

November 7, 2002

Senators Kennedy, Schumer, Leahy and Feinstein  
Senate Committee on the Judiciary  
Room 226 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senators Kennedy, Schumer, Leahy and Feinstein

I am writing to formally ask for your help in finishing the work you and your Committee began in 1998 to pass a private relief bill for me. While ultimately you can only do this in your personal capacity, I am contacting you through your Committee since the Committee which you chaired has oversight responsibilities relevant to this case and has been involved in it. In addition, I understand that some of the classified information you may need to review this case must be accessed through your Committee facilities. I apologize for the length of this letter, but this is reviewing 13 years of history.

The initial issue involved in this case was willful misleading and lying to Congress about intelligence pertaining to Pakistan's nuclear weapons program and a false allegation that I was "intending" to expose this to Congress. As if this was not serious enough, it has now-- through a recent landmark Congressional Reference about a private relief bill (PR) for me in Federal court which is heading your way-- gone way beyond these initial issues into matters that will affect the Congress as an institution and the lives of all federal employees who work with classified information, especially those in the intelligence, foreign affairs and law enforcement Communities.

By way of background, I am a former Weapons of Mass Destruction intelligence officer for the Office of the Secretary of Defense (OSD) under Dick Cheney and was a CIA WMD intelligence officer prior to that. I am not going to even begin to recount most of the details of this case herein, nor could I, but suffice it to say that the actions and abuses by OSD beginning in 1989 using security and personnel powers have caused profound and unjustified damage to my life. These actions relate to my being placed in what can best be described as an intelligence-related separation of powers battle between the Executive Branch and the Congress over classified information and illegal politicization of intelligence.

A Private Relief Bill (PR) for \$1.1 million was introduced for me in 1998 and was referred to the Court of Federal Claims by the entire Senate. As Senator Bingaman said in his Floor Statement: "I am introducing this bill today not only because I believe a constituent has been wronged, but because this case involves an issue that's virtually important to the effective functioning of government". After a 4 year court proceeding, we recently concluded a trial. This proceeding has raised what I and my attorneys believe to be landmark issues of direct concern to the Congress and serious questions about the activities of the highest levels of the intelligence community including the CIA, the current DCI himself, Mr. Tenet, the Defense Department, the Justice Department and others. No one can resolve these issues but the Congress.

My intention in this letter is not to present the case, but to review the basic background and history of this case, including Senate involvement, in seeking your assistance to obtain the relief which I am due. The basic issues in this case are far from being a secret. There have been over 30 articles either about this case or mentioning what happened to me in the national and international media, including the New York Times and a major piece in the New Yorker. My attorneys will provide these, which, along with the voluminous correspondence between Congress and the Executive Branch.

I was respected as one of the IC's top experts on Pakistan's nuclear weapons program. I prepared numerous assessments for President Reagan and VP Bush, as well as for Secretaries of Defense and State and received commendations and awards for my work from the DCI and others. I was the first CIA officer to work very closely with the law enforcement community on counter proliferation activities resulting in arrests and prosecutions of foreign agents that received considerable Congressional attention.

My chain of command in the CIA Directorate of Intelligence and I were concerned that Congress, in the mid to late 1980's, was not being told the truth regarding Pakistan's nuclear weapons program and clandestine and illegal nuclear procurement activities in the U.S. Given the existence of certain Congressional laws at the time, this constituted not only gross politicization of intelligence, but violations of law, and probable criminal activity within the Executive Branch. In any case, misleading or lying to the Congress regarding the grave threat to US and international security posed by the proliferation of nuclear weapons, billions of dollars of military and economic aid and military sales is something the Senate took very seriously and I certainly hope you still do.

In addition to raising issues at the heart of our democracy, and further unchecked abuses of power, I think this issue is still a very current one in light of the fact that we now have a nuclear arms race in South Asia; that there is evidence of Pakistani nuclear contacts with Al Qaeda; and most recently that Pakistan has provided gas centrifuges to North Korea, which will enable that member of the Axis of Evil to manufacture enough highly enriched uranium for numerous nuclear weapons.

In 1987, I testified before the Congress as the CIA's top expert on Pakistan's clandestine nuclear activities. While I sat next to him, an NIO attempted to mislead the Congress and it became apparent that he had been doing so for some years. During this hearing, I exposed a small portion of this cover-up under orders from concerned supervisors in the CIA and the Office of General Counsel. I was persecuted by some in the CIA/DO and the NIO officers for this.

Shortly after joining OSD in 1989, the same CIA/DO and NIO officers attempted to fabricate security and other concerns about me and deny me access to the relevant intelligence reporting in my new job. At this time I unequivocally disclosed my concerns about people misleading the Congress regarding Pakistan's nuclear weapons program to my OSD supervisors, as I observed these illegal practices and related intelligence activities continuing within the EB. The DDCI himself eventually put a stop to these unauthorized activities against me by of his some subordinates. I soon learned that certain operationally related actions of mine prior to leaving the CIA had exposed manipulation of intelligence sources by the same

individuals to perpetuate the defrauding of the Congress in a Presidential certification. Without going into any of the details, in the recent court proceeding, there was considerable extensive testimony by high-level CIA officials who shared these concerns and confirmed that this occurred. They and some at State believed as I did that the law is the law and that intelligence should not be politicized to meet illegal policy goals, especially when it involves weapons of mass destruction in unstable countries that support terrorism.

At OSD, in April of 1989, at the request of a Deputy Assistant Secretary of Defense, I, as the sole proliferation intelligence officer in OSD, wrote a technical intelligence assessment for our new Secretary Dick Cheney on the status of Pakistan's nuclear program in coordination with DIA and others in the IC. This was fully coordinated within OSD. The technical intelligence facts and views that I presented, shared by the vast majority of my colleagues in the IC, threatened a Presidential certification under the Pressler Amendment to the Foreign Assistance Act and would have terminated all military and economic assistance to Pakistan by law, including a pending \$1.4 billion dollar F-16 sale of great interest to OSD which required Congressional approval. As revealed in the court proceeding, years later, the assessment was apparently rewritten behind my back before it was sent to Cheney.

I was also working with federal agents on intelligence-based and other criminal nuclear related activities by Pakistan in the U.S. some of which, if brought to the attention of Congress, would have had the same effect on the military relationship under Congressional laws.

Shortly after being promoted and soon after engaging in these actions and making disclosures to my OSD supervisors that false testimony and certifications were being provided to the Congress, including by OSD itself, I was secretly and falsely accused by an unreliable colleague of mine who had been temporarily placed in an acting supervisory position, of "intending" to blow the whistle to Congress on this activity on a classified level to a member of the HPSCI. This caused a panic at the highest levels of DOD. I was suddenly handed a firing notice and then had all of my clearances suspended for security reasons based on "classified allegations by a senior DOD official with the support of others."

As a result of these false accusations, as the Senate is aware, my life and marriage then became the victims of some of the worst abuses of security and personnel powers that anyone in the Senate had ever seen involving the highest levels of DOD/OSD with the possible exception of Mr. Cheney and then Undersecretary for Policy Mr. Wolfowitz. (Although all of Mr. Wolfowitz' senior personal staff was directly involved, he has testified that he was not informed). In fact, as the judge in this case heard, at his confirmation hearing for Deputy SecDef in 2001, Mr. Wolfowitz, upon being questioned about my case by Senator Levin, testified that he shared my concerns that people in the Executive Branch were attempting to mislead Congress on the Pakistan nuclear issue, he said: *"I specifically sensed that people thought we could somehow construct a policy on a house of cards that the Congress wouldn't know what the Pakistanis were doing. I've always thought that policies based on withholding information from Congress are going to fail in the long run."* It is an interesting question as to whether the responsible officials, Mr. Cheney and Mr. Wolfowitz would have approved of the actions of their subordinates against me. I think not.

The Senate examined and investigated this matter very carefully (your committee was one of seven or eight in both Houses involved over the last 12 years) along with myself and my

*pro bono* attorney, the late Paul Warnke. After years of highly suspect Inspector General investigations involving DOD, and then CIA and State IG's at the behest of my Senator Jeff Bingaman and others, the State Department IG, Sherman Funk, withdrew his endorsement of the last joint investigation and extraordinarily and strongly disagreed with the DOD IG, Derek Vander Schaaf, in writing, to the Senate. The Senate Armed Services Chairman Thurmond and Ranking Minority Member Nunn then called in the GAO. Following this, the Senate then concluded that the IG investigations were flawed, that I had done nothing wrong, been horribly harmed and had no legal options and had been placed in a separation of powers battle through no fault of my own. I note that the Senate lawyers required my attorneys and myself to engage in considerable demonstrative proof to establish that I had exhausted all possible remedies, including the Whistleblower Protection Act. Under pressure from Armed Services and Senator Bingaman to settle the case, the Secretary of Defense also maintained that I had no legal options.

As a result of this situation, in 1998, based on bipartisan concerns and commitments made to me by the Armed Services Committee and himself, Senator Bingaman introduced a private relief bill for me for \$1.1 million dollars and made a floor statement. (Both attached.) At that time I met with a colleague of mine with whom I had worked closely on Pakistani nuclear matters for President Reagan, Alan Kreczko, who had become the Chief Counsel of the NSC. He was horrified at what had been perpetrated on me and met with President Clinton. The President, he informed me said that he was not going to tolerate any actions taken against employees for their alleged "intentions" and would sign the PR bill for me when it crossed his desk. Mr. Kreczko then met with Scott Stuckey, the Chief Counsel of the Senate Armed Services Committee and relayed this Presidential view. Nine years into this hell, the ball was clearly in the Senate's court.

Instead of moving ahead with the PR bill, the Senate then voted to refer the bill to the Court of Federal Claims, for reasons having nothing to do with my particular case, but the opposition of one or two Senators to PR bills in general. It is evident from the floor statement that Senator Bingaman anticipated a rapid conclusion to this proceeding. This unfortunate decision put me, Mr. Warnke and other lawyers at Howrey & Simon through 4 more years of what I can only describe as continuing hell.

Once you are in a court in a Congressional Reference, I learned, you have to "hang your hat" on a law. This was rather preposterous since I there was no applicable law, as the Senate had agreed. The only law "available" was the Whistleblower Protection Act (WPA). Instead of having my "day" in court with OSD about the merits of the case and its equity, I soon found myself doing battle with not only the Justice and Defense Departments as I had expected, but with virtually the entire U.S. Intelligence Community including the DCI, Mr. Tenet, NSA Director General Hayden, the Deputy SecDef, and Mr. Hamre, who were personally invoking the highest level privilege of the President to block the material evidence in the case:

One of the first things we did in discovery, naturally, was to subpoena the numerous intelligence and related reports and documents on Pakistan's nuclear weapons program which I was falsely accused of "intending" to convey the substance of to the Congress and which contained the information which was the basis of my "disclosures". This would have evidenced the illegal Congressional motive at the heart of this case to explain the reprisals

against me. I should mention that while CIA located everything in discovery, we learned that DOD had inexplicably shredded all their documents including highly classified and accountable assessments for Secretary Cheney, and that NSA was absurdly unable to locate numerous documents.

I note that the judge is cleared, I have SCI clearances as did Mr. Warnke and I had seen all of the documents we requested with only a few exceptions. Before the Court could see the documents, Mr. Tenet, General Hayden and Mr. Hamre filed personal sworn declarations asserting State Secrets Privilege (SSP) over every single document blocking the Court from seeing any of them based on intelligence "sources and methods". The case was too classified to be properly heard, in their view. The judge allowed this. If you are not familiar with SSP, this is one of (if not the most) absolute privileges of the President and it is rarely asserted. This entire approach in a case about intelligence and an intelligence officer was absurd, especially since I had never disclosed any classified information to unauthorized individuals and the case could have been heard at the SCI level with no risk of disclosure.

Mr. Warnke had become ill and the government refused to grant more than secret clearances to any of the other lawyers on my pro bono legal team in a case where almost all the material evidence was Top Secret or at least SCI. To this day I have not been allowed to specifically discuss the details of the material evidence in the case with my lawyers! In addition, the government dragged its feet in even granting the secret clearances.

Mr. Tenet, in an unusual and I am told inappropriate move, in filing his sworn SSP declaration as DCI, also put on his "hat" as the former staff director of the SSCI and asserted I was wrong about my allegations of a Congressional cover-up. In essence, trust me, I am from the government, your honor. Addressing the merits is not the purpose of an SSP assertion in court. As you will see shortly, there are more serious issues about Mr. Tenet's sworn statement.

In light of these unforeseen activities by the government, in May of 2000, I wrote a letter (attached) to the Chief Counsel of the Senate Armed Services Committee and my Senators expressing my desire to withdraw from the case in light of the fact that literally all of the material evidence had been blocked from the proceeding under SSP. I stated that I did not believe I could prove the case without this evidence, not to mention that the government was maintaining that the WPA did not apply to classified disclosures. I also expressed serious concerns about the propriety of some of the government's activities in the court case, Mr. Tenet's in particular. I noted that the will of the Senate that the case be properly heard was being defied. Not only was the executive branch maintaining that the WPA did not cover classified disclosures, they were now asserting that there would be no classified Congressional References. The judge allowed this as well. This put me in an absurd position since my entire career was at Top Secret SCI level as was the material evidence in the case. I asserted that this the actions of the government in the case were placing an unreasonable burden on me. We were nevertheless asked by the Senate to continue with "the process" with their full understanding that it was probably futile and would likely lead to a negative outcome. There were discussions in addition to the letter and we were told to "go through the motions" and that this would not stop a PR bill if a negative reference were returned to the Senate, as will shortly occur.

As the proceeding continued, matters got even worse and the CIA began asserting SSP over all information it deemed classified that did not involve SCI or other intelligence sources and methods. In fact the government forced depositions to be conducted at the unclassified level and former and current CIA people (including myself) and others were blocked from answering questions in even the most general terms on the key issues. Declarations and filings were seized from my attorney's offices. This went on for over two years. I have been an intelligence professional for 22 years and I am certain that much of what was blocked was totally unclassified—"yes" or "no" answers to generalized questions for example. You have to read the record to appreciate this.

Amazingly, based purely on circumstantial evidence, we survived (barely) summary judgment on a couple of issues. The main one of these appears to be based on a factual misunderstanding by the judge: that my disclosures to my supervisors were unclassified. In addition, based on the Supreme Court case Navy Vs Egan, the judge decided that he could not follow one of the primary instructions of the Senate in the reference: to examine the security actions against me as a basis for damages, one of the worst aspects of the harm to my life.

In total frustration, not long before the trial, we obtained voluntary sworn declarations from my former CIA chain of command, including the former Deputy Director of Central Intelligence (DDCI), as well as the National Intelligence Officer for Proliferation, and from the head of the responsible nuclear proliferation office. These individuals, who constituted literally the highest levels of the intelligence community, confirmed my allegations that others in the CIA, DOD and State had willfully misled Congress regarding Pakistan's nuclear program, the Pressler and Solarz Amendments and the F-16 sale. These same individuals, who were the original classification authorities for the information involved, claimed their declarations were unclassified. Mr. Tenet and his subordinates then claimed that most of these declarations were Top Secret SCI and asserted SSP over them, seizing them and blocking them from the proceeding. The judge allowed this as well.

One of these high-level CIA individuals also testified that he attempted to start an IG investigation into the handling of Pakistan's nuclear program and was rebuffed. Later, in 1992, he was sent down to the Senate about my case, and personally briefed Mr. Tenet, then staff director of the SSCI on the classified details of the misleading of Congress on Pakistan's nuclear weapons program. Mr. Tenet apparently did nothing about this. This appears to be at odds with statements he made in his sworn SSP declaration.

Months prior to the trial there was a conference in which the CIA, Defense and Justice Departments argued that the SSP assertions were very broad allowing them to assert carte blanche SSP over not just SCI or intelligence sources and methods, over anything they deemed "classified" in the trial or the proceeding, including things that had been unclassified. The judge allowed this as well. My attorney made very clear that this would probably make it impossible to effectively present my case at trial.

Suffice it to say that the trial, which was supposedly at the Secret NSI level, was outrageous, bordering on the ridiculous, with the judge allowing the CIA and the Justice Department to invoke SSP every ten minutes (sometimes more frequently) blocking the testimony of almost every witness at convenient junctures and then using SSP to redact the transcript in hundreds of instances even beyond those the judge granted at the trial. None of us,

including the judge, could identify the objective criteria for the SSP assertions at trial. The only thing eventually articulated was that current and former CIA employees (including myself) were not allowed to testify, among other things, to what they knew or when they knew it. The judge allowed this as well.

To top things off, the Justice Department has asserted in writing (attached) that no congressional staff member, regardless of clearance level will be allowed to see the hundreds of SSP redacted portions of the trial transcript, or the declarations, much less the underlying intelligence documents. My attorneys have been told that this would be history in the making.

I can only describe the judge's trial opinion as a bizarre and factually incorrect mess. I am very concerned, to put it mildly, at the lack of impartiality of this judge, his willingness to allow the government to do virtually anything they wanted with SSP and his failure to recognize that in doing so he denied himself the material evidence and facts of the case. What facts he did have he got so many wrong it is shocking to me. He then reaches conclusion based on materially incorrect facts. Even more disturbing is that he heard testimony from the highest levels of the intelligence community confirming my concerns about the Congress being misled about Pakistan's nuclear weapons program over a period of years. He then totally disregarded this testimony in his opinion, said these activities would have been criminal and then concluded I was unreasonable in my beliefs and wrong! If this all sounds irrational, I can only say that it appears to be. This judge fails to recognize what he does and does not know. At the very least he should have decided that he could not properly hear the case and sent it back to the Senate. I leave these legal issues to you and my attorneys, but it was as if the judge was working for the Justice Department, and I note that this judge is currently serving at the pleasure.

Given his legal views, however, the facts or merits of the case are largely irrelevant to my claim: The judge, in his Opinions, found that the WPA (or any other law) offers no protection to employees for any classified disclosures about anything including illegalities, wrongdoing, threats to public safety, intelligence failures, or anything deemed classified at any level by the EB, even confidential information. This would include of course, providing even the Congressional Intelligence Committees with classified information indicating that terrorists were planning attacks on the World Trade Center or even the Congress itself, not to mention criminal activities within the Executive Branch. The judge found legally that it does not matter whether the disclosure is within the Executive Branch or to the Congress, it is not protected if it is classified.

He also found that actually disclosing classified information to anyone in the Congress, under any circumstances, or even an unsubstantiated allegation by one individual that an employee threatened to go to the Congress with classified information is "reasonable grounds for termination" and revocation of your security clearances.

Senator, while my lawyers made truly valiant attempts to prove a WPA case, this legal judicial view makes the task the Senate set for me truly and utterly impossible as I think it was from the outset of this Reference. This was the last straw, on top of the SSP activities. It is not for me to try to convince a federal court (in this case to appeal to this judge's colleagues in the same court with whom he lunches) that the WPA applies to classified information. I am not going to question his legal opinion (while I do question everything else in his opinion) on this

legal matter. Perhaps he is right. This is for the Congress to deal with, not someone in my position.

While it is your call, it is my view, having (barely) lived through this, that unless the Congress corrects this situation with meaningful and unequivocal protective legislation, you have an obligation to clearly inform all federal employees that they have no protections whatsoever in the case of classified whistleblowing to Congress, (or even if one of your colleagues says you threatened this) to and that Congress has no right whatsoever to receive any classified information from employees (without the permission of the President) regardless of its implications for American lives or other issues. With due respect, under the current legal circumstances as implemented by the EB and upheld by a federal judge, if it is classified, the Congress has the right to be told only what the President and his designees decide you should be told, period.

There is no legitimate reason that federal employees should be running the virtually certain risk of having their careers, livelihoods and possibly their lives damaged or destroyed to assist you in executing your Constitutional responsibilities. This is not an acceptable situation and the lure of “whistleblower protection” under the current circumstances must be exposed for what it is. It is not within my power nor is it my job to address this separation of powers issue. I believe the Congress has the power to address this matter, should you so desire, as you have the power to address the related abuse of personnel security powers in these situations. If you find the current situation acceptable, so be it. I watched the 9/11 hearings in the SSCI and I thought, what if all these agents in the FBI and CIA employees who had intelligence indicating a possible terrorist attack who were ignored in the EB had gone to the SSCI or HPSCI? The "dots" might have been connected then. Such actions are against the law right now.

Regardless, I am certain that at the time of the actions taken against me, no such legal positions had been asserted by the EB, and that the Congress and people in the EB believed that classified Congressional whistleblowing (at least to the Intelligence Committees) was covered under the WPA. This is why the Senate voted 93-1 to pass a Classified WPA in 1998, which would have allowed employees to go the committee overseeing their agency with anything. This got watered down in the House. In any case, I never disclosed or intended to disclose classified information to the Congress or any unauthorized individuals, as three IG's, the GAO and the Defense Department determined and have been terribly harmed for no reason by people who were nervous since they were lying to the Congress. What I did do was my job as an intelligence officer, to accurately present the intelligence facts to the decision-makers. These facts did not fit with their goals. I went further by pointing out that Congress was being misled, and engaging in actions within the Executive Branch to try to put a stop to this. As a result, I found myself the target of a conspiracy to destroy my life by framing me as an intended classified Congressional Whistleblower and an insane security risk. This is politicization of intelligence at its absolute worst and leads to intelligence failures. Now the government is engaging in a national security cover-up in the federal courts in the name of “sources and methods” while arguing that “sources and methods” was the justification for the original illegal activities with the Congress. This is hogwash.

As a result of this impossible position in which I have been placed in the court, which by no means reduces my need for redress, relief and for justice, we are appealing this case to the only place it can be properly heard and where it has always belonged: the Senate. I urge you to contact the lead attorney on the case, Joseph Ostoyich at Howrey and Simon and to take

the actions I have listed below before any portion of the court opinion becomes a matter of public record and I am forced to defend myself on my own.

For myself, which is my primary concern at this point, I am requesting that you quickly:

- Read the attached Notice of Exception carefully, although it is far, far from a comprehensive document it will give you some initial insights. (This is a Court document so please protect as such).
- Review and investigate this case to the extent you deem necessary to move ahead with a new Private Relief Bill for me.
- Obtain all of the documents over which Mr. Tenet, Mr. Hamre and General Hayden asserted SSP in discovery.
- Obtain both a redacted and unredacted version of the Reference (including the SSP redactions) of the trial transcript, declarations by senior CIA officials and discovery documents, so you can see what the judge was left with after the redactions.
- Do whatever is necessary to allow me to testify in a private and unrestricted to you as to the extensive classified details and facts I have been blocked from providing to you and the Court and to address the Court Opinion.
- Join with other senators to sponsor a PR for me as soon as possible that I am provided with relief and that fairness and justice is served.

As a citizen I am concerned and think you should be also concerned about the following precedents and issues that have arisen out of this Reference:

- In his Opinion and in the proceeding the judge has upheld the government's legal position that SSP may be asserted to block the Courts from reviewing any classified (or even unclassified) information whatsoever, even that relating to criminal activity within the Executive Branch or you name it.
- I regret to inform you that the testimony and evidence available in this proceeding indicates that the DCI, Mr. Tenet, has been involved in a cover-up of misleading the Congress about Pakistan's nuclear program extending back to the time he was staff director of the SSCI. He therefore appears to be at the very least in a conflict situation in his current role as DCI and may be using the highest level privilege of the President to perpetuate this cover-up and to protect himself. In addition, key portions of Mr. Tenet's sworn declaration asserting SSP are contradicted by myself and by the highest levels of the IC at the time, as is a CIA IG report on which he relies heavily. Please understand that I have not known or worked for Mr. Tenet and have nothing personally against him.
- The proceeding revealed evidence of obstruction of justice by high-level officials in criminal investigations relating to WMD's .

There is much, much more of a very serious nature, but that is for you to find out for yourselves. Your prompt attention to this matter is deeply appreciated.

Sincerely,

Richard M. Barlow  
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Santa Fe, NM 87508  
Tel. 505-820-6845

Attachments:

Appendix D, Notice of Exception  
1998 Private Relief Bill and Referral to CFC  
Senator Bingaman Floor Statement & Press Release  
22 May 2000 letter to Senate Armed Services  
28 May 2002 Letter from Justice Department to Joe Ostoyich  
Excerpt from the 27 February 2001 confirmation hearing of Deputy Sec Def Paul Wolfowitz

Cc: Senators Hatch, Specter, Sessions, Kennedy, Leahy & Feinstein  
SSCI  
SASC