that there were even allegations of nuclear issues.

Mr. SCHUMER. But it is clear those types of allegations did, from your recollection, did come up at the meeting?

Mr. LEMAY. From my recollection, that is the case, yes.

Mr. SCHUMER. That would be pretty——

Mr. LEMAY. Let me make one other point.

Mr. SCHUMER. Sure.

Mr. LEMAY. I had never heard of a nose cone burr or a fuel compounder before the meeting. It was not in my areas of responsibilities. I have nothing to do with political military affairs and nothing to do with nuclear affairs.

Mr. SCHUMER. OK.

Let me ask you, would you have had any motivation to make this up?

Mr. LEMAY. I had no motivation to make anything up. I was there on instructions. The meeting was at our request and I was simply trying to do the best job I could to provide information to the Under Secretary that he could then factor or use however he saw fit.

Mr. SCHUMER. Who said "blow the lid off the CCC four-alarm blast?" It was quite incendiary language in that memo.

Mr. LEMAY. I said the four alarm blaze, not blast.

Mr. SCHUMER. Who said "blow the lid off CCC?"

Mr. LEMAY. I do not recall. I didn't write it in the memo, and to this day I don't know why I didn't put a name on this.

Mr. SCHUMER. Was it something that someone said in the meeting or was that just your characterization?

Mr. LEMAY. No, someone said that.

Mr. SCHUMER. And it was not you.

Mr. LEMAY. No.

Mr. SCHUMER. So it had to be one of the other people.

Mr. LEMAY. That is correct.

Mr. SCHUMER. And all the others were from USDA.

Mr. LEMAY. That is correct, to the best of my recollection.

Mr. SCHUMER. So that pretty much doesn't square with what Mr. McElvain said there.

Mr. LEMAY. It does not.

Mr. SCHUMER. Or from Brosch, and that is being kind to McElvain and Brosch.

Let me ask you this. Again, the memo is fairly explosive. What was the reaction to your memo at the State Department?

Mr. LEMAY. Well, once I gave it to Mr. Hoskinson, as I say, he reviewed it. He felt it was important enough to pass on. I did not get much feedback from that point.

I knew that several—I don't know what documents have been made available to the committees, but there are documents indicating that Mr. McCormack was concerned, although he eventually supported the traunching idea and proceeding with the program. That was about a month and a half later, so I assumed that he used it however he used it.

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Mr. SCHUMER. So there was disagreement within the State Department itself? I mean, from what we have learned, the Economic Division felt one way and the more political parts of the State Department felt another at first; is that right?

Mr. LEMAY. I don't want to characterize it as disagreement. I think there was a general policy discussion going on and people were looking at different pieces of the puzzle trying to come up with what to do next.

Mr. SCHUMER. But no one, as far as you know, here is the memo that talks about things like "blow the lid off CCC," "four alarm blast" and all of that, "four alarm blaze," and no one but Hoskinson ever came back to you and talked to you about that memo; is that fair to say?

Mr. LEMAY. To the best of my recollection.

Mr. SCHUMER. To the best of your recollection.

Mr. LEMAY. That is fair, yes.

Mr. SCHUMER. Which I find surprising. Did you ever go on your own and discuss it with anybody?

Mr. LEMAY. I do not recall. I may have touched base with Mr. McCormack, but I really don't recall.

Mr. SCHUMER. So it wouldn't have been a lengthy conversation or something that would stick in your memory.

Mr. LEMAY. No, sir.

Mr. SCHUMER. Now, next question is, is there any other information or documentation that you came across, that you know of, that relates to the CCC Iraq matter besides your October 13, 1989, memorandum?

Mr. LEMAY. There are other documents in the record. I think most of these have been—the ones that I recollect have been made available to the best of my knowledge to Mr. Gonzalez. There were several memos from Mr. McCormack to the Secretary, and then there were various decision memos and things of that sort related to the CCC program. So, yes, there are documents available on the decision process.

Mr. SCHUMER. Well, there is one that I, that we are particularly interested in here, and that is, it was evidently a chronology or there may have been—I have not seen this with my own eyes—a chronology of events that was circulated in your area in the State Department which refers to a cable from Rome, which presumably the U.S. Embassy or State Department cable, to the State Department in Washington. And in that cable—did you see that cable?

Mr. LEMAY. I don't know.

Mr. SCHUMER. There was mention of arms sales, supposedly.

Mr. LEMAY. I have not seen the cable, no. I may have seen if cable in the past, but I don't recall.

Mr. SCHUMER. If you could pull the microphone a little closer, I am sorry, I couldn't hear you.

Mr. LEMAY. I say, I don't recall having seen the cable.

Mr. SCHUMER. How about in reference—do you recall hearing or seeing reference to that cable?

Mr. LEMAY. Yes, I have seen reference to that cable.

Mr. SCHUMER. Could you tell me a little about the reference?

Mr. LEMAY. Again, I do not recall having seen the cable itself and the document that I saw was labeled "Secret," so I am really in a tough position here, that I can't really discuss, I don't think.

I can check with legal counsel from the Department, but that is something, since it was in a classified document, that I am not at liberty to discuss in an open session.

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Mr. SCHUMER. All right. You would be prepared to discuss that with members of this committee in a closed session, I presume, provided the State Department adviser has told you that was OK?

Mr. LEMAY. I have been told that I can discuss classified information if everybody in the room is cleared to hear it.

Mr. SCHUMER. Except for Members, I presume.

Mr. LEMAY. That is right.

Mr. SCHUMER. OK, then we may want to pursue that.

You use the term repeatedly throughout your memorandum, "diversion." You couple that term with military hardware and funds on occasion. Are you aware—and I would ask you to comb your mind carefully on this—of other issues that we have not yet discussed which relate to either Iraq, the Middle East, and involve these terms, apart from the CCC program?

Mr. LEMAY. Am I aware of other instances of diversion outside of the CCC program?

Mr. SCHUMER. Yes, that is correct.

Mr. LEMAY. I am not personally aware of that, no.

Mr. SCHUMER. Have you heard in terms of conversations or other references, just as in the previous discussions, about that?

Mr. LEMAY. Yes, I am aware of some other issues that were in the documentary evidence given to Mr. Gonzalez, but it is so far outside of my area that I feel very incompetent to discuss it.

Mr. SCHUMER. Would it involve any possible violations of law as this diversion did?

Mr. LEMAY. I am not a lawyer and I am, again, just not familiar enough with the evidence to say that it did. Again, I just——

Mr. SCHUMER. Could you fill us in on your recollections there? I understand they are coming from someone who does not have great expertise in those areas but it might help us if we understood.

Mr. LEMAY. Well, the only thing I recall——

Mr. SCHUMER. Let me set it in context. Here is a memo—go ahead make your point and then I will make mine.

Mr. LEMAY. As I was going through the documents, there was some indication of third-country arms transfers of American military technology, but I do not—again, I didn't make it a point to look at these documents. They are outside of my area and I was not trying to bone up on Iraq policy; I was simply trying to find the documents with which I was familiar.

Mr. SCHUMER. And were these to Iraq, do you recall?

Mr. LEMAY. I recall they were to Iraq.

Mr. SCHUMER. And when?

Mr. LEMAY. I do not recall dates. As I say, I did not get into the substance of the various——

Mr. SCHUMER. Do you know who received or who sent those documents and who received them within the State Department?

Mr. LEMAY. I do not.

Mr. SCHUMER. Would other people know of this?

Mr. LEMAY. I don't know. I have no idea. Again, it is outside of my area.

Mr. SCHUMER. I understand that.

Mr. Chairman, I might ask that we just pursue this maybe again, if we wish to talk to Mr. Lemay again in this area.

I have finished with my questions. Thank you, Mr. Chairman.

Mr. BROOKS. Let me observe at this time there was some question about whether it was regrettable that Mr. Brosch couldn't be here. I will suggest that in my letter of May 20 to the President of the United States, "I, there-

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fore, write to invite you to send any''—any—''appropriate administration official to testify at this hearing.''

In my letter of June 11, I said, ''I am renewing the invitation I extended to you in my May 20, 1992, letter to send appropriate administration officials to testify in a panel under similar conditions.''

In other words, we invited the President to send anybody he wanted. If he wanted to send Mr. Brosch, he could send him. He could send anybody in the whole administration.

I yield now to my colleague, Mr. Moorhead, the gentleman from California.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Mr. Lemay, were you ever involved in decisions that affected which countries would receive loan guaranties from the CCC program?

Mr. LEMAY. I was not involved in those decisions.

Mr. MOORHEAD. Would it be accurate to say that you are familiar in great deal as to how these loan guarantee decisions were made at the USDA?

Mr. LEMAY. No, it would not be accurate to say I am familiar with that. I have a very general familiarity, but not the exact meeting process and decision process.

Mr. MOORHEAD. This program has been in existence about three decades; has it not?

Mr. LEMAY. That is my understanding.

Mr. MOORHEAD. Is foreign policy ever an aspect of this loan program? Is it a consideration that is taken up when we consider which countries are going to get loans?

Mr. LEMAY. Since I was not involved in the decisions, I cannot answer that question.

Mr. MOORHEAD. At the time these meetings took place and we were considering loans to Iran, much of that period of time the war was going on between Iraq and Iran; was it not?

Mr. LEMAY. Well, by the time that we were looking at the CCC program, I believe the war between Iran and Iraq had ended, about the time my memo was written.

Mr. MOORHEAD. So many loans were made, though, while the war was still going on?

Mr. LEMAY. You would have to check with the Department of Agriculture. I don't know. I mean, it is possible that CCC loans were provided during the Iran-Iraq War. Again, that was before I even came to the Under Secretary's office, so I don't know.

Mr. MOORHEAD. Going to this meeting that you wrote the memorandum concerning, what was basically the direction of the meeting? Was it more of a factfinding effort in which information was trying to be obtained, or just exactly what was the purpose or the feeling of the meeting?

Mr. LEMAY. The purpose of the meeting was that I was under instructions from my superiors to go and discuss with Agriculture allegations that were arising because of the BNL issue.

The attorneys at USDA had gone down to Atlanta and discussed the case with the Justice Department attorneys, and it was thought it would be useful to go in and chat with them to find out what they had heard and what they had discovered. That is what I did.

Mr. MOORHEAD. Do you think, in your recollection, that the meeting accomplished something in that direction, that you and other people present found out information that they didn't have before? Was it helpful in trying to work the problem out?

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Mr. LEMAY. Yes, I think so. I mean, I recall it being quite friendly. I don't recall it being antagonistic. I recall just a pretty friendly, open give-and-take of commentary.

I had told them I was there specifically to get the information and that is what I was doing. I was taking notes, I was getting information which I was then going to put into a memo and provide to my superiors.

Mr. MOORHEAD. From what you say, it was, then, a time when you and the other people present were trying to ascertain if there were any problems with this program, or with the Italian bank, or anything which you can do something about or for which you can achieve a positive result. Or, was it one in which, apparently, the allegations are, you were trying to run away from?

Mr. LEMAY. I honestly believe we were sitting there trying to figure out what other people knew. There was a great deal of question as to what was actually out there; what were these allegations; were any of them true; was there any evidence, and, as far as I know today, evidence of these allegations has not been found. But at the time the allegations were being made. I wrote them down, I presented them to my superiors.

Mr. MOORHEAD. Thank you very much.

Mr. LEMAY. Thank you.

Mr. BROOKS. Mr. Edwards, gentleman from California.

Mr. EDWARDS. No.

Mr. BROOKS. Mr. Mazzoli, the gentleman from Kentucky.

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

Mr. Lemay, I welcome and I applaud your being here today.

May I refer you to a statement which was in the column written by Mr. William Safire on June 22, and I would just read one excerpt that perhaps you can, perhaps help me here. This is as to why you are being permitted to testify.

Apparently, Mr. Safire has heard from people, sources, friends, whatever, that you are being allowed to testify today because "Frank"—Mr. Lemay—"Frank is being set up to be discredited by the coverup crowd at Agriculture who have already lied to Congress and because Frank does not know to this day what happened when his memo went upstairs."

I will let you read that. It is in the middle of the second—starting with "because Frank is being set up."

Mr. LEMAY. And what is the question?

Mr. MAZZOLI. The question, having read that, is that a fair statement? Do you agree with anything that is said there? Are you being set up? Do you believe that you are being allowed to walk forward as a kind of sacrificial lamb?

Mr. LEMAY. I think, to be perfectly frank, if I may.

Mr. MAZZOLI. Please be frank. No pun intended.

Mr. LEMAY. I am too junior to be set up on this thing. I am not a policymaker. I was not a policymaker. I provided information. What happened to that information, how my superiors used that information, is generally beyond my ken. So I do not feel that I am being set up to be discredited.

I am very concerned, I will tell you, I am very concerned about the statements that were made by Agriculture. Because I do not believe the memo is incorrect. I believe it accurately reflects what occurred at the meeting.

Mr. MAZZOLI. Thank you.

Well, I appreciate that because I would hate to certainly, just as an editorial comment on my part, I would hate to think there is anybody even in the State Department or elsewhere in the executive branch that would allow

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you to walk up here, to perhaps be cut off at the knees in subsequent testimony or in some other forum. That would be a very unfortunate fact.

Perhaps this question is more properly directed to the chairman of the full committee, Mr. Brooks, but our friend Mr. Fish earlier said the only time the independent counsel can be triggered is when the Attorney General might have some built-in bias or some built-in conflict of interest, and therefore cannot go forward in ferreting out possible criminal charges against members of the administration.

Am I correct, Mr. Chairman, that under the statute the Attorney General can go forward on his preliminary investigation if he has information or is to believe in some plausible way that high-level members of the administration may have violated some Federal law? Is that correct, Mr. Chairman?

Mr. BROOKS. The question is whether the Attorney General thinks there might be some criminal violation of Federal law, some fraud involved, and the language——

Mr. MAZZOLI. But he does not have to have some built-in bias or some conflict of interest?

Mr. BROOKS. That is just one of the cited reasons.

Mr. MAZZOLI. I got the impression from the gentleman from New York, Mr. Fish, who suggested that only where the Attorney General could not prosecute accurately and adequately because of some built-in problem could the special or the independent counsel go forward.

Mr. Lemay, let me ask you a question here. I find—let me, first of all, say the memo that was put by Mr. Gonzalez in the record, that is your memo? Have you read that from the Congressional Record?

Mr. LEMAY. Yes, I have, but I believe that is a memo with a designated mark "draft" on it. I don't know that that is in the record, but that is the copy that was provided to me as representative of that memo.

Mr. MAZZOLI. It doesn't have "draft" written on it, but have you yourself had a chance to read this from the Congressional Record?

Mr. LEMAY. Yes, I have.

Mr. MAZZOLI. And it is an accurate reflection of what you wrote and sent upstairs on October 13?

Mr. LEMAY. Yes, it is.

Mr. MAZZOLI. I find in there what is a combination of what I would call reportings and editorializing. May I ask you if this is your usual format in making memos of conversation; in the sense there is a series of reportings and then you conclude and observe, is that the typical format for your memos?

Mr. LEMAY. In fact, I would generally add the comment that I think that is my job, is to look at the information and say this is what I think. And people can either agree or disagree or tell me to go back and do more work.

Mr. MAZZOLI. Let me further ask you whether or not the stylistic tone of this is relatively routine to your form of writing?

The gentleman from New York, Mr. Schumer, asked you some questions about big-bang theories and so forth, and again, I wonder if I might say, is this more pungent prose than you would normally use for what I would consider a fairly dry and arcane reference to just a report on a conversation that was had?

Mr. LEMAY. I mean, that is a very difficult question for me to answer. Again, it was written 3 years ago. I am generally pretty straightforward in my memos. I do not hold punches. If I come to a hearing and I take notes, I will say what different members said. I will put that into the record in

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my current job, and that is the way I do my work. I think it is important to have that kind of detail.

Mr. MAZZOLI. You state straightforward—I think it is a very straightforward memo. Straightforward, it could have a connotation of being fairly draft—fairly declarative, fairly absent adjectives and, once again, phrase-making.

So would this be a typical kind of memo from you to your superior on what we would call an average conversation you were asked to report upon?

Mr. LEMAY. Again, it would depend totally on the subject matter. In a sense, what I was providing was a warning.

Mr. MAZZOLI. That leads me to my last question. I want to acknowledge the time constraints we are operating under. That is because it might be more pungent, because it might have more red flags woven through it, threaded through it, salted through it.

Does that lead a panel of observers, this panel, to conclude you may have seen more evidence here than you might have seen in a normal setting, and therefore, you were trying to, by your memo, inform your bosses they better be alert to this thing, this was more than the average situation?

Mr. LEMAY. As I said, I was providing a warning that there were a great many allegations, and they needed to be looked into before we proceeded with the program.

Mr. MAZZOLI. Is it fair to say that when you set this thing up, you did not expect this to be considered just routine and therefore laid aside? You did, in fact—by the way you drafted it, by the way you wrote it, by what you said and what you concluded, you wanted them to give very clear attention to this thing.

Mr. LEMAY. I wanted the memo to get the full distribution I had requested, and I was happy to receive commentary. I did not, by and large.

Mr. MAZZOLI. Thank you very much.

Mr. BROOKS. Mr. Gekas.

Mr. GEKAS. I thank the Chair.

Mr. Lemay, continuing on the line of inquiry as to the purpose of the memo, was it your understanding you were going to hear what the invitees were going to say, and reduce that to a memo and then submit it to your principal; is that correct?

Mr. LEMAY. I guess technically I was the invitee. I went there.

Mr. GEKAS. I thought you said other people were invited to the meeting that you had set up.

Mr. LEMAY. No, sir. We set up the meeting with USDA, and I went there. I went to USDA for the meeting.

Mr. GEKAS. Didn't you request the meeting?

Mr. LEMAY. I requested the meeting.

Mr. GEKAS. You requested the meeting?

Mr. LEMAY. Or Mr. Hoskinson requested the meeting.

Mr. GEKAS. When you went there, was it your purpose to listen to what allegations or conversations might be held and report that, like a reporter, back to your superiors; or was the memo intended from the beginning to also include your conclusions, your determinations, as to what these conversations or allegations meant?

Mr. LEMAY. I cannot think any of many instances where I have passed a memo to anybody that didn't have my conclusions in them. I am not trying to beg the question. I am an analyst basically. I have to give some kind of an idea as to what I think of information.

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Mr. GEKAS. Could you conclude from the conversations you heard and the allegations that were made that the Department of Justice had entered the case?

Mr. LEMAY. Yes. But we knew that already.

Mr. GEKAS. Your memo reflected that, did it not?

Mr. LEMAY. I believe it does. I believe I talk about 10 different investigations and miscellaneous other

things.

Mr. LEMAY. That's right. It says here and—and this again was information I didn't have before I went to the meeting—it reads, "The FBI, Federal Reserve, Comptroller of the Currency, U.S. attorney, USDA Inspector General's Office, DOD Inspector General, Georgia State banking regulators, U.S. Customs, IRS, and Italian bank regulators are currently all investigating the Banca Nazionale Del Lavoro Atlanta Branch lending activity to Iraq." This was provided to me in that meeting.

Mr. GEKAS. When you left there, you could have included, if you felt it was pertinent in your conclusion and comment, that the Justice Department and others were fully investigating this matter; or didn't you draw that?

Mr. LEMAY. That was a known fact. I could have included it, sure. I did not exclude it.

Mr. GEKAS. You say it was a known fact. You assumed Mr. McCormack and your superiors knew that.

Mr. LEMAY. I know they knew that. I know Mr. McCormack knew that and Mr. Hoskinson knew that.

Mr. GEKAS. What prompted the necessity for this meeting then?

Mr. LEMAY. Because there was a meeting between the Atlanta attorneys and the USDA attorneys, where they began to look a little more carefully at the allegations that were coming up. I will have to refer you to Mr. Crowder's testimony. He goes over this in some great detail, I believe, in his May 21 testimony.

Mr. GEKAS. What you are saying to me then is, even before this meeting everyone knew the Justice Department was indeed investigating these various matters?

Mr. LEMAY. Yes. Again, my recollection is a little weak, but I believe the raids took place on the BNL in August, August 1989.

Mr. GEKAS. And you said at one place that you made reference to the "USDA's Brosch noted that the U.S. attorney said there was some indication," et cetera, about their diverted funds. Under Nuclear Related Equipment—that the U.S. attorney had been involved in this question? You noted that?

Mr. LEMAY. Yes, I guess I did.

Mr. GEKAS. When you said under diversion of CCC guaranteed funds/commodities—that paragraph, do you have that in front of you—you said: "Although additional research needs to be done, it appears more and more likely that CCC guaranteed funds and/or commodities may have been diverted from Iraq," et cetera.

Is that your conclusion, or did you note in your memo that the gist of the conversations were such that they concluded—and are you reporting that conclusion, or is that your conclusion? Am I making myself clear?

Mr. LEMAY. Yes, your question is clear. I am trying to remember.

I can tell you what I recall. I recalled that we discussed this issue. I do not recall whether this is a conclusion I would have made or that came out of the scope of the meeting. But, again, the reason I have a conclusion section and a comment section at the end of my memo is because I tried to

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group my personal comments in that section, rather than in other sections throughout the memo.

I cannot tell you at this time that I didn't——

Mr. GEKAS. When you say, "it appears more and more likely," that isn't relegated to your personal conclusion, but rather what you felt was concluded by the other parties?

Mr. LEMAY. I really don't recall. But—I simply don't recall.

Mr. GEKAS. Then you end your conclusion and comment with the statement that the U.S. attorney was going to be meeting with the USDA attorneys in Atlanta. Is that correct?

Mr. LEMAY. Yes.

Mr. GEKAS. Was there any time during this meeting, or before or subsequently, that you felt that the Justice Department was not involved in this matter, was not pursuing any one of the allegations?

Mr. LEMAY. I was under the impression the Justice Department was very actively involved. Again, this is peripheral information. I am not with the Justice Department. I had no reason to believe they were not heavily involved, once they raided the Atlanta branch.

Mr. GEKAS. I have no further questions.

Mr. BROOKS. Mr. Conyers, Mr. Hughes.

Mr. Conyers.

Mr. CONYERS. I will pass.

Mr. BROOKS. Mr. Hughes, the gentleman from New Jersey.

Mr. HUGHES. Thank you, Mr. Chairman.

Mr. Lemay, I understand your October 13 memo was distributed to a number of people, Richard McCormack, Under Secretary, assistant to the Secretary of State for Economic Affairs.

Was it distributed to other participants, participants at the meeting?

Mr. LEMAY. It was my intention it was to be distributed to the participants.

Mr. HUGHES. Do you know from your personal knowledge that it was?

Mr. LEMAY. I do not. I—again, I would have passed it to our support staff.

Mr. HUGHES. At any time between then and let's say October 20 when the Brosch memo was apparently written, did you have occasion to talk to any of the participants about the meeting?

Mr. LEMAY. I have a vague recollection of some phone calls, but I don't recall discussing the meeting per se.

Mr. HUGHES. Let me be more specific. Between then and the time the Brosch memo surfaced, did you have occasion to talk to Kevin Brosch?

Mr. LEMAY. I have no records or phone records. I was not able to refresh my memory on that. I don't remember. I think I probably did, but I do not remember.

Mr. HUGHES. At any time between then and October 20, did he raise any questions about your particular memo?

Mr. LEMAY. Not to the best of my recollection.

Mr. HUGHES. Did he intend to refute anything you said by way of recollection as to what took place at the October 13 meeting?

Mr. LEMAY. No, sir.

Mr. HUGHES. Are you familiar with the October 20 meeting of Kevin Brosch?

Mr. LEMAY. Meeting in Atlanta?

Mr. HUGHES. No, the October 20 memorandum.

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Mr. LEMAY. No, sir, I am not. I—this is the Agriculture analysis memo. I believe I saw that. Again, I am a little weak here. I don't know what document you are referring to.

Mr. HUGHES. There was a memo prepared October 20 by Kevin Brosch giving his version of what took place at your meeting.

Mr. FISH. Would the gentleman yield? Would the gentleman be willing to introduce that memo into the record?

Mr. HUGHES. I am going to do that, ask that that memo and other memos be offered at the conclusion of my examination, if I might.

Mr. LEMAY. I have not seen that memo.

Mr. HUGHES. Mr. Chairman, is there any reason why we cannot furnish that to Mr. Lemay?

Mr. BROOKS. Why we can't furnish what?

Mr. HUGHES. The Brosch memo of October 20.

Mr. BROOKS. Do we have a copy of it? It is in the file?

Mr. HUGHES. While we are waiting for an answer on that, Mr. Lemay, are you familiar with a memo that was prepared by the officer—Office of Inspector General?

Mr. LEMAY. The USDA Inspector General?

Mr. HUGHES. Yes.

Mr. LEMAY. I know there was a memo prepared by the Inspector General's Office, and I have seen it referred to, but I don't recall actually having seen that memo.

Mr. BROOKS. Mr. Hughes, there is no reason he can't have a copy. We can send a copy down there. He can read it again. We can all read it. It is a nice memo.

Mr. HUGHES. Mr. Chairman, I think it would be important for Mr. Lemay to read that, as well as—also Mr. Lemay, have you read the Inspector General's recitation of what took place at the meeting from his account of talking to the other participants?

Mr. LEMAY. No, I have not.

Mr. HUGHES. I wonder if we could make that available to Mr. Lemay, also; and at the same time, Mr. Chairman, I wonder if we could make all three memos a part of the official record, and I would offer them for that purpose.

Mr. BROOKS. They will be a part of the formal record.

[See appendix II–5.]

Mr. HUGHES. I see.

Mr. BROOKS. He can read them. I don't know if he has time right now, with three other witnesses, to read those documents and then give you a judgment on what he thinks about them, because he is not necessarily involved in those particular ones.

Mr. HUGHES. Mr. Chairman, I think the point is that there have been some suggestions that the Brosch memo is an effort to discredit the Lemay memo. And so I think it is important for Mr. Lemay to read that and to—not on my time, I might say.

Mr. BROOKS. He got the general import of Mr. Brosch's attitude when he slammed the door and left.

Mr. HUGHES. I understand that. I wonder if I can ask Mr. Lemay to read that memo and the Inspector General's memo, where he talked to various participants and confirms much of what is contained in your memo, so perhaps later in these proceedings we can ask you some more specific questions about that.

Mr. LEMAY. I am happy to look at it.

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Mr. HUGHES. Mr. Lemay, you alluded to the fact that you saw some evidence—some documentary evidence, I presume—that there were some arms transactions involving third countries at some point. Did I understand that correctly?

Mr. LEMAY. Yes.

Mr. HUGHES. And——

Mr. LEMAY. Again, I want to make one point clear, I am not an expert in these. I do not know how the transactions occurred; I do not know if they were legal or illegal.

Mr. HUGHES. What was the nature of the information you saw?

Mr. LEMAY. It was——

Mr. HUGHES. Bills of lading? Were they memos?

Mr. LEMAY. It was cable traffic.

Mr. HUGHES. Cable traffic?

Mr. LEMAY. Again, you are asking me stuff I really don't have knowledge on. You are going to have to ask other people what is in there and how it was handled and whether the Congress was informed and all the rest of it.

Mr. HUGHES. When did you become aware of this information?

Mr. LEMAY. As I was going through the documentary record that had been submitted.

Mr. HUGHES. Do you recall what type of arms were involved in the cable traffic?

Mr. LEMAY. I am sorry. I did not read the cables.

Mr. HUGHES. Can you reference it for us?

Mr. LEMAY. Not—no, I cannot. Again, I did not—I did not spend any time with it. It was not my issue. I was an economist.

Mr. HUGHES. You do recall that it involved transactions to Iraq?

Mr. LEMAY. Yes, it did.

Mr. HUGHES. Did it involve transactions to other countries, or was it just limited to Iraq?

Mr. LEMAY. Well, it involved transactions between other countries and Iraq.

Mr. HUGHES. I see. And did the—did the traffic indicate, you know, what our involvement might have been?

Mr. LEMAY. I have to say, again, I did not go into any kind of detail. I saw this stuff and said, this is outside my area. I do not need it for my hearing to discuss my memo.

Mr. HUGHES. Did that raise a red flag to prompt you to make inquiry of anybody else about it?

Mr. LEMAY. No, it did not. I do not know what the legal issues are involved with that issue. I mean, I don't know anything about it, frankly, and——

Mr. HUGHES. You do not have—my time is almost up—you do not have any recollection as to the types of arms involved in the transactions?

Mr. LEMAY. None whatsoever.

Mr. HUGHES. Did they mention nuclear arms of any kind? Nuclear——

Mr. LEMAY. I have no recollection. Not only do I have no recollection; I have no independent knowledge. I just didn't look at the stuff.

Mr. HUGHES. I see. Thank you, Mr. Chairman.

Mr. FISH. Mr. Chairman.

Mr. BROOKS. Mr. Fish.

Mr. FISH. Returning to Mr. Hughes' request, I ask the memorandum prepared by Kevin Brosch and addressed to Mr. Conway and Ms. Bullington,

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dated October 20, 1989, be made a part of the record at this point, because I think it is important. It is a contemporaneous memorandum by a principal at the meeting of the 13th of October.

Is that going to appear now in the record at this point?

Mr. BROOKS. I am not sure it will be at this point. I already told Mr. Hughes that that and the other documents that you refer to are going to be included in the record, and we will consider putting it in at the conclusion of this testimony.

Mr. FISH. Thank you, Mr. Chairman.

Mr. BROOKS. Does Mr. Coble have any questions on this?

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Lemay, it is good to have you here. Mr. Lemay, hearings such as this, I guess by necessity are, or by choice, involve the propounding of identical questions time and time again, soliciting identical answers time and time again. I am going to fall into that rut, but I think that is the nature of the beast, and I don't mean this critically.

The gentleman from New Jersey has plowed the field that I was plowing in my mind, and I want to replow it, if I may.

Directing attention to the October 13 meeting, did you respond to an invitation, or did you initiate the meeting?

Mr. LEMAY. It is my recollection that I—we—somebody—I don't know whether it was myself or Mr. Hoskinson initiated the request for the meeting.

Mr. COBLE. You went to Agriculture for the meeting?

Mr. LEMAY. I did.

Mr. COBLE. Were you the only State Department representative at the meeting?

Mr. LEMAY. I was.

Mr. COBLE. How many Agriculture officials attended?

Mr. LEMAY. My recollection, there were four.

Mr. COBLE. There were five of you at that meeting.

I am going to reiterate what the gentleman from New Jersey said. I think this is important. As I recall from your testimony, Mr. Lemay, you do not know with certainty who the recipients were of your October 13 memorandum; is that correct?

Mr. LEMAY. No, I don't know with certainty who received the memo, other than Mr. Hoskinson, and to the best of my recollection——

Mr. COBLE. Other than your boss?

Mr. LEMAY. Yes.

Mr. COBLE. Conversely, did you receive any written or oral message from anybody at the meeting?

Mr. LEMAY. I did not.

Mr. COBLE. Not then or since then?

Mr. LEMAY. I have never received anything concerning the meeting from the Department of Agriculture.

Mr. COBLE. The reason I think this is very timely and very significant, I think it would be one thing if the—your colleagues at Agriculture had been privy to your memorandum of the October 13 meeting, disagreed with it, and did not respond. That is, of course, a horse of one color.

If they did not receive your memo, and then subsequently perhaps learned of it, and then came forward and said this is all wet, nothing to this, obviously we have two different avenues that would be pursued there.

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Mr. Chairman, I think it is incumbent upon this committee to act upon all the information which we can gain; and I think—in view of Mr. Hughes' questioning and my questioning—I think it apparent now that we perhaps need additional information. Not that anyone is not telling the truth, but I think it would be advisable if we could supplement what Mr. Lemay has told us with information or testimony from the Agriculture Department people who were at that meeting.

Let me ask you another question—if I may, Mr. Lemay—in regard again to the October 13 meeting. You stated in your testimony—page 5, I think it was—I am quoting now—"In the meeting we discussed allegations—and I want to stress—allegations of wrong-doing on the part of the Iraqis. At no time was I presented with evidence or proof that the allegations were correct. We were faced with a situation where all agencies had incomplete information."

Now in light of that, Mr. Lemay, how did you reach the conclusion in your memo that, "it appears more and more likely that CCC guaranteed funds and/or commodities had been diverted from Iraq to third parties in exchange for military hardware?"

Mr. LEMAY. Note that it was and/or commodities may have been, may have been.

Now, it is a subtle difference, but I was not saying—again, I was trying to deal with allegations, and maybe there are some sentences in this memo that are not beautiful prose, but in general I think the point that came across in this memo and the point I wanted to make, there are serious allegations. You need to investigate the allegations, you need to find out what is going on before you decide what your policy recommendations are to be. I don't think I was remiss in making that kind of statement.

Mr. COBLE. I didn't intend to imply that you were. It seemed to me there appeared to be lack of proof on the one hand, and perhaps you were qualifying that in your comment. You say you said "may have," "may have been diverted?"

Mr. LEMAY. "May have been." It was basically a look-before-you-leap-type statement.

Mr. COBLE. Let me ask you one final question, Mr. Lemay.

Did you know then or do you know now of any single instance of this so-called diversion or exchange for military goods of CCC-guaranteed commodities?

Mr. LEMAY. I did—I do not.

Mr. COBLE. Thank you, sir. I have no further questions, Mr. Chairman.

Mr. CONYERS. Mr. Chairman.

Mr. BROOKS. Mr. Conyers.

Mr. CONYERS. I thank the chairman.

Mr. Lemay, I—I first of all want to commend you. I only have a couple questions, but I think you are performing an incredibly important service, and you reflect so well upon those people in the Federal Government that just want to do the right thing.

We are talking now about a $2 billion default on Iraq's part that may have to be paid by the American people. We are talking about 5 billion dollars' worth of agriculture commodity credits from 1982 to 1990, and so I ask you, to your knowledge, were you the first to warn your superiors at State that these grain loans might be being used for other purposes?

Mr. LEMAY. I was not.

Mr. CONYERS. You were not?

Mr. LEMAY. I am sorry.

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Mr. CONYERS. Were there a long line of other people preceding you?

Mr. LEMAY. Excuse me. Did you ask whether the grain loans had been used for other purposes?

Mr. CONYERS. No. I asked, were there other people who warned their superiors that the grain loans might be used for other purposes.

Mr. LEMAY. Well, I mean, I had discussions with all of my superiors before I went to the meeting. So the information was generally—there was some general knowledge of what was going on, and there is a documentary record of when memos went forward.

Mr. CONYERS. Like Sam Hoskinson, you talked with him about the matter?

Mr. LEMAY. Yes.

Mr. CONYERS. You talked with the Under Secretary then, Richard McCormack, about this matter?

Mr. LEMAY. It is my recollection that I did, yes.

Mr. CONYERS. Now, were there other persons like yourself, that brought this matter to the attention of the Department of State?

Mr. LEMAY. That brought this to the attention of the Department of State, or to policymakers in the Department of State?

Mr. CONYERS. Yes.

Mr. LEMAY. Well, I—I believe that the—all of the bureaus involved were interested in finding out what the allegations were and whether there was any evidence that they were in any way correct; so I would have to answer, yes.

Mr. CONYERS. There were probably others whose names you may not particularly know.

Mr. LEMAY. That's right.

Mr. CONYERS. On the other hand, there may be some names that you might faintly recall.

Mr. LEMAY. That is also right.

Mr. CONYERS. Right. Well, let's go down the list of the names that you faintly recall.

Mr. LEMAY. Sorry to keep you waiting.

Mr. CONYERS. That is no problem at all. That is what counsel are for.

Mr. LEMAY. I wasn't sure you were going to give me a list, or I was to give you a list.

Mr. CONYERS. OK.

Mr. LEMAY. It is difficult for me to say exactly who was involved in which decisions and who was critical to any part of the policymaking. It was a very big policy and there were a lot of people involved. I am familiar with a small part of that policy.

I know in terms of the CCC issue, the memo was given to my superiors. I am—as to who discussed the overall Iraqi policy issues with the Secretary or the Deputy Secretary or any of the other officials in the Near East Bureau, or in the legal advisor's office, I really can't say with a degree of certainty. Again, it may be that it is in the documentary record that has been provided to the Agriculture Committee; and I am absolutely unfamiliar with what documents have been provided to this committee, since I did not see them.

Mr. CONYERS. I compliment you on your answer, because you are under oath, and we don't need to search for these recollections if they will are not in front of you.

Now, Mr. Lemay, were you surprised when nobody got back to you after you submitted the memo?

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Mr. LEMAY. I don't think I said nobody got back to me. I think I discussed it with Mr. Hoskinson, and that would have been normal.

Mr. CONYERS. But, I mean, were you surprised about the reaction that you received?

This is a personal view I am trying to seek from you, so your counsel won't be of much good to you.

Mr. LEMAY. No, I am not asking for his advice. I—I was just turning to him to see if I could jog my memory.

Mr. CONYERS. Tell me what you recall.

Mr. LEMAY. I don't recall being particularly surprised. I recall I gave it a distribution that I thought would ensure—that would get it into the hands of people making these decisions. I figured that was the end of it, that was the end of my role.

Mr. CONYERS. Didn't you think Secretary Baker should find out about this right away?

Mr. LEMAY. Well, I believe the information should have received the distribution I requested for it, and he was not part of that distribution.

Mr. CONYERS. So you didn't think Secretary Baker should receive it right away?

Mr. LEMAY. I believe that that call remained with Mr. McCormack.

Mr. CONYERS. I see. OK.

Now, you indicated earlier that you requested copies of your memo to be provided to the participants from USDA in the October 13th meeting. Did those USDA officials provide you with any memo they may have written concerning the meeting?

Mr. LEMAY. Not to the best of my recollection. I do not recall ever receiving any documents from USDA.

Mr. CONYERS. Right. We got a little two-pager here that is more embarrassing than anything else, so I assume that there wasn't any writing, at least that we know about.

Final question: What is your understanding of the timing of your memo, sir, in relation to the granting of the fiscal year 1990 commodity credits for Iraq?

Mr. LEMAY. My memo, I think, was probably early in the process, and again, it was a memo discussing allegations which were apparently then investigated by different agencies. I understand USDA's Inspector General investigated and found no case for wrongdoing, and then the process of making those determinations as to amounts and so forth went forward. Again, I am not familiar with that process.

Mr. CONYERS. Great. Thank you very much for your responses, Mr. Lemay.

Mr. BROOKS. Thank you, Mr. Conyers.

Mr. James, the gentleman from Florida.

Mr. JAMES. Thank you so much.

Mr. Lemay, what is your background, your educational background?

Mr. LEMAY. I have an associate of arts degree from the University of Maryland. Bachelor of science, in Foreign Service, from Georgetown University and a master of arts from Johns Hopkins School of Advanced International Studies; and I have done a year of additional advanced graduate work in theoretical economics at the George Washington University.

Mr. JAMES. What were your bachelors or arts degrees in?

Mr. LEMAY. The undergraduate degree was in political science with a minor in economics. Graduate degree was in a field which is called Development, which is mainly economic development issues.

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Mr. JAMES. Your background is not in law; it is in economics and political science?

Mr. LEMAY. I have no background in the law. I have never been part of any kind of legal action.

Mr. JAMES. Mr. Brosch, of course, is an attorney?

Mr. LEMAY. That is correct.

Mr. JAMES. So it would be reasonable to assume in the techniques one would express themselves would rely largely on one's background and education as to how you would deliver conclusionary statements and recitation of facts Would that be reasonable to assume?

Mr. LEMAY. I don't know. I think often the facts speak for themselves.

Mr. JAMES. Indeed. Let's read your summary conclusions and tell me how much there is in terms of facts in this summary, conclusion, and comments you have in your memo. Taken together the points discussed during the meeting indicated we should provide carefully and urging the immediate provisions of the CCC guarantees to Iraq. "If smoke indicates fire"—that is not a fact is it, anything said thus far—"we may be facing a four-alarm blaze in the near future." That is not a fact is it, I would assume?

This is particularly true, given the intense scrutiny the CCC program has been under during the last year.

McElvain indicated that there were 19 investigations of CCC this year, and the integrity of the program is now in question. USDA attorneys will be going to Atlanta for discussions with the U.S. attorney during the coming week. Additional information on the various investigations will be available upon their return.

The only fact I really find in there—I am not being critical of your conclusion—the "USDA attorneys will be going to Atlanta for discussions with the U.S. attorney in the coming week." That was not yet a fact at the time. This conclusion is the intention of the attorneys as to where they might go 1 week later.

Mr. LEMAY. A conclusion and comment statement; I wasn't putting facts in there.

Mr. JAMES. Precisely my point. It wasn't your intention there to put facts in that conclusionary comment—is that correct?

Mr. LEMAY. It was my intention to put an analysis of what I thought was worth analyzing.

Mr. JAMES. Was that a political conclusion or a legal conclusion—your conclusions and comments when you talk about "smoke," "fire?"

Mr. LEMAY. It was neither. It was a statement to the Under Secretary, we should proceed with great caution.

Mr. JAMES. Analyzed perhaps from your educational background of economics and political science?

Mr. LEMAY. It was not a legal conclusion; I am not a lawyer.

Mr. JAMES. Have you analyzed—I understand you have not yet analyzed the subject matter contained in the lawyer's memo and yours yet; is that correct?

Mr. LEMAY. Have I not seen their memo.

Mr. JAMES. I have, and it appears to me that—both when you examine the facts and the other facts you recited that appear in the Congressional Record, that the facts are largely facts concerning allegations made, as far as what we are to expect to see the investigation on in your memo.

Mr. LEMAY. In my memo?

Mr. JAMES. Yes.

Mr. LEMAY. Yes, it is a question of allegations.

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Mr. JAMES. Almost no recitation of facts, but allegations concerning things that need to be investigated; that is, perhaps a fair recitation made no conclusion as to facts, but only as to the existence of allegations that needed to be investigated. That was the substance basically of the memo, was it not?

Mr. LEMAY. The substance of the memo was that these issues were, in fact, discussed.

Mr. JAMES. Yes, which was a fact. You discussed these issues and these allegations.

Mr. LEMAY. That is right.

Mr. JAMES. It was not a discussion to come to a conclusion as to any specific fact, was it? In other words, the purpose of your meeting was to discuss mere allegations, not to make factual determinations.

Mr. LEMAY. The factual determination here was that additional investigation was needed.

Mr. JAMES. Yes, thank you.

Now, I find—and correct me if I am wrong—the attorney's memo discussed almost the identical allegations. I compared point one, payments. I find in his memo that he also—where you said, payments, available information indicates that the GOI required exporters to pay a substantial consulting fee.

Well, he covered that, too. Allegations owed. He said in his legal memorandum or his memorandum—whether—of the meeting, allegations that exporters may have been required to pay consulting fees to companies in the United States that were controlled by the Iraqi Government, parenthesis, names mentioned were XYZ Corp. And Churchill-Matrix.—covered the same subject matter.

The next item, diversion of guaranteed funds, commodities.

Three, this also was mentioned in his memo. Allegations, commodities shipments destined for Iraq under GSM program were transshipped elsewhere and bartered for cash or materials—that is also mentioned in yours.

In other words, as I go down it, I think you will find your memo is totally consistent; it is a matter of style and expression. His, being as I think lawyers would report facts, specifically avoiding the temptation to come to incendiary remarks, whereas yours was an impression from your background. Nothing wrong with it—of coming to conclusions that would be more layman in nature and less careful in regard to conclusionary factual allegations.

Indeed, then you were careful, I find, very careful to make no statement of fact; but because of the alarm and the quality of the allegations, you used colorful language to perhaps get the attention of your superiors. I don't see a distinction between the two.

If you think there is a difference factually or there is something that is different—I did find one difference. I have not—I did not have time to see whether he made a reference to your comment on nuclear-related equipment. However, the nuclear-related equipment in your memo referred to USDA's. Brosch noted that the U.S. attorney said there was some indication that diverted funds and possibly direct bank-lent funds were used to procure nuclear-related equipment. In other words, that was his comment which was omitted.

The only thing I could find thus far omitted was something he perhaps said at the meeting. I don't know how relevant that may be. I was surprised to see the memos as parallel as they were as far as subject matter. I was not surprised to see the difference in style. And I find—I didn't see the inconsistencies.

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So if anyone on this committee can point up the inconsistencies that existed between those two memos, I would appreciate it. If I missed something I haven't heard it yet. Can you point up something he may have left out of his report?

Mr. LEMAY. I have not seen his report.

Mr. JAMES. And no one has told you there was something—there was a factual difference between the two reports?

Mr. LEMAY. No. I didn't know until this hearing that there were reports.

Mr. JAMES. I see. You didn't know he had done a memo?

Mr. LEMAY. I did not know that.

Mr. JAMES. Thank you very much. No further questions.

Mr. BROOKS. Mrs. Schroeder, the gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you, Mr. Chairman. I don't know whether to ask legal questions or factual questions. I really want to compliment the witness on his wonderful record and point out, my understanding is a lot of your job is writing memos. This isn't the first memo you have written?

Mr. LEMAY. No. I have been writing memos for 11 years.

Mrs. SCHROEDER. If it is a meeting, it is a memo, right?

Mr. LEMAY. That is pretty much the case, yes.

Mrs. SCHROEDER. Basically a lot of your promotions and a lot of distinctions you received, that would be a very important part of your job criteria as to how well you write memos to your superiors?

Mr. LEMAY. That is correct.

Mrs. SCHROEDER. One of the things, I suppose you are not just to give them hard facts, but tell them maybe there were traps out there——

Mr. LEMAY. That was my job working for the Under Secretary, yes.

Mrs. SCHROEDER [continuing]. If whistles and bells rang in your head. I assume he selected you, and his head was kind of similar to yours and he would want to know where those whistles and bells were ringing, I guess. You were not there as legal counsel to say, this had been closed out. You—but you could say, this might be a problem; and that is what you were trying to say in the memo, is my understanding.

Mr. LEMAY. That is correct.

Mrs. SCHROEDER. You weren't holding yourself out as the Under Secretary's counsel.

Let me ask a question: Were you at all concerned after this all happened and you later on found out that this had been shifted from your boss to someone else's portfolio or to someone else's attention?

Mr. LEMAY. At the time—even today, I don't think I was terribly concerned about it. It was not my issue to be concerned about. If the senior policymakers of the State Department decide that one Under Secretary or another is to handle an issue, that is really their call.

I am just going to be there to support the Under Secretary for whom I work. If it is clear he is no longer following an issue or no longer interested in an issue, for whatever reason, that is going to become a lower priority for the people on his staff because they are going to have other work to do.

Mrs. SCHROEDER. Does this happen a lot? I mean, I think immediately of the Congress where once a committee gets assigned an issue, the Speaker can't take it back and give it to another one. So you are telling me the Secretary often may transfer an issue from one Under Secretary to another. Does that happen frequently?

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Mr. LEMAY. I don't know who does it. It may be by mutual agreement. I don't know how those decisions are arrived at. I am not really—does it happen frequently? Again, I am in a weak position to say that.

I know there were several other issues divvied up in the period, unrelated to this. Sometimes an issue that begins as an economic investigation—I don't mean "investigation" in the sense of legal, but an economic issue—turns into some other issue. Maybe it becomes a foreign aid issue or a regional issue. Different people and different actors will tend to move into a more paramount position.

Mrs. SCHROEDER. They never gave your boss any reason that you know of why it got transferred?

Were they told it now looks like something other than an economic issue, or did you ever ask your boss why did we lose this oversight? I find this kind of interesting because human beings tend to fight over turf. They all willingly shrugged their shoulders and said, I guess someone else needs to handle this?

Mr. LEMAY. I think you need to ask Mr. McCormack that series of questions. I don't recall going in and saying, gee, Mr. McCormack, why did they take this away from you? It wouldn't be my place to do that.

Mrs. SCHROEDER. When did you know it was taken away from him?

Mr. LEMAY. To the best of my recollection, we were involved in this issue from probably around August 1989, through—through the discussion period when it was decided to double-tranche, and then we were sort of out of it; and then we become involved a little bit when it came time to do a second tranche.

Again, I recall our input on the second tranche issue was rather minimal. Again, these are just my recollections. I do not know what Mr. McCormack may have discussed with other Under Secretaries, or what may have happened at the senior staff meetings. This is my recollection of what I know, and I only, again, know a small part of the picture.

Mrs. SCHROEDER. But McCormack never talked to you specifically about this memo and what kind of information you were conveying to him?

Mr. LEMAY. About my memo?

Mrs. SCHROEDER. Yes.

Mr. LEMAY. I have a recollection we discussed it, but I can't really put it in perspective. It would have been odd had I not discussed it. I recall discussing it with Mr. Hoskinson.

What I can't remember is whether Mr. McCormack right at that time discussed it with us, or whether Mr. Hoskinson discussed it with us, I just don't recall.

Mrs. SCHROEDER. Do you remember any particular kind of reactions from Mr. Hoskinson or Mr. McCormack in discussing this memo with him? It doesn't sound like a routine memo.

Mr. LEMAY. Again, this is my recollection, but Mr. Hoskinson seemed to think it was an important memo.

Mrs. SCHROEDER. He thought it was an important memo, and you can't specifically remember a reaction from McCormack?

Mr. LEMAY. No, I don't remember a specific McCormack reaction. Again, I probably wasn't the person who handed it to McCormack. He may have come out and said, gee, this is a great memo, or this needs more work. I don't recall.

Mrs. SCHROEDER. There wasn't any gossip that went around about the memo and this issue and it being transferred to another Under Secretary?

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Mr. LEMAY. Not, to the best of my recollection, among the people I talked to, and those were other special assistants. Again, it is a long time ago.

Mrs. SCHROEDER. Did you handle other things dealing with the commodity credits, other issues and meetings that you went to at the Department of Agriculture, or was this——

Mr. LEMAY. This was the only commodity credit issue that came up. I did some work on coffee policy. Miscellaneous things would come up at different things, and those tended to fall into my portfolio.

Mrs. SCHROEDER. Thank you very much, Mr. Chairman. I really appreciate your letting me do this. Thank you.

Mr. BROOKS. Mr. Campbell, the gentleman from California.

Mr. CAMPBELL. Thank you, Mr. Chairman.

Mr. Lemay, thank you for your testimony and being here today. We have a very specific and narrow purpose on this committee. It is to ascertain whether there should be a special prosecutor, an independent counsel, I guess is the phrase. And the statute under which we operate says, we look into that question where we believe there may be wrongdoing by a specified number of individuals. And those are the President, Vice President, Cabinet officers, individuals above Executive Schedule 2 in the Executive Office of the President, Assistant Attorneys General working at executive level 3 or higher, the head of the CIA or the Deputy Commissioner of Internal Revenue. Chairman and treasurer of the national campaign committees of either party seeking the Presidency.

We have two possible routes: One, something you knew from the evidence from that meeting, or otherwise, would indicate one of these listed individuals might have condoned diversion. The other route is that your memo itself, being ignored by one of these individuals, might indicate complicity in a coverup or desire not to explore fully.

This is my point of departure for the two questions I have to ask you.

Going back to the first route, is there anything you know, based upon what you heard at that October 13 meeting or in any other capacity or in any other context that gives you cause to believe or suspect that any of the individuals whom I listed had knowledge of or condoned diversion of CCC money for Iraq?

Mr. LEMAY. There is not.

Mr. CAMPBELL. Let me pursue the second path. I observe that your memorandum is addressed to the Under Secretary and not to the Secretary of State. I observe also, if I might just refresh your memory, that in the part of the memorandum dealing with diversion you conclude, the paragraph that begins: "Although additional research needs to be done"—the last sentence; perhaps you would be kind enough to read that aloud. It might be more helpful. The last sentence of your memorandum in that paragraph.

Mr. LEMAY. The sentence beginning where documents indicate or the very bottom of page 2,011?

Mr. CAMPBELL. The carryover page 2,012 appears to be the carryover paragraph.

Mr. LEMAY. Parties in exchange for military hardware?

Mr. CAMPBELL. Let me draw your attention to that sentence which concludes the paragraph in which—parties in exchanges, the carryover sentence.

Mr. LEMAY. You want me to read that although additional research needs to be done?

Mr. CAMPBELL. That is the paragraph. I draw your attention to the last sentence of that paragraph.

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Mr. LEMAY. "BDLA paperwork is so sloppy on this point that it may be months (or never) before we can reach a firm conclusion on the diversion issue."

Mr. CAMPBELL. That is the sentence to which I refer. "BDLA paperwork is so sloppy on this point that it may be months (or never) we can reach a firm conclusion on the diversion issue."

This is your judgment contained in a memorandum to the deputy.

On the basis of what you know and what happened to your memorandum and how it was treated in the Department after you wrote it and sent it upstairs, or sent it into your boss, do you have any reason to believe that diversion of funds to Iraq was condoned by any individual listed in the list I gave you at the start of my question?

Mr. LEMAY. To the best of my—to the best of my knowledge, no. I mean, it was not condoned. I believe people were looking into these allegations very seriously.

Mr. CAMPBELL. I thank you, and I thank the chairman.

Mr. BROOKS. Mr. Glickman had a couple of questions and I think Mr. Berman did.

Mr. Glickman, the gentleman from Kansas.

Mr. GLICKMAN. Thank you, Mr. Chairman. Mr. Hughes asked if you had seen the memo from the Agriculture Office of Inspector General dated June 8, 1992. I believe your answer was, you had not seen the memo.

Mr. LEMAY. Not to the best of my recollection.

Mr. GLICKMAN. That was a memo—actually I don't know why it came to us at this late date, confirming your version of the 1989 meeting. There were notes taken at another briefing on the same subject by Assistant U.S. Attorney Gail McKenzie. She briefed Brosch and McElvain. The OIG has compared the notes of both briefings and put this in memo form.

I want to make sure the record reflects the fact that the other memo confirms much of what your memo contained. That memo, that USDA memo, compares notes taken by two OIG, Office of Inspector General, special agents who attended the assistant U.S. attorney's briefing of Brosch and McElvain. It compares these notes point by point, and the two versions appear to confirm each other very specifically.

First, with regard to the consulting fee to a company called Churchill-Matrix and allegations that Churchill-Matrix provided military hardware to Iraq.

Second, both memos discuss, "after-sales services."

Third, both discuss the likelihood that commodities bound for Iraq were diverted to third countries.

Fourth, both memos discuss nuclear missile technology, and specifically, the terms, "nuclear fuel compactor"—it is "compounder" in the other memo, but it is probably the same term I don't know, and, "nose cone burr." Again, that is in the OIG's memo, separate and apart from yours.

Fifth, both memos contain additional allegations about overpricing commodities.

Now, I would like you to look at this, as Mr. Hughes asked you. I raise this to point out the questions with respect to comments disavowing and discrediting your memo by Messrs. Brosch and Mr. McElvain. As far as I am aware, I would say to my colleague from Florida, I believe this memo and the OIG memo basically confirm each other, two independent sources talking about the same subject.

The other thing that I find that is interesting in all of this is Mr. Brosch, in his memo, basically treats in rather cursory fashion the allegations which are made; and it goes on—apparently, there was 1 week's worth of inves-

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tigation done by him. People went down to Atlanta, talked to the bank and everything else.

If you look at the testimony Mr. McElvain gave to Mr. Gonzalez's committee—I am looking at page 271—Mr. McElvain, who is Director of Export Credits at the CCC, who attended the meeting which was the subject of the OIG's comparative memo he was asked about your memo of October 13. McElvain stated, "OK, first thing, I would like to point out that I have never seen that memo, but I did read about the contents of the memo in the Congressional Record and, Mr. Chairman, I say that, no, I do not recall expressing any—making any comments or having any doubts during that meeting that there was a possibility of any of these commodities being diverted or bartered or whatever, or for military equipment, I believe, is the way that memo is stating. That memo, in my opinion, was—the discussions of that meeting were misrepresented very badly."

And then, if you look at page 288, Mr. Brosch said those notes are "totally misleading. They do not represent the conversation that was had in that meeting on October the 13th, in my view."

And then, on page 291, Mr. Brosch says—he is talking about his name being spelled correctly, and then he said to Mr. Vento, "Beyond that, I am not too sure if he got anything right." Then you keep going down that page, 291, and Mr. Brosch continues, "All I can say is I can't account for why Mr. Lemay wrote this. He wrote it. You will have to ask him, but it is certainly not accurate, in my judgment."

I guess—I raise these points to again point out that there is another memo from the Office of Inspector General which outlines the notes that were taken by the OIG people who were at another meeting attended by Brosch and McElvain that basically confirms your memorandum.

I just want to again ask you, for the record, when Mr. Brosch characterizes your memorandum as totally misleading and not accurate, I wonder if you would repeat what you have stated before, perhaps, or how you would respond to his determination that, in fact, it was not accurate.

Mr. LEMAY. I completely stand behind the memo that I wrote. I will take full responsibility for what is said in there, and I believe I was right in providing that information to Under Secretary McCormack.

Mr. GLICKMAN. Then I would ask one other question. In your memo you conclude, "If smoke indicates fire, we may be facing a four-alarm blaze in the near future." And then you go on, "This is particularly true given the intense scrutiny the CCC program has been under during the last year. McElvain indicated that there were 19 investigations of CCC this year, and the integrity of the program is now in question."

Now, as it turned out, there have been a whole series of not only criminal investigations, but congressional investigations involving the operation of the Commodity Credit Corporation during the last 5 years. But can you give us a little more information of what kinds of scrutiny you were referring to in that memo, and what you were talking about, "If smoke indicates fire, we may be facing a four-alarm blaze in the near future?"

I am not exactly sure how that relates to the rest of the stuff in your memorandum.

Mr. LEMAY. I think what I was trying to say with "the smoke indicates fire" line, was that if any of these allegations prove to be true, if any of these allegations are borne out, then the administration has an even bigger foreign policy problem on its hands that will have to be dealt with. I was simply warning people that you have allegations here that are very serious, and that these allegations have to be looked at.

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It is any my general view that people did look at the allegations, and decisions were made that they were baseless and so forth and so on. But, again, if smoke indicates fire, there was a lot of smoke and the smoke involved all of the issues that I have discussed in my memorandum.

Mr. GLICKMAN. Just finally, the CCC, the intense scrutiny the CCC program has been undergoing, was that something that had been related to you at that meeting by the other folks that were there, and specifically by whom?

Mr. LEMAY. The CCC program scrutiny issue I recall coming up with Mr. McElvain. We were discussing what other investigation—and, again, this is 3-year-old memory, but I recall we were discussing just the general types of investigations that were proceeding, both in the BNL thing and I remember him mentioning that there were other investigations,, and I said, Well, what type? How many, what type? And then we came up with a number. I didn't know whether that was correct information or incorrect.

Again, I found it to be consistent with what I was putting in the memo, so when I was going through my notes, I added that as well.

Mr. GLICKMAN. OK.

Thank you, Mr. Chairman. Appreciate it.

Mr. BROOKS. Mr. Frank from Massachusetts.

Mr. FRANK. Mr. Lemay, I have one question, inviting you to do some reconsideration. Given all that you have been through and all that you have heard, do you know now wish you went to law school? You don't have to answer that.

Mr. LEMAY. No, I like being an economist. I don't have a problem.

Mr. FRANK. A couple of things I think should be clear about your own role, which I must say I admire enormously. It shouldn't be the case that simply doing your job without worrying about the consequences is a remarkable thing but sometimes it is.

You wrote this memo, clearly contemporaneously, with no idea it was to be made public; is that correct?

Mr. LEMAY. I never expected it to be made public.

Mr. FRANK. So that, to the extent you were being incendiary, and I suppose the phase "where there is smoke, there is fire" is literally incendiary, you were not writing a memo that later it was to be made public or used in any way? It was written for internal consumption in the Department?

Mr. LEMAY. Yes, it was written for internal consumption in the Department, and I hoped that it would have been distributed to the participants.

Mr. FRANK. And, in fact, it became public because of the initiative of whether it was Mr. Gonzalez, Mr. Rose, Mr. Gejdenson, you didn't publish the memorandum yourself subsequent?

Mr. LEMAY. No, I didn't have even have the memo until I saw it appear in the——

Mr. FRANK. So we are talking about a memorandum which you, in the course of your duties as a State Department employee, wrote, fully expecting it to be contained within the State Department, and subsequently, with no involvement by you, this became public?

Mr. LEMAY. That is absolutely correct.

Mr. FRANK. I hope that that will be made clear, and it seems to me that that is a very important set of rules.

My colleague, Mr. Campbell, asked you whether you had any evidence that the named parties in the independent counsel statute were involved, and you correctly said no. There is, of course, a second group in the independent counsel statute which says that we should have an independent counsel if there is any reason to believe that a crime was committed by anybody, not

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specifically one of those named, and there is some political, legal or financial conflict of interest that would prevent it being investigated by the Justice Department.

So it seems to me that is the area that we are very much in. In other words, if someone were to have concluded that the bank itself, as opposed to simply its employee or anybody else, people in the Iraqi Government or elsewhere, had violated the law, the question would be whether, because of a failure aggressively to follow up earlier, it would be a political embarrassment for the Justice Department or for somebody then in the administration, and that is the general area we are going in.

So just to summarize, your recollection is that at the time, hearing what you heard, you said that there was reason to investigate further some serious allegations about violations of the law; is that correct? I mean, is that basically what you were talking about at the time?

Mr. LEMAY. Yes.

Mr. FRANK. These were allegations, among others, that laws had been violated.

Mr. LEMAY. I mean I am not a lawyer.

Mr. FRANK. We have established that. Were there any economists—maybe the law of supply and demand was impugned.

Mr. LEMAY. There was a lot of supply and demand, but the point is that I was looking at allegations of Iraqi wrongdoing. I don't know whether they were breaking the law. That would be the Justice Department's——

Mr. FRANK. That is a valid point, because one of the questions, it seems to me, and Mr. Gonzalez put into the record at one time point a memorandum quoting administration officials saying, Oh, but we couldn't indict the central bank of Iraq because that would be wrong. So we are talking about a conscious decision by some administration officials not to bring an indictment against the Bank of Iraq, and that is one of the things we would be talking about.

You are not in a position to tell us at this point with what degree of diligence these things were subsequently investigated? That was not part of your job?

Mr. LEMAY. No, I cannot tell you that.

Mr. FRANK. So what we have from you, and I must say it seems to me it is important, is the contemporaneous document by someone just doing his job which says, Hey, based on what I heard late in 1989, or in the fall of 1989, there are some serious problems here.

And I must say, if people are going to look back and say was your memo justified or not, I think hindsight is much more on your side than on the other side. Anybody who looks back here now sees that there have in fact been serious problems and some still left undone.

So I just want to close with the hope, and I have no reason to think there is anything other than that, but I would hope your career is not at all affected by this. It seems very clear you did your job, you did it contemporaneously, you had to reason to think this would later be used, and I hope that will be very clear to everybody and I think that that is a factor that this committee has an obligation now to monitor fairly closely.

Thank you, Mr. Chairman.

Mr. BROOKS. Mr. Berman, the gentleman from California.

Mr. BERMAN. Well, thank you very much, Mr. Chairman.

My colleague from Massachusetts has mentioned the other appropriate area where an independent, special counsel might be selected. A far broader area than a few named individuals, involves fundamental political, economic,

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and legal conflicts of interest which could give the administration and or the Justice Department reasons not to want to pursue, or could constrain reasons to pursue, some issues fully.

Your memo comes in the context of a meeting called because the Department of Agriculture says: "There is so much swirling around about these commodity credits, we don't want to give another billion dollars right now. We are recommending another $400 million."

The Government of Iraq says, or the State Department says: "This is an insult to Iraq, this does not go along with our notion of better relationships, and a meeting is convened to discuss all these allegations."

Is that a reasonable summary of the context of the meeting; and, if not, can you go back and tell me what caused this meeting to happen?

Mr. LEMAY. To the best of my recollection, the meeting occurred because we had heard, and I don't recall whether it was me or Mr. Hoskinson or someone else in the Department had told us, that the attorneys in this, the USDA attorneys had gone down to Atlanta to discuss the allegations.

That was really the first concrete information that we knew of.

Mr. BERMAN. What is the broader context for——

Mr. LEMAY. The broader context was trying to find a policy to deal with Iraq. I mean, I am not, again, I am not a policymaker. I am just a small package here, and I know you need an answer to that question but I am not competent to give it.

Mr. BERMAN. Have you had any conversations in the last couple of weeks with the former Under Secretary McCormack?

Mr. LEMAY. Yes, I have.

Mr. BERMAN. On this subject?

Mr. LEMAY. Yes, sir.

Mr. BERMAN. Are you aware of what actions he might have taken pursuant to this memorandum, from these more recent contexts? Are you aware or did he mention to you what actions he might have taken after reading your memo?

Mr. LEMAY. He said he did not recall exactly what he did with the memo, but he also said there were, or we discussed two memos he sent forward, which I think have been provided to the committee. I don't know.

Mr. BERMAN. Two memos from McCormack to?

Mr. LEMAY. To the Secretary, I believe.

Mr. BERMAN. That arose from the subject matter of your memo? The question of diversion and the question of kickbacks, and the question of——

Mr. LEMAY. No. The memo that he sent up did not go into all of the details of my memo.

Mr. BERMAN. No, but was it based on the information contained in your memo?

Mr. LEMAY. There was one section that I recall of the memo which—excuse me just 1 minute.

I don't know which of the McCormack memos have been declassified, so I am sort of, again, over a barrel here.

Mr. BERMAN. All right. In other words, in terms of talking——

Mr. LEMAY. I am happy to respond to your questions on these memos, because I am familiar with them, but I don't——

Mr. BERMAN. Just to repeat, within the last few weeks you and former Under Secretary McCormack—what is he doing now?

Mr. LEMAY. I believe he is in a consulting firm.

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Mr. BERMAN. OK. Sounds right. Had conversations in the last few weeks where he indicated to you that he sent memoranda on this subject up to the Secretary or—well, to the Secretary; is that correct?

Mr. LEMAY. He indicated to me he recollected having done that. And, again, the documentary evidence has been provided, I believe, to Mr. Gonzalez on this issue.

Mr. BERMAN. All right, so that we have those memos.

Mr. LEMAY. It is my belief that you do. I don't have access to all of the documents that have been provided.

Mr. BERMAN. All right.

So in Mr. Safire's column when he speculates that Under Secretary McCormack may have gone to the Secretary with your information, information which included materials about Iraqi nuclear programs and other programs that they may have utilized these diversions for, nothing Under Secretary McCormack told you undercuts that?

Mr. LEMAY. I honestly don't know what Mr. McCormack did with regard to that memo. I know he sent other memos to the Secretary on the Iraq issue. I don't know whether he did what Mr. Safire claims that he did. I do not recall him telling me that he ran up to the Secretary's office and did that.

Mr. BERMAN. You have had occasion to talk to Under Secretary McCormack in the last couple of weeks.

Mr. LEMAY. That is right.

Mr. BERMAN. About your memo, I assume.

Mr. LEMAY. I discussed my memo with Mr. McCormack, yes, but the substance of the memo, I didn't get into—again, as I say in my statement, I didn't get into who did you talk to and why. That is not my——

Mr. BERMAN. Do you have any reason to believe that the people you suggested be routed in on your memo, the list of people, the people in the Economic Bureau, the people in the Near East Affairs, the legal adviser, were not routed in to get your memo?

Mr. LEMAY. Can you give me just a moment?

Yesterday, I was given a copy of my memo, as held by the State Department information management people, and somebody had typed on the memo the designator which said "not for the system." And "not for the system designator," I was told would have severely restricted the distribution of the memo. It is not necessarily odd that this happened, but somebody outside of our office made that call.

I discussed it with Mr. Hoskinson yesterday. He said he did not recall having done that. And when we discussed the typed face, he said he just didn't think that we had done it. I did not do it.

Mr. BERMAN. Has that ever happened to any of your other memos, that people you have suggested be routed with——

Mr. LEMAY. I don't know, the distribution was not made. All I am saying, there was a designator typed on the memo which said "not for the system" and there is a cover memo from, a short cover memo to Stape Roy, who was the executive secretary of the department, from Mr. Hoskinson.

Mr. BERMAN. Did you have any conversations with Jock Covey about this memo or about——

Mr. LEMAY. I don't recall talking to Jock Covey. We talked in that time in the hallway from time to time. I had known him for a fair amount of time, just sort of in the hallways, but I did not have a professional relationship or personal relationship with him of any sort.

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Mr. BERMAN. Do you have a recollection of discussing the wisdom of providing agricultural credits or, by and large, our efforts to improve political and economic ties with Iraq?

Mr. LEMAY. Not with Mr. Covey. I recall having that sort of discussion with people down on the desk.

Mr. BERMAN. And do you have any information about whether or not soon after your memo, economic—what do you call your bureau, economic bureau?

Mr. LEMAY. Office of the Under Secretary.

Mr. BERMAN. Your office, Office of the Under Secretary, was removed from the process of making fundamental decisions on economic relationships with Iraq?

Mr. LEMAY. It is really my impression that the Office was not removed, but that once the decision to proceed had been made, there was really not an additional role for us to play. That is, once it became clear that the process would move forward and that there was going to be traunching, that was pretty much the end of the economic role, and from there on, you went on with your policy.

Mr. BERMAN. What about the issues of diversions, of use of those diversions for developing a nuclear program? What about all the other questions raised by your memo?

Mr. LEMAY. Well, again, there were investigations that were underway at the USDA's IG's Office that I have been told about, and those found that there was not proof of wrongdoing. Therefore—again, this is my recollection—it was decided that we could proceed with a safeguarded program.

Mr. BERMAN. Mr. Chairman, I would like to include in the record two recently declassified documents that were prepared inside the Department shortly after the memorandum here; one from then Assistant Secretary for Near East Affairs, John Kelly, and the other one from—and that one is dated November 8.

Mr. BROOKS. Without objection, so ordered.

Mr. BERMAN. The other document is a memo to the Secretary from Mr. Kelly and from Abe Sofaer on the Iraqi CCC program dated October 26, 1989.

Mr. BROOKS. Without objection, so ordered.

[See appendix II–6.]

Mr. BROOKS. Are there further questions of the witness?

Mr. WASHINGTON. I have some questions.

Mr. BROOKS. Mr. Sangmeister. The gentleman is recognized.

Mr. SANGMEISTER. Thank you.

Mr. Lemay, I realize you have been on the chair there for almost 2½ hours. Just a couple areas I would like to go into.

In your direct testimony, you were talking about going back to the State Department and trying to look for your file. And if I understood your testimony correctly, it was missing; is that correct?

Mr. LEMAY. I didn't say that it was missing. I simply said it was no longer—it had not been kept by the Office of the Under Secretary.

And, again, as I pointed out earlier, that would not be odd. It was a 3-year-old file, other people had come in, the portfolios had probably been redivided and somebody probability just threw it away.

Mr. SANGMEISTER. Can you tell me specifically what were you looking for in the file when you went back to review it? What documents did you want to use to refresh your memory, or, specifically, why did you want to look at that file?

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Mr. LEMAY. I wanted my handwritten notes on the memo because I was being, my professional integrity was being attacked, and I wanted to make sure I had not somehow blown it.

Mr. SANGMEISTER. So there were no other documents in that file that you really wanted to look at except your handwritten notes from your own memorandum; is that correct?

Mr. LEMAY. That is correct. But there would have been other documents in there. I mean, just standard Iraq-type documents.

Mr. SANGMEISTER. But under procedures at the Department, it would not be abnormal for that file to be destroyed at this point?

Mr. LEMAY. No, because that was not a principal file. As I understand it, those were—it would not have been odd for that to have happened.

Mr. SANGMEISTER. Tell me, Larry McElvain, I believe that is the way it is pronounced, who was or is the Director of Export Credits for CCC, can you tell me, where does this gentleman stand in the so-called stratum or hierarchy of the CCC? I mean, is he the man that would be on top of that Department, or where does he fit in the structure of things?

Mr. LEMAY. I do not know the structure of the Department of Agriculture. I was under the impression he was sort of office director level and maybe a tad higher, but I don't think any more than that. But I really don't know.

Mr. SANGMEISTER. Well, the reason I was asking that is along the lines of the question of my colleague from California, Mr. Campbell, in that section he referred you to wherein McElvain and the USDA IG—this is your memorandum, now—are concerned that commodities were bartered in Jordan and Turkey for military hardware, and the BDLA paperwork is so sloppy on this point, it may be months or never before we can reach a firm conclusion on the diversion issue.

Didn't someone at that time say to McElvain, "Well, so the records at the BDLA are sloppy and can't be followed, what about our own records in the CCC?" Did anyone at that meeting raise that question and say, "What about this? Can't we even trace our own transactions?"

Mr. LEMAY. I can't comment on what happened at the Department of Agriculture. I have no knowledge.

Mr. SANGMEISTER. No, my question to you is: Did anyone at that meeting raise a question with McElvain or anybody else to the standpoint that can't we at least trace our own transactions to see what is happening?

Because you have in your memorandum here that shipments were arriving in Baghdad before they even arrived at other ports that they were supposed to be at before they came there. So, obviously something was wrong. But couldn't the Department trace this themselves?

Mr. LEMAY. It is my recollection that eventually a team was sent to Iraq to look over the documentary evidence, but I do not know what the conclusion of that study was.

Mr. SANGMEISTER. But, again, nobody at the meeting?

Mr. LEMAY. At the meeting.

Mr. SANGMEISTER. No one raised that question about what is this Department doing to keep an eye on what is happening here?

Mr. LEMAY. I think the point, and, again, on vague memory, the point was made that there was followup; that people were looking at the documents. People were examining the documentary evidence, but it was a mess.

Mr. SANGMEISTER. And Mr. McElvain had no explanation to give anyone else attending that meeting as to exactly what had happened on those transactions?

Mr. LEMAY. On each of those.

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Mr. SANGMEISTER. To the best of your recollection?
Mr. LEMAY. We didn't get into specific transactions.
Mr. SANGMEISTER. But just to the overall program. Didn't he have any opinion himself as to what was happening?
Mr. LEMAY. Well I thought he thought there was a problem, but——
Mr. SANGMEISTER. He thought there was a problem. OK, I think you agreed with that.
Mr. LEMAY. I did agree with that, yes.
Mr. SANGMEISTER. That is all I have, Mr. Chairman.
Mr. BROOKS. Does Mr. Washington, the gentleman from Texas have any questions?
Mr. WASHINGTON. Yes, Mr. Chairman.
Mr. BROOKS. The gentleman is recognized.
Mr. WASHINGTON. Thank you, Mr. Chairman.
Mr. WASHINGTON. Mr. Lemay, I appreciate the fact that you have been here for a good deal of time and I will try not to be wasteful of our time. I thank you.

I join the other members of the committee in thanking you for the outstanding work you have done in doing your job and I—like I believe it was Mr. Frank's, plan to be a Member of the Congress, at least for a while, and I will be careful to watch to make sure that your career is not jeopardized because you have done what all good Americans should do in a situation similarly situated to yours.

I have just a few questions that I would like to ask you. I know that you have not seen Mr. Brosch's memo of October 20. Let me set the scene very, very briefly with my questions.

I understood from the questioning of other members of the committee that it was the regular course and practice engaged in by you that, when you attended a meeting such as the one that brings us all here together, you would make contemporaneous notes during the meeting; is that correct?
Mr. LEMAY. That is correct.
Mr. WASHINGTON. So that fact could be borne out if it were called into question by merely looking at other meetings that you had attended over the course of your service to compare what sort of notes you had made which were later reduced to writing at those other meetings unrelated to this, which would then be corroborative of your assertion that this was ordinary and regular for you; is that correct?
Mr. LEMAY. I believe that is the case, yes.
Mr. WASHINGTON. Now, let me make sure that I understand one other fact. What exactly was the date of the meeting that brings us all here together?
Mr. LEMAY. My recollection is that the meeting took place on October 13, 1989.
Mr. WASHINGTON. October 13, 1989?
Mr. LEMAY. Yes.
Mr. WASHINGTON. And it took place at the Department of Agriculture's Office of General Counsel in room 2307, according to your written recollection.
Mr. LEMAY. Yes.
Mr. WASHINGTON. All right. Did I understand you correctly to say in response to an earlier question or in an elaboration upon a response to a question that the memorandum which is published in the Congressional Record at L–2011 under date March 30, 1992, was actually a draft copy of your memorandum of conversations?

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Mr. LEMAY. That was my understanding of this memorandum, yes. And the reason I say that is, when I asked for a copy of the memo as it was in the record, I got a copy that was stamped "draft."

Mr. WASHINGTON. OK. Have you had an opportunity to look at—before I get to that question, let me ask you: In the regular course of business, would this be delivered to some person for typing by you in handwritten form or would it be dictated with the use of dictation equipment?

Mr. LEMAY. I had a Wang word processor and I simply did it myself.

Mr. WASHINGTON. You did it yourself?

Mr. LEMAY. Yes, sir.

Mr. WASHINGTON. So the fact that an earlier version was labeled a draft was merely for the purpose of your having an opportunity—and I don't want to put words in your mouth—but for the purpose of your own review for editorial comment and substantive thought before you would consider it to be in final form and would affix your signature to it.

Mr. LEMAY. That is correct.

Mr. WASHINGTON. Would you, in the regular course of business, then, sign the version that would be the final copy in quotes and available for distribution?

Mr. LEMAY. I would sign the drafting information, yes.

Mr. WASHINGTON. You would sign the draft as well?

Mr. LEMAY. No, no. The information at the end of the memo is called drafting information and my name would appear there.

Mr. WASHINGTON. May I inquire as to whether the copy that was given to you from whatever source that is marked draft is signed or unsigned?

Mr. LEMAY. This memorandum is unsigned.

Mr. WASHINGTON. So in all likelihood it was a draft?

Mr. LEMAY. In all likelihood this was a draft. But I mean it is the same document, it was just not the document that I forwarded.

Mr. WASHINGTON. After preparation of a draft, did you, at some point, prepare that document in final form, sign it and send it for distribution, as you have testified?

Mr. LEMAY. I did do so.

Mr. WASHINGTON. Now, then, in the normal course of business, about how many days would the preparation of the document have taken place after the date of the meeting itself?

Mr. LEMAY. Well, this memo I wrote the day of the meeting and then put in final on—I believe it was the 14th in the morning and provided it on the 14th.

Mr. WASHINGTON. So your testimony is that you have a specific recollection that after the meeting you returned to your office used your Wang and typed up the draft?

Mr. LEMAY. That is correct.

Mr. WASHINGTON. And subsequent to that, then, on the following day—that being the 14th of October 1989—you produced it in final form and sent it for distribution?

Mr. LEMAY. That is correct.

Mr. WASHINGTON. What is the name of the individual to whom you delivered the copies or did you deliver an original and copies or only an original for distribution?

Mr. LEMAY. I gave an original to Mr. Hoskinson and it is my recollection that I gave a copy to our staff assistants.

Mr. WASHINGTON. Staff assistant's name being?

Mr. LEMAY. Patricia Mueller.

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Mr. WASHINGTON. And was that in the ordinary course of business, then? Was she a secretarial-type person, a clerical type person?

Mr. LEMAY. This was support staff. This was not an officer.

Mr. WASHINGTON. Support staff.

Mr. LEMAY. Clerical support.

Mr. WASHINGTON. Would it be the responsibility of such an individual, perhaps not this one individually, but a support staff person in the regular course of business to follow the directions given in your memorandum which would be to distribute copies according to your instructions?

Mr. LEMAY. That is correct.

Mr. WASHINGTON. And would those instructions, then, have been included within the document itself under the title "distribution?"

Mr. LEMAY. Yes.

Mr. WASHINGTON. So that the plain meaning of the words then, the names that are listed under the heading distribution, colon, a person working in that Department in that capacity as was Ms. Mueller, would know or should have known that thereby was a direction to distribute copies to all of the individuals listed on the distribution?

Mr. LEMAY. That is correct.

Mr. WASHINGTON. As well as persons who were listed as participants in the meeting?

Mr. LEMAY. That is also correct.

Mr. WASHINGTON. So it wouldn't take any further documentation or memo or routing slip or anything of that nature to direct Ms. Mueller or some other person working in that capacity to follow those instructions?

Mr. LEMAY. That is correct I would simply——

Mr. WASHINGTON. You never received word from Ms. Mueller, otherwise, that that was not done?

Mr. LEMAY. I did not.

Mr. WASHINGTON. In fact you don't know to this day that it was not done?

Mr. LEMAY. I don't know what happened to the memo once I gave it to the two people that I just said I gave it to.

Mr. WASHINGTON. Now then, what was the procedure? Would it be to place these copies in envelopes or some sort of inside mail circulation envelopes with the little tie strings or address an envelope to each individual?

Did you have an inside mail service within the agencies of government or would it be posted with postage for mailing?

Mr. LEMAY. No. Normally for within the building the staff people would simply have walked the people to the office of the recipient.

Mr. WASHINGTON. Those to the USDA would be sent by what means, if you know.

Mr. LEMAY. Those would have been sent, I imagine, by courier, by confidential courier but I really don't know.

Mr. WASHINGTON. I am not asking on this specific occasion since you don't know that they were sent, but in the regular course of business, if you know, how would they normally be sent?

Mr. LEMAY. Normally, they would be double-enveloped with a receipt and sent that way.

Mr. WASHINGTON. With a receipt?

Mr. LEMAY. Yes.

Mr. WASHINGTON. So am I to understand then upon receipt at the Office of USDA or whatever office, let's not be specific in this case, say you were sending it to the Office of XYZ, then someone in that Office would be re-

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quired to sign that they had, and certify they had received the envelope which you had sent?

Mr. LEMAY. For a confidential document, yes.

Mr. WASHINGTON. What would happen to the receipt, if you know, upon its return to your Office?

Mr. LEMAY. I think it would be filed, but I really never handled that part of the issue and I don't know how long they would be kept.

Mr. WASHINGTON. Would it necessarily be filed in the same folder—would it necessarily be filed in the same folder as was your copy of the memo or would it be kept separately?

Mr. LEMAY. I don't know how our staff people handled the receipt filing. I just don't know.

Mr. WASHINGTON. All right. Now, then, so, then, on October 14, 1989, you handed a copy of the final version of this document to your immediate superior, Mr. Sam Hoskinson.

Mr. LEMAY. That is right.

Mr. WASHINGTON. You did that personally.

Mr. LEMAY. Yes, I gave him the copy. In fact, it was the original.

Mr. WASHINGTON. The original, and directed that copies—were the copies to be made and then sent to these other individuals?

Mr. LEMAY. Yes. He had to see it first before it would be distributed.

Mr. WASHINGTON. Are you suggesting that he had permission, as you understood the regulations, to direct that it not be sent?

You said he had to see it first, but for what purpose would he be seeing it?

Mr. LEMAY. He was the assistant to the Under Secretary and my work product flowed through him to the Under Secretary.

Mr. WASHINGTON. Did he have the authority to direct it not be sent to the persons you had directed distribution?

Mr. LEMAY. I don't know. It was never an issue that came up. I assumed that as my superior he could do whatever he wanted with my work product.

Mr. WASHINGTON. But you were given to understand that he had to see work product such as this, notwithstanding the fact you had directed distribution to other individuals, you said before, or first?

Mr. LEMAY. Yes, that is my recollection.

Mr. WASHINGTON. But you don't have any notion as to why he had to see it first?

Mr. LEMAY. Yes, he had overview responsibilities for the work product of the office. That was his job. He saw everybody's work not just my work.

Mr. WASHINGTON. I understand. I am not trying to make anything sinister out of it. I want to inquire as to whether he had the authority to direct that the distribution you had requested not be, if you will, filled, if you know?

Mr. LEMAY. I mean I can only say vaguely I suppose he could do that, yes.

Mr. WASHINGTON. You know of no other occasion where that occurred?

Mr. LEMAY. I know of no occasion where he changed the distribution on one of my memoranda.

Mr. WASHINGTON. You have had an opportunity, ad nauseum, I am sure, to read over your memorandum that brings us here together.

Mr. LEMAY. I have read the memo many times.

Mr. WASHINGTON. Is it a past recollection recorded?

Mr. LEMAY. I am sorry?

Mr. WASHINGTON. Is it your past recollection, contemporaneous with the events, that is, October 13, 1989, reduced to writing by you?

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Mr. LEMAY. I don't understand the question. I am sorry. Hold on.

Mr. WASHINGTON. Is the——

Mr. LEMAY. When I first heard that my memo had been placed in the Congressional Record, my immediate recollection was of a meeting that I had. I remembered many of the general topics, but, yes, looking at the memo did refresh my memory as to the specifics.

Mr. WASHINGTON. Let me ask you one other question, then, which I forgot about. Have you compared the copy that is marked "draft?" Have you seen a copy that was actually signed by you on October 14, 1989?

Mr. LEMAY. Yes, I have seen both copies.

Mr. WASHINGTON. Have you compared them to see if there are any differences between the copy that is marked "draft," and the copy that was actually signed by you and handed to Mr. Hoskinson, the original of which was handed to Mr. Hoskinson, the copy of which was requested for distribution to all the named individuals?

Mr. LEMAY. I have read both documents. I have not done a line-by-line check of each word, but they are—I mean they are the same document, as far as I can tell from having read them both.

Mr. WASHINGTON. As the author of both the draft and the original, is there any difference, in your mind, between one and the other?

Mr. LEMAY. There is not, except for the designator.

Mr. WASHINGTON. Except for the designation.

Mr. LEMAY. Yes.

Mr. WASHINGTON. Now, then, you have said that the contemporaneous notes were reduced to written form, which is the document itself; is that correct?

Mr. LEMAY. That is correct.

Mr. WASHINGTON. All right.

Mr. LEMAY. But not in chronological order.

Mr. WASHINGTON. And as far as you are able to recall, since you do not have the contemporaneous notes, does the written, the typed version which was typed by you, accurately reflect, insofar as you are able to recall it at this time, the contemporaneous notes that you made contemporaneous with the events in question?

Mr. LEMAY. Yes, it does.

Mr. WASHINGTON. You said that you later saw a copy that was marked "not for the system." When was this that you saw that?

Mr. LEMAY. It was given—well I saw it yesterday afternoon.

Mr. WASHINGTON. All right. Yesterday being June the 22, 1992.

Mr. LEMAY. Yes.

Mr. WASHINGTON. Was that the first time you saw that interlineation on the document?

Mr. LEMAY. Yes, it is.

Mr. WASHINGTON. So may I take it then when you last saw it you didn't see such denomination "not for the system" on the document?

Mr. LEMAY. That is correct.

Mr. WASHINGTON. So you didn't place it on the document?

Mr. LEMAY. I did not place "not for the system" on the document.

Mr. WASHINGTON. And you do not know who did?

Mr. LEMAY. I do not know who did.

Mr. WASHINGTON. What was the source of the document you received yesterday?

Mr. LEMAY. I requested it from the Legal Adviser's Office and they provided it to me.

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Mr. WASHINGTON. So it may have been placed on there any time between—I take it you last saw the document that you can recall, on the 14th of October 1989; is that correct?

Mr. LEMAY. I mean, I may have seen it again during, you know, the following week, but, yes, that is substantially correct.

Mr. WASHINGTON. On about October 1989, you would have no other reason to go back and continually pursue the document on a daily basis?

Mr. LEMAY. No, because again after 3 or 4 months we were largely out of the decision on this issue.

Mr. WASHINGTON. Right. You were out of the loop, at least. So between——

Mr. LEMAY. Right.

Mr. WASHINGTON. So the legend ''not for the system'' was placed on there some time between when you last saw it in October 1989, and when you next saw it on June 22, 1992, and you know not by whom; is that correct?

Mr. LEMAY. I don't know by whom and I don't know

when.

Mr. WASHINGTON. All right. Now, just one other question and I will be finished.

Did the procedure that you outlined in this memo follow what you would ordinarily do for distribution, that is, within your agency as well as participants in the meeting?

Mr. LEMAY. To the best of my knowledge.

Mr. WASHINGTON. All right. So we don't know whether Mr. Kenneth Brosch received your memo? We don't know from you of our own knowledge whether he received your memo, which was dated October 13, 1989, and at least sent for distribution on October 14, 1989, before his memo dated October 20, 1989, do we?

Mr. LEMAY. I have not seen his memo, but I do not know whether he received my memo either.

Mr. WASHINGTON. We don't know, even though it is dated October 20, 1989, when it was actually prepared; do we?

Mr. LEMAY. Whose memo; his memo?

Mr. WASHINGTON. Mr. Brosch's memo.

Mr. LEMAY. I have not seen Mr. Brosch's memo.

Mr. WASHINGTON. Would it surprise you to know that, at least in that portion of the memo dated October 12, 1989, there is no reference to an October 13—there is a reference to October 13, 1989, but not to a meeting with you?

Mr. LEMAY. I have not seen the memo.

Mr. WASHINGTON. Would it surprise you? He was present at the meeting, according to your recollection.

Mr. LEMAY. Yes.

Mr. WASHINGTON. And so, going back to one of my colleague's questions, I am not sure which, but another possible scenario is that this October 20, 1989, is what is known as a CYA memo?

Mr. LEMAY. I have no knowledge whatsoever of the Agriculture memo. I have never seen it. I don't know when it was written.

Mr. WASHINGTON. Neither were you given the courtesy of a copy.

Mr. LEMAY. I did not get a copy, no.

Mr. WASHINGTON. Finally, on the question from my good friend from California, Congressman Campbell, there is a third scenario that he did not mention with respect—you recall the litany of items he drew your attention

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to from the statute requiring consideration of special counsel. If the allegations that you have set out, the facts—and I find no appreciable distinction between those, contrary to the views of those from my friend from Florida, you were not asserting them as being true, you were asserting them as having been said; was that not correct?

Mr. LEMAY. That is correct.

Mr. WASHINGTON. And you put them in that context at the time?

Mr. LEMAY. Yes, I did.

Mr. WASHINGTON. Now, then, if these things were true, if the allegations or some of them were true with respect to diversion of funds, to BNL, to CCC credit actually being given to help pay for the kickbacks, which is what you were suggesting in nice sounding terms in your memorandum, was that not correct? That the supplier would increase the cost of the item to cover the fact that he had to pay this proof-of-sale services, including buying trucks for Iraq and all those kind of things, that that would inflate the price but the CCC would end up guaranteeing the purchase of all those things including kickbacks; right?

Mr. LEMAY. That is my recollection of the discussion.

Mr. WASHINGTON. If those things were true and if they were brought after the date of your memo, after October 13, 1989, when you met, and after October 14 when your memo was sent for distribution, if that memorandum were made available to the President of the United States or any of those people on Mr. Campbell's list, if, if—one if—if those things were done, if that was made available to them, this warning that you made in clear, intelligible language, and following that, funds continued to flow for the very same purpose for which you had suggested clearly that there was abuse, there was a violation of U.S. law, as well as of the CCC program, then that would raise, in and of itself, without regard to the second part of the statute, don't you think, not even being a lawyer, that would raise some concern as to whether these people, having known that these things, having been warned they were done, followed a course of action that allowed them to continue to be done, would maybe not be criminal, but it would surely be negligence in the ordinary use of the term; would you agree?

In other words, if I tell you that if you walk to the ends of the hall and every person who has walked to the end of the hall has fallen a thousand feet, and if you walk to the end of the hall knowing that every person before you has fallen a thousand feet, and you tell someone to go and walk to the end of the hall, and lo and behold, they fall a thousand feet, you would call that negligence without being a lawyer, wouldn't you?

Mr. LEMAY. I would say that I had access to a small portion of the information. It may be that there was other information. It may be there was intelligence information.

It may be there was a whole host of different issues that were also being reviewed at the same time. I cannot attribute negligence or lack of ability to look at information to anyone else. I can only say that I wrote the memo, I provided it where it was supposed to go, and I assumed that people took it into account.

Mr. WASHINGTON. And you had, if you will, fulfilled your responsibility; right?

Mr. LEMAY. I had, if you will, fulfilled my responsibility; that is correct.

Mr. WASHINGTON. Right. I thank the Chair.

Mr. BROOKS. Thank you, Mr. Washington.

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Gentleman, ladies, we have about 10 minutes, 9 minutes for a vote, and I think we will break and come back. I regret that we want to invite you back because we have a few more questions.

I had anticipated that you would take about 20 minutes, old buddy, and I thought then we would be through with you. And, gentlemen, if you will just go and eat lunch, we will have to come back at 1:15. The committee is recessed until 1:15.

[Recess.]

Mr. BROOKS. The subcommittee will come to order.

The Chair recognizes the gentleman from Nebraska, Mr. Hoagland.

Mr. HOAGLAND. Thank you, Mr. Chairman.

There has been quite a bit of comment, Mr. Lemay, on your memo that you prepared in October 1989.

Mr. McElvin, Director of Export Credits of the CCC in the Department of Agriculture, when he testified before the Banking Committee in reference to your memo said, "The discussions of that meeting were misrepresented very badly.".

He said, "I do not recall making any comments during that meeting that there was a possibility of any of these commodities being diverted or bartered for military equipment."

Mr. Brosch, an attorney with the Office of General Counsel of the Agriculture Department in referring to your memo said, "These notes are totally misleading. They do not represent the conversation that was had in that meeting on October 13 in my view."

Later he said to the Banking Committee, "I cannot account for why Mr. Lemay wrote this. It is certainly not accurate in my judgment."

Now, in light of that, Mr. Lemay, you are standing by your testimony, are you not, that the statements in your memo are accurate?

Mr. LEMAY. Yes, I am standing by the testimony that the memo is accurate to the best of my recollection and that the memo that I wrote on the day after the meeting accurately reflects what took place at that meeting.

Mr. HOAGLAND. And Mr. McElvin, the Director of Export Credits, and Mr. Brosch an attorney with the Agriculture Department were both present at that meeting; is that right?

Mr. LEMAY. That is correct.

Mr. HOAGLAND. Now, I wonder if it wouldn't be helpful for us to explore a little bit about your background. How old are you now?

Mr. LEMAY. I am 35 years old.

Mr. HOAGLAND. You are 35 years old. All right. Am I correct that you graduated from Georgetown University School of Foreign Service in 1979?

Mr. LEMAY. That is correct.

Mr. HOAGLAND. And you graduated magna cum laude, a phi beta kappa; is that correct?

Mr. LEMAY. Yes, that is correct.

Mr. HOAGLAND. And you went directly to graduate school, is that right, to the Johns Hopkins School of Advanced International Studies?

Mr. LEMAY. That is also correct.

Mr. HOAGLAND. Graduated 2 years later in 1981 from Sias, is it called Sias?

Mr. LEMAY. Yes.

Mr. HOAGLAND. S-I-A-S?

Mr. LEMAY. Yes.

Mr. HOAGLAND. And in 1981 you joined the Foreign Service; is that right?

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Mr. LEMAY. Yes, that is correct.

Mr. HOAGLAND. Did you have to take an exam in connection with your application to become a Foreign Service officer?

Mr. LEMAY. Yes there is a written exam and a battery of oral exams given to people who are candidates for a job in the Foreign Service.

Mr. HOAGLAND. Do you know approximately how many people took those written and oral exams during the year that you applied for?

Mr. LEMAY. I do not recall exactly how many did in the year that I applied, but on average I believe its somewhere in the neighborhood of between 17,000 and 20,000 people take the written exam and I believe several thousand take the—who take the test, pass the test and are given oral interviews.

Mr. HOAGLAND. Of those that pass the written test and give oral interviews, how many pass the oral interviews?

Mr. LEMAY. I do not know how many passed the oral but, in general, I believe you get about 200 positions offered a year, at least that was my recollection of the year that I came in. So again, a smaller percentage.

Mr. HOAGLAND. So the application process begins with you, say, over 17,000 people a year?

Mr. LEMAY. That is my recollection of 1981, yes.

Mr. HOAGLAND. From which 200 are selected.

Mr. LEMAY. Roughly.

Mr. HOAGLAND. You were one of the 200 selected.

Mr. LEMAY. Yes.

Mr. HOAGLAND. I note also that you can speak German, French, and Spanish.

Mr. LEMAY. To a better or lesser degree, yes I do.

Mr. HOAGLAND. In addition to English.

Mr. LEMAY. That is correct.

Mr. HOAGLAND. All right and prior to joining the Foreign Service, you worked with the Agriculture Department as a foreign affairs specialist?

Mr. LEMAY. That is correct. That was while I was in graduate school.

Mr. HOAGLAND. While you were at Johns Hopkins Graduate School?

Mr. LEMAY. Yes.

Mr. HOAGLAND. And was your first assignment as a foreign service officer a counselor officer in the Dominican Republic?

Mr. LEMAY. Yes, it was actually something called a rotational officer position where I did counselor work for 1 year and then I did administrative work for 1 year.

Mr. HOAGLAND. And you did that work in the Dominican Republic?

Mr. LEMAY. Yes, I did.

Mr. HOAGLAND. Then your next job was staff assistant to the Assistant Secretary of State for Latin America Affairs?

Mr. LEMAY. That is correct.

Mr. HOAGLAND. How long did you occupy that position?

Mr. LEMAY. I was there for a year and a third.

Mr. HOAGLAND. Here in Washington?

Mr. LEMAY. Yes.

Mr. HOAGLAND. At the Department of State?

Mr. LEMAY. Yes.

Mr. HOAGLAND. You were promoted to become a policy planning officer for economic affairs in the Bureau of Latin America affairs, is that right?

Mr. LEMAY. That is right.

Mr. HOAGLAND. Also here in Washington?

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Mr. LEMAY. Here in Washington, that's right.
Mr. HOAGLAND. How long was that assignment?
Mr. LEMAY. I believe I was there for just under 2 years.
Mr. HOAGLAND. Then you were sent to Bogotá, Colombia; is that right?
Mr. LEMAY. Yes.
Mr. HOAGLAND. You were deputy director of the economic section?
Mr. LEMAY. That is correct.
Mr. HOAGLAND. How long were you stationed in Colombia?
Mr. LEMAY. I was in Colombia for roughly 2½ years.
Mr. HOAGLAND. And then you were promoted following an assignment to become Special Assistant to the Under Secretary of State for Economic and Agricultural Affairs; is that right?
Mr. LEMAY. First I had 1 year of university training, then I took the——
Mr. HOAGLAND. Sorry, you did advanced graduate work in macroeconomics.
Mr. LEMAY. That is correct.
Mr. HOAGLAND. At George Washington University Law School here in Washington.
Mr. LEMAY. George Washington University, the economics department.
Mr. HOAGLAND. Sorry, George Washington University, economics department here in Washington.
Mr. LEMAY. Correct.
Mr. HOAGLAND. That was an 1-year program.
Mr. LEMAY. Yes, it was.
Mr. HOAGLAND. You continued your status as a foreign service officer?
Mr. LEMAY. Yes, it was a sabbatical fully paid by the Department of State.
Mr. HOAGLAND. And then after that, did you receive a degree for that work?
Mr. LEMAY. No, I did not. It was not a degree program.
Mr. HOAGLAND. And then following——
Mr. LEMAY. The State Department program is generally not a degree program.
Mr. HOAGLAND. So you completed what the program was designed to consist of?
Mr. LEMAY. Yes, I did.
Mr. HOAGLAND. All right. Then you were asked to become Special Assistant to the Under Secretary of State for Economic and Agricultural Affairs?
Mr. LEMAY. That is correct.
Mr. HOAGLAND. And what are the responsibilities of the Special Assistant?
Mr. LEMAY. Well, in general they are what I outlined in my testimony that I had to ensure that the issues within my area of responsibility that were under the purview of the Under Secretary of State for Economic Affairs were brought to his attention, that he was fully briefed for all meetings that he might have had, that he received information on whatever issues he asked me about.

Basically, I would follow what other bureaus were doing in economic areas and provide information to him independent of them. Sometimes I would review their work and provide guidance to the bureaus so that the final product that came up to the Under Secretary would be adequate to his needs.

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Mr. HOAGLAND. I have an organization chart of the Department of State here and it appears to me as if there are only four Under Secretaries; is that correct, in the Department? Economic and Agricultural Affairs, Political Affairs, International Security Affairs and Management?

Mr. LEMAY. I believe that is correct.

Mr. HOAGLAND. So being——

Mr. LEMAY. I think that is correct.

Mr. HOAGLAND. So being a Special Assistant to an Under Secretary of State is an important job; is that right?

Mr. LEMAY. Yes, it is.

Mr. HOAGLAND. How old were you when you held that job?

Mr. LEMAY. I would have been roughly 33, I guess.

Mr. HOAGLAND. Mr. Chairman, I wonder if I might have this organization chart made part of the record?

Mr. BROOKS. Without objection so ordered.

[See appendix II–7.]

Mr. BROOKS. And I hope you know the retribution they took against him after all these illustrious jobs, do you know what they did to that man?

Mr. HOAGLAND. I don't know.

Mr. BROOKS. I think they put him in congressional relations. Is that correct Mr. Lemay? Are you now—put it this way, are you now in congressional relations?

Mr. LEMAY. I am now in congressional relations, that is correct.

Mr. BROOKS. Somehow or other that is where you now are.

Mr. HYDE. Mr. Chairman, I wonder if the gentleman might also include a genealogical chart?

Mr. HOAGLAND. Is this a genealogy of the State Department, Mr. Hyde?

Mr. HYDE. It will branch out later, I am sure.

Mr. HOAGLAND. He does have a remarkable record, Mr. Hyde. I am just attempting to make some of these facts known.

Now, it was in your capacity as Special Assistant to the Under Secretary that you were dispatched to the Agriculture Department to find out what was going on in Iraq; is that correct?

Mr. LEMAY. Yes it is.

Mr. HOAGLAND. So your boss, the Under Secretary, sent you over to the Agriculture Department to visit with people to find out what is happening; am I correct?

Mr. LEMAY. Yes, the instructions came from my superiors.

Mr. HOAGLAND. You didn't go over with any preconceived notions?

Mr. LEMAY. I did not.

Mr. HOAGLAND. Or with a whole lot of prior knowledge about the operations of the CCC; is that right?

Mr. LEMAY. That is correct.

Mr. HOAGLAND. And you attended the meeting that included these individuals whose testimony I quoted earlier?

Mr. LEMAY. Yes, that is correct.

Mr. HOAGLAND. And prepared your memo, the first draft of your memo the same day?

Mr. LEMAY. That is correct.

Mr. HOAGLAND. Mr. Washington went into great detail about the method by which you prepared the memo, I see no point in going into that again. But would you have had any reason to fabricate or put information in that memo that does not, in fact, reflect what occurred in the meeting?

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Mr. LEMAY. I would not have had any reason to fabricate anything that went on in that meeting. I would not have been doing my job. I would have been basically breaking the trust that my superiors had in me to go and provide them with accurate information.

Mr. HOAGLAND. I have nothing further, Mr. Chairman.

Mr. BROOKS. Thank you.

Mr. Kopetski, the gentleman from Oregon.

Mr. KOPETSKI. Thank you, Mr. Chairman.

Mr. Lemay, are you aware of any meetings that occurred between the U.S. Department of Agriculture officials and the U.S. attorneys office in Atlanta and/or members of the task force that had been formed to investigate the BNL prior to the October 13 meeting?

Mr. LEMAY. Prior to my meeting with them? I was aware that the attorneys from USDA had talked to the Atlanta attorney. I believe they were there from the 10th to 12th of October 1989. That is my recollection. I am not aware of any prior meetings to that.

Mr. KOPETSKI. In your meeting on the 13th, did Mr. Brosch or any other participants in the USDA who attended this meeting, discuss or allude to a meeting they had recently attended in Atlanta regarding those allegations of—relating to nuclear fuel compounders and the nose cone and the diversion?

Mr. LEMAY. To the best of my recollection they only said they had been down in Atlanta talking to the attorney on the BNL case.

Mr. KOPETSKI. But they didn't discuss any substance of the meeting other than that?

Just a general reference or were there more specific things?

Mr. LEMAY. I don't recall them saying—this came directly out of our talks with the attorney and this is from so-and-so or someone else. They were just making points that clearly had been made available to them. So I assumed that it came from their meeting with the Atlanta attorney but I do not know that for a fact.

Mr. KOPETSKI. I want to ask you about leading up to the October 13 meeting. In your testimony you say that you and Mr. Hoskinson have a quote "significantly more give and take" in terms of your discussions and that you had met in September and early October, I assume, a number of times in terms of your pulling together the various information of gathering paper and facts; is that correct?

Mr. LEMAY. Yes, it is.

Mr. KOPETSKI. How many times did you meet prior to the October 13 meeting and have these discussions? Are these hallway discussions or set in your agenda or calendar?

Mr. LEMAY. No, other than the first one when I got the assignment to go and take over the CCC issue——

Mr. KOPETSKI. That was sometime in September, excuse me.

Mr. LEMAY. Yes, either late September or early October.

Mr. KOPETSKI. OK.

Mr. LEMAY. I recall sort of quick meetings. I would step into his office. We would chat for a few minutes and then I would leave or we would be standing in the entry, there was a large entry foyer into the Under Secretary's suite. We would stand there and discuss it. It was catch-as-catch-can type of things. I recall that there may have been one other sit-down meeting later in October once the USDA-IG report was made public or was being alluded to is a better way of putting it. I don't remember ever seeing

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the IG report but I believe there was a sit-down meeting in his office at that time.

But again we were coworkers, we were very friendly and it was, you got a 1 minute, I will come in and talk to you, type of approach.

Mr. KOPETSKI. You would say this is over a 2 to 3 week period leading up to the October 13 meeting?

Mr. LEMAY. After the initial meeting, yes, I would say I went in for guidance a few times and got additional information from him. That's right.

Mr. KOPETSKI. And was this—were these—so I am assuming the range of time is from a few minutes to maybe even an hour? Were they longer, shorter?

Mr. LEMAY. I believe the first meeting—again my recollection on this fails me—first meeting was longer and the other meetings, as I said, tended to be shorter. Sort of got a minute, I will come in and talk. They would range, they probably didn't go more than 10 to 20 minutes in general.

Mr. KOPETSKI. Were there less than 10 of these or more than 10 of these kinds of encounters?

Mr. LEMAY. I would guess less than 10, but again my recollection is very weak.

Mr. KOPETSKI. And the aftersales service fees of about $350 million at least in one instance, at what time did you gain knowledge of that? Was that at the October 13 meeting or did you have some sort of paper indication prior to that?

Mr. LEMAY. Again, my recollection is fairly vague, but I believe that I had discussed the aftersales service issue with Mr. Hoskinson prior to the October 13 meeting and I seem to recall being asked to ask about that issue.

Mr. KOPETSKI. I have not been in Washington very long but $1 million is still a lot to me, but did you think that $350 million was a lot of money?

Mr. LEMAY. Yes, I do. Much more than my salary.

Mr. KOPETSKI. I thought at one point in your testimony you talk about—here it is, you talk on page 4 that you state, I remember one meeting being very free-flowing with a variety of issues being discussed at different times. That is the October 13 meeting; is that correct?

Mr. LEMAY. That is correct.

Mr. KOPETSKI. Prior to that meeting, did you sit down with Mr. Hoskinson or anybody else and develop an agenda for the meeting or points that you wanted to ask about?

Mr. LEMAY. I do not recall sitting down with Mr. Hoskinson or anyone else and coming up with an agenda. I worked through the issues and the information we had and sort of developed my own agenda which was basically to get information.

Mr. KOPETSKI. And there were topic areas that you were obviously interested in pursuing in this meeting; is that correct?

Mr. LEMAY. I recall that I didn't have a great deal of information on the topic areas, certainly not on all the issues that I have discussed in my memo. But I wanted to—I seem to recall, and again bear with me, but I seem to recall the diversion issue being one I was interested in and I seem—this is in preparation for the meeting—and the aftersales services issue to be another one. I had not heard at that time of the nuclear, potential nuclear diversion stuff so I didn't focus at all on that.

I did not focus on the other issues that are in my memo. I think those came directly from the meeting.

Mr. KOPETSKI. Were there any individuals or personalities whether foreign or domestic that you wanted to inquire about at the October 13 meeting?

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Mr. LEMAY. Personalities?
Mr. KOPETSKI. Individuals.
Mr. LEMAY. No, I did not ask any questions about people. I may have asked a question about who was being indicted but that was just sort of my own interest to find out who was going on with the Atlanta branch.
Mr. BROOKS. Mr. Kopetski, we have a vote and I would like to get Mr. Reed's questions in because I want him to go back to work. He has been here all day; he will be getting time and a half, drawing overtime.
Mr. KOPETSKI. Mr. Chairman, I have less than 1 minute.
Mr. BROOKS. All right.
Mr. KOPETSKI. Thank you, Mr. Chairman.
Prior to the October 13 meeting, did you have any conversations or queries with Mr. Hoskinson or at the October 13 meeting about any Americans receiving benefit of any of these alleged kickbacks or aftersales fees, rewarded in any way from any of these transactions?
Mr. LEMAY. We did not to the best of my recollection discuss any specific individuals.
Mr. KOPETSKI. Did it ever cross your mind or wonder if any Americans were involved in this?
Mr. LEMAY. We discussed the case of Churchill-Matrix which I think is in my memo and I did not—I don't recall right now whether that was an American company or not, I believe it was British. But I don't recall American companies being discussed as recipients or users.
Mr. KOPETSKI. That is the end of my questioning, Mr. Chairman, thank you.
Mr. BROOKS. That can you very much, Mr. Kopetski. The gentleman from Rhode Island, John Reed, is recognized.
Mr. REED. Thank you, Mr. Chairman.
Mr. REED. Mr. Lemay, Mr. Hoskinson was your immediate supervisor. You testified today I think that you can confirm he received the memorandum and you had discussions, but after that you are not quite sure who got the memorandum; is that accurate?
Mr. LEMAY. I know that Mr. Hoskinson received it and after receiving the copy of the memo from our Legal Advisors Office, I know the memo went to Stape Roy and Jim Collins. At least it was sent to them. I don't know that they received it for a fact.
Mr. REED. Mr. Hoskinson, what is he doing today? What is his job today?
Mr. LEMAY. Mr. Hoskinson is to the best of my knowledge working at the Central Intelligence Agency.
Mr. REED. Prior to his assignment to Department of State, did he work for the Central Intelligence Agency, also?
Mr. LEMAY. He worked for the Central Intelligence Agency at some point in his career. Directly prior to working in Department of State he had an another position, but I don't recall what it was. It was not with Government.
Mr. REED. Now, in his capacity in the Department of State did he have any informal or formal liaison with the intelligence community to your knowledge?
Mr. LEMAY. Not to—I don't know. I honestly don't know what his connection with the intelligence community was. I did not discuss that with him at the time.
Mr. REED. Now, in your testimony, Mr. Lemay, you point out that it was Mr. Hoskinson who was in the position to confirm, criticize, rewrite or order additional research and work with respect to your performance; is that accurate?

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Mr. LEMAY. That is accurate.

Mr. REED. After you reported back to him and gave him this memorandum, were you ordered to do additional work with respect to the issues that had been the topic of this meeting?

Mr. LEMAY. I was not.

Mr. REED. Do you find that to be unusual in that you wrote a memorandum which was rather vivid in its imagery and significance in some of the conclusions which might be drawn from it?

Mr. LEMAY. I believe that Mr. Hoskinson had confidence in my ability, and I don't know whether he checked up on the memo and called people or not. I have no way of knowing that, but he did not come in and tell me that he thought that something was faulty with the memo or that a portion of it was too inflammatory or other portions should be excised.

He simply accepted the memo as something I had drafted and assumed that it was correct.

Mr. REED. He accepted the memorandum but he did not ask you to pursue this further to see if there was additional evidence of the allegations that you raised or, to your knowledge, in any other way seek to find further substance to these allegations?

Mr. LEMAY. I was already responsible for that issue, so that would have been my job in any case.

Mr. REED. So essentially you presented the memorandum to Mr. Hoskinson, nothing was done in your office to further pursue these serious allegations which were raised in the memo?

Mr. LEMAY. No, that is not the case. I think that we continued to follow the issue. It is my recollection that the liaison issue with the other Legal Advisors' Offices which were handling the BNL investigation was passed to the legal advisors' staff of the Department of State—this is my recollection—at that point I ceased working with the Department of Agriculture legal people because we had our own legal people doing that sort of thing.

Mr. REED. So your best recollection is that the information you uncovered, the allegations which are the substance of your memorandum were not pursued by your office at all but were pursued by legal officers within the Department of State.

Mr. LEMAY. That is my recollection. They were pursued but—again, pursued is an interesting word. I didn't just drop the issue. I kept on—sort of kept tabs on it but I did not go to any additional meetings on the subject.

Mr. REED. In keeping tabs on this issue, did you continually inform your superiors, Mr. Hoskinson and his superior, Mr. McCormack as to what was going on on a regular basis?

Mr. LEMAY. Yes, I recall discussing it with Mr. Hoskinson. Again, this is short meetings that I told you about earlier.

Mr. REED. But there was no direction from your superiors to follow through or to continue this or do anything other than what you summarized in your memorandum?

Mr. LEMAY. Not that I recall.

Mr. REED. Again, going back to your perception, you wrote a rather stringent memorandum with rather strong language which I suggest—I don't want to put things into your mind—that this was you were surprised, perhaps amazed at some of the revelations and that whole approach seemed to peter out except for your own initiative to keep it going informally. That didn't cause you any concern?

Mr. LEMAY. I was concerned about the memo and the issues I raised in the memo, but I was under the impression at the time that these were being

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looked into by other offices and that my role in this had, in large measure, passed on to more senior officers in other bureaus.

In other words, what I had done is I had gone, I had discussed the issues with the Department of Agriculture, I had made my report, that report was forwarded to the appropriate officials in the Department and then it was handled by other people .

Mr. REED. Can you specifically indicate what senior people in the Department you felt were pursuing this issue?

Mr. LEMAY. At the time it was my impression that the Legal Advisors Office was involved in the issue and that some of the officers from the Near East bureau were involved in pursuing the issue, and to some extent our office continued to be interested in the issue. There may have been others.

Mr. REED. Thank you, Mr. Lemay.

Mr. BROOKS. Thank you very much, Mr. Reed.

We now have a vote on the previous question on the rule and we may have a vote on the rule, so I would say the committee will stand in recess until 20 minutes after and you can have a quick coffee to wake you up this afternoon.

Mr. Lemay, we are deeply grateful for your having been here and it has been a long session and you got to know more about Congress than you ever planned on knowing.

Delighted to have had you here.

Mr. LEMAY. Thank you, Mr. Chairman.

[Recess.]

Mr. BROOKS. The committee will come to order.

The second witness is Frank DeGeorge, Inspector General of the Department of Commerce. He has held that position since April 1988. Previously, he was Deputy Inspector General at Commerce and Associate Deputy Administrator of the VA.

We welcome you to the committee. We would appreciate it if you will summarize your statement and we will accept the full statement, every pristine word of it, for the record.

I would ask you to rise and raise your right hand.

Mr. DEGEORGE. Mr. Chairman, I have two members with me, my counsel, Wayne Weaver, and the Audit Manager, Andrew Cochran, who are prepared to testify as well. Do you want to swear them in as well?

Mr. BROOKS. We might as well. We are delighted to have you, gentlemen.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

[Witnesses sworn.]

Mr. BROOKS. We are glad to have you, and you can proceed, sir.

STATEMENT OF FRANK DeGEORGE, INSPECTOR GENERAL, DEPARTMENT OF COMMERCE, ACCOMPANIED BY WAYNE WEAVER, COUNSEL, AND ANDREW COCHRAN, AUDIT MANAGER

Mr. DEGEORGE. Mr. Chairman, in June 1991, we issued two reports to the Department on matters relating to the release of Iraqi export license information to the Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations. Copies of both reports are attached to my statement.

Our audit, which was initiated after requests of the Department's general counsel, found changes were made by BXA to 68 license records out of records for 1130 license applications processed for export to Iraq from 1985

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through August 2, 1990. BXA personnel also changed permanent records on the bank's automated data base.

We concluded that changes to five truck license records were unjustified and misleading. We also reported that almost all other changes, though inconsequential in effect, were not supported by satisfactory documentation.

These changes included deletions of notations that indicated referrals of the applications to other involved agencies, changes in the positions of those agencies, and changes in end-use statements and a commodity description.

We conducted over 20 interviews of persons involved in the matter and reviewed hundreds of pages of documents. Based upon the audit, we inspected the automated export licensing system at BXA and identified 14 corrections to ensure better controls over licensing data for the future.

Members of Congress, some Members of Congress, have expressed concern that we did not name the individuals responsible for the changes in the report. We seldom, if ever, name officials in our audit reports. However, we believe our working papers contain sufficient information on the identities of the individuals responsible for the changes, and those work papers have been provided to this committee.

In fact, all the work papers, every piece of paper that we have, has been provided to this committee. The committee has been provided copies of our audit inspection, other than interview notes, which the staff has also reviewed.

The Justice Department advises that their criminal investigation is still open. No one within the administration or outside it, including Secretary Mosbacher or General Counsel Willkie, or anyone else, has influenced, directed, approved, restricted or changed how this office conducted its work and the reporting of its results.

I will be happy to answer any questions of the committee.

[See appendix II–8.]

Mr. BROOKS. Thank you very much, Mr. DeGeorge.

Under the 5-minute rule, I have a few questions for you.

The difference between an audit report and an investigative report by an IG is that the latter assesses generally the blame for misconduct, while the former does not. Now, why did you decide to conduct merely an audit of the alteration of records?

Mr. DEGEORGE. We decided preliminarily and first to conduct an audit for several reasons, not the least of which it was an involved process. We did not have numbers of auditors or inspectors or investigators who were familiar with it.

It is not unusual for us to start a complex job with a series of allegations as an audit. In this particular case, we started as an audit because we had one or two people, including Mr. Cochran, who were available; two, we had no allegations, other than the ones that are in newspapers, no smoking guns, no statements, a few records and concerns. I was also more vitally concerned, Mr. Chairman, that we find out if complete records had been deleted.

The whole inference of the charges to date has been that somehow the administration has taken records, changed them, deleted them and made massive changes. I was concerned that we find original source documents, and these are accounting records and systems records, and that was the primary reason we started as an audit.

Mr. BROOKS. Now, interview notes obtained from your office yesterday indicate that Under Secretary Kloske spoke with general counsel Willkie about the changes to the records on the day they were first released to Congressman Barnard.

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Why didn't you proceed to question Mr. Willkie about his knowledge or involvement in this action?

Mr. DEGEORGE. Well, there were three or four different reports, Mr. Chairman.

Mr. BROOKS. Yes.

Mr. DEGEORGE. And each of them went through many iterations, and, in effect, Mr. Willkie had very little to do, in our conclusion, with the process. He worked—he and Mr. Haendel, who is his deputy, worked very closely with the so-called Rostow committee, which was dealing with policy issues, which was dealing with third-party paperwork, which was dealing with issues of, I think the term is deliberative process, to determine what, in effect, the form and the content of the form of the reports were.

We also had no reason to believe, from early on, that this process was not self-contained within BXA. So there was no reason to interview Mr. Willkie. We did talk to Mr. Haendel in some depth.

I also find it difficult to believe, if I can add a P.S., and I think there has been some confusion in the newspapers, Mr. Willkie recommended that I look at it. I really found it difficult at that point in time to believe he would have me look at something that he himself was involved in.

We subsequently have had some discussions, but not formal interviews.

Mr. BROOKS. Did you talk to Mr. Iain Baird, Director of the Office of Export Licensing?

Mr. DEGEORGE. Yes, sir.

Mr. BROOKS. Got some statements from him. He stated that the State Department says "trucks classified as military vehicles should be reclassified as cargo trucks."

He also told the auditors Mr. Kloske said something about a gag order. "The administration didn't want criticism during the Iraqi engagement."

Do you know anything about that?

Mr. DEGEORGE. I don't know anything about gag orders. Those terms were never brought up except that was a rumor and we were never able to substantiate that.

The issue, in my mind, of the trucks and the licenses were one license was mentioned by the State Department in their comments. The other four or five licenses, Mr. Kloske told us, in effect, that Mr. Kloske decided to change. The other gentlemen involved, the other employees that are career employees, I would just as soon restrict their names, but a Mr. Hill basically told us and confirmed that, in effect, as your records would indicate, I am sure, that Mr. Hill and Mr. Kloske made essentially all the decisions on the 66 licenses.

Mr. BROOKS. Now, your testimony identifies only three goals for the audit: to determine if changes were made to the information given to Chairman Barnard, and if changes were made to the permanent data base, and the accuracy of notations concerning the positions of other agencies regarding the export licenses to Iraq.

Were there any other objectives of your audit?

Mr. DEGEORGE. Implicit in all our audits, sir, is the education and the background the auditors have. They know the rules. If they find anything that smells slightly of criminal, they are to bring it to our attention.

I had no allegations through the whole process by anyone connected with the job, including my deputy, including the audit manager, including my counsel, including any of the auditors, most of whom are in this audience, that anyone ever felt there were any criminal actions.

Mr. BROOKS. And the reasons for changes, you never went into those?

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Mr. DEGEORGE. The reasons for changes—yes, sir, we went into the reasons for the changes, and I think our audit report discusses them. There were various reasons given, some of which I think were absolutely wrong.

Examples: Parts and components are one series of errors—changes that were made, the thesis being if you had a hard disk——

Mr. BROOKS. Let me ask you one more question and my time will be up.

Could you tell us today with certainty who was the final authority for changes of the information submitted to the Congress or to the permanent database?

Mr. DEGEORGE. Who made the changes?

Mr. BROOKS. Who was the final authority for the changes? Might have had some secretary make the changes, but she didn't dream it up. Who was the authority for it?

Mr. DEGEORGE. Mr. Kloske and Mr. Hill, who worked for him, between the two of them, identified the changes. Ten or 11 of the changes were directed by Mr. Kloske. The rest of the changes, which included mostly comments from other departments, mostly corrections—I repeat that, mostly corrections.

Mr. BROOKS. You think they did it on their own?

Mr. DEGEORGE. Within that office? Yes, sir, I do.

Mr. BROOKS. Nobody told them to do it; they just did it?

Mr. DEGEORGE. We have no evidence to that regard.

Mr. BROOKS. Do you have any idea in God's will why they would do it?

Mr. DEGEORGE. We have records, and I think the records that you have seen will indicate exactly what took place. They were doing this over a Columbus Day weekend. They were in a hurry. They made changes, they made runs, they looked at the data. They saw obvious mistakes, mistakes on licenses, for instance, where they knew that they had not been disapproved, but disapproval was indicated.

We were told time and time again that the staffs went back and checked all the way back to source documentation, and sometimes they did. We have confirmed that the only changes to all 1,500, 1,700 licenses are the ones we have talked about. We even went back to the CIA to get preinvasion date records to be certain that nothing was lost. They routinely received copies of these databases.

I have no reason to believe that there were any changes, to my knowledge, directed by anyone except within the office of BXA.

Mr. BROOKS. I find that very difficult to believe.

Mr. Fish, the gentleman from New York.

Mr. FISH. Thank you.

Mr. DeGeorge, it is your testimony that of 60-odd alterations, most of them were inconsequential; is that correct?

Mr. DEGEORGE. Yes, sir.

Mr. FISH. I think this is explained in more detail in the full text of your prepared statement.

Mr. DEGEORGE. As well as the work papers, Mr. Fish.

Mr. FISH. And the ones that you did consider consequential with respect to, say, the sale of the military trucks, the reason given for the alteration being that the bureau doesn't license the sale of trucks, you disagreed with that for that reason at the time?

Mr. DEGEORGE. The bureau does license military trucks. New, used trucks.

Mr. FISH. And the discussion of the 60-odd alterations was in your report?

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Mr. DEGEORGE. Yes, sir.

Mr. FISH. And the IG's report has been submitted to committees of the Congress?

Mr. DEGEORGE. It was in our semiannual report that was submitted last January, I think. December. And other committees and other members have received these reports.

Mr. FISH. In your investigation, did you uncover any evidence to suggest to you that changes in the license records involved criminal intent?

Mr. DEGEORGE. No, not to my knowledge. Not to the information we have got. And I would ask Mr. Cochran, who basically did almost all the interviews, what his experience is.

Mr. FISH. Mr. Cochran.

Mr. COCHRAN. Thank you.

It isn't easy to determine, but from what we gathered, there didn't seem to be an intent. There was not a secrecy involved. There didn't appear to be anything withheld or lost in our audit. People contributed their knowledge, they contributed documents voluntarily. There appeared to be no intent to deceive Congress as to the total realm of exports license for Iraq of dual-use items.

For instance, there are military users throughout the document that are clearly of a military nature. There are exports that could clearly be used in a military nature.

Mr. FISH. So you did not uncover any evidence to suggest changes were part of a conscious effort of deception?

Mr. COCHRAN. No, sir.

Mr. FISH. Thank you.

Is it not true that you or Mr. DeGeorge decided not to refer the matter regarding the alterations to the Department of Justice for criminal prosecution?

Mr. DEGEORGE. We didn't reach that point, is the best way to put it, Mr. Fish. We basically reviewed the data. We issued our report, we issued the second report, and within 2 or 3 weeks after that, Congressman Barnard, Chairman Barnard sent the report to the public integrity people.

Mr. FISH. Mr. DeGeorge, do you have any evidence—I don't see any evidence in the record to this effect—but do you have any that the Secretary of Commerce knew of any such changes before the documents were sent to the Congress?

Mr. DEGEORGE. I have no evidence of that.

Mr. FISH. Does the fact that the records on over a thousand licenses were not changed, suggest anything to you about whether deception was the intent behind the changes that were made? Would a successful deception effort necessarily have involved changing the records of additional licenses?

Mr. DEGEORGE. I guess the best way to answer that is, there doesn't seem to be any pattern to the changes, with the exception of the trucks which apparently most people thought was going to be embarrassing is the reason they made the changes.

The rest of the changes seemed to be random. There were two or three—there was one deletion on an HP computer of some comments. There was some additional information added to three or four others. There doesn't seem to be any pattern.

I guess the best way to put it is, if you look at the total licenses that were submitted, and you try to reach a judgment as to whether or not these would be the ones that you would suggest were the most embarrassing, I do not think so, from my judgment. There were many other items on that list that

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I think one could argue, in effect, could cause more embarrassment to the administration.

Mr. FISH. Thank you very much.

Thank you, Mr. Chairman.

Mr. EDWARDS [presiding]. The gentleman from New York, the chairman of the Crime Subcommittee, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

First I want to say, Mr. DeGeorge, I think at least you deserve praise for analyzing the record and calling the shots at least as you saw them in terms of changes in the record. On the other hand, I am very troubled by your testimony in general.

The committee staff has had an opportunity to talk on three occasions with Mr. Kloske, and the contradictions—he was supposed to be here, but at 11 last night he said he wasn't not going to come. He will submit his statement for the record by Thursday.

But let me go over the contradictions between what you say and he says, which are glaring. Someone has it all wrong. I won't cast any motivation.

Let me tell you some of the things that Mr. Kloske said. One, he was instructed by senior advisers and lawyers at the Department of Commerce to provide only "the bare minimum to Congressman Barnard." He was told to "keep it simple," volunteer no information.

Kloske identified Wendell Willkie, Don Haendel, Wayne Berman, and Bruce Soll as the individuals who gave him those orders.

Two, Kloske was under daily supervision from Secretary Mosbacher's senior advisers about what information was being provided to Congressman Barnard. Kloske said he got calls "every day" from people on "the 5th floor" at Commerce about what was in the records and what kind of progress was being made to respond to Congressman Barnard.

Three, Kloske thought that he might have talked with Secretary Mosbacher in general terms at the meetings. Kloske said he suggested that Mosbacher meet with Congressman Barnard because Barnard might think Mosbacher was "playing games" with him.

Four, they get more serious as we move along. Kloske said that other agencies were reluctant to give printouts containing interagency positions to Congressman Barnard. Kloske also remembers a document which indicated that the Department of Defense wanted changes in the permanent record because they were "not satisfactory."

Five, Kloske said he thought Commerce might have spoken with Nick Rostow of the NSC about the records and remembered meeting with Steven Rademaker of the NSC. He also recalled Richard Barth of the NSC was involved as well. He recalled one telephone conversation involving White House Counsel Boyden Gray.

Six, Kloske said that Commerce General Counsel Wendell Willkie had called Robert Kimmitt at the State Department during the late fall of 1990 about document production to Congressman Barnard. Kloske described Kimmitt as in favor of "letting the clock run out on Barnard's subpoena." What that means is, wait until there is a new Congress and the subpoena will expire.

Seven, Kloske said he discussed with Wendell Willkie about whether or not to provide to Barnard, to Congressman Barnard, the interagency positions on the licenses. Willkie was against this disclosure because it revealed "deliberative process." Kloske said Willkie was adamant but called both the State Department and the White House in Kloske's presence.

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Kloske thinks that Willkie spoke with either Kimmitt or the chief counsel at State. Kloske thinks that Willkie then spoke with either Boyden Gray or a deputy to Gray or to Rostow. Both individuals Willkie spoke to agreed that the interagency positions should be deleted. Willkie then ordered Kloske to delete the interagency positions in the printout record for Congressman Barnard.

Now, obviously, this raises a whole bunch of questions.

Mr. DEGEORGE. Can I address at least a little bit of that?

Mr. SCHUMER. Well, why don't I ask you the questions and then you can address it as you wish.

First—and I think these will get to them, and I want to give you your fair shot to answer every one of them—first, were you or members of your staff ever aware of what Mr. Kloske told us; that Wendell Willkie had instructed Kloske to make changes and deletions to the interagency positions in the summary memo first provided to Mr. Barnard?

Mr. COCHRAN. Mr. Schumer, Mr. Kloske told us that in his interview. Let me remind you that this was before his October 24, 1990, letter to Doug Barnard in which he stated that Mr. Barnard's October 15 request for interagency positions was being reviewed by other agencies and they would get back to him.

We view that statement as a discussion of Mr. Willkie's policy role; that is, to determine whether positions should not be included wholesale because it was part, it would be executive privilege would be claimed or it was part of the deliberative process exclusion. We did not view that as evidence that changes, specific changes to specific positions were ordered on the documents.

Thereafter, those positions were included, albeit a number of them were changed, but they were included on the December 1 printout provided to Representative Barnard.

Mr. SCHUMER. You are saying you surmised that Mr. Willkie was making a policy call?

Mr. COCHRAN. That is right, sir.

Mr. SCHUMER. Did you ever interview Mr. Willkie?

Mr. COCHRAN. We interviewed Mr. Haendel because--

Mr. SCHUMER. Please answer the question yes or no.

Mr. COCHRAN. No, sir, but Mr. Kloske and Haendel ordered him——

Mr. SCHUMER. How can you say you have a complete report when you are making—if you just told me that you were comparing documents, what should have been and what isn't, as Mr. DeGeorge said in his testimony, I would say it was a rather incomplete audit, but that was your parameter. But I would then say to myself, and what I did say to myself is, it seems to me you would have to interview certain people to make judgments as to why certain things were put in and not put in, perhaps for legitimate or illegitimate reasons. You have made that judgment in this case.

Well, how in God's name can you make a judgment about a man's motivation and not interview him and then issue a report clearing everybody?

Mr. COCHRAN. Because other items of evidence indicated that those positions were not included in the October 24 printout because there was still a discussion going on at the interagency level and those positions were then later included.

Mr. Haendel told us that he had no knowledge of the specific changes to the positions until Mr. Kloske's February 26, 1991, memorandum to Mr.

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Willkie. So we concluded that what they were talking about there was the process by which all agency positions would be represented or would not be represented as evidence of the deliberative process. That was our judgment.

Mr. SCHUMER. I am a little—OK.

Mr. COCHRAN. It is the difference between policy and specific changes.

Mr. SCHUMER. You were making a surmise about what was in someone's head without even interviewing them and just interviewing their assistant.

Mr. COCHRAN. Well, since we interviewed the deputy, whom Mr. Kloske said——

Mr. SCHUMER. Well, why wouldn't you? Give me one reason why you shouldn't have interviewed Mr. Willkie? Did he not have enough time for you?

Mr. COCHRAN. No, sir. We didn't consider that Mr. Willkie had ordered specific changes to specific positions on those records.

Mr. SCHUMER. Kloske told you he did.

Mr. COCHRAN. And the lower level assistant volunteered——

Mr. SCHUMER. Kloske stated to you, as I understand it, and I will let you finish, that he was in an office where Willkie made this decision after getting on the phone and talking to other people. Haendel may or may not have been in that office; I don't know. It doesn't have it in our records of the interview there.

Mr. DeGeorge.

Mr. DEGEORGE. Mr. Schumer, we did not see it was our job to determine what was a policy determinant on the part of the lawyers. We did not look at that issue. We didn't try to look at that issue.

We were charged with looking at whether specific changes were made to the license process including the original source data base. That is what we looked at. That is what I thought was appropriate to look at.

I cannot second-guess the lawyers' deliberative process or whatever the comments were or whoever Mr. Willkie talked to, including Mr. Rostow's staff. It was not the intent of the audit. There was no reason to believe during the audit that it affected any people—that it had affected that.

Mr. SCHUMER. But the man who did the audit, the gentleman to your left, just said he had to make certain determinations to come to the conclusion whether things should have been changed or shouldn't in terms of what was in people's heads.

Let me ask you another question. I have a list of all the people you have interviewed. It very curiously leaves out any of the top level people at Commerce who were involved in the processing of the Barnard request. Mosbacher was not interviewed, Willkie was not interviewed, the two assistants to Mosbacher who were involved in this, Mr. Soll and Mr. Berman, were not interviewed, no one at the White House or the NSC was interviewed, even though Kloske has stated—I don't know if he stated it to you; he may have just stated it to us—that they were on the phone with Willkie making a determination.

Why were none of these people interviewed?

Mr. DEGEORGE. Let me make another comment before I directly answer you. You have read, I am sure, Mr. Kloske's—the notes we took from Mr. Kloske's interview.

Mr. SCHUMER. I have them here.

Mr. DEGEORGE. Almost nothing which you basically have told us was told to us. Nothing that you repeat, almost nothing, I think you would con-

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firm, was told to us by Mr. Kloske. So I would ask you why he didn't tell us this?

Mr. SCHUMER. He says some of the things in there. I mean, I have the memo here, as well, but, look, if Mr. Kloske didn't say to you all of these things, here is your memo, and he says in this memo, your memo, he says his direction was to be responsive to the Congressman's requests. He took his direction from Wayne Berman and Wendell Willkie. He also understood it to be the direction from the White House.

According to Berman and Willkie, they wanted to provide no new documents or additional information. Then he says to you the process always underwent "an interminable legal review by Stillman's office and by Haendel. It says he amplified the direction he gave to others to remain within the guidance provided "by the Office of the Secretary."

So while it may not have been fleshed out in as much detail as to us, it is clear that in your own memo that Kloske was making it clear that, first, he did not make the decisions himself, and that people higher up from him did, and yet you didn't interview any of them.

Mr. DEGEORGE. And how many times must I repeat that the scope of our job was restricted, and we decided that we needed to arrest the charges that were raised by Mr. Kloske's note to Mr. Wendell Willkie and we tried to respond to the very simple issue of specific changes.

We were not in a position then or now to make judgments on the policy calls and whether to submit data, whether to submit reference data, et cetera. That was a long, long negotiated process with Mr. Barnard's committee, as you know.

Mr. SCHUMER. Let me ask this question, you or your associate, Mr. Cochran. Mr. Cochran, during the numerous interviews your investigators conducted as part of your audit, weren't there references by the interviewees about meetings with other agency officials, particularly at the NSC, the White House, and DOJ about documents to be produced to Congressman Barnard.

Mr. COCHRAN. I don't recall DOJ, but I remember that was where Mr. Rademaker's name was brought up, and I don't remember a specific White House attorney. Again, that was in the discussion of policy. I think that is where you and I disagree as to what is a change and what is not a change.

Mr. SCHUMER. Well, at the very least, I think we would agree that your audit was severely circumscribed in terms of what it was to look at——

Mr. COCHRAN. I wouldn't.

Mr. SCHUMER [continuing]. By who you talked to.

Mr. COCHRAN. If I thought Wendell Willkie ordered a specific change, which would have been pretty unusual, since he asked for the audit, I would have gone to Mr. DeGeorge and said we have to talk to Willkie and I would have talked with him.

I told Mr. DeGeorge we had to talk to Dan Haendel, because there was information that he was involved somehow in the process by which documents were put together.

Mr. SCHUMER. Kloske never told you that Wendell Willkie was involved?

Mr. COCHRAN. He said Willkie and Haendel ordered the positions deleted. That is in the memorandum of the interview. So we went to Mr. Haendel who said he knew nothing about the specific changes. He was involved in the policy discussions. Others indicated he was so involved.

The lower level assistant, who came to us the first day that Mr. DeGeorge and I interviewed, took responsibility for the position changes; said he negotiated those out with the assistance of the attorneys, but they had made con-

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tacts with licensing officials. Negotiated those out with licensing officials from DOD, State and——

Mr. SCHUMER. And you make a determination about these changes without talking to any of those people.

I will move on to the next point, but your answers, at least to me, are very unsatisfactory. Very unsatisfactory.

Now, Mr. DeGeorge stated in his comments, I believe it was in response to Chairman Brooks, that Kloske said that he and Mr. Hill made all the decisions about changes in the permanent record.

Mr. DEGEORGE. That is correct. That is my understanding.

Mr. SCHUMER. Well, here is what Kloske told us. Kloske told us that he didn't even know of changes in the permanent record until it came out publicly; that he read about them in the newspapers. Something is rotten in the state of Denmark.

Mr. DEGEORGE. Well, you better check with the other statements. I know Mr. Hill said that he made the changes, Mr. Young said they were aware of the changes. There were five or six other employees that were apparently present when Mr. Kloske directed the changes.

Mr. COCHRAN. Mr. Hill told us that he saw Dennis Kloske order the permanent ECASS records changed. That is in the memorandum of Mr. Hill's interview.

Mr. DEGEORGE. I find it very unusual, Mr. Schumer, that you have the advantage of a discussion with Mr. Kloske when Mr. Kloske is not here, and I can only take your word for what he has told you or even that he has told you the truth.

Mr. SCHUMER. That is a fair statement, Mr. DeGeorge. We believe Mr. Kloske. I believe him. But he will have to submit a statement for the record and maybe he should be called here.

Mr. COCHRAN. Will he be sworn in?

Mr. SCHUMER. He was supposed to come until 11 last night. I don't want to forgo the opportunity of getting your view on the record under oath as to what his statements were.

Next, I would like to know about the change in purpose of the audit. According to a draft audit dated March 13, 1991, the purpose of the audit was to determine not just the nature but "the reasons for changes to export license data." Yet, this is not one of the three purposes, three listed purposes of your audit described in your testimony, and, obviously, your audit doesn't include those reasons for the changes.

Why was it changed?

Mr. DEGEORGE. I thought we had explained that we tried to determine the reasons, Mr. Schumer. That, in effect, we asked people—all the people on the staff involved. I don't understand the nature of the question.

We didn't walk away from determining what people decided, or have any reason to believe that we slowed the job down because, in effect, we didn't ask that question.

Mr. SCHUMER. You told me a minute ago, and so did Mr. Cochran, that you were not interested in the motivations of people. You just wanted to compare the record.

Mr. DEGEORGE. I didn't say that. I never said that. What I said is that the primary thrust of our job was, basically, to look at who made what changes and did the report, as submitted to the Congress—I mean, I am not—we constantly go back and forth between policy and specific changes.

We looked at specific changes. We went as far back as we could, as far north as we could, to determine who authorized those changes. And from

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the records we have, that have been provided to this committee, we reached a judgment.

Mr. SCHUMER. So there was no intent in the change from the audit letter of, the audit outline of 3/13 to finally to delete reasons as to why these were changed?

Mr. DEGEORGE. There was no intent to——

Mr. SCHUMER. In your report there is not much evidence of the reasons for changing; correct?

Mr. DEGEORGE. There is not much evidence because there seems to be no rhyme nor reason to it, from my perspective.

Mr. SCHUMER. I just want to get on the record again it is your view—just, again, following up on the chairman's question—who ordered the changes in the permanent record? You still state that that was Mr. Kloske and Mr. Hill and them alone; is that right?

Mr. DEGEORGE. Well, tell him what you believe.

Mr. SCHUMER. Go ahead, Mr. Cochran.

Mr. COCHRAN. There is some indication that Mr. Kloske may have ordered that, the change to the permanent database, but that is—and then there are other indications that Mr. Hill may have asked officials at the ECASS office to make other changes.

Mr. SCHUMER. What office is that?

Mr. COCHRAN. ECASS is the Export Control Automated Support System, and we have some information on different changes.

Mr. SCHUMER. Are you as sure as Mr. DeGeorge was 5 minutes ago that it was Hill and/or Kloske who were totally responsible for making those changes?

That is what he stated both 5 minutes ago and then 10 minutes before that.

Mr. COCHRAN. Yes.

Mr. SCHUMER. You are sure of that?

Mr. COCHRAN. The changes were initiated, to the best of our evidence—the changes were initiated by personnel of the BXA. Either the lower level people, such as with Mr. Hill, or by Mr. Kloske himself. And, as our report states, Mr. Kloske concurred with all the changes.

Mr. SCHUMER. OK. Let me ask you this.

Mr. Cochran, was this the first audit that you have done in the IG's office?

Mr. COCHRAN. I began working with the Inspector General's Office, the Office of Inspections and Resource Management, in April 1990. This was the—this may have been the first audit using auditing standards. I conducted a number of inspections using inspection standards.

Mr. SCHUMER. Can you tell me what your background was?

Mr. COCHRAN. I would be pleased to. Thank you.

I graduated from high school in Springfield, OH, in 1974; I attended Miami University in Ohio, graduated with honors with a degree in accounting in 1978. I attended the University of Notre Dame and graduated in 1982 with an MBA degree with high honors and a law degree. I then began work as a tax specialist in the Cincinnati office of Arthur Andersen & Co. in Cincinnati.

During my years in law school, I had served as a congressional intern for my Congressman in Ohio, Clarence J. Brown. And I guess I caught Potomac fever, because when Mr. Brown became Deputy Secretary in 1983, he offered me a position on his personal staff, and I served on his personal staff from November 1983, through his departure in early 1988.

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I wasn't sure what I wanted to do yet with my life, and I was offered this position as—the title was Confidential Assistant to the Assistant Secretary for Export Enforcement in BXA. In that capacity, I reported to the then Under Secretary Paul Freedenberg, and the then Deputy Under Secretary Lee Mercer.

Both those positions were primarily administrative in nature. They were special assistant positions, and in neither position did I exercise any responsibility over export control policy with regard to Iraq or any other country.

I left BXA in August 1988, entered the private practice of law as a corporate lawyer for the firm of McCarthy & Burke. I returned to the Office of Inspector General in 1990. I did complete my C.P.A. requirements in Ohio while working for Arthur Andersen, and I am a licensed attorney.

The C.P.A. license is inactive only due to lack of continuing professional education requirements, but still there, and I am a licensed attorney in Virginia and the District of Columbia.

Mr. SCHUMER. You are not a civil service employee, are you?

Mr. COCHRAN. I am a civil service employee and proud of it.

Mr. SCHUMER. You took the test, et cetera. Now, were you then?

Mr. COCHRAN. I was Schedule C appointee from November 1983, through August 1988.

Mr. SCHUMER. Let me ask you this. Or let me ask Mr. DeGeorge this.

Isn't it true that your own IG General Counsel—I believe his name is Mr. Weaver—recommended against the selection of Mr. Cochran to do this audit because of his previous political background in the upper levels of the Commerce Department; that, at least, it might create an appearance of a conflict?

Mr. WEAVER. If I might answer the question. My name is Wayne Weaver. I am the counsel, and I did raise——

Mr. SCHUMER. Nice to meet you, Mr. Weaver.

Mr. WEAVER. I did raise that issue at the beginning of this particular audit. It was an appearance issue, and it was solely to prevent—not because I had any questions about Mr. Cochran's integrity, but solely because whether something like what is happening now might happen in the future, I raised it as a concern to my managers, the Inspector General and others in the audit staff, and they resolved the issue to my satisfaction.

Mr. SCHUMER. Thank you, Mr. Weaver.

I have no further questions, Mr. Chairman.

I thank the witnesses.

Mr. BROOKS. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. DeGeorge, I do not regard myself as a man of ultimate intelligence. I am not a man of letters. My intelligence is average. I may be superior to some, inferior to many.

Having said that, I take great comfort in your admission that you had difficulty in following the gentleman from New York's line of questioning. I had much difficulty in following it, so maybe I am not the only guy who needs additional illumination.

I have problems with the special prosecutor-independent counsel scenario. Not that I don't want people who have done wrong to be punished—that is not my problem at all—and if it is a Democrat, Republican, liberal, conservative, Mugwump, if he or she has done wrong, I want him or her punished.

But having examined some of these exercises, where Democrats and Republicans were both victims, I am afraid this independent counsel or special counsel—special prosecutor-independent counsel course is one that may well

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be filled with rocks and shoals and reefs, and I don't want anybody who is innocent to be put through that. Many times I think it may be an ego exercise for the special prosecutor.

Now, having said all that, I will shift my line of questioning. I have before me a sanitized version of a printout that contains one of what I have been told are five significant changes. You all are familiar with those, I presume. I have one up here.

This reads 2406, and this is a commodity classification number. 2406—commercial utility cargo truck. Now, I am advised that this one alteration resulted in having altered the description of the truck but left the commodity classification number unaltered.

Mr. DEGEORGE. That is correct. Left everything else unaltered including the value of the shipment, the end user, the military and Iraq, et cetera.

Mr. COBLE. Now, I am not an expert in cryptics either, but it seems to me that if one intends to deceive or mislead, that this number would have been altered as well. Am I off on the wrong track?

Mr. DEGEORGE. No, I think that that is, essentially, one of the reasons that we were concerned about taking this automatically into an investigation—these issues, such as this one, where they changed only partial database elements, where others seemed to make no sense as they were made. This was made over one long weekend, Columbus Day, by, I would say, 20 career bureaucrats and Dennis Kloske, who directed it all himself. That is, essentially, the way the process worked.

I had no reason to believe that those bureaucrats, all of whom we interviewed, those career civil servants, in any way misled us. So the only thing I would say to you is that it didn't delete it entirely. They didn't remove the license so it never existed. They didn't, in effect, change the commodity code number or the dollar amount or the fact that, in effect, the end user, who that was—they simply changed the data that said military trucks to commercial trucks.

Mr. COBLE. So with the commodity classification number still intact and unaltered, I guess to one familiar with this sort of operation, this would still identify it, would it not?

Mr. DEGEORGE. I am sure the manuals that they use to identify by commodity code exactly what the description is—programs—Mr. Cochran can—is that correct?

Mr. COCHRAN. Yes. The Code of Federal Regulations will—if you pick it up and read it, it says, vehicles designed especially for military purposes. And there are certain vehicles designed especially for military purposes that are licensed by the State Department and are on the U.S. munitions list. And there are certain of those vehicle licenses by the Commerce Department, and they have different features.

Mr. COBLE. Well, finally, Mr. Chairman, I would conclude—and the basis of my indepth knowledge on this is limited; I want to make that clear, first of all—but it seems to me, based upon this limited examination, that if this were an intent to mislead or deceive, it was a rather amateurish, unsophisticated effort, with apologies to those who did it.

Do you want to add anything to that, gentlemen?

Mr. DEGEORGE. No, sir. I just would say that the changes seemed to be random, incomplete and not very sensible. And the reason we used the term misleading rather than fraudulent or they lied was because they were incomplete snippets of work, and that is essentially why we arrived at our conclusions in the audit report.

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Mr. COBLE. I appreciate you all being here. And, Mr. Chairman, I just want to reiterate if anybody has done wrong, I want to see them nailed; but if no one has done wrong, I will be doggone if I want to see them go through this exercise and have us spend $30 million more on a special prosecutor course.

Mr. HYDE. Will the gentleman yield?

Mr. COBLE. Yes, sir.

Mr. HYDE. Did either of you three gentlemen—Mr. Weaver, DeGeorge, Cochran—find any evidence of criminality on behalf of any government employee in all of your investigations?

Mr. COCHRAN. No, sir.

Mr. DEGEORGE. No, sir.

Mr. HYDE. No? Thank you.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. SCHUMER. Will the gentleman yield?

Mr. COBLE. I will be glad to.

Mr. SCHUMER. Thank the gentleman.

I think the record will show who was interviewed and who was wasn't, but I just have one more question—if the gentleman's time hasn't expired—which I couldn't get to.

I have here, Mr. DeGeorge, a memo from you to Mr. Mosbacher, June 4, 1991, that—well, for lack of a better word—contradicts what you have just told us. It says, and let me quote from it:

Our review disclosed that the former Under Secretary—that is Kloske—concurred with all of the changes to the data sent to the chairman but was unaware of any system data base changes. The changes to the permanent record.

That would back up what Kloske told this committee in the last few days and contradict what you just said to us.

Mr. DEGEORGE. May I answer, sir?

Mr. SCHUMER. Please.

Mr. DEGEORGE. In reviewing for purposes of this report, because our records—and I think you would admit it—went both ways, some employees said Mr. Kloske had; some said he had not. We have at least some evidence that Mr. Kloske directed it, in my judgment.

Mr. Cochran, in reviewing that process, wrote: We discovered a mistake in our records which, in effect, caused us to issue an errata sheet to that document which was issued last week. Now, that errata sheet is included in all pertinent copies of the report.

But it seems very clear to me that, whether or not you agree with that one change that we made, it is clear to me that, at least in some cases, Mr. Kloske had complete knowledge and was told and approved of the changes to the data sheet. That is where we disagree.

Mr. SCHUMER. Well, Mr. DeGeorge, first, I am getting a little weary of this. You said 1 minute ago unequivocally Kloske did the changes to the permanent data base and he never told you anything else. Then I find a document that says he told you something else, signed by you. I am beginning to smell a scapegoat here.

Mr. COCHRAN. Let me seek to clarify that, sir. I am sorry.

In reviewing the records in preparation for this testimony, we came to the conclusion that that phrase there, we were not confident—I was not confident in reviewing the records of the work done by all of the auditors that we could support that phrase in the audit report. And, to be safe, to be absolutely safe, I recommended we take that phrase out.

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Now, the audit team, as with any team, has different roles and responsibilities assigned. As the manager, I accept responsibility for the work of that team; the good work and the mistakes, and I regret that. That errata sheet was attached to the copies of the report brought up here with the testimony and is now in the work papers in the appropriate places, as far as I know, in the work papers.

Mr. SCHUMER. Let me ask you this, Mr. Cochran. Being careful, fine; not jumping to conclusions, fine. Would you agree with Mr. DeGeorge's statement of a few minutes ago that, unequivocally, it was Hill and Kloske who were totally responsible for changes in the permanent data base? Or is it more gray than that and more equivocal than that?

Mr. COCHRAN. Well, it is clear to us that, with regards to the records sent to Representative Barnard——

Mr. SCHUMER. That is a different issue. I am talking about the permanent data base.

Mr. COBLE. Mr. Schumer, pardon me. I am going to be procedurally correct. Let me reclaim my time and let you get time from someone else. I want to go vote.

Mr. SCHUMER. I ask unanimous consent of the committee for two additional minutes to finish this line of questioning before we break.

Mr. EDWARDS. Mr. Coble has the time.

Mr. SCHUMER. I am sorry. I thought his time had expired.

Mr. COBLE. I am going to go vote, Mr. Chairman. I don't want to cut Mr. Schumer off. Would there be another way procedurally we could give him time?

Mr. SCHUMER. Mr. Coble, I ask unanimous consent for 2 minutes to just pursue this line of questioning before I go vote.

Mr. EDWARDS. Is there any objection, Mr. Coble?

Mr. COBLE. No objection by me.

Mr. SCHUMER. Go ahead, Mr. Cochran. Would you state, as Mr. DeGeorge did, unequivocally, that to the permanent data base, not the records sent to Barnard, that it was Hill and Kloske who were completely responsible?

Mr. COCHRAN. The permanent data base?

Mr. SCHUMER. Correct.

Mr. COCHRAN. Well, I would have to—I would have to go back to the work papers. As nearly as I can recall from the work papers, they are responsible for changes to the permanent data base after they made the changes to the printout.

Mr. SCHUMER. That is not stating that they were responsible. You are telling me the lines of authority; is that correct?

Mr. COCHRAN. No, I am trying to determine-- I am trying to recall from the work papers, and I don't—I am not sure here which one ordered changes to the data base for which changes. Mr. Hill——

Mr. SCHUMER. Mr. Kloske has stated to this committee he didn't even know of changes to the permanent data base until the IG's report came out. Mr. DeGeorge stated just in the last half-hour that it was Hill and Kloske who were responsible for all these changes to the permanent data base.

Mr. COCHRAN. I would say, yes, they are responsible for all the changes to the data base.

Mr. SCHUMER. Even though your own records show when you interviewed him he was unaware of that?

Mr. COCHRAN. No. I believe that our records show—in fact, I believe the record of the interview with Mr. Kloske shows a notation that I entered after

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the interview that says he ordered John Young to make changes to the ECASS database with respect to the trucks and the end-use statements.

Later in that interview—in fact, in that memorandum of the interview, the conclusion is stated that he didn't know of changes to the ECASS database. When I reviewed those papers in preparation for this, I saw that—and I tried to read it as objectively as I could. I said to myself, will, this appears inconsistent, this notation that I wrote.

Mr. SCHUMER. Sure does.

Mr. COCHRAN. I understand that, and that is why I decided that the phrase "but was unaware of changes in the system database" had to be removed.

Mr. SCHUMER. But, Mr. Cochran, you have explained that. People can make their own judgments as to where they come out on it. But I don't see where, in God's name, you come up with agreeing with the statement of Mr. DeGeorge that it was certain, that it was just Hill and Kloske who changed the permanent database.

Mr. COCHRAN. Well——

Mr. SCHUMER. What is your evidence for that when you have a direct contradiction from one of the two people involved?

Mr. COCHRAN. Well, again, I don't have the benefit of Mr. Kloske's testimony. It wasn't under oath. I am surprised he said that because I know in our interview——

Mr. SCHUMER. I am asking you your evidence. That was a bold and sweeping statement that might have very serious implications, so it shouldn't be given lightly.

Mr. COCHRAN. I understand. Yes, sir. Yes, sir.

Mr. SCHUMER. Now, I want you to think about it and tell me if you agree with it. You did the audit. Is it certain—certain—that Hill and Kloske were the only ones responsible for the changes in the permanent database?

Mr. COCHRAN. The technical changes were accomplished by someone else sitting at a keyboard typing.

Mr. SCHUMER. No, ordering it to be done, and it went no higher than them?

Mr. COCHRAN. To the best of our knowledge gathered in the audit. The scope is, to the best of our evidence, yes. That is as far as I can go. If Mr. Kloske is telling you something he didn't tell us——

Mr. SCHUMER. Where did you base your evidence from?

Mr. COCHRAN. The interviews conducted during the audit.

Mr. SCHUMER. Give me the specifics.

Mr. COCHRAN. Mr. Hill's interview conducted——

Mr. SCHUMER. Mr. Chairman, with your indulgence, we have about 3 minutes to vote. I will gladly just ask that the gentlemen be given time to review their records right here and when we come back they can answer that question.

Mr. EDWARDS. We stand in recess for 15 minutes.

[Recess.]

Mr. EDWARDS [presiding]. The committee will come to order. Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman. I have a couple more questions, but I had left it with Mr. Cochran finding some things in the record that indicated that it was Kloske and Hill who were in charge of changing the permanent record were solely responsible for it.

Mr. COCHRAN. Thank you, Mr. Schumer and Mr. Chairman. I will try to be as responsive as I can on the basis of our evidence.

Mr. SCHUMER. I appreciate that.

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Mr. COCHRAN. Let me go through some of these papers here as our report had indicated.

Mr. SCHUMER. You can submit those for the record if that is OK with the chairman.

Mr. EDWARDS. Without objection, so ordered.

[See appendix II–9.]

Mr. SCHUMER. Just the specific pages for the record of this hearing. I know you submitted them to us in general.

At the end, tell the stenographer the specific pages.

Mr. COCHRAN. The report stated Mr. Kloske was unaware of any system database changes. Here is what we did and what I found in going back through the papers.

Mr. Hill——

Mr. SCHUMER. Who—just for the record, tell us who Mr. Hill is.

Mr. COCHRAN. Dan Hill was a licensing official in

BXA.

Mr. SCHUMER. Under Mr. Kloske?

Mr. COCHRAN. Under Mr. Kloske. He no longer works at the agency.

On April 11, we interviewed him, I believe for the third time. It is on B–17 in our work papers. You will see, point number two, Dennis Kloske told John Young to change the printouts and ECASS to amend the descriptions of the vehicles to commercial utility cargo trucks. John Young was the Director of the Office of Resource

Management.

Mr. SCHUMER. Correct. That says Kloske ordered some lower-down to do it. It doesn't say it was solely his

idea.

Mr. COCHRAN. That is correct.

Mr. SCHUMER. The rest of the submissions are just like that?

Mr. COCHRAN. Submissions indicate information about who ordered or who knew of the changes.

I would like to call your attention to Mr. Kloske's February 26 memorandum to Mr. Willkie, and that is included in Exhibit 5 in our work papers. He included an attachment called Iraq database assessment. On page 2 of that, the end of the third paragraph, last two sentences, states: Based on concrete and specific documentation available on microfiche, we corrected the database by including the additional information. These corrections are detailed case by case on the attachment.

He discusses those.

Mr. SCHUMER. Mr. Cochran, fine. We will submit others for the record. I would like to submit in the record one other thing—the IG's own report of—I don't have the front sheet here—of March 21, 1991, auditor, and it has your name, Cochran, date March 21, 1991.

[See appendix II–10.]

Item ten. We asked him, Kloske, if there are standing orders from the Office of the Secretary, including the General Counsel's Office, to silently take the heat for export license controversies. He would only answer, ''Orders are orders.'' That is right.

Is that correctly from your document?

Mr. COCHRAN. That is from my document. That was indicating——

Mr. SCHUMER. Let me ask you something, Mr. Cochran.

Mr. FISH. Can he finish answering the question?

Mr. COCHRAN. I can explain, I think, the context for that remark.

Mr. SCHUMER. I thought I was asking the question.

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Mr. FISH. Mr. Chairman, the gentleman from New York may have liberties with the 5-minute, 15-minute, maybe 50-minute rule. We are doing something very strange here, an unsworn statement by someone who is not here being the basis of the questions, and when the question is asked, then the answer is interrupted.

I think it would be only polite, under the circumstances, to allow the witness to respond.

Mr. SCHUMER. I would say to the gentleman, I asked him to answer if this was his document. He said yes, but let me explain. I would be interested in the explanation, but only after I ask this question.

Mr. FISH. That is what I object to.

Mr. SCHUMER. I will defer to the gentleman. Give your explanation.

Mr. COCHRAN. I appreciate—I am not surprised it was asked. I was asking about export controversies in total, that is, in the universe of decisions where the Commerce Department and the Defense Department make decisions on export licenses. And I was asking if Commerce, quote, takes the heat for all export license controversies. Do Defense Department people blame Commerce for certain dual use items around the world?

Mr. SCHUMER. Orders are orders. That was his answer.

Mr. COCHRAN. That was his answer.

Mr. SCHUMER. You stated—Mr. DeGeorge stated it was Hill and Kloske. Here, Kloske told you someone is giving him orders.

Mr. COCHRAN. Yes, sir, I believe——

Mr. SCHUMER. And yet if I were an auditor, investigator, C.P.A., someone of even mind, I would certainly want to check that out and see if someone gave him orders instead of making a statement, a very serious statement, that it was Kloske and Hill alone who ordered these changes.

You have from him now, in two instances—I am sure if we go through the record more that Kloske told you folks that there were higher-ups involved. You didn't talk to any of the higher-ups. Fair enough—not fair enough from my point of view. Let's take your explanation on its face.

Then you make a statement—and to me, this is truly stepping over the line—without having talked to any of those with foreknowledge, that Kloske, at least himself, what I am reading, in deference to the gentleman from New York, is not something Kloske said yesterday. This is from the record of the IG of what Kloske told them a year and a half ago. We still don't get any questions of anybody at a higher level.

As I said, it seems to—let me finish, Mr. DeGeorge. Of course, you will comment; I will be happy to have you comment.

It just seems to this gentleman that an Under Secretary is being set up here. There is plenty of evidence on the record—there may be some that points to Kloske. There is plenty that points to higher-ups. We get an unabashed statement that says Kloske and his underling did it. I am sort of appalled.

Mr. DEGEORGE. Why are you appalled?

Mr. SCHUMER. Because of what I just said, Mr. DeGeorge. If you have to ask that question, I really have some doubts—you have in your record twice that Kloske said—I will repeat it for your benefit—that Kloske said other people were ordering him to do this. You don't talk to any of those other people.

Mr. COCHRAN. We don't have anything that says someone ordered Kloske to do this. That is the difference. I understand the interest in these statements, but we don't have anything specific. The lower level official, Dan Hill, on his first statement to us told—volunteered to us that he initiated

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changes on the positions—to deletion of positions and the changes of positions—and that he identified that Mr. Kloske ordered changes to other—to the trucks and the end-use statements. We received no information during this audit.

You know, if people didn't tell us something or people tell someone something else 1 year later, I would be real surprised. But during the audit, the evidence we gathered, there was no specific finger pointing to someone outside of BXA as a source for the specific changes.

Mr. SCHUMER. Mr. Cochran, I don't want to take the committee's time any further. But it is not that Mr. Kloske changed his story when he came and talked to us; in your own record you have evidence of his story being completely consistent, and you folks ignoring it.

Mr. EDWARDS. We haven't heard from the Justice Department. We do want to move on.

Mr. Coble has several minutes left. Mr. Coble.

Mr. COBLE. I will be brief, Mr. Chairman.

Mr. Chairman and ladies and gentlemen, I realize that we operate very liberally as we examine our witnesses. We don't apply the strict rules of evidence, and properly so, but I think my friend from New York has contributed dimension to liberal examination. I mean, here we have heard about this midnight witness who appeared, Lord only knows from where.

I don't know whether the gentleman from New York examined Mr. Kloske or maybe Mr. Kloske's brother-in-law or Mr. Kloske's uncle. I don't know under what conditions the examination took place. I do know, Mr. Chairman, we have three warm bodies who are seated out here before us, under oath, responding to questions by this committee; and it appears Mr. Kloske's testimony has been given more weight than the witnesses before us. That bothers me.

Mr. Kloske is conspicuously absent, A; and B, therefore not under oath. So I am uneasy about all this weight that is being submitted to Mr. Kloske's testimony.

We all know, I think, that the Department of Justice is investigating this issue of altered entries. I am wondering if the gentleman from New York, Mr. Schumer shared the information that he gained from Mr. Kloske with the Department of Justice. That might well be a pertinent point.

My point is, there are many unanswered questions here. And, Mr. Chairman, I am not proposing to have answers to them, but I hope someone does.

Mr. FISH. Will the gentleman yield?

Mr. COBLE. I will be glad to.

Mr. FISH. I thank the gentleman for his statement. He is right on the target.

I want to add to that no member of our staff has been provided, before this hearing, right up to this minute, with a statement by Mr. Kloske in affidavit form or otherwise. There is no way we can verify or refute any of the statements we have heard this afternoon.

Mr. COBLE. I agree. I thank the gentleman from New York, Mr. Fish, for his statement. I think this is taking an irregular, unnatural turn of events; and Mr. Chairman, I wanted to share my discontent with the committee.

I thank the chairman.

Mr. EDWARDS. We thank the gentleman. We have the Department of Justice to testify after this, so we will stick as closely as possible to the 5-minute rule.

The gentleman from Massachusetts, Mr. Frank, is recognized.

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Mr. FRANK. I think that answers the gentleman from North Carolina's question, about whether Mr. Schumer has told the Justice Department. My guess is, Mr. Schumer has told the Justice Department more than they wish to hear and they have had the benefit of it. I think we should note that much of what Mr. Schumer was quoting from was not a discussion he had with Mr. Kloske but a discussion he pointed out the IG's Office had with Mr. Kloske. Many of the comments came from that.

I would like to ask a couple of questions.

Mr. DeGeorge—and I understand, in fairness to you, you are not a free-wheeling agent. You are restricted by rules. You in this case, as you said, were given a charge; is that correct? You said you were charged to do this investigation and that had a lot to do with the scope of it.

Mr. DEGEORGE. That is not the way I would interpret it, Mr. Frank. I was asked by Mr. Willkie to take a look at the facts after he received a report from Mr. Kloske. I decided to do it. It was not an order.

Mr. FRANK. You did say, on several occasions the scope was influenced by what you were charged with.

Mr. DEGEORGE. The scope was influenced by the decisions that I thought were pertinent to the audit.

Mr. FRANK. Now I think you are making a contradiction to what you said before. And I am going to ask that we let—my recollection is, you said at one point—you said you did it this way because that was what you were charged to do.

Mr. DEGEORGE. Yes, sir. A request was made. I looked at that request and made judgments of what work I thought was satisfactory, necessary.

Mr. FRANK. What was the charge?

Mr. DEGEORGE. May I read the letter to you?

Mr. FRANK. Yes. And your interpretation of it.

Mr. DEGEORGE. As you know, there have been—this is to Frank DeGeorge from Wendell Willkie, dated March 11. As you know, there have been questions raised by the trade press and others concerning the accuracy of the Iraq export license computer printouts provided to Congressman Barnard. In response to my request of February 8, 1991, Under Secretary Kloske transmitted a report dated February 26, 1991, explaining changes made to the printout. Since allegations continue to emerge about these and other possible changes, the Secretary and I believe it would be appropriate for you to look into the allegations concerning preparation of the Iraqi printout.

Mr. FRANK. You said earlier you interpreted your charge to be—you used the word "charge," it was in response to some questions about why you hadn't broadened the scope and why you hadn't gone into what you determined were policy-type things. You said because your charge was to find out who had made the changes, and that was it. That is the obvious problem we have here. It was certainly the thrust of your answers before.

I would ask that we have those prepared and get them to you if you want to amplify them later. I got the clear impression you indicated you focused on—as you did on who made the changes and didn't go beyond that because that is what you were asked to do. Did I hear you incorrectly?

Mr. DEGEORGE. That is what I was asked to do and that is what we did first.

Mr. FRANK. The point is you were asked by Mr. Willkie. The point I am making, you cited—again—I will try and find these in the transcript. You cited the nature of your charge as one of the reasons you didn't ask Mr.

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Willkie, but Mr. Willkie was the charger. I think to have Mr. Willkie—I beg your pardon?

Mr. DEGEORGE. I am sorry. I didn't understand. The charger?

Mr. FRANK. The charger. Mr. Willkie charged you; and you gave as a reason why the scope was narrower than some people here were asking you, your answers were that, well, we didn't go into some of these things because our charge was to find out who did what. You said the primary thrust of my job was who made what changes. When asked or, in fact, criticized for not going beyond that, you said, well this is my charge.

My point is, your charge is from Mr. Willkie. Your own testimony indicated you took from Mr. Willkie this charge, and I don't think that is a good argument as to why you didn't go ask Mr. Willkie some questions. Yes.

Mr. DEGEORGE. I do not accept the word "charged."

Mr. FRANK. You used it.

Mr. DEGEORGE. If I used the word previously, it was in error. Mr. Willkie made a request. He asked me if I would look. We decided to what extent we would look and how we would look.

Mr. FRANK. I interrupted you. You used the word "charge" before. You obviously have a right to now say you didn't use the word. I think frankly you are concerned now about the implications of it. The clear thrust of your testimony is you pled a scoping from Mr. Willkie as the reason you didn't ask Mr. Willkie the questions.

Mr. DEGEORGE. I don't agree with that conclusion, Mr. Frank.

Mr. FRANK. I think you do, and that is why you want to change the use of the word charge. I will get the transcript. You said the primary thrust of your job was who made what changes.

Mr. DEGEORGE. We said the primary thrust of what we wanted to do was who made 66 changes and why.

Mr. FRANK. What did you do to find out why?

Mr. DEGEORGE. What did I do to find out why?

Mr. FRANK. Yes.

Mr. DEGEORGE. I don't understand the question.

Mr. FRANK. All right, I will ask you another one. The why is one of the weakest parts of your report because you appear—if you read the report, it appears to be almost random mistakes.

You say, a Bureau official told us the descriptions were changed to clarify the Bureau does not license the sale of military trucks. You then go on to point out the bureau, in fact, does license the sale of military trucks.

Did you believe the bureau didn't know what it did? Did you think that was an honest error or a conscious lie?

Mr. DEGEORGE. I believe the changes were made because Mr. Hill and Mr.——

Mr. FRANK. I asked you a specific question. On page 4 here of your statement it says: A bureau official told us the commodity descriptions were changed to clarify the bureau does not license the sale of military trucks.

Mr. DEGEORGE. That is the what Mr. Hill told us.

Mr. FRANK. In the next paragraph you say, the bureau does license military trucks. One of the two reasons they gave you was simply wrong. It wasn't a case of interpretation. I am asking you whether you think that was a conscious lie or an honest error? Did they forget they didn't license military trucks?

Mr. DEGEORGE. I think it was an error.

Mr. FRANK. That is why I am bothered. Do you think they forgot they licensed military trucks? Was it they hadn't licensed any for 1 week and

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it slipped their mind? How can you be the Bureau of Export Administration and forget that you license military trucks?

Mr. DEGEORGE. You will have to ask Mr. Hill.

Mr. FRANK. Did you ask him, sir?

Mr. DEGEORGE. Yes, we did.

Mr. FRANK. What did he say?

Mr. DEGEORGE. He told us, first, he thought it was the policy; and second, told us he disagreed and he had made a mistake.

Mr. FRANK. I understand. You said he thought it was the policy. He was wrong. He didn't know he licensed military trucks?

Mr. DEGEORGE. I am sorry, I don't follow your semantics.

Mr. FRANK. When he told you he didn't license military trucks, did you think he had forgotten, that he didn't know? Military trucks ain't yo-yos. It would seem to me if I was running the Department of Export Administration, I would know whether or not they licensed military trucks.

Mr. DEGEORGE. I do not know it was Mr. Kloske's.

Mr. FRANK. If that is all you know, it was an abominable job of an investigation.

Mr. DEGEORGE. It wasn't an investigation. As soon as we finished——

Mr. FRANK. Why didn't you finish this investigation?

Mr. DEGEORGE. Because as soon as we finished this audit, we had another.

Mr. FRANK. It was a time problem and staff resources?

Mr. DEGEORGE. Among other things. We had a limited number of people. I don't have 4,000 people.

Mr. FRANK. Time and resources were the issues. Resources is people.

Mr. DEGEORGE. Right.

Mr. FRANK. I still want to get back to what seems to me a very shoddy investigation. He gave two reasons: One, the State Department letter justified it. You say, no, the State Department letter didn't justify it. Two, you said you don't license military trucks, but you do license military trucks. That is so glaring an error.

You didn't try to find out why he told you?

Mr. Cochran.

Mr. COCHRAN. Let me read from Mr. Hill's interview with us, his first interview. Dan said Kloske called him directly and wanted to make four additional changes to the printout. The——

Mr. FRANK. Speak into the microphone.

Mr. COCHRAN. The ECC end description for certain trucks was military trucks. Yet, it is obvious—this is my characterization of Dan's discussion——

Mr. FRANK. Move the microphone.

Mr. COCHRAN. Yet it is obvious DOC/BXA doesn't license military vehicles. The description was due to the CCL number entered by the exporter.

Mr. FRANK. Who said it is obvious they don't license military vehicles?

Mr. COCHRAN. Dan.

Mr. FRANK. He told you it was obvious?

Mr. COCHRAN. He told me that is what he was thinking at the time he made the change. They saw the change; they were working over a weekend.

Mr. FRANK. Who made the change?

Mr. COCHRAN. Dan Hill.

Mr. FRANK. What is his position?

Mr. COCHRAN. May I finish?

Mr. FRANK. No, I can't follow you.

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What was Dan Hill's position?

Mr. COCHRAN. Dan Hill was a licensing official under Mr. Kloske at the time.

Mr. FRANK. He told you they didn't license military trucks?

Mr. COCHRAN. He is saying at the time it was obvious to him DOC/BXA didn't license military trucks and the exporter entered the description. And that Kloske called and said—and wanted to make this additional change.

That is what Mr. Hill told us on March 13. That is interview memoranda B–1.

Mr. FRANK. You have gone past the point of my question.

Isn't it odd Mr. Hill, who works there as an export licenser—you say he told you they didn't license military trucks when, in fact, they do? They were at the time. Isn't it odd that you didn't wonder how he happened—it slipped his mind they licensed military trucks?

Mr. COCHRAN. He told us he was in error.

Mr. FRANK. Did you ask him how he happened to make the error? Did you ask him when he found out?

Mr. COCHRAN. When he found out?

Mr. FRANK. Did he suddenly wake up at 3 o'clock in the morning and say, oh, my God, of course we license military trucks; or was he watching a movie and saw a military truck? How did this man in the licensing business suddenly recall?

Mr. COCHRAN. He did not tell us when he realized the error.

Mr. FRANK. That is such an obvious error—if you are an investigator wouldn't you have asked him why he made such an obvious error? You leave us with the inference it is not an honest error, especially—you also say, page 4 of your statement, the total value of the licensed trucks was over $1 billion. I thought we were talking five or six trucks—five instances, but five instances of $1 billion, two-thirds of the total value for the export licenses for Iraq during that period.

In fact, your statement, Mr. DeGeorge—more than 97 percent of the total value of the changed licenses is accounted for by changes to the truck licenses—we are talking about large sums of money.

My time has expired. I would simply say, I am wholly unpersuaded you made a serious effort to find out how this man made such a glaring and obvious error that led to Congress being misled on a very serious point.

Mr. DEGEORGE. We can only disagree with you.

Mr. FRANK. I thought you would.

Mr. EDWARDS. Gentleman from Florida.

Mr. JAMES. Thank you very much. This question is for Mr. DeGeorge. Could you explain the actual changes the information related to the truck licenses?

Mr. DEGEORGE. The actual changes.

Mr. JAMES. Of the information.

Mr. DEGEORGE. The only change was a change of characterization from military trucks to commercial trucks.

Mr. JAMES. In those three memos, including those corrections sent to Congress in regard to the truck licenses, were those the only changes we are dealing with here?

Mr. DEGEORGE. In this particular case those changes, the only data element of those changes, the end user, the CCN, commodity code number and the other—the dollar values were not changed, only the categorization.

Mr. JAMES. Now, did you—I know you testified to this, but I would like to get it in a simple question/answer form, if I can.

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Who specifically do you know, as a fact, was involved in those changes? You said Dennis Kloske was one that made the changes. Is that my understanding? Kloske?

Mr. DEGEORGE. Staff—some of the changes were initiated by Mr. Kloske, yes. A great number were initiated by Mr. Hill. Mr. Kloske was involved in about 11, I believe.

Mr. JAMES. Kloske was involved in 11 and Hill was involved in how many?

Mr. DEGEORGE. The balance, 57, 56.

Mr. JAMES. Fifty-seven or 56 so 15 or 16 percent were Kloske's changes and Hill's was the balance.

Now did Kloske have knowledge of Hill's changes?

Mr. DEGEORGE. He had knowledge to changes in the data base. I am not positive he had knowledge—he acknowledged changes to data which was transmitted to Congress. I am not positive he had knowledge of all the changes made to the data base, but at least some.

Mr. JAMES. Congressman Frank asked you questions about Hill's reasons for the changes and Hill later corrected himself and said "I made a mistake." Did Kloske have knowledge of Hill's earlier assumption?

Mr. DEGEORGE. I am uncertain of that. Perhaps—well, no. We are talking about the other changes. I know Mr. Kloske had knowledge because he transmitted a letter of detailed changes with explanations to Mr. Willkie, which was the basis of Mr. Willkie's direction to me.

Mr. JAMES. I mean previously. Did Mr. Kloske have knowledge of Hill's changes and the reason for the changes?

Mr. DEGEORGE. I believe so.

Mr. JAMES. If he did, are we to assume Kloske made the same mistake, an assumption that they didn't handle the military trucks?

Mr. DEGEORGE. I don't have Mr. Kloske's testimony in front of me, but I know at least Mr. Hill and others have basically said Mr. Kloske was the one that directed the changes to the trucks, yes.

Mr. JAMES. Hill was just the functionary for the changes?

Mr. DEGEORGE. In that case, yes.

Mr. JAMES. Wouldn't it be more important what Kloske thought the designation was, rather than what Hill thought?

Mr. DEGEORGE. That is correct.

Mr. JAMES. Why are we interested in what Hill thought?

Mr. DEGEORGE. Mr. Hill made some of the mistakes and I would argue Mr. Kloske made some of the mistakes.

Mr. JAMES. My point is if Kloske knew what Hill was doing, I assume Kloske made the same assumption of fact that they don't do the reporting the same way with regard to military vehicles.

Mr. DEGEORGE. Mr. Kloske and Mr. Hill worked very closely. I don't think there were any changes in the data reported to Congress or to the Hill without the other one knowing.

Mr. JAMES. I may be confused. Page 4, a Bureau official told us commodity descriptions were changed. We clarified the Bureau does not license the sale of military trucks. I assume that Bureau official, although it doesn't say, was Mr. Hill.

Mr. DEGEORGE. My understanding is those were Mr. Kloske's words. We don't license military trucks.

Mr. JAMES. "No, sir," were Kloske's words.

Mr. DEGEORGE. My understanding.

Mr. JAMES. Did Hill have the same assumption or just follow instructions?

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Mr. COCHRAN. Sir, he did have that same assumption, strange as it may appear and he used a State Department letter to justify the change also.

Mr. JAMES. We have heard allegations, we don't have Kloske's statements before us. But we heard, I think Congressman Schumer recite that Mr. Kloske reported he transmitted certain information to Mr. Willkie. Does your information conclude that that is correct or did you inquire of Kloske as to his conversations with Willkie?

In other words, do you have reason to believe it was correct, Mr. Schumer's representation as to Kloske—who at least he contends he talked to——

Mr. WEAVER. If I might answer that question, it appears there was quite a bit of communication between Mr. Kloske and people at the departmental level and the printouts and copies were sent to other agencies for their review. The communique—the evidence that we discovered during our audit shows that these communications were concerning policy issues such as whether the descriptions of the other agencies fell within the executive privilege or the deliberative process privilege and therefore should be withheld from Congressman Barnard's subcommittee. We did not have evidence—we did not disclose any evidence so therefore I can't say whether any exists, but we did not disclose any evidence during our audit that the purpose of those transmittals was for the other agencies to make changes to the data that was being sent to the hill, that the communications that were going on between Kloske and senior departmental officials and others outside the Department were for policy issues.

Mr. JAMES. In other words, see if I am phrasing it correctly. The discussions that happened with Willkie and any higher up officials was as to what subject matter was covered by executive privilege. But nowhere in those communications did you find evidence that there was a mandate or directive to change any data system information.

Mr. WEAVER. If I could clarify that, we are aware several printouts were sent to Congressman Barnard's subcommittee; that in certain printouts there were orders that classes of information would be deleted from the printouts that were sent, but our understanding was that was not a secretive process, that they told the committee what was going on.

That information was not being provided to them, and our understanding was that those deletions of classes of information such as end users in certain cases or other agency positions were on policy basis of making a determination whether deliberative process applied.

Mr. JAMES. In other words you are asking us—you drew a distinction between intentionally trying to mislead Congress by saying it is a military truck or nonmilitary truck and telling Congress, look, we don't believe you are entitled to this deposition, therefore we are deleting it because of executive privilege. There is a distinction between those two types of information is what you are saying.

Mr. WEAVER. That is correct. We don't associate the communications—we have found no evidence to date and you will have to defer to Department of Justice on this—but we have found no evidence to date that during our audit that leveraged the military truck changes to these other communications that were going on in these policy matters.

Mr. JAMES. I see my time was up. There was one clarifying question. I take it, then, you got no information from Mr. Kloske that would suggest that Mr. Willkie in any way instructed, mandated, implied or expressed there be deletions of the nature to mislead Congress in regard to the trucks; is that correct?

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Mr. DEGEORGE. We have no evidence of that whatsoever.
Mr. JAMES. Thank you very much.
Mr. BROOKS. Mr. Washington, the gentleman from Texas.
Mr. WASHINGTON. Thank you, Mr. Chairman. Mr. Cochran, since you are privileged to be a member of two professions, let me preface my questions with do you consider law or accountancy to be your long suit?
Mr. COCHRAN. In my job I really use the accounting skills and, of course, the analytical skills that I developed further in law school. The job requires the use of auditors techniques. I leave the legal judgments to Mr. Weaver.
Mr. WASHINGTON. Yes, sir. What is your definition of intent? It is not a law school question, just your working thumbnail definition. You recall a question came up on several occasions as to why you didn't inquire into the intent of certain individuals. I need to know—can you hear me? A lot of other noise going on. I will wait.
Mr. COCHRAN. OK. My definition of intent?
Mr. WASHINGTON. Yes, sir.
Mr. COCHRAN. Well, I think especially in this context it was—it was an indication that there was some specific thought to direct action for some purpose, to a specific purpose to, let's say, a specific thought to deceive Congress, to withhold information, to conceal data, to do something like that.
Mr. WASHINGTON. So you wouldn't measure by the results, you would measure it, then, by the state of mind of the individual involved, would you?
Mr. COCHRAN. We try to do that by the totality of the circumstances. What the individuals told us they intended to do, what they did and the time frame they did it in, whatever the documents indicated, and the end result. So, yes, we did go into trying to determine some kind of reason, state of mind as far as intent, and then see what the end result is and determine some kind of perspective with respect to the final information.
Mr. WASHINGTON. Would you agree that a circumstantial way of adducing that would be to look at the circumstances, to look at the chain of events, to look at the time frame?
Mr. COCHRAN. Certainly in an auditing standpoint,
yes.
Mr. WASHINGTON. Would you also agree the direct evidence would be to inquire of an individual why they did certain things?
Mr. COCHRAN. Yes, sir. In fact, we did inquire as to the individuals. We did not include in our work papers a list of the questions. We did inquire how the changes were made and who made the changes.
Mr. WASHINGTON. Why the changes were made would go to intent.
Mr. COCHRAN. That is correct, intent, justification, basis, support.
Mr. WASHINGTON. Rationale, et cetera. You mentioned in connection with the inquiry on the question of intent you raised the spector of, "policy role." I am curious to know how you read a policy consideration into the question of intent.
Mr. COCHRAN. Could you repeat the question? I am not sure I understood the question.
Mr. WASHINGTON. To put it in focus—I forgot—I believe it was from Chairman Schumer when he put questions to you about why you didn't inquire of Mr. Willkie. You—I don't remember the entire sentence structure or the thought expressed, but I wrote down at that time that I wanted to inquire of you with respect to your use of the term, "policy role," in connection with reaching a point where you had satisfied yourself with respect to the inquiry as to what was done and when it was done. And you used that as an explanation—not an excuse, but an explanation as to why you

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didn't inquire of Mr. Willkie as to his involvement with that aspect of your audit.

Mr. COCHRAN. Yes, sir. Our evidence indicated that Mr. Willkie didn't have a role in ordering a specific change, OK. But he had a role in distributing documents and participating in these discussions on executive privilege and deliberative process. When we were satisfied as to the individuals as far as we were concerned, as far as our evidence indicated, the individuals responsible for the changes and the processes by which the changes were made to printouts there was—by definition if that is all the relevant evidence, that is as far as you need to go.

Mr. WASHINGTON. OK. I have just one other question and I will be finished. Going back, again, I believe it was the chairman's line of questioning, I want to focus in on the quotation "orders are orders." I assume for the sake of discussion when a person speaks of an order, he or she speaks of someone who is higher on the totem pole than he or she, rather than someone who is lower. Would you agree with me on that?

Mr. COCHRAN. Yes.

Mr. WASHINGTON. An order wouldn't come from a person's subordinate. It would come from a person's superior. Since there has been agreement that Mr. Kloske made the statement on the question whether the General Counsel's Office was, quote, "taking heat on the export licensing controversy," his answer, I guess, with a shrug of the shoulders "orders are orders," what did you take that to mean?

Mr. COCHRAN. Took that to mean—I think people may recall there were stories which department was responsible for licensing the sale of arms to the Soviet Union and the Eastern bloc. That is what he was referring to. That is what I took it to mean. If I thought he meant with regards to specific changes, nobody told me to stop with Kloske. Nobody told me——

Mr. WASHINGTON. No one told you to stop.

Mr. COCHRAN. No one told me to stop anywhere.

Mr. WASHINGTON. I am not suggesting you did.

Mr. COCHRAN. I want that on the record. If I thought that meant with respect to specific changes, I would have pursued the line of questioning.

Mr. WASHINGTON. What did you take it to mean?

Mr. COCHRAN. Since we had already identified individuals responsible for specific changes, recall that Dan Hill took responsibility for most of the changes. I took it to mean he was referring to the overall U.S. Government export control policy that somehow the Commerce Department is supposed to take the rap for export licensing decisions and other people told us that, too.

Mr. WASHINGTON. OK. Let me ask you finally—I want to make sure this is in the proper context. I understand it to mean Kloske was asked, quote, "if there are any standing orders from the Office of the Secretary, including the General Counsel's Office to silently take the heat for export licensing controversies," you would mean in general, not in particular with respect to the changes that were made?

Mr. COCHRAN. That is right, I mean in general. If he had meant in specific I would have gone into a further line of questioning about the specific changes.

Mr. WASHINGTON. How do you know he didn't mean that?

Mr. COCHRAN. We were satisfied—at that point he already told us what he knew of the specific changes, about the trucks, that he had been shown a letter, that he may have—my notation in the case may have ordered a

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change to the data base and what other people had told us. He was one of the last interviews conducted.

Mr. WASHINGTON. You found these things to be extricable then from the general concept of "orders are orders" on the wider plane and not related to your specific inquiry. You knew him to understand the nature of your inquiry.

Mr. COCHRAN. That is right.

Mr. WASHINGTON. Thank you, sir, I have no further questions.

Mr. EDWARDS. It will be a few moments before we continue. Two or three members are on their way back from the Chamber where there is a vote.

The committee will come to order. The gentleman from California, Mr. Campbell is recognized.

Mr. CAMPBELL. Thank you, Mr. Chairman. I thank the witnesses for their patience. I am going to ask you to help me one more time to the best of your recollection in your investigation. What reason did Kloske give and what reason did Hill give for making the alterations they did?

Mr. DEGEORGE. The alterations to the data base?

Mr. CAMPBELL. More importantly the alterations to the submissions to Barnard?

Mr. DEGEORGE. In our testimony I think we list the various reasons given. On the truck licenses the confusion apparently between Hill and Kloske, both the effect they, "did not license military trucks which were dual use trucks," and basically it was a category that the request, as submitted, was proper. They didn't have to make that change.

There were others that dealt with parts and components, parts and components Mr. Hill made the judgment—and there were two parts of their administrative procedure that he had confused. On one part of it he said basically because a part component does not have to go to Defense for computer, say, a hard disc on computers, it doesn't have to go to Defense for approval. When it came back we resolved—made a decision, yes or no, since it didn't have to go. We put it there in the first place. I think it would be better off to leave it alone.

They decided in the best interest they want the best presentation they would take it off.

There were end use comments and a lot of issues like that. There were three tape facilities—I think they were taping facilities, not unlike what we have here that they added that they were for editing purposes in some Iraqi information. The information was added.

In another case the computer, certain data was subtracted. They give explanations in a letter from Mr. Kloske that I will give you a copy of. The rationalizations I don't understand.

Mr. CAMPBELL. As you recall your original testimony here today, I mean in your written statement, not that you changed it, because to my knowledge you did not. I remember you saying the truck designation might have been changed by Kloske to avoid embarrassment. That is my recollection.

Mr. DEGEORGE. That is my sense why they did it. There was 1 billion dollars' worth of trucks even though they were never shipped. Sometimes we lose sight of the fact they never were shipped. During that process after he made the decision—the actual discussion I recall from the notes when it was brought to Mr. Kloske's attention he said, "We don't ship military trucks do we?" Mr. Hill said, no, and then bang they changed it.

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Mr. CAMPBELL. The phrase, ''embarrassment,'' is what I am focusing on. You meant to use that in the context of embarrassment to the Commerce Department or BXA.

Mr. DEGEORGE. Or in the administration. That is pure speculation.

Mr. CAMPBELL. I admit it is, but it is really important to me because of the issue of whether you in your judgment, in using the phrase ''embarrassment'' might mean political embarrassment. Let me offer this and ask you to tell me whether it is accurate or not.

It would have been embarrassing to the administration for evidence of military use trucks going to Iraq during that period of time, either under President Reagan or under President Bush. That is embarrassing. Was that your sense of the use of the phrase—that you think Kloske might have made the changes he did to avoid embarrassment?

Mr. DEGEORGE. It is possible. My intent to use the word ''embarrassment'' was embarrassment because it was a significant asset that could be used to adapt it for military use.

Mr. CAMPBELL. Here is why I emphasize that. As you saw earlier, perhaps I am trying my best to work under the statute that gives us this jurisdiction. One of the factors to consider is whether the Attorney General, if he went ahead with the prosecution or investigation might be in a personal, financial or political conflict of interest.

Well, no one here is alleging personal or financial, but a political conflict of interest. And a political embarrassment are close concepts in my mind. And that is why, when you suggested perhaps Kloske acted the way he did to avoid embarrassment, I wanted to follow up if you thought that might have been in your judgment to avoid political embarrassment.

Mr. DEGEORGE. Yes. Let me put it in total context there, Mr. Campbell. If you look at the random listing of the licenses that were submitted and approved, there are many, many other issues that were actually approved without any problem and were shipped without any problem that I personally, from my view, if I was the 39th President or anyone else or Secretary of Commerce, I would think in hindsight later on this looks pretty bad. I wonder why we did there or allowed this. Computers for the nuclear facilities, a personal helicopter for Saddam Hussein. Those types of issues are far more significant to me than the ones we discussed here.

Mr. CAMPBELL. Regrettably you can't excuse an error because other errors were not made. I understand how that goes to intent.

Mr. DEGEORGE. It was like one guy gets stopped for speeding and he watches six other guys go by while the policeman writes him a ticket.

Mr. CAMPBELL. I appreciate your answer. Mr. Chairman, I would ask unanimous consent to take 30 seconds when we come back for the purpose——

Mr. EDWARDS. Without objection. We will recess now and when we return in a very few minutes I hope you will be recognized and then the gentleman from Nebraska, Mr. Hoagland.

[Recess.]

Mr. BROOKS. Mr. Hoagland, the gentleman is recognized.

Mr. HOAGLAND. Thank you, Mr. Chairman.

Mr. BROOKS. May I make one observation first and say that the committee would like to conclude tonight. We have one more panel, two witnesses, from the Justice Department, who have been very patiently waiting here all day long, and I think you gentlemen are both competent lawyers and Lee, we have you too here also, and I am sorry about that, but apparently there have been a lot of interest and questions from Mr. Lemay and Mr.

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DeGeorge. I don't think there is any point in hammering this out and coming back at 7 o'clock tonight working from 7 to 9. We will put this off, we will have another meeting of the panel on Thursday morning at 10 o'clock. We can finish it in regular order.

Does that sound reasonable to you all, gentlemen? I realize you have schedule problems, but I don't know what else we can do.

Well, would they prefer to submit their statements and submit to written questions? It is not as effective for members, they might not be that happy. Lee, what do you think.

Mr. RAWLS. I think we can.

Mr. BROOKS. Stand up so I can hear you.

Mr. RAWLS. We will be prepared to submit our statements, any written questions and then if you wanted us back Thursday for followup, if that suited the committee, we would also be prepared for that. But perhaps to save you the time, take a look at our statements and we will answer any written questions and if you then want us back for further questions, we will come on back.

Mr. BROOKS. Let's do it like that, and then you are not committed to another day of hanging around fooling with this business.

Mr. RAWLS. It is at your discretion, Mr. Chairman.

Mr. BROOKS. Is that your request; is that your suggestion?

Mr. RAWLS. Yes, sir.

Mr. BROOKS. Without objection then, we will accept at the conclusion of Mr. DeGeorge's testimony written statements by the gentlemen from the Justice Department and they agree to answer all the written questions we might have and we will advise all of the committee of that in writing in the morning at dawn, and the questions will have to be in by—what kind of period of time?

I guess by 48 hours on the questions for us to get them to you, 48 hours for them back, so we can get them in the record.

We will hold the record on this basis.

We will try to get the questions tomorrow, maybe 36 hours. You will get the answer by Friday and go to press on Friday. It is easier than written answers to written questions, you know that. All right, without objection, so ordered then. The gentleman is recognized.

[See appendix II–11.]

Mr. HOAGLAND. Mr. DeGeorge, I notice that the results of your investigation are to contain any responsibility for the record changes within the Bureau of Export Administration in the Commerce Department; is that right?

Mr. DEGEORGE. I am sorry, sir, would you repeat the question?

Mr. HOAGLAND. Sure. The results of your investigations are to contain any responsibility for the 66 or 68 record changes within the Bureau of Export Administration; is that right?

Mr. DEGEORGE. Well, it was an audit and we do confirm, in our judgment, that the restrictions and decisions were all made within the Bureau of Export Administration, yes, sir.

Mr. HOAGLAND. Right. And any responsibilities for record changes lies within that Bureau; is that right?

Mr. DEGEORGE. Yes, sir.

Mr. HOAGLAND. Entirely within the bureau. And basically, with the exception of a couple of interviews in Defense and other agencies, all of the interviews were of individuals within the Bureau; is that right?

Mr. DEGEORGE. No, there were, the Deputy General Counsel, Dan Haendel, and generally most of the people within the agency, yes, sir.

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Mr. HOAGLAND. Now, it is the case, isn't it, that your interview of Dennis Kloske, I have the memo here, it indicates that he received direction from Wayne Berman concerning Congressman Barnard's subpoena and Mr. Berman is counsel to the Secretary of Commerce.

Mr. DEGEORGE. He was, yes, sir.

Mr. HOAGLAND. And he also received guidance from Mr. Willkie, the General Counsel. But you and your team declined to interview either of those two gentlemen, even though they gave Mr. Kloske guidance with respect to how he should entitle these subpoenas; is that right?

Mr. DEGEORGE. We have tried mightily, and I guess not successfully to define the difference between what we considered the deliberative process decisions and the policy decisions which were negotiated between the NCS, the Department and Mr. Barnard's committee. That we did not feel was our direction. What we tried to do——

Mr. HOAGLAND. But those individuals were not interviewed, though, Mr. DeGeorge; is that right?

Mr. DEGEORGE. That is correct.

Mr. HOAGLAND. Now, paragraph two of the memo of the interview of Mr. Kloske of March 21 indicates that the responses underwent internal legal review, including review in the Office of the Counsel of the White House; is that right?

Mr. DEGEORGE. I was not at the interview, sir. Andy; is that correct?

Mr. HOAGLAND. The summary indicates it underwent internal legal reviews in the White House among other places.

Mr. COCHRAN. That is what he told us.

Mr. HOAGLAND. He told you that, and in spite of the fact he told you that, you declined to interview anybody at the White House about the document changes; is that right?

Mr. COCHRAN. Because we had no evidence linking anybody at the White House and we still have no evidence anybody at the White House to the specific changes in the documents.

Mr. HOAGLAND. They were involved in the process, weren't they?

Mr. COCHRAN. The process of answering Congressman Barnard's question yes, sir and the process of determining whether agency positions should be included or not and whether evidence of agency deliberations is, can be excluded as part of the deliberative process, yes, sir.

Mr. HOAGLAND. Paragraph three of the memo indicates that he was given guidance from individuals in the Office of the Secretary?

Mr. COCHRAN. Yes, sir.

Mr. HOAGLAND. But you declined to interview anybody in the Office of the Secretary.

Mr. COCHRAN. Not directly. We interviewed the deputy general counsel at the time but not anybody in the Office of the Secretary for the same reasons that there was no evidence linking anybody in the Office of the Secretary to the specific changes.

Mr. HOAGLAND. Well, let me ask you this.

Mr. COCHRAN. And there was evidence——

Mr. HOAGLAND. Let me ask you this. Paragraph 10 states of this summary of the interview states in full: "We asked him if there are standing orders from the Office of the Secretary, including the General Counsel's Office, to silently "take the heat" for export license controversies." He would only answer "orders are orders." Right? Did I accurately——

Mr. COCHRAN. Yes, sir. As I explained, we discussed this with Mr. Washington. This was a general discussion of general U.S. Government export

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control policy and he was telling me that in past controversies over which the Department was responsible for approving shipments to the Eastern Bloc or any other country, that there were orders basically to remain quiet as to whether the Commerce Department should take the rap. It did not have anything to do with the specific changes.

Mr. HOAGLAND. Well, you know, your memo here says that he was—he was asked whether he was under standing orders to silently take the heat.

Mr. COCHRAN. I conducted the interview, and I know——

Mr. HOAGLAND. His response was orders are orders, and you didn't do any interviews to follow up on that; is that right?

Mr. COCHRAN. That is because in his interview and the interviews with others, and I should point out that his interview was one of the last conducted, that we identified the individuals, and the individuals actually identified themselves, who made, who were responsible for the changes and who made the changes.

So after that question, it was not relevant to our objective to determine how or why or who made the changes, so we did not pursue the line of questioning.

Mr. HOAGLAND. Let me ask you a final question. Have you seen the memo dated October 10, 1990, by which the transmittal memo when the information was sent to Congressman Barnard and distributed to State, Defense where there is a reference that there have been discussions about the matter with attorneys from Department of State, Department of Defense?

Mr. COCHRAN. Sir, I believe that document is included in exhibit 2, which was provided to the committee.

Mr. HOAGLAND. And that didn't cause you to follow up and interview any of those individuals with whom those discussions were made concerning compliance with Congressman Barnard's request?

Mr. COCHRAN. Well, two reasons for that. Number one, since we were satisfied that we had identified the individuals responsible for the changes; and we were satisfied that this was evidence of the policy discussions on deliberative process and how generally the printout should be assembled; we did not pursue the line of questioning.

Mr. HOAGLAND. We have a vote on now, Mr. Cochran, so I can't pursue this any further, but I certainly think the air would have been clearer to a greater extent if these leads had been followed up.

Anyway, thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Hoagland, and we want to thank you very much, gentlemen, appreciate your testimony.

Let me say that Dennis Kloske is a former Under Secretary for Export Administration at the Department of Commerce. Because it was discussed by both representatives of the Department of Justice and the Department of Commerce in their testimony, I extended an invitation to him to testify here yesterday. He responded late last night by asking permission to submit a statement by 9:30 a.m. on Thursday, June 25, and we will give him that opportunity and the record will be open until Thursday. We have these questions to go in anyhow.

[See appendix II–12.]

Now, over the last 5 days we have received numerous documents from the executive branch per my June 11, 1992, request to the President. I would like to point out that not all the documents requested were received. Numerous documents were intentionally withheld on the basis of, one, the agency was unable to locate the documents; two, it would compromise ongoing criminal investigations or prosecutions or the deliberative process; and three,

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documents, some of them, were, they say, protected under nondisclosure rules pertaining to grand jury proceedings.

And, finally, the Justice Department has been requested to provide classified documents which pertain to BNL and other matters involving sales to Iraq of military-related equipment prior to the Persian Gulf conflict. Some of these documents have been provided to the committee while others have been withheld. Unfortunately, the classified documents provided to the committee late last week have not been viewed, in large part, because of a previous decision by the administration to suspend the security clearances of key Judiciary staff.

Apparently, the CIA and the National Security Council decided that the security clearance procedures applicable to this committee, previously honored by three past presidents, are no longer valid. As a result, the committee staff were unable to review any documents classified by the executive as national security related materials.

And I would now like to say that we thank all the witnesses for their patience and for their participation in the hearing today. Their testimony will be useful to the committee's assessment of whether to request the Attorney General to appoint an independent counsel.

I want to make sure that all members have the benefit of a complete transcript of the hearing record from June 2 and from today's proceedings, and this can be done promptly.

At this point, at that point, rather, when that has been done, the committee may proceed a number of ways: It may do nothing further based on the evidence received, or, if a majority of either party comprising the committee write to the Attorney General requesting the appointment of an independent counsel, then the statute is triggered and the Attorney General must conduct a threshold inquiry and report back to us within 30 days.

The written request need not be preceded by collective action by the committee in voting on a motion to appoint an independent counsel. But such a vote may be useful to the process developed so far. In any event, as I indicated at the June 2 hearing, the matter needs to be resolved and resolved expeditiously. I trust it will be. The hearing is adjourned.

[Whereupon, at 5:25 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

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