

Mel Levine

An Oath The House Doesn't Need

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Last week the House Committee on Standards of Official Conduct (otherwise known as the Ethics Committee) unanimously decided not to take any action against Rep. Robert Torricelli with regard to assertions that he might have violated a new House oath not to disclose classified information "received in the course of service with the House of Representatives."

The decision was right. As Rep. Torricelli's lawyer, I always believed the congressman had acted in good faith, according to his conscience, and consistently with the highest ethical and legal standards.

But while the committee's action confirms this view of his conduct, it also points out flaws in the oath itself. In fact, this entire episode leads to

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the conclusion that this new oath is unnecessary, can be counterproductive and should be scrapped.

The Torricelli inquiry developed as a

result of the congressman's providing the New York Times with a copy of a letter he had written to President Clinton suggesting that a Guatemalan army officer who had a relationship with the CIA had been involved in two murders, one of an American citizen, the other of the husband of an American citizen. Torricelli acquired his information when a source outside Congress and outside the scope of his congressional activities and responsibilities approached him and advised him of the events in question.

As a member of the Intelligence Committee, Torricelli had taken great care to ensure that he was not privy to any classified information through that committee, even going so far as to refuse committee briefings on Guatemala.

But this year, for the first time, all members of the House had been asked on the first day of the legislative session to sign what has become known as the "generic secrecy oath."

This oath, not a partisan issue, was enacted with no debate and almost no information provided to members. The only legislative history of the new oath is a one-sentence "Sentence-by-Section Analysis" offered by Majority Leader Dick Armey on the House floor on Jan. 4 of this year. Armey stated in that analysis that the new rule required members to "take an oath or affirmation on non-disclosure of classified information prior to being given access to such material"—clearly suggesting that it applied only at such time as material was "being given" through the legislative process.

The Ethics Committee in the Torricelli matter properly concluded that the oath and its intent were ambiguous and that Mr. Torricelli, in this case of first impression, could not be held to have violated it, or any other House rule for that matter.

The committee then proceeded to offer House members much-needed guidance on this amorphous new oath by saying that in the future members should seek guidance as to whether a matter is classified before disclosing it.

But isn't all of this simply an un-

necessary new stricture, especially after the country has survived—and won—the Cold War and flourished for over two centuries without any such oath?

I was privileged to serve for 10 years as a member of the House of Representatives. After each of my five elections to the House, I proudly affirmed the oath constitutionally prescribed for members: to support and defend the Constitution of the United States. The Constitution provides that oath—and no other. None other is necessary.

Although the new generic secrecy oath is well-intended, it simply adds a new, unnecessary and confusing level of uncertainty for members. Citizens frequently approach members of Congress with information about all sorts of sensitive governmental issues—frequently with the goal of righting wrongs, of bringing injustices to light.

For two centuries, we have relied on the good judgment of members, not some oath that exceeds the constitutional requirement, and is imposed on members who do not sit on committees privy to sensitive information. (Intelligence Committee members sign their own oath.)

Further, it is difficult if not impossible to draft such an oath in a manner that serves the public interest. If it is not drafted so narrowly as to be practically useless, it will necessarily compromise members of Congress in the appropriate discharge of their responsibility to investigate any number of issues that may come before them. But if drafted narrowly, it necessarily has a very limited scope.

The Ethics Committee responded thoughtfully and appropriately to the matter before it when Torricelli sought its guidance. But it should be relieved of the burden of further interpretation of this needless new oath. The House should scrap this oath altogether.

The writer is a former Democratic representative from California.