"Congress Had to Immunize North: the choices - dispel the cloud over the White House of impeach the presidnat", Arthur L. Limon and Mark A Belnick in Washington Post 7/29/90

The headline is a fair encapsulation of this oped article by the Iran/Contra committee's counsel and his executive assistant but the article itself is their attempt at self-justification rather than a lucid and impartial assessment of the actualities. Their attempt at self-justification, which requires also an attempt to justfy what the Congress itself did and did not do, is obviously inspired by the court of appeals panel's finding for Oliver North along stricly party lines, the GOP for him, the lone Democrat not for him on the issue of the granting of immunity by Congress denying him a fair trial.

To enable the self-justification the authors misstate the actualities: "There were only two choices under our Constitutional system: dispel the cloud over the White House or impeach the President."

Under our Constitution Congress has neither the obligation nor the right to investigate for the purpose of "dispel(ling) the cloud over the "hite House." It did have the obligation of impeaching the president but it lacked the courage and integrity, and this is what underlies all that went wrong after that decision was reached.

Without a word about what they did do on their Iran/Contra committee, other than immunizing North and Poindexter, these lawyers say the only other alternatic was a criminal prosecution but such investigatipns "take place in secrecy and they take time."

There were many other alternatives available to the Congress and much of the work of their committee was in secret and remains secret, so that criticism of criminal investigations, whether or not truthful, is not justified or fair.

Quite a few Congressional committees had jurisdiction and could have held hearings, but they addicated in favor of the joint committee the decision on which eliminated competition that could have brought to light what the joint committee did not bring to light. Had any Member of either House sought to do this his political survival was involved and apparently that was of more importance to all such Members. Each of the committees to which the Reaganites lied had jurisdiction, and this includes both on foreign relations and intelligence oversight. Consideration of impeachment would have been by the House judiciary committee but for years there has been a cowardly avoidance of consideration of impeachment.

The most obvious of the ignored alternatives was the conducting of a traditional Congressional investigation. This mean conducting a real investigation and that also the Congress clearly had decided against.

Limon and Belnick pretend that the only investigatory possibility is the one they presided over. This is. to their knowledge, not at all true. They pretend that their investigation required that early on North and Poindexter be called on to testify under a grant of immunity against prosecution for all about which they were asked to testify.

These are false pretenses. A traditional investigation would have begun with the building of a case within the accepted norms of congressional investigations and that would not have been difficult, from what was within the public domain. Although White House resistence could have been anticipated the Congress has the right to subpoena the information it requires. White House refusal to honor subpoenaes would have forwarded rather than impeded a real Congressional investigation. There was an enormous amount of relevant information readily available and it would have made for a sensational investigation. The real Congressional problem with this is that it could have made a drive for impeachment hard to resist and it would have required an expose of the CIA and others and of what has come to be called "the national security state."

There were innumerable underlings the immunization of whom would not have been any problem at all who were readily available to the committee only some of whom were called. At least for public testimony. (Others may have been questioned in private.) Like Fawn Hall.

Aside from what became known with the Hassenfus survival there was much that had been

public domain for quite some time, Like reports of a Reagan/Iran deal on the hostages taken by Iran during the Carter presidency, a deal under which Reagan did permit arms for Iran. LIke the Reagan/CIA intrusion in Latin America, notoriously in Nicaragua.

Aside from the sure to be embarrassing Congressional involvements in Reaganite illegalities for which the Congress had reason to be afraid, there were other approaches that would at the very least have been seriously embarrassing to the administration. An obvious and entirely ignored one is the Congressional determination to avoid the basic lie in Meese's press conference vice Reagan in which the White House made its first acknowledgement that maybe something was wrong. Meese deliberately staged a delaying action that made wholesale destruction of records more than possible - certain. He did this and then lied about it at that press conference. He said it would have been wrong for the FBI to investigate when there was no reason to believe that any law had been violated. Aside from the fact that it was a lie to say there was no reason to believe that any law was violated, it was also a lie to say that any investigation by the FBI other than of a criminal law-violation investigation would have been wrong. And the Congress knew this very well.

The FBI had both the right and the obligation to conduct other than law-violation investigations. Knowledge of its rights and obligations is not required for an understanding of this. Casual examination of its public filing classifications makes this obvious. In addition, it is required to make presidential investigations. As J. Edgar Hoover testified to the Warren Commission, it had no law-violation jurisdiction when JFK was assassinated. it made the monster investigation it did make as a presidential inquiry investigation and each and every one of its massive files that was disclosed, of which I have about a quarter of a million pages without having anything like all of them, is of a non-law violation investigation, of an investigation pursuant to a presidential request for the investigation.

It simply is not possible that the attorney general did not know this so it is not possible that his basic and controlling lie was from ignorance. His lie, in fact, made him a co-conspirator in the criminal acts of the Reagan administration.

Had the Congress conducted a traditional investigation instead of a media event, and had it controlled its investigation in the traditional manner, rather than giving the Sullivan-type lawyers a field day, it would have served the legitimate interests and obligations of the Congress as it did not do, would have laid a basis for necessary legislation, the basic justification for Congressional investigations, would have informed the people as it failed to do, but had it, it would have damaged individual Members who had personal involvements in the misdeeds,would have exposed its own failures and abdications, and it might have made impeachment unavoidable. It just did not have the kidney fot this or the exposure of the spookeries like the CIA that would have been inevitable.

In their knowing misrepresentation of the actualities and the alternatives, which should have been aparent to the Post's Outlook editors, Liman and Belnick may have relieved themselves of some personal embarrassment but they also confess failure in event their own dishonest terms. They did not "dispel the cloud over the White House", which they postulate was the only alternative to impeachment.

As with The Watergate, in which the Post limited itself to getting Nixon out of the White House, it limited its reporting to coincide with the self-imposed limitations of the joint Iran/Contra committee. Much that was relevant and was known to the Post was not published by it. "this was true," to my knowledge, in its Watergate reporting.

Today, alas, there is no whitewash to thin to cover official transgressions and the self-serving writings of the Simons and Belnicks tend to obscure still more.

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Arthur L. Liman and Mark A. Belnick

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Congress Had to Immunize North

The choices—dispel the cloud over the White House or impeach the president.

When the congressional Iran-contra committees decided to immunize Oliver North and John Poindexter, they were acutely aware of the potential consequences for any subsequent criminal trial. Those who maintain that the committees acted irresponsibly ignore not only the record, but the constitutional crisis that gripped Washington after the scandal erupted.

In November of 1986, the American people and Congress learned that the United States had secretly sold arms to Iran and that proceeds from these illicit arms sales had been diverted to the Nicaraguan resistance at a time when U.S. military aid to the contras was prohibited by law. The crisis triggered by these shocking reports held the nation in thrall. The administration lost public confidence. In a parliamentary system, the government would have fallen. Under our constitutional system, the president remained in office, but was staggered, as Reagan officials have acknowledged.

There were only two choices under our constitutional system: dispel the cloud over the White House or impeach the president. To accomplish either, the facts underlying the affair had to be found and disclosed as rapidly as possible.

A criminal prosecution does not serve that purpose. Criminal investigations take place in secrecy, and they take time. Criminal trails are hemmed in by strict rules of evidence designed to provide a fair forum for determining guilt or innocence, not to inform the public or to resolve constitutional crises.

Only Congress had the power to act quickly, decisively and openly. It was Congress's duty to do so. After all, it was Congress that had been misled. It was congressional oversight of intelligence operations that had been ignored. And it was Congress that had to decide whether an impeachment process should go forward. If Congress had chosen instead to pass the buck to criminal investigators, it would have been justly condemned for abdicating its constitutional responsibilities and playing politics with a nuclear tinderbox. On the other hand, if Congress had chosen to proceed behind closed doors, it would have been accused of perpetuating the very secrecy that had led to the affair.

Nonetheless, the congressional investigating committees did their best not to foreclose criminal prosecutions. To the contrary, it was a central purpose of the committees to uphold the rule of law. As their report concluded, "there is no place in government for law breakers."

BY MACNELLY FOR THE CHICAGO TRIBUNE

Accordingly, the committees conducted their investigation with intense regard for individual rights as well as the independent counsel's requirements. Decisions to immunize witnesses were not made lightly. Immunity for North and Poindexter was deliberately deferred, at the independent counsel's request, to give him time to build his case and seal away the evidence before any possible taint. That is why Poindexter's deposition was conducted in private, and that is why Poindexter and North did not testify until near the close of the congressional hearings, by which point the independent counsel had been gathering evidence for nearly eight months. The District Court found these procedures adequate. So did one of the three appellate judges in the North case. The final word has yet to be written.

> *"The constitutional crisis would have continued unabated."*

Certainly, the independent counsel would have preferred no immunity grants for North and Poindexter. But in that event, these two central figures would not have testified. And the daunting question of what they would say the president knew would have remained unanswered—perhaps permanently, given Poindexter's decision not to testify at his own trial. The constitutional crisis would have continued unabated. Indeed, the independent counsel was unable to return indictments against North and Poindexter until the winter of 1988 or to conclude Poindexter's trial until 1990.

If in such circumstances Congress must make a choice between enabling the government to function or relying exclusively on criminal prosecutions, the choice Congress made in the Iran-contra affair was the right one.

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