PROPOSED STANDING COMMITTEE ON INTELLIGENCE ACTIVITIES

HEARINGS

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. Res. 400

TO ESTABLISH A STANDING COMMITTEE OF THE SENATE ON INTELLIGENCE ACTIVITIES, AND FOR OTHER PURPOSES

MARCH 31; APRIL 1, 2, AND 5, 1976

Printed for the use of the Committee on Rules and Administration

U.S. GOVERNMENT PRINTING OFFICE

69-450 O WASHINGTON : 1976

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Approved For Release 2001/07/27 : CIA-RDP90-00735R000200160003-5

CONTENTS

WEDNESDAY, MARCH 31, 1976

THURSDAY, APRIL 1, 1976

FRIDAY, APRIL 2, 1976

MONDAY, APRIL 5, 1976

APPENDIX

PROPOSED STANDING COMMITTEE ON INTELLIGENCE ACTIVITIES

WEDNESDAY, MARCH 31, 1976

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The committee met in room 301, Russell Senate Office Building, at 10:10 a.m., Hon. Howard W. Cannon (chairman), presiding.

Present: Senators Cannon, Pell, Robert C. Byrd, Allen, Clark, Hugh Scott, and Griffin.

Staff present: William McWhorter Cochrane, staff director; Chester H. Smith, chief counsel; Hugh Q. Alexander, senior counsel; John P. Coder, professional staff member; Dr. Floyd M. Riddick, professional staff member; Jack L. Sapp, professional staff member; Ray Nelson, professional staff member; Larry E. Smith, minority staff director; Andrew Gleason, minority counsel; and Peggy Parrish, assistant chief clerk.

OPENING STATEMENT OF HON. HOWARD W. CANNON, CHAIRMAN OF THE COMMITTEE ON RULES AND ADMINISTRATION

The CHAIRMAN. The committee will come to order.

Today, the Committee on Rules and Administration is conducting a hearing on Senate Resolution 400, to establish a standing Committee of the Senate on Intelligence Activities, and for other purposes.

Senate Resolution 400 was reported by the Committee on Government Operations on March 1, 1976, and on the same day was referred to the Committee on Rules and Administration for a period extending no later than March 20, 1976. Subsequently, on March 18, 1976, the resolution was referred simultaneously to the Committee on the Judiciary and the Committee on Rules and Administration with instructions that the Committee on the Judiciary make its recommendations to the Committee on Rules and Administration no later than March 29, 1976, and that the Committee on Rules and Administration file its report on Senate Resolution 400 no later than April 5, 1976. By unanimous-consent agreement on March 25, 1976, those reporting dates were extended 3 days, to April 1, 1976, and April 8, 1976, respectively.

There is no question that, in the light of recent disclosures of illegal or improper actions by certain of our intelligence agencies, the Congress should certainly review carefully its oversight vote on this most vital area. The Committee on Government Operations has spent 8 days of hearings and considerable additional time in arriving at the proposal we are considering today.

Briefly, that proposal—Senate Resolution 400—would establish a new standing Committee of the Senate on Intelligence Activities to oversee and make continuing studies of the intelligence activities and programs of the U.S. Government, and to submit to the Senate appropriate proposals for legislation concerning such activities. The new committee would have 11 members, 6 majority and 5 minority. Continuous service on the committee would be limited to 6 years. The majority members would select the committee chairman, and the minority members would select its vice chairman.

The proposed committee would have legislative jurisdiction over the Central Intelligence Agency and the intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of Defense, the Department of State, the Department of Justice, and the Department of the Treasury. Also, the proposed committee would have authorization authority in respect to the strictly intelligence agencies, and in respect to the intelligence activities of the other departments and agencies I have just listed.

The jurisdiction of the standing Committees on Armed Services, Foreign Relations, Government Operations, and Judiciary would be accordingly modified or qualified.

Service by staff members of the proposed Committee on Intelligence Activities would be strictly limited to 6 years, and such employees would require strict security clearance.

The resolution contains lengthy provisions relating to disclosure by the committee of intelligence information it receives from the executive agencies, including procedures in case of objection by the President to any such disclosure.

The Select Committee on Standards and Conduct would investigate any alleged unauthorized disclosure of intelligence information by a Member or employee of the Senate, and recommend appropriate action to the Senate.

The records of the Select Committee on Government Operations With Respect to Intelligence Activities would be transferred to the new standing committee.

In addition, the proposed standing committee would be directed to engage in a study of a wide variety of subjects bearing on intelligence information and report back to the Senate thereon no later than July 1, 1977.

Without objection, I will insert the text of Senate Resolution 400 in the hearing record at this point.

[The text of S. Res. 400 follows:]

94TH CONGRESS
2D SESSION

S. RES. 400

[Report No. 94–675]

IN THE SENATE OF THE UNITED STATES

MARCH 1, 1976

Mr. MANSFIELD (for Mr. RIBICOFF) (for himself, Mr. CHURCH, Mr. PERCY, Mr. BAKER, Mr. BROCK, Mr. CHILES, Mr. GLENN, Mr. HUDDLESTON, Mr. JACKSON, Mr. JAVITS, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. MORGAN, Mr. MUSKIE, Mr. NUNN, Mr. ROTH, Mr. SCHWEIKER, and Mr. WEICKER) submitted the following resolution; which was referred to the Committee on Government Operations

MARCH 1, 1976

Reported by Mr. MANSFIELD (for Mr. RIBICOFF), without amendment

MARCH 1, 1976

Referred to the Committee on Rules and Administration for a period extending no later than March 20, 1976

MARCH 18, 1976

Reported by Mr. MANSFIELD (for Mr. CANNON), without amendment

MARCH 18, 1976

Referred simultaneously to the Committee on the Judiciary and the Committee on Rules and Administration with instructions that the Committee on the Judiciary make its recommendations to the Committee on Rules and Administration no later than March 29, 1976, and that the Committee on Rules and Administration files the report no later than April 5, 1976

RESOLUTION

To establish a Standing Committee of the Senate on Intelligence Activities, and for other purposes.

Resolved, That it is the purpose of this resolution to establish a new standing committee of the Senate, to be known as the Committee on Intelligence Activities, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation

V—O

concerning such intelligence activities and programs. In carrying out this purpose, the Committee on Intelligence Activities shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. Rule XXIV of the Standing Rules of the Senate is amended by adding at the end thereof a new paragraph as follows:

"3. (a) Six members of the Committee on Intelligence Activities shall be from the majority party of the Senate and five members shall be from the minority party of the Senate.

"(b) No Senator may serve on the Committee on Intelligence Activities for more than six years of continuous service, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent practicable, at least three but not more than four Members of the Senate appointed to the Committee on Intelligence Activities at the beginning of the Ninety-sixth Congress and each Congress thereafter shall be Members of the Senate

who did not serve on such committee during the preceding Congress.

"(c) At the beginning of each Congress, the members of the Committee on Intelligence Activities who are members of the majority party of the Senate shall select a chairman, and the members of such committee who are from the minority party of the Senate shall elect a vice chairman. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. Neither the chairman nor the vice chairman of the Committee on Intelligence Activities shall at the same time serve as chairman or ranking minority member of any other committee referred to in paragraph 6(f) of rule XXV of the Standing Rules of the Senate.".

SEC. 3. (a) Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(s) Committee on Intelligence Activities, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

"(A) The Central Intelligence Agency and the Director of Central Intelligence.

"(B) Intelligence activities of all other departments

and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of Defense; the Department of State; the Department of Justice; and the Department of the Treasury.

"(C) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

"(D) Authorizations for appropriations for the following:

"(i) The Central Intelligence Agency.

"(ii) The Defense Intelligence Agency.

"(iii) The National Security Agency.

"(iv) The intelligence activities of other agencies and subdivisions of the Department of Defense.

"(v) The intelligence activities of the Department of State.

"(vi) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

"(vii) Any department, agency, or subdivision which is the successor to any agency named in item (i), (ii), or (iii); and the activities of any depart-

ment, agency, or subdivision which is the successor to any department or bureau named in item (iv), (v), or (vi) to the extent that the activities of such successor department, agency, or subdivision are activities described in item (iv), (v), or (vi).".

(b) Paragraph 3 of rule XXV of the Standing Rules of the Senate is amended by inserting:

"Intelligence Activities---------- 11"

immediately below

"District of Columbia---------- 7".

(c) (1) Subparagraph (d) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by inserting "(except matters specified in subparagraph (s))" immediately after the word "matters" in the language preceding item 1.

(2) Subparagraph (i) of paragraph 1 of such rule is amended by inserting "(except matters specified in subparagraph (s))" immediately after the word "matters" in the language preceding item 1.

(3) Subparagraph (j) (1) of paragraph 1 of such rule is amended by inserting "(except matters specified in subparagraph (s))" immediately after the word "matters" in the language preceding item (A).

(4) Subparagraph (l) of paragraph 1 of such rule is amended by inserting "(except matters specified in sub-

paragraph (s))" immediately after the word "matters" in the language preceding item 1.

SEC. 4. (a) The Committee on Intelligence Activities of the Senate, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters deemed by the Committee on Intelligence Activities to require the immediate attention of the Senate or such other committee or committees. In making such reports, the committee shall proceed in a manner consistent with paragraph 7 (c) (2) to protect national security.

(b) The Committee on Intelligence Activities of the Senate shall obtain an annual report from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such report shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interests. Such report shall be unclassified and shall be made available to the public by the Committee on Intelligence Activities. Nothing herein shall be construed as requiring the disclosure in such reports of the names of indi-

viduals engaged in intelligence activities for the United States or the sources of information on which such reports are based.

SEC. 5. (a) No person may be employed as a professional staff member of the Committee on Intelligence Activities of the Senate or be engaged by contract or otherwise to perform professional services for or at the request of such committee for a period totaling more than six years.

(b) No employee of such committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing to be bound by the rules of the Senate and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 6. The Committee on Intelligence Activities of the Senate shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 7. (a) The Committee on Intelligence Activities of the Senate may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote.

(b) (1) In any case in which the Committee on Intelligence Activities of the Senate votes to disclose publicly any information submitted to it by the executive branch

which the executive branch requests be kept secret, such committee shall notify the President of such vote.

(2) The committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President notifies the committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by such disclosure is vital and outweighs any public interest in the disclosure.

(3) The Committee on Intelligence Activities may disclose publicly such information at any time after the expiration of three days following the day on which it receives an objection from the President pursuant to paragraph (2), unless, prior to the expiration of such three days, three or more members of such committee file a request in writing with the chairman of the committee that the question of public disclosure of such information be referred to the Senate for decision.

(4) In any case in which the Committee on Intelligence Activities votes not to disclose publicly any information submitted to it by the executive branch which the executive branch requests be kept secret, such information shall not be

publicly disclosed unless three or more members of such committee file, within three days after the vote of such committee disapproving the public disclosure of such information, a request in writing with the chairman of such committee that the question of public disclosure of such information be referred to the Senate for decision, and public disclosure of such information is thereafter authorized as provided in paragraph (5) or (6).

(5) Whenever three or more members of the Committee on Intelligence Activities file a request with the chairman of such committee pursuant to paragraph (3) or (4), the chairman shall, not later than the first day on which the Senate is in session following the day on which the request is filed, report the matter to the Senate for its consideration.

(6) One hour after the Senate convenes on the first day on which the Senate is in session following the day on which any such matter is reported to the Senate, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of the information in question, in which case the committee shall publicly disclose such information.

(B) disapprove the public disclosure of the infor-

mation in question, in which case the committee shall not publicly disclose such information, or

(C) refer the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

Upon conclusion of the consideration of such matter in closed session, which may not extend beyond the close of the fifth day following the day on which such matter was reported to the Senate, the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph.

(c) (1) No classified information in the possession of the Committee on Intelligence Activities relating to the lawful intelligence activities of any department or agency of the United States which the committee or the Senate, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

49-450 O - 76 - 2

(2) The Committee on Intelligence Activities, or any member of such committee, may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the Committee on Intelligence Activities, or any member of such committee, makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee, which, receives any information under this subsection, shall make the information available to any other person, except that a Senator may make such information available either in a closed session of the Senate, or to another Member of the Senate; however, a Senator who communicates such information to another Senator not a member of the committee shall promptly inform the Committee on Intelligence Activities.

(d) The Select Committee on Standards and Conduct may investigate any alleged disclosure of intelligence information by a Member, officer, or employee of the Senate in violation of subsection (c). At the request of five of the members of the Committee on Intelligence Activities or sixteen Members of the Senate, the Select Committee on Standards and

Conduct shall investigate any such alleged disclosure of intelligence information and report its findings and recommendations to the Senate.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of Member, or removal from office or employment, in the case of an officer or employee.

SEC. 8. The Committee on Intelligence Activities of the Senate is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 9. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by S. Res. 21, Ninety-fourth Congress, all records, files, documents, and other materials in the pos-

session, custody, or control of such committee, under appropriate conditions established by it, shall be transferred to the Committee on Intelligence Activities.

SEC. 10. (a) It is the sense of the Senate that the head of each department and agency of the United States should keep the Committee on Intelligence Activities of the Senate fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency.

(b) It is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or document in the possession, custody, or control of the department or agency, or witness in its employ, whenever requested by the Committee on Intelligence Activities of the Senate with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the Committee on Intelligence Activities of the Senate any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, Presidential directives, or departmental or agency rules or regula-

tions; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

SEC. 11. It shall not be in order in the Senate to consider any bill or resolution, or amendment thereto, or conference report thereon, which appropriates funds for any fiscal year beginning after September 30, 1976, to, or for the use of, any department or agency of the United States to carry out any of the following activities, unless such funds have been previously authorized by law to carry out such activity for such fiscal year—

(1) The activities of the Central Intelligence Agency.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence activities of the Department of State.

(6) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

SEC. 12. (a) The Committee on Intelligence Activities

shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence—

(1) the quality of the analytical capabilities of United States foreign intelligence agencies and means for integrating more closely analytical intelligence and policy formulation;

(2) the extent and nature of the authority of the departments and agencies of the executive branch to engage in intelligence activities and the desirability of developing charters for each intelligence agency or department;

(3) the organization of intelligence activities in the executive branch to maximize the effectiveness of the conduct, oversight, and accountability of intelligence activities; to reduce duplication or overlap; and to improve the morale of the personnel of the foreign intelligence agencies;

(4) the conduct of covert and clandestine activities and the procedures by which Congress is informed of such activities;

(5) the desirability of changing any law, Senate rule or procedure, or any Executive order, rule, or regu-

lation to improve the protection of intelligence secrets and provide for disclosure of information for which there is no compelling reason for secrecy;

(6) the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities in lieu of having separate committees in each House of Congress, or of establishing procedures under which separate committees on intelligence activities of the two Houses of Congress would receive joint briefings from the intelligence agencies and coordinate their policies with respect to the safeguarding of sensitive intelligence information;

(7) the authorization of funds for the intelligence activities of the government and whether disclosure of any of the amounts of such funds is in the public interest; and

(8) the development of a uniform set of definitions for terms to be used in policies or guidelines which may be adopted by the executive or legislative branches to govern, clarify, and strengthen the operation of intelligence activities.

(b) The Committee on Intelligence Activities of the Senate shall report the results of the study provided for under subsection (a) to the Senate, together with any

recommendations for legislative or other actions it deems appropriate, no later than July 1, 1977, and from time to time thereafter as it deems appropriate.

SEC. 13. (a) As used in this resolution, the term "intelligence activities" includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, movement, or other association in such foreign country, and which relates to the defense, foreign policy, national security, or related policies of the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and covert or clandestine activities directed against such persons. Such

term does not include tactical foreign military intelligence serving no national policymaking function.

(b) As used in this resolution, the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(c) For purposes of this resolution, reference to any department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that such successor engages in intelligence activities now conducted by the department, agency, bureau, or subdivision referred to in this resolution.

SEC. 14. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.

The CHAIRMAN. I believe that this brief description of the purpose of Senate Resolution 400 has included its most important features. I would, however, in this opening statement like to pose rhetorically a number of questions about the proposal which have occurred to me after a preliminary study of the resolution. Hopefully, satisfactory answers to most of those questions will be found during the course of these hearings.

QUESTIONS ON SENATE RESOLUTION 400

(1) Senate Resolution 400 would create a Standing Committee on Intelligence Activities with a fixed membership of 11 members, 6 from the majority party and 5 from the minority party.

Why should this committee be excepted from the procedure in respect to all other standing committees that the number of majority and minority members changes each Congress to reflect as nearly as possible the ratio of majority and minority in the full Senate?

(2) Senate Resolution 400 would impose a 6-year limitation on service on the Intelligence Committee.

What would this do to the natural process of members gaining seniority on committees?

Would not the more experienced members with established seniority on other committees as a result tend to shun service on this new committee?

(3) Unlike the practice in respect to all other standing committees of the Senate, the chairman of the Committee on Intelligence would be chosen by the majority members of the committee.

Why is it necessary to choose this chairman by this method, which is contrary to the established procedure set forth in rule XXIV of the Standing Rules, under which all standing committee chairmen are approved by the Senate itself?

(4) The ranking minority member would be vice chairman of the Intelligence Committee.

How would this square with the tradition on standing committees that the next ranking majority member takes over in the absence of the chairman?

(5) Senate Resolution 400 would grant the Intelligence Committee authority over authorizations for the intelligence activities of the Departments of Defense, State, Justice, and Treasury.

Is there really any feasible method of extracting the authorizations for the intelligence activities of those departments from their overall authorizations, which would remain within the jurisdiction of other committees?

For example, if the Committee on Armed Services were stripped of its authorization authority over Defense Department intelligence activities, how could it make sound judgments on overall authorizations with one of the vital elements—intelligence—missing?

(6) Would not the 6-year limitation on staff service on the Intelligence Committee make it difficult for the committee to locate and maintain competent staff, since they would know that just about the time

they would become accustomed to and really familiar with their duties they would have to seek other employment?

(7) Senate Resolution 400 would express the sense of the Senate that the head of each department and agency of the United States should keep the Senate Committee on Intelligence Activities fully and currently informed concerning intelligence activities of such department or agency. If the Intelligence Committee is to serve its purpose, such information is vital. Yet we have it here as a sense-of-the-Senate request in a simple Senate resolution, which does not have the force of law, and which, the Senate Legislative Counsel advises, the departments and agencies may comply with or not as they choose.

Why should not this and possibly other proposals in the resolution be deleted therefrom and be reintroduced in the form of a Senate bill which ultimately would become a public law, binding upon the departments and agencies involved?

(8) Why was the joint committee approach, which has worked so well in the sensitive atomic energy field, not utilized for this new sensitive purpose?

Now, committee members, these are some of the questions which occurred to me. I know there will be others as we go along and I hope our witnesses, some of them, would take the opportunity to comment on some of these.

Senator GRIFFIN. Could I add one question?

The CHAIRMAN. Senator Griffin.

Senator GRIFFIN. Could any of the witnesses comment on the fact that the committee could disclose classified information and the procedure that would be provided in the resolution for disclosure. Any comments concerning that would be welcome as far as I am concerned.

The CHAIRMAN. That is a very good additional point.

Any other comments from the members?

Senator BYRD. Mr. Chairman, I think you have quite comprehensively covered the field. Senator Griffin raises an additional question with respect to the divulging or reporting of information and making it public, and I will have some concerns in these various areas as we go along and I hope as you do, Mr. Chairman, that those who have written the legislation thus far will be able to answer the questions that would be directed toward them.

The CHAIRMAN. Senator Allen?

Senator ALLEN. No further comments.

The CHAIRMAN. As I indicated at the commencement of this statement, the Committee on the Judiciary was directed to report any recommendations it may have in respect to Senate Resolution 400 to the Committee on Rules and Administration not later than April 1, 1976. That committee has so reported to this committee, and I will read into the record a letter I have received from the Honorable James O. Eastland, chairman of the Committee on the Judiciary, transmitting that committee's recommended amendments to Senate Resolution 400. Also, without objection, I will insert into the record at this point the text of those amendments and the Judiciary Committee's explanation thereof.

[The material referred to above follows:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., March 30, 1976.

Hon. HOWARD W. CANNON,
Chairman, Senate Rules Committee,
Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the March 18, 1976 order of the Senate referring S. Res. 400 to the Commitee on the Judiciary with instructions to make recommendations to the Committee on Rules and Administration, I wish to advise you that the Committee on the Judiciary met on March 30, 1976, and recommends the resolution favorably with amendments.

The effect of the amendments approved by the Committee on the Judiciary would be to delete from S. Res. 400 the grant of jurisdiction to the proposed Committee on Intelligence Activities over the intelligence activities of the Department of Justice, including the Federal Bureau of Investigation.

The amendments would retain in the Committee on the Judiciary its historic jurisdiction over the Department of Justice, including the FBI.

A Judiciary Committee print of S. Res. 400, as amended, is attached.

With best wishes and kindest regards, I am

Sincerely yours,

JAMES O. EASTLAND, *Chairman.*

[JUDICIARY COMMITTEE PRINT]

MARCH 30, 1976

94TH CONGRESS
2D SESSION

S. RES. 400

[Report No. 94–675]

IN THE SENATE OF THE UNITED STATES

MARCH 1, 1976

Mr. MANSFIELD (for Mr. RIBICOFF) (for himself, Mr. CHURCH, Mr. PERCY, Mr. BAKER, Mr. BROCK, Mr. CHILES, Mr. GLENN, Mr. HUDDLESTON, Mr. JACKSON, Mr. JAVITS, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. MORGAN, Mr. MUSKIE, Mr. NUNN, Mr. ROTH, Mr. SCHWEIKER, and Mr. WEICKER) submitted the following resolution; which was referred to the Committee on Government Operations

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Reported by Mr. MANSFIELD (for Mr. RIBICOFF), without amendment

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Reported by Mr. MANSFIELD (for Mr. CANNON), without amendment

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Referred simultaneously to the Committee on the Judiciary and the Committee on Rules and Administration with instructions that the Committee on the Judiciary make its recommendations to the Committee on Rules and Administration no later than March 29, 1976, and that the Committee on Rules and Administration files the report no later than April 5, 1976

MARCH , 1976

Reported by Mr. ----------, from the Committee on the Judiciary

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RESOLUTION

To establish a Standing Committee of the Senate on Intelligence Activities, and for other purposes.

Resolved, That it is the purpose of this resolution to establish a new standing committee of the Senate, to be

known as the Committee on Intelligence Activities, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation concerning such intelligence activities and programs. In carrying out this purpose, the Committee on Intelligence Activities shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. Rule XXIV of the Standing Rules of the Senate is amended by adding at the end thereof a new paragraph as follows:

"3. (a) Six members of the Committee on Intelligence Activities shall be from the majority party of the Senate and five members shall be from the minority party of the Senate.

"(b) No Senator may serve on the Committee on Intelligence Activities for more than six years of continuous service, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent

practicable, at least three but not more than four Members of the Senate appointed to the Committee on Intelligence Activities at the beginning of the Ninety-sixth Congress and each Congress thereafter shall be Members of the Senate who did not serve on such committee during the preceding Congress.

"(c) At the beginning of each Congress, the members of the Committee on Intelligence Activities who are members of the majority party of the Senate shall select a chairman, and the members of such committee who are from the minority party of the Senate shall select a vice chairman. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. Neither the chairman nor the vice chairman of the Committee on Intelligence Activities shall at the same time serve as chairman or ranking minority member of any other committee referred to in paragraph 6(f) of rule XXV of the Standing Rules of the Senate.".

SEC. 3. (a) Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(s) Committee on Intelligence Activities, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

"(A) The Central Intelligence Agency and the Director of Central Intelligence.

"(B) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of Defense; the Department of State; ~~the Department of Justice;~~ and the Department of the ~~Treasury~~ *Treasury; but not including the Department of Justice.*

"(C) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

"(D) Authorizations for appropriations for the following:

"(i) The Central Intelligence Agency.

"(ii) The Defense Intelligence Agency.

"(iii) The National Security Agency.

"(iv) The intelligence activities of other agencies and subdivisions of the Department of Defense.

"(v) The intelligence activities of the Department of State.

~~"(vi) The intelligence activities of the Federal~~

~~Bureau of Investigation, including all activities of the Intelligence Division.~~

"~~(vii)~~ *(vi)* Any department, agency, or subdivision which is the successor to any agency named in item (i), (ii), or (iii); and the activities of any department, agency, or subdivision which is the successor to any department ~~or bureau~~ named in item ~~(iv), (v), or (vi)~~ *(iv) or (v)* to the extent that the activities of each successor department, agency, or subdivision are activities described in item ~~(iv), (v), or (vi)~~ *(iv) or (v)*.".

(b) Paragraph 3 of rule XXV of the Standing Rules of the Senate is amended by inserting:

"Intelligence Activities..... 11"

immediately below

"District of Columbia..... 7".

(c) (1) Subparagraph (d) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by inserting "(except matters specified in subparagraph (s))" immediately after the word "matters" in the language preceding item 1.

(2) Subparagraph (i) of paragraph 1 of such rule is amended by inserting "(except matters specified in sub-

69-450 O - 76 - 3

paragraph (s))" immediately after the word "matters" in the language preceding item 1.

(3) Subparagraph (j) (1) of paragraph 1 of such rule is amended by inserting "(except matters specified in subparagraph (s))" immediately after the word "matters" in the language preceding item (A).

~~(4) Subparagraph (l) of paragraph 1 of such rule is amended by inserting "(except matters specified in subparagraph (s))" immediately after the word "matters" in the language preceding item 1.~~

SEC. 4. (a) The Committee on Intelligence Activities of the Senate, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters deemed by the Committee on Intelligence Activities to require the immediate attention of the Senate or such other committee or committees. In making such reports, the committee shall proceed in a manner consistent with paragraph 7 (c) (2) to protect national security.

(b) The Committee on Intelligence Activities of the Senate shall obtain an annual report from the Director of the Central Intelligence Agency, the Secretary of Defense, *and*

the Secretary of State~~, and the Director of the Federal Bureau of Investigation~~. Such report shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interests. Such report shall be unclassified and shall be made available to the public by the Committee on Intelligence Activities. Nothing herein shall be construed as requiring the disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the sources of information on which such reports are based.

SEC. 5. (a) No person may be employed as a professional staff member of the Committee on Intelligence Activities of the Senate or be engaged by contract or otherwise to perform professional services for or at the request of such committee for a period totaling more than six years.

(b) No employee of such committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing to be bound by the rules of the Senate and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance

as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 6. The Committee on Intelligence Activities of the Senate shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 7. (a) The Committee on Intelligence Activities of the Senate may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever

committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote.

(b) (1) In any case in which the Committee on Intelligence Activities of the Senate votes to disclose publicly any information submitted to it by the executive branch which the executive branch requests be kept secret, such committee shall notify the President of such vote.

(2) The committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President notifies the committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by such disclosure is vital and outweighs any public interest in the disclosure.

(3) The Committee on Intelligence Activities may disclose publicly such information at any time after the expiration of three days following the day on which it receives an objection from the President pursuant to paragraph (2), unless, prior to the expiration of such three days, three or more members of such committee file a request in writing

with the chairman of the committee that the question of public disclosure of such information be referred to the Senate for decision.

(4) In any case in which the Committee on Intelligence Activities votes not to disclose publicly any information submitted to it by the executive branch which the executive branch requests be kept secret, such information shall not be publicly disclosed unless three or more members of such committee file, within three days after the vote of such committee disapproving the public disclosure of such information, a request in writing with the chairman of such committee that the question of public disclosure of such information be referred to the Senate for decision, and public disclosure of such information is thereafter authorized as provided in paragraph (5) or (6).

(5) Whenever three or more members of the Committee on Intelligence Activities file a request with the chairman of such committee pursuant to paragraph (3) or (4), the chairman shall, not later than the first day on which the Senate is in session following the day on which the request is filed, report the matter to the Senate for its consideration.

(6) One hour after the Senate convenes on the first day on which the Senate is in session following the day on which any such matter is reported to the Senate, the Senate shall go into closed session and the matter shall be the pend-

ing business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of the information in question, in which case the committee shall publicly disclose such information.

(B) disapprove the public disclosure of the information in question, in which case the committee shall not publicly disclose such information, or

(C) refer the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

Upon conclusion of the consideration of such matter in closed session, which may not extend beyond the close of the fifth day following the day on which such matter was reported to the Senate, the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph.

(c) (1) No classified information in the possession of the Committee on Intelligence Activities relating to the lawful intelligence activities of any department or agency of the United States which the committee or the Senate, pursuant

to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The Committee on Intelligence Activities, or any member of such committee, may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the Committee on Intelligence Activities, or any member of such committee, makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee, which, receives any information under this subsection, shall make the information available to any other person, except that a Senator may make such information available either in a closed session of the Senate, or to another Member of the Senate; however, a Senator who communicates such information to another Senator not a member of the committee shall promptly inform the Committee on Intelligence Activities.

(d) The Select Committee on Standards and Conduct may investigate any alleged disclosure of intelligence information by a Member, officer, or employee of the Senate in violation of subsection (c). At the request of five of the members of the Committee on Intelligence Activities or sixteen Members of the Senate, the Select Committee on Standards and Conduct shall investigate any such alleged disclosure of intelligence information and report its findings and recommendations to the Senate.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of Member, or removal from office or employment, in the case of an officer or employee.

SEC. 8. The Committee on Intelligence Activities of the Senate is authorized to permit any personal representa-

tive of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 9. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by S. Res. 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession, custody, or control of such committee, under appropriate conditions established by it, shall be transferred to the Committee on Intelligence Activities.

SEC. 10. (a) It is the sense of the Senate that the head of each department and agency of the United States should keep the Committee on Intelligence Activities of the Senate fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency.

(b) It is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or document in the possession, custody, or control of the department or agency, or witness in its employ, whenever requested by the Committee on Intelligence Activities of the Senate with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the Committee on Intelligence Activities of the Senate any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, Presidential directives, or departmental or agency rules or regulations; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

SEC. 11. It shall not be in order in the Senate to consider any bill or resolution, or amendment thereto, or conference report thereon, which appropriates funds for any fiscal year beginning after September 30, 1976, to, or for the use of, any department or agency of the United States to carry out any of the following activities, unless such funds have been previously authorized by law to carry out such activity for such fiscal year—

(1) The activities of the Central Intelligence Agency.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence activities of the Department of State.

~~(6) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.~~

SEC. 12. (a) The Committee on Intelligence Activities shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence—

(1) the quality of the analytical capabilities of United States foreign intelligence agencies and means for integrating more closely analytical intelligence and policy formulation;

(2) the extent and nature of the authority of the departments and agencies of the executive branch to engage in intelligence activities and the desirability of developing charters for each intelligence agency or department;

(3) the organization of intelligence activities in the executive branch to maximize the effectiveness of the conduct, oversight, and accountability of intelligence activities; to reduce duplication or overlap; and to im-

prove the morale of the personnel of the foreign intelligence agencies;

(4) the conduct of covert and clandestine activities and the procedures by which Congress is informed of such activities;

(5) the desirability of changing any law, Senate rule or procedure, or any Executive order, rule, or regulation to improve the protection of intelligence secrets and provide for disclosure of information for which there is no compelling reason for secrecy;

(6) the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities in lieu of having separate committees in each House of Congress, or of establishing procedures under which separate committees on intelligence activities of the two Houses of Congress would receive joint briefings from the intelligence agencies and coordinate their policies with respect to the safeguarding of sensitive intelligence information;

(7) the authorization of funds for the intelligence activities of the government and whether disclosure of any of the amounts of such funds is in the public interest; and

(8) the development of a uniform set of definitions for terms to be used in policies or guidelines which may

be adopted by the executive or legislative branches to govern, clarify, and strengthen the operation of intelligence activities.

(b) The Committee on Intelligence Activities of the Senate shall report the results of the study provided for under subsection (a) to the Senate, together with any recommendations for legislative or other actions it deems appropriate, no later than July 1, 1977, and from time to time thereafter as it deems appropriate.

SEC. 13. (a) As used in this resolution, the term "intelligence activities" includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, movement, or other association in such foreign country, and which relates to the defense, foreign policy, national security, or related policies of the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose

political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and covert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policymaking function.

(b) As used in this resolution, the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(c) For purposes of this resolution, reference to any department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that such successor engages in intelligence activities now conducted by the department, agency, bureau, or subdivision referred to in this resolution.

SEC. 14. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.

PURPOSE OF AMENDMENTS TO S. RES. 400 CONTAINED IN COMMITTEE PRINT NUMBER 1

The total effect of the various amendments contained in Committee print number one is to retain the present jurisdiction of the Committee on the Judiciary over all functions of the Federal Bureau of Investigation and to strike from S. Res. 400 all grants of jurisdiction to the contemplated Committee on Intelligence Activities over the FBI.

The intelligence activities of the Department of Justice are exempted from the grant of jurisdiction of the contemplated Committee on Intelligence Activities to be contained in proposed subparagraph(s) of rule XXV of the Standing Rules of the Senate by striking out "the Department of Justice" on page 4, line 8 of the bill.

Since the proposed subparagraph(s) of rule XXV states, in lines 4 and 5 on page 4 that the provisions are applicable not only to the enumerated departments and agencies, "but not limited to" those listed, the language of page 4, lines 9 and 10 is amended by striking the period, inserting in lieu thereof a semicolon and the words: "but not including the Department of Justice.".

The inclusion of jurisdiction in the proposed Committee on Intelligence Activities over authorizing legislation concerning the intelligence activities of the FBI is removed by striking line 24 on page 4 through line 2 on page 5.

The reference to "bureau" in line 7 of page 5 is removed since the Federal Bureau of Investigation would not be included within the jurisdiction of the proposed Committee.

The language of S. Res. 400 which takes away the jurisdiction of the Committee on the Judiciary over the intelligence activities of the Department of Justice by amending subparagraph (1) of paragraph 1 of rule XXV of the Standing Rules of the Senate is deleted by striking out lines 5 through 8 of page 6 of the bill.

The intelligence activities of the FBI are exempted from the mandatory authorizing language of Section 11 of S. Res. 400 by striking out lines 3 through 5 on page 16 of the bill.

Other technical amendments redesignate sections of the bill to conform to the changes made by the amendments.

The CHAIRMAN. Senator Stennis, we are very happy to have you here to testify on this matter.

STATEMENT OF HON. JOHN C. STENNIS, CHAIRMAN OF THE COMMITTEE ON ARMED SERVICES

Senator STENNIS. Thank you, Mr. Chairman, and members of the committee. Anything I can discuss I feel I owe it to the committee, and your questions are very timely. If I may just on my part say this, I will attempt to answer any of those questions later after getting a copy and file them for the record.

[Responses to the questions, subsequently received for the hearing record, may be found on p. 61 of these hearings.]

The CHAIRMAN. Very good.

Senator STENNIS. Mr. Chairman, I have a prepared statement here. I do not propose to read all of it by any means. I would ask that it be placed in the record and that I be permitted to summarize and emphasize such points therein or otherwise that I might see fit.

The CHAIRMAN. Yes; the statement will be made a part of the record in full and you may summarize from it as you wish.

[The written statement of Senator Stennis follows:]

STATEMENT OF HON. JOHN C. STENNIS, CHAIRMAN OF THE COMMITTEE ON ARMED SERVICES

INTRODUCTION

Mr. Chairman, I am happy to appear before the Rules Committee to testify on S. Res. 400, a resolution which would have far reaching effects on U.S. intel-

ligence activities and national defense. The full Committee on Armed Services has discussed thoroughly at two separate meetings S. Res. 400. No votes were taken within the Committee on this resolution. I believe, however, that my remarks reflect the general consensus of the Committee.

I respect the hard work and good faith of all those who labored on this resolution and now support it. There are certain fundamentals in this resolution, however, that I vigorously oppose.

SUMMARY OF POSITION

My position and recommendations on this resolution are as follows:

Retention of legislative jurisdiction over foreign intelligence by Armed Services Committee

S. Res. 400 would amend the Senate rules to transfer legislative jurisdiction over intelligence activities from the Senate Armed Services Committee to a proposed Standing Committee on Intelligence Activities. I strongly oppose this provision.

The foundation of the legislative responsibility of the Armed Services Committee in providing for the national defense lies in adequate intelligence judgments about foreign nations. The Armed Services Committee will be unable to meet properly its responsibility for the "common defense generally" if the Committee is deprived of its authority over one of the most crucial elements of national defense—foreign intelligence.

Elimination of requirement for legislative authorization of intelligence budgets

This resolution would rule out of order any annual appropriations for specified intelligence functions unless they were previously authorized by law. Separate authorization of various intelligence activities will result in making public and therefore available to potential adversaries, sensitive data on U.S. intelligence activities. I am firmly against such a procedure.

Abandonment of unilateral Senate approach

These two central features of S. Res. 400—changes in jurisdiction and the authorization process—are inherently unsound. That they would be accomplished by amending the Senate rules without comparable changes by the House of Representatives, can result only in utter legislative confusion.

Mr. Chairman, I would urge the Rules Committee to consider a change which would make Congressional control and oversight over intelligence activities more effective.

Creation of new permanent Armed Services Committee on Intelligence

A Permanent Intelligence Subcommittee of the Armed Services Committee can be established and I would agree this Subcommittee should be separately funded with a small, highly competent staff and would concentrate solely on foreign intelligence activities.

RETENTION OF LEGISLATIVE JURISDICTION BY ARMED SERVICES COMMITTEE

A historical perspective is essential to appreciate fully the importance of Armed Services Committee jurisdiction over U.S. foreign intelligence activity.

Background on present intelligence community

The U.S. intelligence community in its present form was established in 1947 as part of an overall reorganization of the U.S. national security structure. The experience of World War II beginning with the attack on Pearl Harbor has demonstrated the necessity of an integrated and centralized intelligence community. Prior to this time virtually all U.S. intelligence capability was spread throughout the military services. The CIA was created to ensure that intelligence would be available centrally to the President, the National Security Council and those government departments dealing with U.S. national security. The CIA was to be a civilian agency so that intelligence, to the greatest extent possible, would be objective and free of any parochial bias.

It was recognized that the United States could no longer remain isolated and ignorant of the capabilities and intentions of other nations. The overriding purpose of the new intelligence community, headed by the CIA, was to support the national defense.

Role of foreign intelligence in national defense

Throughout the years intelligence has been indispensable to national defense.

Arms development as well as arms control have depended critically on intelligence. Indeed, the size and content of the U.S. defense budget and the deployment of U.S. troops are directly related to intelligence estimates of foreign nations.

Intelligence, however, is not an end in itself. Like airlift capability, research and development, or anti-submarine forces, intelligence activities must be designed to support the overall defense program.

Because the U.S. defense depends so vitally on intelligence, it has always been necessary that the President, the Defense Department and the Armed Services Committee ensure that intelligence activities appropriately serve the needs of defense. Particularly in times of crises, there must be the flexibility to trade off and balance intelligence activities with other defense activities.

Thus, it is essential that the Armed Services Committee, like the Director of CIA and the Secretary of Defense, be able to review and adjust the effectiveness and scope of U.S. foreign intelligence activities. Were the Armed Services Committee to be deprived of this legislative authority, the intelligence community could become a separate entity unresponsive to the needs of national defense.

Intelligence integral element of national defense

The necessity for Armed Services Committee jurisdiction over intelligence activities is further underscored upon examination of the composition of the foreign intelligence community. Approximately 85 percent of the funds and 80 percent of the personnel in all U.S. foreign intelligence activities are managed by the Defense Department. The intelligence components remaining outside the Defense Department—principally the CIA—are overwhelmingly devoted to providing intelligence in support of the national defense. In light of this close and inseparable relationship, it would be unwise for the Senate to try to deal with foreign intelligence apart from the Defense Department.

SEPARATE AUTHORIZATION FOR INTELLIGENCE BUDGETS

As I have said, the Rules Committee should reject the S. Res. 400 requirement for separate legislative authorization of intelligence budgets.

Damaging disclosures

If there is to be separate legislative authorization as a requirement for annual appropriations for each of the major intelligence activities, including CIA, DIA, NSA, etc., all to be debated on the Senate floor, there is no doubt whatever that crucial aspects of our U.S. intelligence activity will be disclosed and thereby made available to the Russians. The argument will be made that no damage will be done if only total figures are disclosed. Yet year-to-year trends will give hard evidence to other countries as to the nature of some of our operations. You may recall that the Senate rejected a floor amendment to the Defense Authorization Bill in 1974 which would have required the disclosure of the aggregate CIA budget.

In terms of Congressional reality, however, there is no way debates on intelligence can be limited to lump-sum figures. It is virtually impossible to debate the whole of a subject without debating its parts.

Impracticalities of separating intelligence from defense

Let me refer to some of the problems that the separate authorization requirement would create in the Department of Defense. Again I emphasize that about 85 percent of the funds and 80 percent of the manpower of all U.S. intelligence activity are utilized within the Department of Defense. The intelligence funds within the Department of Defense are now carried in 23 separate appropriation accounts such as the R&D, military construction, personnel, operations and maintenance, procurement, and the like. These, of course, are carried here so that the amounts of these funds will not be made public and disclosed to potential adversaries.

I am advised that there is literally no way from a budget standpoint that these funds can be carved out with all the accounting restrictions of a separate budget. For instance, there is an aircraft known as the KC–135, many of which are used for refueling aerial tankers for the strategic air force. Other aircraft of this identical type are used for reconnaissance and intelligence purposes.

If we are to have a separate intelligence budget those planes used for intelligence, their spare parts, fuel, personnel, etc., must be handled separately even though they are in fact identical. Moreover, the cost of overhead facilities, such

as airports and ground equipment, must be separately broken out. This example could be duplicated many times with respect to the budgetary chaos and inefficiency that a separate authorization requirement would create.

Lack of meaningful distinction between tactical and national intelligence

The resolution provides that tactical intelligence does not have to be included within the required budget authorization as distinguished from the so-called strategic intelligence affecting national policy. As a practical matter, it is almost impossible to separate these activities in a budgetary sense. For example, the U–2 reconnaissance aircraft were used for both purposes, tactical and strategic. The same electronic intelligence source often provides useful information to a field commander, a weapons designer, and a national policy maker. And, there are many other examples such as anti-submarine devices, satellite activities, etc., all of which demonstrate the inseparability of intelligence activities from the Defense functions as a whole.

DIFFICULTIES IN RELATIONSHIPS WITH THE HOUSE ON INTELLIGENCE ACTIVITIES

Mr. Chairman, I firmly believe that the proposals I have discussed are inherently unsound within themselves. I would emphasize, however, that these changes are in the form of amendments to the Senate rules and hence would apply only to the Senate. Such action by the Senate would seriously impede the ability of the Congress as a whole to deal with intelligence legislation. For instance, since the House is proposing no legislative changes in the way that intelligence functions are now authorized, the House Armed Services Committee would report a military authorization bill containing sizable sums in the Research and Development account for intelligence purposes. If S. Res. 400 becomes the rule, these same funds would no longer be in the military authorization bill as reported by the Senate Armed Services Committee. What would be the situation in the conference with the House? Frankly, the situation would be a procedural nightmare. And this example would be duplicated many times over.

Moreover, unless existing law is drastically amended, the management of foreign intelligence will remain spread throughout various departments and agencies of the Executive Branch. Thus, an attempt by the Senate to bring all intelligence activities under one umbrella would be inconsistent with the practice of the Executive Branch as well as the House of Representatives.

NO IMPROVEMENT IN U.S. INTELLIGENCE CAPABILITY RESULTING FROM S. RES 400

Mr. Chairman, it is only proper to ask ourselves, does this resolution result in improving U.S. intelligence capability?

We should keep in mind that the criticism of intelligence activities in the past months has not been directed toward the collection and analysis of defense intelligence. Rather it has been directed toward the alleged misuse of intelligence capability at the highest executive levels, involving certain covert activities, surveillance excesses against U.S. citizens, etc. These areas, which have been under the direct control of the Office of the President, account for only a small sliver of U.S. intelligence activity.

Unfortunately, there is nothing in this resolution which would establish safeguards against the improper use of intelligence authority for domestic purposes as well as the various other alleged misuses. It is unrealistic to expect that the mere creation of a new Committee will resolve any problems or improve the product of U.S. intelligence. On the contrary, I firmly believe that great damage may flow from the provisions I have discussed in this resolution.

At the same time, I believe that certain changes should be made in how the Senate copes with its responsibility for intelligence and urge that you consider the following approach.

NEW SUBCOMMITTEE AND NEW COMMITTEE

Mr. Chairman, although I urge that the Rules Committee not recommend favorably on S. Res. 400, I do recommend that affirmative steps be taken:

Creation of a new Permanent Subcommittee of the Senate Committee on Armed Services

The Rules Committee should recommend establishment of a Permanent Intelligence Subcommittee of the Senate Armed Services Committee which would be separately funded and concentrate solely on intelligence activities.

I would support the formation of such a Subcommittee. The Subcommittee would have a small, competent and permanent staff. Procedures could be devised whereby this Subcommittee would cooperate with the Committee on Foreign Relations and regularly report its general oversight findings to the Senate.

I would emphasize that I have no objection to an added group to review the administration of foreign intelligence. This group should include the elected leadership of the Senate.

CONCLUSION

In view of its basic defects, I urge the Rules Committee to reject S. Res. 400 and seriously consider the proposals that I have outlined to strengthen the Congressional role in intelligence.

Senator STENNIS. Thank you, Mr. Chairman.

Now, gentlemen, in the Armed Services Committee, we had two around-the-table committee discussions by virtually all the membership of the committee. We do not have a resolution to bring here to you, but I am certain that I speak for the great majority, as a consensus, on the points I make—I speak for a majority of the committee without being nailed down to specific language. Some of the others will appear also.

Gentlemen, I have the greatest respect for the workings of the Intelligence Committee. I cooperated with them in any way that I could and they desired. I commend them and the Government Operations Committee for their work, all done in good faith and diligence, but fundamentally I am compelled to respectfully disagree with their conclusions, and the high point, main points pertain to jurisdiction. The resolution takes away through a proposed Senate rule the jurisdiction of the Armed Services Committee in connection with intelligence and also requires a complete authorization by the new committee of all the sums to be appropriated for military intelligence. I will enlarge upon that. I am compelled—I don't like to talk about myself—but I am compelled to go somewhat into my background of my experience with this, Mr. Chairman.

This is the most far-reaching proposal in this field since the enactment of the National Security Act which created the Department of Defense in 1947.

Now, I wasn't here then, but as I have said before, I came in on the next train after that bill passed. It was still rocking Capitol Hill. It created a Department of Defense over the objection of the services. It created this Secretary of Defense, at Cabinet level, really above the services. It split away from the military, over their objection, this intelligence agency, and the final language provided that both its Director and Deputy Director could not simultaneously be a military man.

Now, Mr. Chairman, over the years the CIA has done an excellent job.

What is their job? Gathering and analyzing intelligence. Their record is not all good by any means. For one reason or another, they got into a local or domestic or home affairs. But by and large the gathering of intelligence, particularly from foreign areas in collaboration with friendly foreign countries—the gathering and reporting and interpretation—that is a matter of opinion, interpretation—but I think they have done an excellent job. It has been at the cost of the lives of many of these men, a good many of them, and it has been at the cost of the lives of many men of other nationalities that were employed by the CIA.

Of course, Pearl Harbor was in the background of the creation of this thing. The Nation had to decide whether to go international or not; they created this Department of Defense, realized that they had to have this foreign intelligence and set that up as I have already said. Out of all that grew NATO, the Marshall plan and other matters—some successful and some not. But as a whole, these intelligence people have done an excellent job in their primary field, and there has been more surveillance of them than appears on the surface. The surveillance over the military part, the part that really counted and with which the Armed Services Committee was concerned, has been far more than appears on the surface, and I have been rather shut-mouth about it myself. This course of action comes down through men like Styles Bridges, Everett Salstonstal—they were both on Armed Services—Margaret Smith, the late Senator Russell, the late Senator Ellender and others. There was a rather involved, tedious difficult oversight task and when they first drew me into it, I didn't like the idea of so much secrecy. It is against the American concept—certainly, it is against mine—so much secrecy in Government. But as I read on deeper and deeper into this problem. I saw more and more the absolute necessity of keeping the amounts of these expenditures largely secret because of the inferences and conclusions that can be drawn by adversaries as to what we are doing or what we are not doing. That is a big part of this story.

Let me illustrate some of the things that were carried in the bosom of this group, in which Appropriations and Armed Services had a commonality of membership then, by chance, and they worked together a great deal. The most recent thing, this Russian submarine that was sunk, and we tried to raise it—and did raise it—with what would have been a wealth of material had not that cable broken. For 4 years, for 5 years we made appropriations for that project which cost a good deal of money. It was on the verge of being successful. At the last moment the cable broke and killed it. If we had followed Senate Resolution 400 or the usual way of getting money authorized and appropriated there would have been inferences, it would have gotten out. From their suspicions—all the Russians have to have is a suspicion—they would have been right on the spot. They are guarding it now 25 hours a day. However, back to the original point: That project was carried through 4 successive years of appropriation. There were several of us that knew about it, discussed it. It lost on the other front.

The U–2; there is no way to describe or estimate the value that we got from the work of the U–2. That goes way back as you recall. The U–2 was an airplane gathering information. From it, we found out—this is an open session, I am not going to elaborate very much—but we learned a lot of things we should not do, a lot of weapons we should not build, because it would be a waste of money, because they wouldn't be needed. We learned, on the other hand, what would be needed from what others were doing. Billions and billions of dollars is my estimate on the amount of money saved there. That project went through many years of appropriation. They weren't gathering just the intelligence I have been referring to, but there was intelligence used in other ways.

Now, those are fine illustrations, but just a few. We had information, by the way, about Cuba. As you will recall, it was misinterpreted

in part; but I mean we had information about the missile base in Cuba that precipitated the crisis there. So the work, by and large, has been carried out in a very skillful way. This military intelligence beyond our shorelines has been interpreted as a whole mighty well, and there has been a surveillance to a large degree on the military part that has been effective from year to year. There are complaints now, and I am not blaming anybody. But to come along now and strip the Armed Services Committee of responsibility for recommendations over this vast worldwide military program, carrying now over $100 billion a year, with so much of it founded, bottomed on intelligence; to call on a committee to handle just the hardware and personnel part of this $100 billion budget, stripped of all jurisdiction by just a Senate rule which goes to the foundation of this whole structure is not only awkward, but it is impossible. It just won't work. It won't work.

If you change under S. Res. 400, which does not have the concurrence of the House of Representatives—how are we going to handle here a $100 billion program? How can we handle it through a system in which the other body does not conform and does not follow, where we are requiring an authorization bill with all the processes that we have to go through with to debate back and forth and everything that goes with it—a system that the House is not concurring with.

Whatever improvement or whatever reform we need to get better intelligence—and that is what it's all about—I would respectfully say it should be something in which the House concurs. There would have to be a united action, a united effort, and a similar jurisdiction or similarity in committees that have jurisdiction. I am convinced that the intricate, difficult part of authorizing these large programs is not fully realized, except by those of us that have been through it year, after year, after year. It is no bad commentary or criticism of any group of men, but I am satisfied that there would be inferences—they don't have to be outright leaks—and conclusions that could be drawn from debating all of these matters back and forth, and from a right to appeal from the Chair and vote this and vote that. Time after time in these yearly authorizations we would be giving away a lot of the key matters and permit conclusions by our adversary which would be highly beneficial to them. Those actions are not necessary.

If we are going to make a crucial change in this field, I would strongly recommend that we go back and try to have some unified action by the House. I wouldn't cringe from a properly set up joint committee, say. I have no aversion to some modification of this monitoring of intelligence or surveillance. I had invited and had the consent and acceptance of the two floor leaders—Mr. Mansfield for the majority and Senator Scott of the minority, who are also members of the Foreign Relations Committee—that they would join us in our Surveillance Subcommittee when this matter arose, and a new intelligence inquiry was adopted by the Senate. I took all this in full faith, and we didn't have those planned meetings, but that shows my background, my attitude, and my efforts along that line. So before I conclude, I would like to say something more about a possible affirmative move here that can help the situation and provide a better setup—a more acceptable setup—to the membership of the Senate. I feel it is repetitious, but let me just refer to a few matters here about this authorization.

Now, money for parts of these programs, gentlemen, shows up in 23 separate different places, 23 separate items, in the appropriation bill. So there would be that many major programs that would have to be authorized and debated, and then appropriated for. The bill provides, subject to a point of order, that any measure could be stopped in its tracks on the floor if it had not been specifically authorized. It would take a two-thirds vote to overrule that. It would be the parliamentarian's opinion as to whether a program was authorized.

All this would involve our satellite programs, the moneys for their development. The satellite programs are in the bill now, in the research and development program handled by the Senator from New Hampshire, Mr. McIntyre, and his members in a skillful way. Some of the satellite program supports intelligence, some of it supports training, and some of it supports various other activities more into the heart of the military program itself.

Take the KC–135, the tanker. It is not classified. Some of those planes are used in intelligence activity. Some are used in many other phases of our military activity—refueling B–52s, for instance. How are you going to separate them? You can't do it? How much of the cost of my office is chargeable to Adams County, Miss., which is just one of 82 counties in Mississippi? Could I make a calculation and an estimate of how much of the office expense goes to taking care of the needs and desires of the Adams County people? Of course not. These matters just have to be taken in lump sum, gentlemen.

There is signal intelligence of all kinds that I can refer to in a broad way—the interception of messages. They intercept ours too, you needn't doubt it. It happens in hundreds of different ways in all parts of the world. How can you separate this? How can you say this part is intelligence and has to be authorized separately, and so forth and so on. If you want to have an intelligence agency that does the job, the constructive part of the job, the good part of the job, but will not let it operate under special rules, then we are not going to have the agency. It just cannot be conformed to the regular rules of procedure and legislation. We just have to make a choice between the two. It may be that we don't need the intelligence agency at all. If we don't, that would solve the problem; but if we need it, and I think we do—of course we do—we are going to have to make some differences in handling it. So I will go along, so to speak, with anything along the lines of housekeeping, but not on jurisdiction, not on the jurisdiction of the Senate Armed Services Committee, and not on this matter of authorization. It is unsound fundamentally to try to have to take out these projects, identify them in money figures, and let the adversaries know about it, one way or another—and that is not making any accusations against anyone.

Lest I be misunderstood, I am not advocating that we not have intelligence. I found out, members of the committee, that people have a deep concern about this matter. They sense—they sense that we might, in the confusion, I call it, over methods—that we might fail to give intelligence the proper emphasis and security. I think we are on our mettle and must do our very best to come forth with some kind of a remedy, but I submit to you the fundamentals must put this jurisdiction where it is, at least where the House is going to leave it, and the authorization—the same thing.

On the matter of staff, in my years in the Senate, when I became chairman, the man who had been handling intelligence oversight for the Armed Services Committee retired. So I had to get someone to look after it. I got an excellent man—excellent. I would put him up against anyone on Capitol Hill, but he already had too much to do—Ed Braswell here, our chief of staff. Unfortunately, he already had too much to do.

If you come up with an alternative plan, I approve the idea of having someone from the Foreign Relations Committee, which I already mentioned, or a special subcommittee of Armed Services with a special money resolution. I readily agree that there should be a highly competent staff—not large in numbers, but a highly competent staff—two or three exclusively to work on it, with a chairman and cochairman or subchairman, whatever you want to call it, being nonpartisan who could really have time to give it more attention.

I am ashamed of some of these things that happened here at home that the CIA got into in one of their bad moments. Some of it was individuals. This domestic stuff, I am ashamed of it, and of course I knew nothing about it. I remember I wasn't attending Senate sessions the year that this wig stuff came out and it humiliated me. That doesn't mean you have got to destroy the jurisdiction because of some of those things being done. As a whole, they have done an excellent job.

Let me point out, I hold no brief for the military as such, but the command of our military forces in all these years has not been mixed up in all this bad stuff—not one bit. No chief of staff. No evidence was brought out that showed any conniving by any chief of staff or of any man in direct authority. Apparently the responsibility went far beyond the services themselves.

The last time a Deputy Director of CIA was appointed, I also suggested that he be a civilian. To show how I feel about it. I am not waving a flag for the military. I suggested that we not even have a military man for deputy. It turned out all right. I didn't know who they were considering when I made that recommendation.

We have a situation where the military itself has come through generally with a clean bill of goods, so far as the proof I have heard, though some military men may have been involved in some degree in some of this stuff. That is the matter as I see it, gentlemen.

I want the privilege, as you already said, of looking later, Mr. Chairman, at your various timely questions. I will require a little time, but I have taken too much time now, I am sorry.

The CHAIRMAN. Thank you very much, Senator Stennis, for your very fine presentation.

One of the questions that bothered me, and I posed it here earlier: How could the Armed Services Committee carry out its responsibility for the national defense if it were unable to exercise the jurisdiction over what we were doing in the field of intelligence activities and coordinating that with our requirements for military systems and hardware?

Is there any way that could be done that you can see?

Senator STENNIS. There is just absolutely no way, and I base that on years of effort I have made. The chairman of this committee has been highly useful in this same work. I agree with the inferences of his question. I tried to see if there was some way, Senator, you take

the jurisdiction away, of all these intelligence agencies from that committee, and you leave the Armed Services Committee stripped to the bone, undressed in public, so to speak, so far as being effective in this field.

In decisionmaking, I don't rely upon military intelligence alone. We bring in the CIA—the civilian agency—and get the fundamentals from them, and then we bring in the military intelligence, too, and compare, but the CIA in these foreign countries is the one who has the information. Without the authorization and jurisdiction, the District of Columbia Committee of the Senate could have just about as much chance to get at the thing as we would.

The CHAIRMAN. If I could refer to the proposed organizational structure for a moment, the limitation in the resolution provided for a 6-year limitation on staffing. Do you see any possible way that a competent staff could be developed with expertise if they were limited to a 6-year period?

Senator STENNIS. I don't think so. I would go at it another way. I would appeal to the men: Now, if you make good and show your qualifications in every way, this will be a life career for you perhaps, if you want it. You have got to approach them in that way.

The CHAIRMAN. On the proposed limitation on membership to Members of Congress, can you foresee any of the senior Members of the Senate giving up a position of seniority on major committees to serve on a committee such as this where their term would be limited to 6 years?

Senator STENNIS. No; I don't think it would work that way, Senator. I am sure I don't fully understand just what the purpose of those provisions are. I think it would be hurtful to put such limitations on the plan to start with, severe limitations.

The CHAIRMAN. Senator Griffin?

Senator GRIFFIN. Senator Stennis, I don't know how close you were to it, but one very important development that occurred long before I came to Congress was the development of the atomic bomb which ended the war with Japan. I happen to know the Congressman who preceded me in Michigan's 9th district was one of the very few Members who was familiar with the details of that particular item. I wonder what would have happened if that vital secret had gotten out?

Senator STENNIS. Well, that is an excellent illustration. Perhaps that is the all time, big-league record, the way they kept all this secret, but that was before my day. I wasn't here then.

Senator GRIFFIN. I don't attach any particular implications or suggestion in connection with this, but just as a matter of the record and background, I want to read the English translation of the Tass newsstory dateline Moscow, March 25:

Moscow, March 25, Tass—

> The publication of the book "The CIA Through the Eyes of Americans" will familiarize wide circles of Soviet readers with critical views of Americans themselves and public of other countries as regards the subversive activity of the U.S. Central Intelligence Agency against peace and freedom of people, the newspaper Pravda writes today.
>
> The documentary book issued by the Soviet "Progress" publishers is a collection of articles from the press of the United States and other countries exposing the CIA's dirty machinations. It also contains excerpts from books by former CIA agents.

The opening chapters of the book are a story of the CIA's spying on U.S. citizens in violation of the country's laws. In its unlawful operations at home, this espionage organization closely cooperates with the Federal Bureau of Investigation (FBI), which is the main tool of struggle against the progressive forces of the United States. The reactionary leadership of the AFL–CIO has also become an ally of the CIA, says the review.

The book carries findings of the report by the Special Senate Select Committee on Intelligence published late last year. They deal with the planned assassinations of Cuban Prime Minister Fidel Castro, progressive Congolese political figure Patrice Lumumba, commander in chief of the Chilean Armed Forces, Gen. Rene Schneider.

The review notes that the book contains data about the CIA's subversive actions against the Socialist countries in the cold war period, the staging of various coups against progressive governments in the developing countries, including the CIA's direct involvement in the overthrow of the legitimate popular Unity Government in Chile. The book also contains the latest press reports exposing the criminal operations of U.S. intelligence services in Angola, Portugal and Italy.

If you think that is more appropriate at some other point in the record, that would be all right.

The CHAIRMAN. It is fine.

Senator Pell.

Senator PELL. I apologize for not hearing your whole statement. As I understand it, your view is that there should be an oversight committee that would stay plugged in, but the actual authorizing of funds would remain with the present standing committees, is that your thought?

Senator STENNIS. My position is that the jurisdiction of the committee of the Senate which has responsibilities to make recommendations as to the whole military program including authorizations and so forth, just has to have jurisdiction over intelligence—they just have to. Further, the regular authorization processes, as a practical matter, just would not and cannot effectively be made to apply to a great part of this intelligence program. It just won't work. There would be exposure—I am not accusing anyone of leaks, but inferences and conclusions—will be drawn against us—and to the advantage of the other side if we have these authorizations with these line items identified.

Take submarines, for instance. They are used for intelligence purposes. Of course, they are also used for training, for keeping the sea lanes open, but they would be collecting intelligence currently and in war time.

How would you separate that authorization? That intelligence part of it? Who is going to authorize the engaging in intelligence? It is not possible.

Senator PELL. The same argument would apply to the Foreign Relations Committee, too. We have to have a picture of the whole. It is important that we receive these briefings of what covert activities are going on over the world to assess the decisions we should make. How do you think this should be handled?

Senator STENNIS. Before the intelligence inquiry, I invited Senator Scott and Senator Mansfield, members of the Foreign Relations Committee and leaders of the Senate to sit with us and confer with us. I think we could work out something and perhaps have some of the membership of your committee.

Senator PELL. I am not sure that that would be satisfactory to the majority of the Members of the Senate, because I think there is a feel-

ing that the Members themselves want to participate as well as leaving it to one or two trusted colleagues.

Senator STENNIS. If you are going to have a program where everyone has to participate on every item, with all deference to everyone, there is such a jumbled mass of matters, repetition and so on, year after year, just enough will get out for the adversaries to form inferences or conclusions useful to them.

Everytime a new man is cut in on it, he thinks there ought to be more disclosed, but when he gets deeper into it, he sees where it shouldn't be handled that way. It is embarrassing to talk to a colleague—I have talked to many of them in the cloak room. It is a burden you don't want to carry. You can't go to sleep at night.

Senator PELL. We have to get somewhere in between.

Senator STENNIS. I have a cooperative attitude about it, but not on jurisdiction and authorization.

Senator PELL. Thank you.

The CHAIRMAN. Senator Scott?

Senator SCOTT. Senator Stennis, thank you very much for your presentation. I want your opinion on these provisions of the bill designed to guarantee leaks. Let us take the greatest secret of the World War II perhaps, the breaking of the Japanese code.

I am not aware whether you knew that or not, whether some very limited numbers of persons in Congress may have known it. The secret was kept because an extraordinarily few people knew it. The secret was in the force in which I served in the Navy, which was a landing force, only the chief and the admiral of the intelligence section knew about the breaking of the code. I was his executive officer. I didn't know about the breaking of the code. It was wisely held. It led to the shooting down of Admiral Yamamoto, Commander of the Japanese combined fleet.

If we had broken the code of another nation in a state of belligerency or the state of war, there are provisions here in this law that the committee is entitled to that classified information. It could vote to release it. The President would have 5 days in which to say, "Please, don't release the fact that we have the enemies' code."

The committee would be authorized to disclose the information any time after 3 days. The enemy would be kept in doubt for 3 full days of our intentions. After that, the committee would have the right to disclose it. The President would be powerless. Our Armed Forces would be at the mercy of the committee, which might well think that it was in the national interest to disclose to the enemy under the Freedom of Information or some other doctrine, the fact that we had broken their code.

Now, does that give you any concern?

Senator STENNIS. The greatest kind of concern. I am so saturated with this thing that it is inconceivable to me that, on second thought, we could adopt the provisions to which you have referred. I think, too, if we are going to go that route, gentlemen, we better be prepared to double the appropriations for the Department of Defense because we are giving away everything here and really helping them prepare for whatever designs they may have. We would have to get ready in a far better way.

Senator SCOTT. I am wondering about the need for a single committee under the circumstances that are covered in another section of S. Res. 400—that any member of the committee could disclose classified material to any other Member of the Senate. I have heard the statement made in the committees, "You know, anything we know, everybody else in the Senate is entitled to know."

Senator STENNIS. Yes.

Senator SCOTT. In point of fact, that has never been the case in the handling of classified information.

Would you say that secret classified information once in the hands of 100 people is quite a secret as if it were in the hands of a single committee?

Senator STENNIS. Well, of course not, of course not. It is hard to draw an exact line. It is unpleasant to have to carry the load. It is no reflection. I wouldn't feel it is any reflection on me if the chairman of this committee would tell me, "There is some stuff here we better handle the best we can and keep it pretty close and secret."

I would go down the hall myself and walk away. That is the nature of it.

There is no criminal law to protect intelligence. We worry about this on our committee. Generally, there is only the old Espionage Act. The Atomic Energy Act includes protection for that kind of intelligence. This act needs some amendments, you know, the basic authority for CIA. We have had bills here on it, but the atmosphere has been such for the last 2 or 3 years that you just couldn't proceed too well in the last part of the war. It is not a perfect law.

Senator SCOTT. I have no other questions.

The CHAIRMAN. Thank you.

Senator Byrd?

Senator BYRD. Senator Stennis, first, I want to compliment you for your statement. You have expressed concerns that each of us have. We are working in an atmosphere, post Watergate and post of a good many other revelations that have occurred which, to a considerable degree demands that some action be taken to correct and prevent a recurrence of such abuses as we have been exposed to.

I think that—this is my own personal opinion—I think that Congress has to take some action. I feel that the public expects it, and if we don't take some action, there will be a continuing clamor and urging on the part of members inside the legislative branch and through the various segments of the media and from the people themselves.

If we start from that premise, we also have to accept another premise, one which has been very carefully explored by you and it is somewhat multiheaded, one being the extreme sensitivity of the information with which we are dealing. Our country has to have intelligence. We cannot fight a war without intelligence. We cannot prevent a war without intelligence. Our country has to know what potential adversaries are doing, what they are planning, so that we may act counter thereto and be prepared if conflict comes to defend adequately our country, but more important perhaps, be prepared to prevent a war from occurring.

Now, there is some intelligence that just can't be made public in the interest of our country and in the interest of people who are engaged in securing intelligence.

So, we have these two basic premises from which we have to start. You have also pointed out the infeasibility of having a committee of the Senate which would have the sole authority to authorize funding which would have to deal with various committees in the House, that body not having structured itself in conformity with the structure that is contemplated by this resolution.

Now, we are troubled by these premises that I have attempted briefly to articulate. Our job is to find a way, a way to assure the people of this country that abuses will not recur if we can prevent them from occurring—a way that will also assure the people of the country, and I include myself among them, that sensitive information that is vital to the security interests of this country is going to be adequately protected, insofar as it can be protected—human beings and human frailties being involved. So, it is in the spirit of this acceptance of the need for both of these vital things that I make my comment.

I take it from your statement that you would prefer a joint committee over the approach envisioned in this resolution of having a Senate standing committee, and you make that point basically, I suppose, because of the problems involved in the structuring—the difference in the structuring of the two Houses with respect to the authorizing process.

If I read you correctly in this regard, would you have a suggestion as to how such a joint committee could be structured by way of its membership?

Senator STENNIS. Well, if we were going that route, it would require a great deal of exploration, Senator, that I haven't done. You correctly said if we are going to have a special authorization of identifiable items, or a line item approach, that would drive you to the joint concept, as you so well said, but I haven't conferred with any members of the House about that. That would require exploration.

I think as a practical matter here in the Senate that we should get some kind of a setup including members of the Armed Services Committee and Appropriations Committee, say, and the Foreign Relations Committee. This is just Stennis talking on this. If we could get a group there to meet the situation and satisfy everyone—a group with a kind of look-see surveillance, a coordination group. But basically, whoever is going to have responsibility for the overall military program must have responsibility for intelligence. All the look-see and look-over-the-shoulder that may be necessary to satisfy the membership, I would cooperate to work out something along that line. But basically, we can't perform our function that by law we must do unless we have jurisdiction over intelligence.

Senator BYRD. May I ask a second question just in an attempt to feel our way here?

Senator STENNIS. Yes.

Senator BYRD. Suppose a joint committee were to be established, Senator Stennis, the reasoning back of the resolution in part that provides for a limitation on the term of service for members on that committee and the limitation on the term of service for the staff is the idea—whether or not it is valid, and it may be in part valid, but not in its totality—that too many years of service in this field hardens one who serves the necessity of seeing the overall picture, and one gets really to the point where he can't see the forest from the trees. He takes the side of the intelligence community.

I think that is the basic reason for this facet of this proposal. What would you think of being able to meet this objection and having on that joint committee the chairman and ranking members of the Armed Services, the Foreign Relations, the Government Operations Committee, but in addition thereto that there be other members—not appointed by the steering committees, but appointed by the leadership in both Houses, so that in addition to the persons who have served years on these respective committees, there would be some fresh blood and some fresh viewpoints and perhaps not make it as—well, what do you think?

Senator STENNIS. My suggestion is a matter of surveillance, or look-see or overlook. If that is enough, I would say all right, but not include the jurisdiction in this joint committee that you describe.

Senator BYRD. Not including the authorizing jurisdiction?

Senator STENNIS. No, the authorizing jurisdiction and the general jurisdiction as a whole to do the job, the Armed Services Committee of each House must have that basic jurisdiction over intelligence.

Senator BYRD. This committee would have oversight and surveillance.

Senator STENNIS. Some oversight and surveillance on a gentlemanly basis, if that is the judgment of the Senate.

As one member, I think I could live with that, but there is always that total reservation about the Armed Services Committee's jurisdiction being retained.

Senator BYRD. I think you have answered my question.

The CHAIRMAN. Senator Allen?

Senator ALLEN. Thank you.

Senator Stennis, I regard you as a great patriot. Certainly, your views in this area have great weight with me. I feel that this legislation is an over-reaction to the improper and illegal activities of the intelligence agencies. I think it would be illogical to say because the intelligence agencies have acted improperly in some areas that we need to change the authorization process. I have heard little, if any, criticism of the authorization process that we now have. I am wondering how this separate committee could do a better job. I might say that I am glad that this legislation has gone through more committees than one. I feel that it has given the Congress and the committees more time to have a more objective view of just what is involved here. It is true that there was a certain area of hysteria throughout the country as a result of some of the disclosures of the improper activities of the intelligence agencies, but I believe that hysteria has subsided, and I believe that the Congress is now taking a more objective view of what is involved.

I am sorry to say that I believe there is a large body of public opinion in this country that feels that the Congress is out to destroy our intelligence agency. There is a strong feeling of that sort in many responsible circles. I hate to see that, but it is there.

Do you feel that this change in the authorization process would cripple the operation of the Armed Services Committee?

Senator STENNIS. Oh, yes. It would greatly cripple it. It would leave us without the adequate tools of our trade, if I may use that expression, Senator Allen. It would disarm us.

Senator ALLEN. As you decide what you need to do for this country, you need to crank in intelligence.

Senator STENNIS. We just have to have, not just as a matter of naked information, but from the executive branch which is responsible to us, a coordination of the effort and a continuing year-long contact—not at social functions, I mean grim reality.

Senator ALLEN. If this resolution is passed as is, would you get your intelligence information by going to the chairman of the committee and saying: Frank, or George, or whoever, can you give me some intelligence information so that our committee can use that information to carry out its function of authorizing appropriations for the defense of our country?

Is that the way you would be reduced to getting this information?

Senator STENNIS. Well, not altogether reduced to that, but it would be just about at that level. That would be about the level of our standing with reference to it. We could ask them to come in and tell us what they told the others and we could cross-examine them, but that is as far as we could go. That continuity of relationship that goes on day and night, year after year would be gone, would be gone.

They would be looking to someone else on Capitol Hill for their sustenance in a legislative way. I have an intimate contact with them in that way, but no other contact with these people. I am not buddy of them or anything like that. They know that.

Senator ALLEN. I certainly realize that.

Senator STENNIS. I just mention that in passing, but we need that continuity of contact.

Senator ALLEN. Do you think there would be more likelihood of the intelligence activities of our country becoming more a matter of common knowledge and therefore available to our adversaries under the process related to this resolution, or by leaving the jurisdiction in the Armed Services Committee?

Senator STENNIS. Well, with all deference, there would be a greater probability by far of information getting out one way or another, or at least enough to make conclusions. It doesn't take much to interpret.

These Soviets are smart and anyone else could do so who is interested.

Senator ALLEN. You know, under our form of government, it is not hard for our adversaries to know just what we are doing in the defense area.

Senator STENNIS. Yes.

Senator ALLEN. Just by reading the Congressional Record, reading the debates on the various defense bills, by studying the committee hearings, by reading what is written or hearing or seeing on the national news media, anyone, an average citizen as well as our adversaries can be pretty well briefed on just what our defense effort consists of; isn't that correct?

Senator STENNIS. That is correct. That is so.

Senator ALLEN. Would there be more of an inclination on the part of this select committee by the separate authorization—would that not be more conducive to operating our intelligence agency and authorization more in a fish bowl?

Senator STENNIS. I am compelled to say yes. That system would bring it, not the individual Senator, but the system would produce it.

Senator ALLEN. This resolution, certainly in the areas you are talking about, the matter of jurisdiction and authorization, is this legislation, in your judgment, contrary to the national interests?

Senator STENNIS. I think so; yes. The system is; yes.

The CHAIRMAN. Senator Clark?

Senator CLARK. Just a couple of questions, Mr. Chairman.

Senator Stennis, you obviously have many years of experience in the area of defense, the Central Intelligence Agency, and so forth.

What, in your judgment, based on that experience, is the greatest problem that we have with the system we have now, or the so-called old system? What do you see as its greatest weaknesses?

Senator STENNIS. You couldn't have been here at the time I outlined my version of that in my opening remarks. Some things that happened, that come out, were not characteristic of the CIA at all. I think they have done, under very adverse conditions over the years, really a good job, a good job. Most of the things involving domestic affairs are really traceable directly to the President of the United States, whoever he was at that time, or to someone who was speaking directly for him or was believed to be.

I have already outlined here—as to additional surveillance—what my recommendations would be on that.

Senator CLARK. I will read those remarks.

Senator STENNIS. I will go over them again.

I said, I would be cooperative on anything like that within our committee, but I would fight to the end for the basic jurisdiction of the committee in the authorization process.

Senator CLARK. The other question I have: Do you believe that the passage of Senate Resolution 400 would encumber your committee's ability to be fully informed of all of the intelligence information that the CIA has available to it?

Senator STENNIS. Well, it would rob us, it would rob us of that continuity, not alone of information, but of a relationship we have with CIA.

I had no more to do with selecting the present Director than anyone. You know, I wasn't in on that. But I am sure he feels a responsibility to our committee. It appeals to him and it brings out his best, and if you change the law, you are going to take it away from us and give it to someone else.

Senator CLARK. I wasn't thinking so much, Mr. Chairman, of the authority for the moment, but rather whether you feel—this is a question we have been talking about in the Foreign Relations Committee as well—whether you feel there is any section or line in this bill that would, in any way, encumber your committee's ability to be fully informed of all the information and analysis and operations of the Central Intelligence Agency?

Senator STENNIS. I can start by assuming we wouldn't be denied any specific piece of information, but so far as formulating and planning ahead and wanting to, you know, discharge our duties of jurisdiction—if you take that away from us, we just don't have it. The bare facts wouldn't replace it by any means. The intelligence agencies are going to look to someone, naturally, with a sense of responsibility, and it would no longer be the Senate Armed Services Committee if you put that jurisdiction elsewhere.

Senator CLARK. So it is not the gathering of information or the ability to be informed as a committee, but rather the other, the jurisdictional question?

Senator STENNIS. I would say this; if you would transfer this jurisdiction elsewhere, it certainly is not going to increase the quality of intelligence. It certainly is not going to improve the situation there, and it might be that it would decrease the quality there.

Senator CLARK. Thank you very much.

Senator STENNIS. Better intelligence is what we are looking for, Senator Clark.

The CHAIRMAN. Senator Stennis, in your prepared statement that was made a part of the record, you recommend that affirmative steps be taken to create a new permanent subcommittee of the Senate Committee on Armed Services, and that committee to be separately funded and concentrated solely on intelligence activities and to develop a small competent and permanent staff as contradistinguished from this suggestion here, a 6-year staff.

That is your recommendation on this matter?

Senator STENNIS. Yes, trying to be on the affirmative, I make the positive recommendation to meet the situation that you are confronted with, we all are. That is something that would fit right in. As I emphasized, I am thinking of that very seriously.

The CHAIRMAN. And you are suggesting that that subcommittee report regularly on oversight to the Senate and cooperate with the Foreign Relations Committee?

Senator STENNIS. Yes, sir. There is a continuity. I had ex officio members, two from Foreign Relations—Senator Scott from Pennsylvania and Senator Mansfield from Montana—but that didn't go. The special committee began its work. I thought that would strengthen the situation. For chairman of a new subcommittee I would try to pick out someone that had time to do it, and would do it, and make a special effort to do it. In the same way with the minority member, but in all my deliberations in all these years, I never heard a partisan issue raised among this oversight group.

The CHAIRMAN. Thank you very much, Senator Stennis, for your helpful testimony.

[Senator Stennis subsequently responded to questions posed by Chairman Cannon in his opening statement as follows:]

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., April 6, 1976.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciated the opportunity to appear before the Rules Committee on March 31, 1976 to express my strong opposition to enactment of S. Res. 400.

In your statement opening that hearing you posed several important questions regarding the provisions of S. Res. 400. Because some of your questions go to the heart of my own reservations about this resolution, I am taking this opportunity to respond for the record.

THE NECESSITY OF LEGISLATIVE JURISDICTION WITHIN THE ARMED SERVICES COMMITTEE

You asked the question most telling of the fundamental unsoundness of S. Res. 400 when you inquired, "* * * if the Committee on Armed Services were stripped of its authorization authority over Defense Department intelligence activities, how could it make sound judgments on overall authorizations with one of the vital elements (intelligence) missing?"

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Isolating foreign intelligence activities from the overall U.S. defense program would severely limit and distort the work of the Armed Services Committee. As I tried to underscore in my earlier testimony, it is essential that the Armed Services Committee retain the legislative authority to shape and direct U.S. foreign intelligence activities.

As you know. the Armed Services Committee is charged with responsibility for the "common defense generally." It must therefore ensure that the separate elements of the defense program support one another to provide the most effective national defense plan. The Committee must weigh needs and priorities across the spectrum of defense activties, including intelligence, and make very difficult decisions.

In making these decisions, the Committee must of course be acquainted with the best and most current intelligence as it channels resources into defense programs. It must also be fully acquainted with defense programs—war plans, strategic weapons, anti-submarine capability, and the like—as it channels resources into intelligence activities. U.S. foreign intelligence activities can be effective only if they are designed to support the national defense. It is the crucial interaction between foreign intelligence and national defense that would be missing under S. Res. 400.

A recent example of this interaction occurred when the Central Intelligence Subcommittee of the Armed Services Committee in cooperation with the Appropriations Committee made sharp reductions in one costly area of intelligence activity. As reflected in the Appropriations Committee report, this savings was achieved because, from the work of the relevant Committees, it had become clear that the activity in this area was excessive given the value to the U.S. national defense of the intelligence produced. Without the Committee background on defense programs, I doubt this decision could have been made—or at least would not have been made as soon as it was.

The Armed Services Committee is uniquely suited to make decisions regarding the content of foreign intelligence programs. As I have already stated, the vast majority of U.S. foreign intelligence resources are contained within the Defense Department and are inseparable from the defense program. The Committee can review the R & D, procurement, and construction for intelligence activities, just as it does for airlift capability, command and control facilities and so forth. The Committee members have had experience with these matters and, with the Committee staff, have learned a good deal about what a potential enemy is doing and what the United States is planning by way of response. It is this knowledge and experience that is the basis for judgments about what U.S. foreign intelligence programs should be authorized and what areas of intelligence should be pursued.

THE SECURITY OF VITAL FOREIGN INTELLIGENCE

Your question regarding the advisability of trying to estabilsh procedures governing disclosures, congressional right to information, etc., is also of particular concern to the Armed Services Committee. I have long been convinced that certain modification should be made to the National Security Act of 1947. Indeed, in 1973 I introduced legislation to revise the National Security Act of 1947. Prior to any congressional action in this area, however, the Select Committee on Intelligence was established. The Committee on Armed Services is still waiting for the findings and recommendations of the Select Committee before considering changes in law affecting U.S. intelligence activties. I still believe that legislation is required to solve many of the problems confronting U.S. intelligence activties. I believe it would be unrealistic and unwise to try to solve these problems by Senate resolutions rather than by statute.

PROCEDURES CONCERNING NEW SELECT COMMITTEE ON INTELLIGENCE

The other questions which you posed focused on the operation and structure of the new committee contemplated in S. Res. 400. Many of the provisions of S. Res. 400—rotating membership, fixed terms, etc.—are inconsistent with Senate practice. Other provisions such as designating the ranking minority member as vice chairman, are inconsistent with the Legislative Reorganization Act and hence cannot be effected merely by Senate resolution. Although I have not studied these provisions in great detail, I believe such drastic departure from regular Senate procedures should be required to meet a very heavy burden of justification.

Finally, I would like to bring to the attention of the Rules Committee other aspects of S. Res. 400 which I find troublesome:

1. By bringing all U.S. intelligence activties including the domestic activities of the FBI under the umbrella of a new select committee, S. Res. 400 would blur the crucial and long-standing separation of foreign intelligence from domestic intelligence. Undermining the distinction between foreign and domestic intelligence could well result in greater opportunity for infringements on the rights of U.S. citizens than the creation of another Senate committee could prevent.

2. As set forth in S. Res. 400, the definition of intelligence activties, particularly the presumed distinction between "tactical" and "national" intelligence, is vague and unworkable.

3. All nominations for intelligence positions within the Department of Defense should be considered by the Armed Services Committee rather than, as in S. Res. 400, a select committee.

4. The provision of S. Res. 400 requiring written records of an exchange of intelligence information between Committee members and other members of the Senate is awkward and ill advised.

In my view, however, the major deficiency of S. Res. 400 is that, in its understandable concern with intelligence oversight, the resolution would interfere with the prudent and orderly consideration of defense budgets. It would do this by improperly limiting the legislative jurisdiction of the Committee on Armed Services.

Thank you for affording me the additional opportunity to respond to your opening questions.

Sincerely,

JOHN C. STENNIS, *Chairman.*

The CHAIRMAN. Senator Hruska.

STATEMENT OF HON. ROMAN L. HRUSKA, RANKING MINORITY MEMBER OF THE COMMITTEE ON THE JUDICIARY

Senator HRUSKA. Mr. Chairman and members of the committee, I appear at the request and instance of Senator Eastland, chairman of the Committee on the Judiciary. He asked that I present a report written in part and oral in part as to the action taken by that committee pursuant to the instructions that any recommendations that it have be transmitted to your committee.

That was done formally yesterday by a letter of transmittal which had attached to it a Judiciary Committee print of Senate Resolution 400, which incorporates and embodies the amendments which the Judiciary Committee recommends be made a part of that resolution.

The thrust of the amendments is this: That the Department of Justice and that the Federal Bureau of Investigation be deleted in toto from the language and the embrace of the Senate resolution.

The chairman wanted me to thank the Rules Committee for its cooperation and its courtesy in extending us the opportunity to have the hearings that we did on this subject, not only a day of hearings at which Attorney General Levi and Director of FBI Kelley appeared, but also formal discussion in the full committee on two occasions, the most recent of which was yesterday afternoon. My remarks will go only to the amendments to Senate Resolution 400 as recommended by the Judiciary Committee.

Each member of the committee reserved his individual right to propose additional amendments to the resolution, or express a stand on the merits of the resolution as a whole.

Now, Mr. Chairman, I have submitted a written statement which I wish incorporated in the record, if that pleases the committee.

The CHAIRMAN. It will be made a part of the record.

[The written statement of Senator Hruska follows:]

STATEMENT OF HON. ROMAN L. HRUSKA, RANKING MINORITY MEMBER OF THE COMMITTEE ON THE JUDICIARY

Yesterday, the Judiciary Committee considered S. Res. 400 and voted to report it to the Rules Committee as amended. The action of the Judiciary Committee followed hearings last week and much consideration of this matter by the members of the committee.

The effect of the amendments approved by the Judiciary Committee would be to delete from S. Res. 400 the grant of jurisdiction to the proposed Committee on Intelligence Activities over the intelligence activities of the Department of Justice, including the Federal Bureau of Investigation.

The amendments would retain in the Judiciary Committee its historic jurisdiction over the Department of Justice and the FBI. The present exercise of jurisdiction over these activities is in accord with the purpose and spirit of the Legislative Reorganization Act of 1946. Senate Report No. 1400, 79th Congress, 2nd Session, "Legislative Reorganization Act of 1946," (May 31, 1946), set forth the standards controlling committee jurisdiction, p. 2: "(the bill) would replace our jerry-built committee structure with a simplified system of standing committees corresponding with the major areas of public policy and administration . . . and the coordination of the congressional committee system with the pattern of the administrative branch of the National Government would improve the performance by Congress of its legislative and supervisory functions. . ."

Following this continuing guideline, the Judiciary Committee possesses oversight jurisdiction over the Department of Justice and its bureaus including the Federal Bureau of Investigation. The full committee and at least three subcommittees exercise jurisdiction over the Bureau and its functions, the Subcommittee on Administrative Practice and Procedure, the Subcommittee on Constitutional Rights and the Subcommittee on Criminal Laws.

The difficulty with S. Res. 400, prior to its being amended, is it proposed to split the oversight jurisdiction of the FBI between the Judiciary Committee and the proposed new intelligence committee, with the new committee to have jurisdiction over intelligence activities of the Bureau and the Judiciary Committee to retain jurisdiction over non-intelligence aspects of this agency.

Those who have studied the FBI's organization and mode of operation are well aware that its intelligence activities are intertwined with its law enforcement function. For the most part its intelligence activities are an investigatory tool used in detecting crime.

There is a real potential that a splitting of the oversight jurisdiction of intelligence and non-intelligence aspects of the FBI may create much confusion and result in conflicting congressional guidance to that agency. It should be noted that the FBI, unlike other intelligence collecting agencies affected by S. Res. 400, is a law enforcement agency. The intelligence activity of the FBI is simply a means by which it detects and investigates violations of federal criminal laws. Because this activity is so integrally related to the criminal investigatory function of the FBI and the Department of Justice, it is our belief that oversight of the FBI should be continued to be dealt with as a unit.

Mr. Chairman, during the hearings before the Judiciary Committee on S. Res. 400, both Attorney General Levi and FBI Director Kelley testified. Both stated that vigorous oversight of the Department of Justice and the FBI was healthy and productive in the betterment of the system. Both urged that this function could be best served by retaining oversight in a single committee.

Mr. Levi well pointed out that "intelligence activities of the FBI should be closely tied to the criminal law" and that "congressional oversight arrangements that would split off the intelligence functions from the more ordinary law enforcement functions of the Bureau would tend to diminish the force of this perception."

Mr. Chairman, we have heard much in recent years that the FBI should be more accountable to the Department of Justice and the Attorney General. It should be viewed as an integral part of the Department of Justice—not as a separate law enforcement or intelligence agency. The effect of splitting of the intelligence oversight of the Bureau and vesting it with a separate committee would tend to create the impression that it is somehow divorced from the rest of the law enforcement branch of the federal government.

We should remember, Mr. Chairman, that the Bureau is under the supervision of the Attorney General, the principal law enforcement office in the federal gov-

ernment, a subject over which the Judiciary Committee has long exercised jurisdiction.

As stated by Director Kelley:

"While the FBI has many duties concerning the internal security of our country, it is not alone in this responsibility. The entire criminal justice system is involved. Observance of the law and the preservation of public order are the foundations for this country's domestic security. Without adequate and equitable enforcement of the law, whatever the source or circumstance of its violation, a democratic society cannot enjoy the stability it requires."

Stripping the Judiciary Committee of jurisdiction over law enforcement in the area of internal security while leaving it with general jurisdiction over the remainder would be to create a hybrid wherein necessary general oversight over law enforcement would be annulled and essential perspective destroyed.

The Judiciary Committee is at this moment considering the revision of Title 18 of the United States Code, the criminal laws including the provisions on espionage. Should it report a bill with amended espionage provisions subject to future amendment by the Intelligence Committee? Should it report a bill with no change in the existing provisions on espionage with the expectation that the bill will be re-referred to the Intelligence Committee? Should the lengthy study that has gone into the espionage provisions be put aside?

A further consideration which I believe should be borne in mind is that a separation of intelligence oversight from the traditional law enforcement aspect of the Department and the Bureau would very likely result that no one Senate committee would have a general overview and knowledge of all the activities of the Department of Justice. This could result in some information as to its operations to "fall between the cracks" and become known to no committee.

It is submitted that questions like these must be considered carefully and thoughtfully before a decision is made to place exclusive legislative jurisdiction over intelligence activities by the FBI in the proposed committee. We believe that the reasonable and feasible conclusion is to leave that jurisdiction with the Judiciary Committee where the elements of intelligence investigations by the FBI in the field of internal security, legislative and oversight jurisdiction over internal security, and general jurisdiction over law enforcement are now blended together as the Reorganization Act intended.

Senator HRUSKA. I will make a few brief references just to get some of the highlights before you.

In the main, Attorney General Levi spelled out three or four reasons why the FBI and the Department of Justice should be deleted from this resolution.

First of all, it was his considered judgment that the domestic security investigations of the Bureau should be tied closely to criminal law. This is done not only by the inherent way in which the FBI functions, but it is now being crystalized in the form of guidelines which will shortly become effective and in which there will be authorized domestic security investigations only into conduct which involves, or will involve, violence or violation of the Federal law.

A similar point can be made to the Bureau's counterintelligence responsibility. These investigations into espionage and terrorist activities of foreign governments for a variety of reasons frequently do not lead to prosecution, but rather they are essentially connected with law enforcement and with particular reference to espionage and terrorism.

The Bureau's longstanding discipline of perceiving its intelligence functions as connected closely to the Federal criminal law is important because it is a reminder of the need to carefully protect individual rights. Congressional oversight arrangements that would split up the intelligence functions from the more ordinary law enforcement functions of the Bureau would tend to diminish the force of this perception. It is an important perception, because in the law enforcement field

there is a constant and careful monitoring by the Judiciary so we are, as a Department of Justice, as a Committee on the Judiciary, and the FBI are mindful of that factor constantly.

Mr. Chairman, in the field of foreign intelligence which would be one of the spinoffs into the jurisdiction of the proposed committee, insofar as foreign intelligence activities are concerned, the FBI has only derivative jurisdiction. It is only at the instance of other bureaus and other agencies of the Government with primary responsibilities in foreign intelligence that the FBI enters the picture. And because of the derivative nature of this type of investigation, the Bureau activities would come under the oversight of the new committee since the original agencies making the reference and being the source of derivation are scheduled to be under the jurisdiction of the proposed committee.

So the first part is that there is a close connection between law enforcement and criminal law and the activities of the FBI and of the Department of Justice.

The second reason is that the Federal Bureau of Investigation should perceive itself and be perceived as a single law enforcement organization, but at the same time, should be viewed as an integral part of the Department of Justice, with oversight of the totality of this operation vested in the Judiciary Committee.

A third and related reason is that a single committee with oversight jurisdiction will develop an expertise about the Bureau and the Department of which it is a part. The activities of the Bureau, even in the intelligence area, are fundamentally interrelated with other parts of the Department of Justice. The development and nurturing of an expertise and understanding and concern by the Congress about one part cannot be separated from a similar understanding and concern with another part.

Finally, Mr. Chairman, there is always the risk that if there is a multiplicity of committees with oversight responsibilities over a single agency, each committee will learn something about the activities of that agency, but no committee will learn enough about it.

These are four reasons and there are collateral reasons, which constitute the basis for the Judiciary Committee recommendations to have certain deletions and amendments made to Senate Resolution 400.

I might also say that the oversight of intelligence activity, the oversight which is directed, for example, solely to the intelligence activities at the exclusion of the law enforcement function, would have a strong tendency to generate conflicting congressional guidance. It is hard enough for an agency to be responsible to one or two committees. It would be much more difficult for that agency to perform efficiently and with any degree of assurance if there were conflicting rules and conflicting directives and guidelines coming from too many committees.

The CHAIRMAN. Would it also not be very important that the Judiciary Committee had the intelligence information concerning the FBI in order to make its judgments as to what ought to be done authorizationwise?

Senator HRUSKA. No question about it. The Judiciary Committee has to know what is going on if it is going to legislate in the areas of budget, jurisdiction, and the like. The committee would be hard-pressed to make sound judgments as to budget levels, manpower, and other

legal tools that the Department of Justice may need to enforce the laws based on the intelligence gathering activities of the FBI.

The CHAIRMAN. Senator Pell?

Senator PELL. No.

Senator SCOTT. Could I ask one question before leaving.

Do you recall the vote in the Judiciary Committee on the deletion?

Senator HRUSKA. I don't know whether it was recorded.

Senator SCOTT. It was a voice vote.

Senator HRUSKA. The chairman informed me that all but two of the committee members were in accord with the recommendation.

The CHAIRMAN. Thank you.

Senator Byrd?

Senator BYRD. No questions.

The CHAIRMAN. Senator Allen?

Senator ALLEN. Senator Hruska, I notice section 7 of the bill starting on the middle of page 8 and going on down halfway on page 13, about something over a fourth of the bill, seems to deal not with gaining information and keeping secrets, but methods of disclosing information that is gained. It looks like part of the thrust of the bill is to provide for the release of that information and not the retaining of secrets.

Do you read the bill that way?

Senator HRUSKA. In a fashion, I do read it that way. There is a distinction between the Department of Justice and the FBI as a combined entity and the other agencies that would be subject to this resolution. The function of the Department and the FBI is law enforcement and it would be an extraordinary procedure, indeed, if we opened the investigatory part, particularly to those who are under investigation, and sometimes investigations last for years, as in the case of organized crime. To have that type of information prematurely disclosed would be tragic, indeed.

Senator ALLEN. It looks like any information that is gained would have to be released to any Senator who requested it. If we release the information to all 100 Senators, does that increase the risk of disclosure?

Senator HRUSKA. Yes; but not only that, from my experience on the Judiciary Committee, I have noted with great gratification the restraint which has been exercised not to get into the business of managing the Department of Justice or FBI on a daily basis. Oversight; yes, and how they function with regard to the laws on the books, but not in an administrative way.

There may be individual instances where there is abuse or possibly some violation of the law; yes. But, there are laws to remedy that situation. As to my colleagues who receive sensitive information through their work on other committees, I would have to say I trust their judgment and discretion, and thus, would be happy to concede access to such information rather than demand access in the name of full disclosure and oversight.

Senator ALLEN. If the President of the executive branch furnishes the committee with information and requests that it not be disclosed, the committee can still disclose it if three members, I believe, do not ask that an appeal be carried to the Senate. Then you have a session of

the Senate to determine whether or not the information is to be released despite the request of the President.

I have noticed these secret sessions of the Senate over there, they get permission for a couple of dozen staff people to be present there and maybe some officers of the Senate, and by the time we get out of the secret session, we either hear about it on the radio, or read it in the newspapers, so that once you have a session of the Senate to determine whether you are going to release anything or not, you have already let the cat out of the bag, have you not?

Senator HRUSKA. I think that is an accurate statement.

Senator ALLEN. This is just about as much establishing a procedure for disseminating intelligence information as it is gaining and holding secret intelligence information, is that not correct?

Senator HRUSKA. That is correct.

The CHAIRMAN. Thank you very much.

Senator HRUSKA. Thank you.

The CHAIRMAN. Senator Thurmond, Mr. Bush, Director of Central Intelligence, is here and has a time problem.

Would you object if he proceeds?

Senator THURMOND. If he is catching a plane, OK; otherwise, I am as busy as he is.

I have two more committee meetings that I am going to.

The CHAIRMAN. Very well, Senator Thurmond, you may proceed.

STATEMENT OF HON. STROM THURMOND, RANKING MINORITY MEMBER OF THE COMMITTEE ON ARMED SERVICES

Senator THURMOND. Mr. Chairman, I want to state in the beginning that I heard the statement of Senator Stennis.

I approve of that position.

I also heard the statement of Senator Hruska, and I approve of that position.

Mr. Chairman, thank you for the opportunity to appear before the Rules Committee and offer these brief comments relative to Senate Resolution 400.

My statement is not very long, and I think I could follow the statement that I have here rather than try to summarize it.

I would like to focus my remarks in three main areas: (1) Proposed changes in the authorization process; (2) general procedural issues; and (3) meeting the challenge of past intelligence problems.

Under the first point, Senate Resolution 400 would strip the Armed Services Committee of any authorization responsibility for intelligence. This approach may be unworkable for the following reasons:

(1) In my view, intelligence and defense are inseparable, in that one complements the other.

(2) The Armed Services Committee actions are predicated to a degree on the findings of our intelligence agencies, especially the CIA which as a nonmilitary agency, provides a different viewpoint compared to the essential military intelligence gathering groups.

(3) Over three-fourths of the intelligence resources are expended through the Defense Department. For instance, Navy and Air Force pilots are flying military aircraft on intelligence-gathering missions.

Military personnel in foreign countries are trained to make intelligence estimates. The Secretary of Defense is required to make tradeoffs between resources devoted to intelligence and those devoted to other defense purposes. Intelligence is indispensable to all phases of force planning, approval of which rests solely with the defense committees. Exorcising our committee of the authorization authority would, in my opinion, make our common defense responsibility more difficult.

(4) The quality of intelligence is a legitimate area of concern for the Defense Committees if they are to provide properly for our national security. I doubt this quality could be maintained if we are deprived of our authority to evaluate, control and authorize U.S. intelligence programs.

On procedural matters, I would like to make the following points:

1. The Senate is making a mockery of its own processes when Senate Resolution 400 is allowed to precede the report of the Select Committee.

2. How are we to wisely address obvious problems in intelligence areas when we are asked to approve a solution before receiving the report on the problem we are attempting to rectify?

3. Senate Resolution 400 is so broad it strips authority from four committees—Armed Services, Judiciary, Foreign Relations, and Government Operations. Each of those committees have able men capable of exercising oversight in their respective areas of jurisdiction.

4. Based on my information, the alleged abuses through intelligence agencies in the past three or four administrations resulted from bad judgment by past Presidents and high executive officials. Thus, once the select committee report is made, the Senate should first consider drawing legislation to meet those abuses.

5. Shifting intelligence authorization to a separate committee means disclosure in reporting to the Budget Committee and disclosure in debate when seeking approval in the full Senate. This disclosure tells our enemies what we are spending, how we are spending it, and how it changes from year to year.

6. Present oversight can be strengthened if the defense committees examine in more detail our intelligence programs.

7. Passage of Senate Resolution 400 would mean separate authorization of intelligence items, but we have no assurance there will be a similar committee in the House. Thus, if the House fails to alter its procedures, how do you go to conference, so that the will of the two bodies might be brought together?

Mr. Chairman, my third point is that we must take some action to meet the challenge of past problems in the intelligence community. On this I would like to make the following points:

1. Without having the advantage of the select committee report, it is still obvious that the responsible committees have not in the past bored in enough to assure the necessary oversight.

2. The real abuses were not committed by the Congress or its Members, but resulted from poor judgment in the executive branch, compounded by the lack of closer scrutiny in the legislative oversight area.

3. It would appear that the responsible committees should have an opportunity to study the report of the select committee and recom-

mend to the Senate such steps as each committee feels appropriate to better exercise its intelligence responsibilities.

4. The Senate may wish to consider a joint intelligence watchdog committee, empowered to guard against future abuses and make recommendations to the authorizing and appropriating committees.

5. There should be some consideration of establishing criminal penalties for public disclosure of certain intelligence information, such penalties applicable to any official of Government.

Mr. Chairman and members of the Rules Committee, in closing, allow me to express my appreciation for your attention and consideration of my remarks. Senate Resolution 400 is a far-reaching proposal and I urge you carefully consider its many ramifications.

In Senator Stennis' presentation, I am not too sure since he spoke chiefly off the cuff, that he emphasized on page 4 the second paragraph.

It reads as follows:

> **Thus, it is essential that the Armed Services Committee, like the Director of CIA and the Secretary of Defense, be able to review and adjust the effectiveness and scope of U.S. foreign intelligence activities.**
>
> **Were the Armed Services Committee to be deprived of this legislative authority, the intelligence community could become a separate entity, unresponsive to the needs of national defense.**

I feel that is important and should be emphasized.

The CHAIRMAN. Thank you, very much, Senator Thurmond, for a very fine statement.

There is one other point that we are aware of that you didn't allude to.

You mentioned that the Select Committee on Intelligence Activities has not made its report, and it would be premature to act before that report is made to the Senate.

We just reported out a resolution yesterday from Senator Byrd's subcommittee which would establish a select committee to study the jurisdictional aspect of the organization of the Senate committees and try to reduce overlaps and duplications of jurisdictions.

Do you think it would be wise to have that information as well in hand before attempting to adopt a special resolution on this particular subject?

Senator THURMOND. I think it would.

The CHAIRMAN. I note that in your item 5, you think there should be some consideration of establishing criminal penalties for public disclosure of certain intelligence information, such penalties applicable to any official of Government.

Senator Allen pointed out Senate Resolution 400 would appear to make it easier to disseminate and release classified information rather than impose any penalties for that kind of activity.

Senator THURMOND. It would appear to make it easier to disclose information than it would to protect information.

I think Senator Allen is imminently correct on that.

The CHAIRMAN. Senator Allen?

Senator ALLEN. No; I will waive questions.

The CHAIRMAN. Senator Clark?

Senator CLARK. No questions.

The CHAIRMAN. Thank you, Senator Thurmond.

The Honorable George Bush, Director of the Central Intelligence Agency.

STATEMENT OF GEORGE BUSH, DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY; ACCOMPANIED BY MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DIRECTOR; GEORGE CARY, LEGISLATIVE COUNSEL; AND DONALD MASSEY, ASSISTANT LEGISLATIVE COUNSEL

Mr. BUSH. I have with me Mr. George Cary, our Legislative Counsel, and Mr. Mitchell Rogovin, my special legal counsel, and Mr. Donald Massey, the Assistant Legislative Counsel in Mr. Cary's office.

I have a prepared statement which is eight pages long.

I would be happy to submit it for the record and summarize it.

The CHAIRMAN. It would be helpful if you would read it so we would have the full benefit of your views.

Mr. BUSH. It won't take very much time.

Mr. Chairman, I appreciate the opportunity to testify today on Senate Resolution 400, which would establish a new standing Senate Committee on Intelligence Activities. I will limit my comments to those aspects of this resolution which directly affect the ability of the Central Intelligence Agency or the Director of Central Intelligence to fulfill our respective responsibilities.

Mr. Chairman, the Central Intelligence Agency welcomes strong and effective congressional oversight. We have a great deal to gain from it. We gain the advice and counsel of knowledgeable members. Through it, we can maintain the trust and support of the American people. We will retain the support only so long as the people remain confident that the political structure provides clear accountability of our intelligence services, through effective Executive and congressional oversight. Good oversight will insure that the intelligence agencies operate as the Government—and the Nation—wish them to. But in establishing this accountability, I believe the Congress must also insure that oversight enhances, rather than hinders, the vital operations of our intelligence agencies. Although there is much to be admired in Senate Resolution 400, I am concerned that certain sections of this resolution would unnecessarily hinder our foreign intelligence effort.

One of the principles which the President stated in his February 18, 1976, message to Congress was that Congress should seek to centralize the responsibility for oversight of the foreign intelligence community. The past year has witnessed the antithesis of this. While 8 Congressional committees (including the select committees) were formally involved in this oversight process, 11 other committees or subcommittees made oversight claims and some were given access to sensitive intelligence information. This rapidly broadened access to sensitive material has contributed substantially to the past year's unprecedented number of leaks of sensitive foreign intelligence information, in addition to placing a heavy burden on senior foreign intelligence offiicals in carrying out their regular duties.

As Director of Central Intelligence, I want to assure you that I seek to cooperate to the maximum extent possible with the Congress. I want Congress to be a consumer of intelligence. CIA provides a daily report on foreign developments to the congressional committees directly concerned with our national defense and foreign policy. Intelligence community members provide background intelligence information on

specific events to any Member of Congress who requests it and to committees on matters within their jurisdiction. In this way, Congress shares in the fruits of our intelligence effort, and is better able to exercise its responsibilities to provide for the common defense and share in the formulation of American foreign policy. However, I do not believe that details of intelligence operations can be spread this widely, for guaranteed secrecy remains a prerequisite to success in many of our activities. Chinks in our adversaries' armor are rapidly repaired when made public. Our technical capabilities are nullified, and our own officers as well as foreign human sources are senselessly endangered. And so I urge concentrated oversight.

I am not alone in advancing this position. The Government Operations Committee report on Senate Resolution 400 states:

> The Committee was . . . very aware of the need to reduce the proliferation of committees [involved in oversight of CIA]. This resolution has been drafted with this concern in mind.

While Senate Resolution 400 makes significant strides toward concentrating oversight by altering the charters of other relevant committees to exclude intelligence activities, it does not, by itself, accomplish this objective. While the Senate Select Committee is winding up its affairs, reducing by one the number of committees involved in intelligence oversight, the Senate Budget Committee has established an intelligence unit and has begun requesting access to sensitive information. It is my hope that the interests of the Budget Committee can somehow be satisfied through the essential role of the Appropriations Committee, which has traditionally involved oversight of CIA. In addition, under section 662 of the Foreign Assistance Act of 1961 (the Hughes-Ryan amendment), information regarding convert action is reported to three committees of the Senate—Appropriations, Armed Services, and Foreign Relations. Reports are also made to the corresponding committees of the House. Senate Resolution 400 will not affect these reporting requirements. In his message the President recommended that section 662 be modified.

Section 7(c)(2) of Senate Resolution 400 further diminishes the effect of the proposed Senate Rule XXV changes on consolidated oversight. This section expressly permits the proposed committee and its members to disclose any committee information to any other Senate committee or individual Senator. Furthermore, any member who learns information in this manner may also disclose it to any other Senator. While such a provision is arguably necessary for substantive intelligence, I can see no justification for unlimited dissemination of information about this Agency's sources and methods. Section 7(c)(2) negates a major advantage of consolidated oversight—halting the proliferation of sensitive operational information throughout the Congress—and in my opinion must be tightened up considerably.

I do not intend to become involved in any committee debates over the jurisdiction of various intelligence programs or activities. That is a matter for you to resolve. My concern is over the proliferation of sensitive intelligence operational information—information concerning intelligence sources and methods—throughout the Congress.

I strongly urge the Senate, in considering the oversight issue, to concentrate oversight of foreign intelligence activities. If a new committee is established, perhaps the interests of other committees might

be accommodated by reserving seats in the intelligence committees for members of other relevant Senate committees, but again that is clearly a matter for the Senate to resolve.

Mr. Chairman, the second of my major concerns regarding Senate Resolution 400 relates to sections 7 (a) and (b) which assert the authority of the proposed committee to disclose information provided by the executive branch, even over the objections of the President.

The President addressed this point in his February 18, 1976, message on foreign intelligence activities to the Congress. The President stated:

> Any foreign intelligence information transmitted by the Executive Branch to the Oversight Committee, under an injunction of secrecy, should not be unilaterally disclosed without my agreement. Respect for the integrity of the Constitution requires adherence to the principle that no individual member nor Committee, nor single House of Congress can overrule an act of the Executive. Unilateral publication of classified information over the objection of the President, by one Committee or one House of Congress, not only violates the doctrine of separation of powers, but also effectively overrules the actions of the other House of Congress, and perhaps even the majority of both Houses.

Aside from the constitutional aspects, section 7(a) and (b) create other serious problems. Much information the executive branch would furnish the proposed committee is protected from disclosure by statute. Disclosure of this material by the committee or the Senate might in some circumstances risk a violation of these laws. These sections would also create a serious conflict in responsibilities for the Director of Central Intelligence. The DCI must cooperate with the Congress, but if he provided intelligence sources and methods information with no assurance in return that it will be protected, he would be violating his statutory responsibility—imposed on him by Congress—to protect this information from unauthorized disclosure. Moreover, on a practical level, acceptance of this section would significantly reduce the chances that the Executive and Congress could work together constructively in the intelligence field. I believe this section would immediately place the executive branch and the committee in an adversary relationship, and could impede the flow of sensitive information to the committee. Such a relationship would detract from good oversight and would not contribute to good intelligence.

I believe what the Senate and this country want is good oversight. Public disclosure is not synonymous with good oversight. The proposed committee can do its job responsibly and conscientiously, giving maximum protection to the rights of American citizens, and yet not disclose sensitive information to the public—and hostile foreign intelligence services—in the process. It is my recommendation that the sections permitting the Senate to disclose executive branch information over the objection of the President be deleted from Senate Resolution 400. I am confident that this problem can be solved informally to the mutual satisfaction of the Agency and committee concerned.

My third major concern with Senate Resolution 400 lies in section 11. This section would establish a Senate procedure which would compel the passage of a periodic authorization bill for funds for the activities of this Agency, despite section 8 of the Central Intelligence Agency Act of 1949, which provides continuing authorization authority for CIA. One purpose of section 8 was to protect against the disclosure of the CIA budget, in recognition of the danger inherent in budget disclosure to our foreign intelligence effort. An annual authori-

zation bill reported from the new committee would reveal at least the budget total. Both the Senate and the House have in the past 2 years voted, by substantial margins, to keep intelligence budgets secret. I will provide the committee a memorandum on disclosure of our budget.

It is my belief that this problem can be solved to the satisfaction of both the Senate and the intelligence agencies. The Congress now, through the Appropriations Committees, annually subjects the CIA budget to thorough and total examination and determines the level and nature of our expenditures. No budget information is withheld in this process. The purpose sought to be advanced by an authorization requirement is to give the proposed oversight committee a means to influence the size and program content of the intelligence budgets. According to the Government Operations Committee report on Senate Resolution 400, an authorization requirement "should assure a regular review of each agency's intelligence activities, its efficiency and its priorities." This Agency would welcome such a review, but does not believe that an authorization requirement is necessary. We now brief the CIA subcommittees of the House and Senate Armed Services Committees on our budget. We would not oppose a requirement to brief the proposed committee on the CIA budget, and a requirement that the intelligence committee file a classified letter containing its CIA budget recommendations with the Appropriations Committee. Such a plan would insure that the committee was briefed on the Agency budget, that it considered it carefully and that the Appropriations Committee received its recommendations, thus satisfying the objective of an annual authorization without disclosing the budget.

Finally, I would like to comment on the wisdom of combining in one committee jurisdiction of both domestic and foreign intelligence activities. I believe it inadvisable to add jurisdiction of the FBI's intelligence activities to the otherwise solely foreign intelligence jurisdiction of the proposed committee. As Attorney General Levi testified before the Government Operations Committee, the FBI's intelligence activities relate to law enforcement. The counterintelligence activities of the Bureau relate to enforcement of the espionage and related laws. Although certain intelligence activities of the FBI and foreign intelligence agencies may be similar, the constitutional bases, standards, and problems involved are so different that it would appear more suitable that all FBI activities be overseen by a committee other than the one concerned with foreign intelligence activities. Much has been said about keeping foreign intelligence and law enforcement activities separated within the executive branch. I believe the same principle should apply to the Congress in the exercise of its oversight responsibilities.

As a former Member of Congress, Mr. Chairman, I am particularly anxious that the relations between the Congress and the intelligence agencies proceed in a cooperative and harmonious spirit which will contribute to increased efficiency of our foreign intelligence effort, while yielding complete protection to the rights of American citizens. It will be my privilege as the Director of Central Intelligence to serve the Congress by providing intelligence on substantive developments which will aid Congressional decisionmaking, and to be totally accountable to our designated oversight committees.

What we seek in return is that oversight be concentrated and that sensitive information be protected, thus facilitating our total cooperation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Bush.

I think you have made some very good points here.

It seems to me from the proliferation of the jurisdictional areas of the various committees and subcommittees, you are probably spending a great deal of your time in reporting to those units rather than concentrating on intelligence activities.

Mr. BUSH. It has becomes a problem.

The CHAIRMAN. You indicated 11 in addition to the regular committees involved, 8 congressional committees, including the Select Committee, and 11 other committees which made oversight claims.

I presume that you had to appear or your Agency had to appear and make presentations to those committees?

Mr. BUSH. Yes, sir, we have, and we will be glad to submit a listing of these committees for the record.

The CHAIRMAN. It would be helpful if you would attach a list to be included in the record.

[The material referred to, subsequently submitted to the committee by Director Bush, is as follows:]

COMMITTEES AND SUBCOMMITTEES, OTHER THAN REGULAR CENTRAL INTELLIGENCE AGENCY OVERSIGHT COMMITTEES, WHICH HAVE MADE FORMAL OR INFORMAL REQUESTS FOR INFORMATION ON AGENCY OPERATIONS DURING THE 94TH CONGRESS

1. Senate Judiciary Committee:
   Subcommittee on Administrative Practice and Procedure (electronic surveillance)
2. Senate Judiciary Committee:
   Subcommittee on Constitutional Rights joint request with Senate Commerce Committee
   Subcommittee on Science, Technology, and Commerce (electronic surveillance)
3. Senate Labor and Public Welfare Committee:
   Subcommittee on Health joint request with Senate Judiciary Committee
   Subcommittee on Administrative Practice and Procedure (tests on human subjects)
4. Senate Banking, Housing, and Urban Affairs Committee (securities transactions problems)
5. House Government Operations Committee (securities transaction problems)
6. House Government Operations Committee:
   Subcommittee on Legislation and National Security (assertion of general oversight)
7. House Government Operations Committee:
   Subcommittee on Government Operations and Individual Rights (Rockefeller Commission Report, use of computers, and relationship with Department of Justice)
8. House Government Operations Committee:
   Subcommittee on Consumer and Monetary Affairs (banking)
9. House Judiciary Committee:
   Subcommittee on Courts, Civil Liberties, and the Administration of Justice (technical surveillance)
10. House Post Office and Civil Service Committee:
    Subcommittee on Postal Facilities, Mail and Labor Management (mail survey program)
11. House Internal Relations Committee:
    Subcommittee on International Political and Military Affairs (relating to Mayaguez)

The CHAIRMAN. You made the point there is no justification for unlimited dissemination of the agency's sources and methods.

If this resolution were approved, it would contribute to that result rather than attempt to limit that result.

On page 6 you said you would provide a memorandum for the committee.

Do you have it?

Mr. BUSH. I believe we have it with us today, and it will be made a part of the record.

The CHAIRMAN. If not, we will make it a part of the record when we do receive it.

Mr. BUSH. We have that document here.

[The memorandum referred to follows:]

Memorandum.

Subject: Intelligence Budget Secrecy.

CIA is strongly opposed to the disclosure of either the intelligence community or CIA budgets, for the following reasons.

1. Disclosure of intelligence budgets would provide potential adversaries with significant insight into the nature and scope of our national foreign intelligence effort. Year-to-year changes in budget levels (particularly if they are sizeable as they sometimes have been in the past), taken together with other information, will make possible much better conclusions about the future direction of major Intelligence Community programs. The U.S. Government would benefit considerably from access to this same information with respect to the Soviet intelligence effort.

2. Once an intelligence budget figure is made public, it will be impossible to prevent the disclosure of many sensitive and critically important intelligence programs and activities. An immediate requirement would be levied to explain precisely which of our intelligence activities were covered and which were not. Definitional questions over where "intelligence" expenditures stop and operational expenditures begin would necessarily lead to public discussion of sensitive programs and techniques.

Publication of intelligence budget figures would result in debate on changes or trends developed in succeeding year figures, and fluctuations in the figure would generate demands for explanations which in turn would reveal the component parts of the figure and the programs supported by it. The history of disclosure of Atomic Energy Commission budget materials and related information by both the Executive branch and the Congress indicates that publication of any figure with respect to intelligence would quickly stimulate pressures for further disclosure and probes by various sectors into the nature of the figure and its component elements.

3. It has been asserted that CIA budgetary secrecy is unconstitutional, in light of Article I, Section 9, Clause 7 of the Constitution, which states:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

Though there has been no effective judicial test of the procedures which have been in effect since the passage of the 1947 and 1949 Acts establishing CIA, CIA believes that present procedures are fully in accord with the Constitution. Agency appropriations are an integral part of appropriations made by law and are reflected in the Treasury's Statement and Account of Receipts and Expenditures in compliance with Article I, Section 9, Clause 7 of the Constitution. In addition, the history of the adoption of this clause of the Constitution indicates that considerable flexibility was to be left the legislature in meeting its requirements. Moreover, there is considerable historical precedent for budgetary secrecy, going back to a secret fund used by Washington and successive Presidents, and a secret appropriations act in 1811.

The CHAIRMAN. The point you make where you say that counterintelligence relates to espionage and not domestic activities, I think, is a very good point.

Do you have something, Mr. Pell?

Senator PELL. Thank you.

In connection with the list of committees to which you report, to how many do you report to the chairman and ranking member alone, and to how many do you make a report to the whole committee or subcommittee?

Mr. BUSH. Our legislative counsel can address himself to that.

Mr. CARY. It varies with the committee. We can provide that information to you.

[The information referred to was subsequently submitted to the committee as follows:]

Our four regular oversight committees—the Armed Services and Appropriations Committees of the House and Senate—have subcommittees to handle intelligence matters. We report to these subcommittees. We also have reporting responsibilities to the Senate Foreign Relations and House International Relations Committees, pursuant to Section 662 of the Foreign Assistance Act. The International Relations Committee has created a subcommittee to receive these briefings. Pursuant to a Committee agreement, we brief only the Chairman and ranking minority member of the Foreign Relations Committee.

Senator PELL. Congratulations on the way you have taken the job and the freshness and the vigor with which you approached it.

It has an effect on the morale. We are very delighted.

I notice also in your statement that you mentioned you were subject now to a thorough examination in the appropriations process.

Mr. BUSH. Yes.

Senator PELL. My impression is that the agency is to be congratulated on the lack of abuses that have occurred in the light of the dereliction of the Congress in subjecting you to a pretty thorough examination, and my impression is that this is a process that is rather pro forma.

About how many meetings would you say that you have had in the course of a year that constituted a thorough examination?

Mr. BUSH. I can't give you a total in the last year, but we will submit it.

I have been in this job for about 8 or 9 weeks, Senator Pell, and in that time, I have presented extensive briefings on both the CIA and intelligence community budgets to the Senate Appropriations Subcommittee and the House Appropriations Subcommittee. There were four presentations to these committees. Although I can't address myself in detail to past procedures, I can guarantee you that the information that was submitted in addition to our testimony was extensive. Nothing was held back.

The questions were penetrating, and it was certainly more than a pro forma look at the CIA and the intelligence community budgets. This was true in the Senate, and it was true in the House. I will be happy to submit for the record, if it would be agreeable, Mr. Chairman, a list of briefings over the past year on our budget. But I am speaking from my own experience, the four presentations just since I have been in this job have certainly been extensive and thorough.

Some have charged that the budget is not fully disclosed to our oversight committees.

I can tell this committee that it is fully disclosed to these committees, and that we have not held back.

If there is additional information requested, these committees submit extensive lists of questions, so I can assure the Senator that we

are doing a thorough job of responding to proper and thorough oversight in the appropriations field.

Senator PELL. In the report which you will submit backing up the statement, will you also submit it for the previous year, which is long before you came aboard?

I am not indicating any dereliction on the part of CIA.

I think the fault probably rested with us in Congress, that we didn't exercise our responsibility. One of the beneficial effects of the Church committee and the excellent work that Senator Church did in leading that committee was, perhaps, to make us more conscious of our own responsibility.

Thank you.

[Information, subsequently submitted, pertaining to budget appearances of the CIA before Appropriation Committees during the 94th Congress is as follows:]

BRIEFINGS OF SENATE AND HOUSE APPROPRIATIONS SUBCOMMITTEES ON INTELLIGENCE BUDGETS DURING THE 94TH CONGRESS

There were numerous other briefings of these Subcommittees on other topics.

Senate Appropriations Subcommittee:
- April 30, 1975—Intelligence Community budget
- May 1, 1975—CIA budget
- March 9, 1976—Intelligence Community budget
- March 10, 1976—CIA budget

House Appropriations Subcommittee:
- February 21, 1975—Intelligence Community budget
- April 17, 1975—Intelligence Community budget
- April 18, 1975—CIA budget
- May 6, 1975—Intelligence Community budget
- June 11, 1975—CIA budget
- March 16, 1976 (morning session)—Intelligence Community budget
- March 16, 1976 (afternoon session)—CIA budget

The CHAIRMAN. Senator Byrd?

Senator BYRD. Mr. Bush, on page 6 of the resolution, paragraph (b) of section 4, the second sentence refers to the annual report which is mentioned in the preceding sentence by the Committee on Intelligence Activities from the Director of the Central Intelligence Agency.

Mr. BUSH. Right.

Senator BYRD. And I quote verbatim from the second sentence and the following sentences in that paragraph:

> Such report shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interests. Such report shall be unclassified and shall be made available to the public by the Committee on Intelligence Activities. Nothing herein shall be construed as requiring the disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the sources of information on which such reports are based.

Now, what are the problems that will confront your Agency in complying with this requirement?

Mr. BUSH. Senator Byrd, if such a report is submitted in accordance with this section—an unclassified report—it would not be particularly meaningful.

It would be difficult to discuss, on an unclassified basis, our intelligence activities and the intelligence activities of foreign countries. How we know what they are doing gets into methodology.

I believe the requirement of such a report would cause serious problems. I think it would stir up agitation that we are withholding

information, which we indeed would have to do, if the report were to be made public.

Senator BYRD. Well, you are not given any discretion as to the thoroughness of the report?

Mr. BUSH. No, sir.

Senator BYRD [reading].

Such report shall review the intelligence activities of the agency or department concerned, and the intelligence activities of foreign countries directed at the United States or its interests.

You are not given any discretion as to what you may or may not provide in such report.

It is all encompassing in that it shall review the intelligence activities of your agency and the activities of the foreign countries which are directed at the United States or its interests.

Now, you would be bound by that not to withhold any information, that, in the judgment of your Agency, you would feel ought to be classified?

Mr. BUSH. I agree with the Senator. The problem I run into is that on the one hand we are instructed to submit an unclassified report, and on the other hand, we cannot divulge intelligence sources and methods.

The idea has appeal. I would like to be able to fulfill this requirement. There are activities which would take some of the onus off the back of the CIA if we could talk about accomplishments as well as face up to things that have gone wrong. However, my statutory obligations would prohibit me from submitting a meaningful report.

The sources and method argument is not a contrived argument. It is not a specious argument to withhold information. I have had contact with some abroad with whom we work. I believe strongly that I should keep and faithfully fulfill the obligation to protect intelligence sources and methods.

The idea is a good one, but it is impractical, given my other responsibilities.

Senator BYRD. Do you feel that you could responsibly perform to this mandate contained in the second or third sentence?

Mr. BUSH. No, sir, I don't believe so.

It is too all-encompassing—too widespread.

We would be asked to do something that would be almost rendered meaningless by my other responsibilities.

Senator BYRD. If your report omitted any information which in the judgment of your Agency ought to remain classified, you would not be complying with the mandate of this second sentence?

Mr. BUSH. That is true.

Senator BYRD. Would that lead to adversary relations with the Congress?

Mr. BUSH. I am afraid it would.

Senator BYRD. Would it lead to contention and charges that you were failing to cooperate?

Mr. BUSH. Yes, sir, I believe it would.

Senator BYRD. On page 14 of the resolution, there are three paragraphs which begin with the words "It is the sense of the Senate."

That carries no mandate and no agency is required to comply with those paragraphs—no agency or person is under any legal responsibility to comply with those three paragraphs.

What would be your reaction now if this bill were passed with these three paragraphs in section 10?

How far would you go toward complying with the requirements which are contained in, "It is the sense of the Senate" paragraphs?

Mr. BUSH. I would endeavor, Senator, to comply by keeping the Senate, this committee, informed on intelligence activities, anticipated activities which are the responsibility of or engaged in by intelligence community members.

We could go a long way to comply with that.

There could be some matters of such heightened sensitivity that we want to be very careful about disclosing them.

The next paragraph relates to providing further information or documents.

We have done an awful lot of that in the past and we will continue to do it in the future.

The third paragraph relates to the violation of constitutional rights.

I think there we certainly would come forward with this information—Mr. Rogovin reminds me, subject to sending information to the Attorney General for criminal investigation, we would find it easy to more fully comply with the last paragraph.

Senator BYRD. Thank you.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Mr. Bush, I certainly feel you have the support of Congress and of the public outside of the Congress, especially, because of your character and ability and your dedication.

Certainly, this legislation was not aimed at doing anything other than seeing that the intelligence agencies do and perform the tasks that are in the public interest and are within their charter.

I feel that your statement is a very fine and discreet statement.

In general, you seem to approve of the idea of oversight and the establishment of the committee; yet, you make so many what I consider valid criticisms, that I am just wondering to what extent you really feel that a committee of this sort is necessary.

Mr. BUSH. There are certain particulars in this resolution that cause us enormous problems. However, the principle of consolidated oversight and, at the same time, protection against the release of legitimately secret information has enormous appeal.

I said to my colleagues: Look, we are not going to go up there and get in the middle of the Senate's business in terms of how the Senate or the House of Representatives orders its oversight.

We should make clear to this committee that we favor consolidated oversight.

We don't want to get crosswise jurisdictionally with existing oversight committees.

We have made suggestions that would make this resolution more palatable to us. As written, we have problems with it.

Senator ALLEN. As it now stands, the administration could not support it?

Mr. BUSH. We could not, speaking for the administration.

Senator ALLEN. You feel the present setup is better than the committee as set up by the resolution and given the powers of this resolution to this committee?

Mr. BUSH. I hate to be against everything, but we are not happy with the present proliferation of the numbers of committees exercising oversight.

Again, it is not an unwillingness to spend time on the Hill or have the staff spend time up here.

We indicated what we do favor is more consolidated oversight. That may or may not be possible for the Senate to implement.

Senator ALLEN. Would you give us then your idea of a bare bones bill that would accomplish desirable objectives in the national interests, but that would not have the matters that you criticize in your statement?

Mr. BUSH. We could submit something appropriate for consideration, Senator Allen. The concept of a joint oversight committee, which I think many Members of the Senate and House favored at one time or another, certainly has enormous appeal to us.

Senator ALLEN. You would submit a suggested bill that would be an improvement over the status quo, but yet would not have the objectionable features that Senate Resolution 400 has?

Mr. BUSH. We would set out certain principles which I have indicated would be something that the whole intelligence community, and I am confident the administration, could support.

We would not have thought it out carefully from the jurisdictional aspects in the Senate and the existing jurisdiction in the House.

Such principles will address our problems: an authorization requirement leading to disclosure, proliferation of the committees involved in oversight, and so on.

Senator ALLEN. It would be helpful to the committee if you would furnish a suggested draft of legislation that would be in the national interest in your judgment, but would not be subject to the criticisms that you have made of Senate Resolution 400.

Mr. BUSH. If the Senator would accept a suggestion, what we might be able to do more promptly is submit a list of general principles, and then if you would like us to follow through and do some drafting on the general legislation, we will be glad to do that.

The submission of draft legislation would quite obviously take longer.

Senator ALLEN. I want to cooperate and make it easy.

Mr. BUSH. All right, sir, we will submit some oversight principles. After that, if the committee would like full legislation drafted, we will go to work on that.

Senator BYRD. Mr. Chairman, I, for one, would not think it wise to have any agency of Government that is envisioned in this resolution submit to this committee a proposed draft.

I certainly understand the desire on the part of the distinguished Senator from Alabama to arrive at some workable, feasible proposal to get at this.

I would think that it would be perfectly proper for any witness representing any of the agencies involved here, to submit to the committee, in addition to his statement, a refinement of the criticisms of the resolution, any suggestions, but I doubt if it would be wise for the Director of the Central Intelligence Agency to submit to this com-

mittee a proposed draft of a resolution on which the Congress could work its will.

Senator ALLEN. Would Senator Byrd yield?

He said he would prefer to submit a statement of desirable principles, and I accepted that revised suggestion. I think the distinguished Senator from West Virginia would agree that that would be a better thing.

Senator BYRD. Yes; I do.

The CHAIRMAN. We will be happy to have you submit that.

[The oversight principles, subsequently submitted by the CIA, is as follows:]

DESIRABLE PRINCIPLES OF CONGRESSIONAL OVERSIGHT OF THE INTELLIGENCE COMMUNITY

1. Oversight should be concentrated exclusively in the minimum number of committees required to effectively conduct it. Existing law should be modified to conform to this principle.
2. Oversight should include strict and enforceable rules against unauthorized disclosure by committee members and staff.
3. Procedures for authorized disclosures should not provide for disclosure over the President's objections.
4. Oversight should not include a formal authorization procedure which would bring about the disclosure of the intelligence budget or its components, or fragment the budget authorization responsibility for one department or agency to more than one Senate committee.
5. Oversight of the foreign intelligence community should not be combined with jurisdiction of FBI intelligence activities.
6. Requirements that the CIA or other intelligence community members notify Congress or obtain Congress' approval before the initiation of covert actions or other activities are neither desirable nor necessary. Presently notification of covert action is provided within a very short time after a decision has been reached. In certain circumstances a prior notification or approval requirement may be constitutionally suspect or impractical.

The CHAIRMAN. Senator Clark.

Senator CLARK. I would like to ask you, both as a Director of the Central Intelligence Agency and, as you said, having served in the Congress yourself: As you read the laws which authorize the establishment of the CIA, the laws under which you operate, is it your belief that the information which the CIA collects and analyzes is to be made available equally to the legislative branch of Government and the executive branch?

Mr. BUSH. The law, Senator Clark, is not clear on that.

Senator CLARK. Do you operate on the assumption that the Congress is equal in its ability to receive information on operations, or do you believe that one branch is put above the other?

Mr. BUSH. I believe we will try to operate, and are now, on the assumption that Congress should be a consumer of intelligence and we welcome proper oversight to go into full detail.

We view the Congress as full partners.

I would have to say to the Senator that on certain time-sensitive issues, it would be proper that the President of the United States, given his responsibilities, receives perhaps the most highly sensitive information before the Congress might, or in certain depths that the Congress might not need it, at the outset. But it is my intention and belief, and my colleagues will tell you that I have told them that CIA is to consider Congress a legitimate and equal partner as far as intelligence goes.

It is hard to define it more clearly.

Senator CLARK. I appreciate that, particularly if it is unclear in the law.

I suppose that is a good warning to this committee and the Senate, that if they want to be full partners, they better specify it in the law.

If it is that unclear, it is an area that we ought to address ourselves to. It seems to me that what you are really saying is that one of the partners is more equal than the other.

If certain sensitive information is to be made available to the President and not to the Congress on a totally and completely equal basis, then it seems to me that they are not really equal partners.

Mr. BUSH. Perhaps under the way the law is written now, that observation is correct.

Mr. Rogovin could address himself to that in a legal sense.

Though we recognize our responsibilities to keep Congress informed, the CIA is still part of the executive branch of Government.

Would it be appropriate for our special counsel to make a comment?

The CHAIRMAN. Certainly.

Mr. ROGOVIN. I will pick up with what the Director said.

The Agency remains an executive branch agency under the control of the President.

The issue becomes more clear when you talk about operational intelligence and the opportunity for the executive to reach the conclusion that he wishes.

This is in the area where the Senate resolution is the same as the sense that portion of the Foreign Assistance Act that refers to timely and fully advising the Congress. I think that is a significant feature in response to your question.

Senator CLARK. In what way is that related?

Would you be more specific?

I don't mean the section in the resolution, but why that is relevant to what we are talking about, Mr. Rogovin?

Mr. ROGOVIN. Because it is a question of timing.

I don't believe the Agency would decline to give information to any jurisdictionally appropriate committee regarding any foreign intelligence.

I think the question of timing, however, becomes important when the information relates to operations. This goes to the debate as to whether section 662 requires prior notification or, as it seems to read, timely notification.

Senator CLARK. Let me ask it another way.

Are there any highly sensitive areas of operation which the executive branch is entitled to know about and which the Congress is not entitled to know about?

Mr. BUSH. Not in totality.

Senator CLARK. I am speaking in any respect.

I am speaking under the law, not the proposed legislation.

Mr. BUSH. I better turn to legal counsel to address himself to the law.

Mr. ROGOVIN. Senator Clark, I think the issue arises where the DCI or the President cannot be assured by the rules of the Senate or the House that disclosure might not be made, and I think that becomes a troublesome concern.

The willingness to turn over the information is unfettered.

The concern is whether the information then will be publicly disclosed and disclosed to our adversaries. I think that is the single most abrasive issue in the determination of a free flow of information.

Senator CLARK. Of course, that assumes that the administration has the full right to make the decision, the final decisions, as to what should be classified and what should not be classified.

It assures that that branch of the Government has a higher authority with the Government with regard to classification, doesn't it?

Mr. ROGOVIN. I wouldn't quibble over the term "classification."

I think it is clear that the executive branch has sole responsibility for classification and declassification. That, however, has nothing to do with the appropriateness of Congress disclosing the information it has.

It is conceivable that the President, through the exercise of executive privilege, may decline to turn over certain information unless he can be assured that that information will not be disclosed.

It may simply relate to an ongoing sensitive situation that could be made public at a later date.

Senator CLARK. All right.

Then I have just one other area of questioning.

Insofar as we are all in agreement that Congress is entitled to certain information, whether that be operational, however sensitive, would it not be entirely up to the Congress to decide who receives that information—what committee, what group of committees, and what individual Senators?

Mr. ROGOVIN. Yes, sir, it would.

Senator CLARK. In that sense, no committees of the Congress, whether it be the House or the Senate, and, in that sense, no one Senator and no one Congressman is superior or inferior to any one Congressman or any one Senator—would you not agree to that?

Mr. BUSH. I think that is true, sir, but we are getting into the area of responsibilities also under the law for protection of sources and methods.

One Senator might say in judgment any piece of information I get relating to the CIA budget, out of my conscience I will make public, and another Senator might suggest: Anything I learn about what is happening on the Czechslovakian border, I feel, because of my heritage, I should make public. So if I as the Director would recognize the equality of each Member of the Senate in this narrow sense of giving sensitive information to all others, I would be in a horrendous bind.

Senator CLARK. I understand the problem.

Mr. BUSH. I would not be fulfilling my obligations to protect sources and methods if I handed out a piece of information which I know would inevitably become a disclosure.

Senator CLARK. I understand the problem.

I am wondering as we write a law and are sensitive to oversight, how do we write a law which says one Senator is entitled to certain information from our our Government, but another Senator is not, or one Congressman is entitled and one is not?

Even under the strongest rules of the seniority system, I never heard that one Senator was superior to another in terms of availability of information or right to vote or right to know.

If we are going to argue, as your statement does for understandable reasons, what is in the first sentence on the fourth page of your paper, I am sure that that causes a problem.

Furthermore, any member who learns information in this manner may also disclose it to any other Senator. While such a provision is arguably necessary for substantive intelligence, I can see no justification for unlimited dissemination of information about this agency's sources and methods.

We can't say one Senator is entitled to information that another Senator is not entitled to. I don't see how that can be viewed constitutional, whatever practical problems it may create.

Mr. ROGOVIN. With respect to operational intelligence—a narrow slice of information—if the Senate were to set up an Oversight Committee with consolidated jurisdiction and determine that such a committee should be the recipient of not only general foreign intelligence information, but also of operational intelligence, and that committee agreed with the executive branch to an injunction of secrecy, then, as to that narrow slice of information, I think that it would be turned over to the committee since it would be accepted by the committee under such rules.

As to other types of foreign intelligence information, I could see a different rule where it didn't come to the committee under such an injunction of secrecy. That would obviate the problem, but it doesn't resolve the totality of the problem.

Senator CLARK. I wouldn't think so.

It puts one Senator above the other in terms of information that is available to them to operate on.

Lastly, this is tied to all of these points.

The thing I would be concerned about, and I am sure a number of other Members of the Congress are, too, is if our Government is undertaking certain operations—perhaps Angola is a good example—that directly reflect on the welfare of our country, for better or for worse, as one might judge it, then certainly the Members of the Senate or the Members of the House would have the right to know that the Government was doing these things.

And based on that right, they have the right to take any action in terms of cutting off funds or taking any other step necessary to counteract that operation if, in their judgment, it is not in the Nation's best interest.

You may make it impossible for them to carry out their responsibilities under the Constitution, which includes taking such action.

Mr. BUSH. We will comply with the law.

We don't have a foot-dragging approach to the law, but the law in this very sensitive field instructs us to do certain things, and we are complying with this law.

The other problem that I have with this discussion is that we do not want to be drawn into the real jurisdictional problems of the Senate.

As my testimony indicates, we were trying to express broad principles, but whatever you come up with, which is compatible with all the Director's responsibilities under the law will certainly be complied with.

Senator CLARK. I understand that.

Mr. BUSH. I was afraid we might be leaving the wrong impression. We have enough problems without being misunderstood on this point.

Senator CLARK. The only problem is that, to this one Member of the Senate, it seems that I have a responsibility and a right to know what our Government is doing so that I can, at least, act on my own best judgment, for better or worse, on that information and presently, under the Hughes amendment, we are doing that. But it seems to me if you do set up a system—and perhaps the Hughes amendment does the same thing: Sets up three committees that have access to other information that other Members of the Senate do not have access to, and, therefore, could not act on, not having the information—it is carrying out a new area of responsibility that I find difficult to believe is consistent with the Constitution.

The CHAIRMAN. If the Senator will yield, we do have to recognize the fact that the executive branch does have authority to classify information.

The President is Commander in Chief. Some of it is on a need-to-know basis only.

Even though an individual may have a complete clearance to receive complete information, there are many people in this country who have that kind of clearance, that are not entitled to receive sensitive information which is not released to many.

I presume you have that sensitive classification on the need-to-know basis.

Mr. BUSH. We certainly do.

The CHAIRMAN. That is a problem.

Senator CLARK. It is.

In those areas of classification that are clearly within the jurisdiction of the Congress to act on, without having all the information available as to what our Government is already doing, it is almost impossible to act with any intelligence.

I yield.

The CHAIRMAN. I was just going to point out that under the act itself, the principle that seems to me as certainly an important principle comes under "Powers and duties."

It reads:

> It shall be the duty of the Agency, under the direction of the National Security Council—
>
> (1) to advise the National Security Council in matters concerning such intelligence activities of the government departments and agencies as relate to national security;

And that is its No. 1 direction and authorization in its charter.

> (2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the government as relate to the national security;
>
> (3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the government using where appropriate existing agencies and facilities: *Provided*, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: *Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

There are other duties.

It would seem to me that he has a responsibilty to protect intelligence sources from unauthorized disclosure, whatever that may be, and if that classification involved a need-to-know basis in his judgment, I would think probably that would be the rule to be followed.

Senator CLARK. Would it be the chairman's interpretation that certain Members of the Senate would be superior to others in the single sense of the receiving of information?

The CHAIRMAN. I don't know that I would conclude that, because I don't know that there are any Members of the Senate, per se, that would have to know the intelligence source and method.

I think they would have to know what we are doing, but to know the intelligence source and the method, I would certainly say that should be on the need-to-know basis and I can't conceive how I, as a Senator, would need to know what his intelligence was and what his method was in relation to a particular activity, even though we ought to know generally about the activity.

For instance, in Angola, we ought to have been advised, and we were, that money was being spent in Angola on the intelligence route.

Senator CLARK. That raises the question on page 4 as to methods.

You are talking about this at the bottom of page 3 of your statement and on page 4.

> Section 7(c)(2) of S. Res. 400 further diminishes the effect of the proposed Senate Rule XXV changes on consolidated oversight. This section expressly permits the proposed Committee and its members to disclose any Committee information to any other Senate Committee or individual Senator. Furthermore, any member who learns information in this manner may also disclose it to any other Senator. While such a provision is arguably necessary for substantive intelligence, I can see no justification for unlimited dissemination of information about this agency's sources and methods.

It is your interpretation that Senate Resolution 400 would require you to reveal your sources and methods then?

Mr. BUSH. We are concerned that that interpretation would be placed on it, and it throws me into a very complicated position because of the language that Senator Cannon just read.

Senator CLARK. It is not my understanding that you reveal your sources and the method to committees you report to.

Mr. BUSH. We do on some aspects.

We are very careful, but we do to oversight committees.

There are names of certain agents that I am sure they don't have, they haven't asked for, and it would cause me great problems under the act to give them. But in terms of other intelligence sources and methods, we brief our oversight committee in considerable detail.

That is a dilemma in itself.

The CHAIRMAN. Senator Stennis emphasized that point when he brought up the question of U-2.

That was a source and method of acquiring information. It had to be authorized and appropriated for, and it was for the construction of those particular airplanes, so that information did, of course, have to be released, and it was released to the Intelligence Subcommittee.

Senator CLARK. Thank you.

The CHAIRMAN. Thank you very much.

Senator ROTH. Senator Huddleston and I are appearing together. You want us to come back?

The CHAIRMAN. If you will, please.

We have got permission to sit until 1 o'clock.

It is 5 minutes to 1, so we will recess until 10 o'clock in the morning, and have you both return then.

The committee will stand in recess until 10 o'clock.

[Whereupon, the committee recessed, to reconvene at 10 a.m., Thursday, April 1, 1976.]

PROPOSED STANDING COMMITTEE ON INTELLIGENCE ACTIVITIES

THURSDAY, APRIL 1, 1976

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The committee met at 10:05 a.m., in room 301, Russell Senate Office Building, Hon. Howard W. Cannon (chairman) presiding.

Present: Senators Cannon, Pell, Robert C. Byrd, Allen, Williams, Clark, Hatfield, Hugh Scott, and Griffin.

Staff present: William McWhorter Cochrane, staff director; Chester H. Smith, chief counsel; Hugh Q. Alexander, senior counsel; John P. Coder, professional staff member; Dr. Floyd M. Riddick, professional staff member; Jack L. Sapp, professional staff member; Ray Nelson, professional staff member; Larry E. Smith, minority staff director; Andrew Gleason, minority counsel; and Peggy Parrish, assistant chief clerk.

The CHAIRMAN. The committee will come to order.

Senator Church, we will be glad to hear from you.

STATEMENT OF HON. FRANK CHURCH, CHAIRMAN OF THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES

Senator CHURCH. Thank you, Mr. Chairman, and members of the Rules Committee.

Since 1950, there have been over 200 proposals introduced into the Congress which would have created some form of an intelligence oversight committee. The need for effective legislative oversight over the intelligence community has been evident for a long time. The existing standing committees clearly have not been able to meet the total need. A new standing committee with jurisdiction over the national intelligence community is the correct answer to a problem that has been evident for at least 25 years.

Since February of last year, the Senate Select Committee on Governmental Operations with Respect to Intelligence Activities, of which I am chairman, has been working on legislation to create such a new standing committee of the Senate on intelligence activities.

As a result on January 29, 1976, I introduced S. 2893, on behalf of myself and seven of my colleagues on the select committee. The bill was referred to the Government Operations Committee, which made certain improvements, including reintroducing the measure as a resolution. Senate Resolution 400.

Senate Resolution 400 is similar in most respects to S. 2893. It retains those elements of the select committee bill which I believe are crucial to the success of an oversight committee on intelligence.

I therefore joined in sponsoring Senate Resolution 400, and I am here today to urge that this committee report the resolution with its essential elements intact.

In order to serve as an effective instrument of congressional oversight over the intelligence community, as it is now organized and directed in the executive branch, a standing committee must have the following characteristics:

It must have jurisdiction over the entire intelligence community as it affects national intelligence. National intelligence includes the CIA, the National Security Agency, the Defense Intelligence Agency, the Bureau of Intelligence and Research and the Department of State, and the Intelligence Division of the FBI.

The committee must also have jurisdiction over the national intelligence budget. That budget must be authorized on an annual basis so that, each year, Senators who have acquired expertise in the intelligence field have an opportunity to examine with care the programs which Congress is being asked to fund.

Finally, the committee must have access to information necessary to make wise legislative judgments. Congress cannot legislate without information. Access to such information will be assured by a system of annual authorization of appropriations for intelligence activities. By centralizing jurisdiction over such authorization legislation in the standing intelligence committee, the Senate will assure that the Executive will cooperate with that committee in providing the information necessary to carry out all of its oversight responsibilities.

Mr. Chairman, I have listed the essential elements of intelligence oversight. Senate Resolution 400 includes a number of additional provisions which I believe will contribute significantly to the proposed committee's effectiveness.

Under the resolution the committee membership is to rotate on a staggered basis, a provision which will permit the committee to benefit from fresh perspectives, as well as the expertise of seasoned members. The committee is to have six majority and five minority members. A vice chairman is to be selected by the minority members. These arrangements reflect the necessity for a bipartisan approach to a most sensitive element in the national security structure.

Incidently, Mr. Chairman, that kind of arrangement serves the select committee in seating them well and avoiding the partisan divisions which were confidently predicted but which did not occur.

Unauthorized disclosure of sensitive information by Senators or staff is explicitly prohibited, while procedures are outlined for the disclosure of information where appropriate. Procedures for imposing sanctions for unauthorized disclosure are described in some detail.

Standing rule 36 now provides generally for the protection of confidential Senate business, but it has been suggested that a more explicit rule may be necessary with respect to sensitive intelligence information.

It has been brought to my attention that Senate Resolution 400 includes certain provisions which may cause problems for other committees whose jurisdiction touches upon elements of the intelligence

community in some way. Although the intelligence community has never been overseen by one committee whose jurisdiction permits it the authority, time and expertise to provide effective oversight over all national intelligence activities, a number of committees have had jurisdiction over parts of the intelligence community or over certain activities performed by intelligence agencies.

It is my view that to the extent that intelligence activities may affect matters at the heart of the jurisdictions of these committees, their jurisdictions will not be diminished by the creation of a new committee.

For example, according to the standing Senate rules, the Armed Services Committee has jurisdiction over "the defense generally." Obviously, the national defense is affected in critical ways by national intelligence activities. The Armed Services Committee must have an overview of all of the Defense Establishment, including, in particular, the intelligence units of the Department of Defense. But neither the Armed Services Committee nor any other committee has the time, because of its other duties, or the necessary overall jurisdiction to attend to the Nation's national intelligence system. That is why the new committee is necessary.

I can hardly overstate the obvious necessity for the Senate to recognize and reflect the way the executive branch has organized the national intelligence community. And unless we do, then the failure, which has been so evident in the past to adequately supervise these activities is bound to continue in the future.

The Executive budgets for and organizes and directs the national intelligence effort in a way that draws together the various components, and unless the Congress establishes a committee that can do the same, it will continue to fail in its oversight responsibilities.

And, Mr. Chairman, the extent of the abuses which have been brought to light and which have been, in part, disclosed through the public hearings of our committee, and which will be disclosed in detail when the committee issues its report constitutes the most telling evidence of the need for adequate oversight in the future if we are to preserve a free society.

Similarly, the Judiciary Committee has jurisdiction over the FBI as part of the Department of Justice. The Judiciary Committee should not be restricted from obtaining an overview of the activities of the Bureau. Most emphatically it should not be restricted from obtaining information and reporting legislation related to the intelligence activities of any agency insofar as those activities may have an impact upon the constitutional rights of the American people.

Finally, the Foreign Relations Committee, as a consumer of intelligence, must be apprised of information in the possession of the intelligence community which may be related to our relations with foreign countries.

In short, there will be instances where committees other than the Standing Committee on Intelligence will have an interest in legislation affecting the intelligence community. This is not an unusual situation in the Senate. I do not believe that it is possible to create a system of committee jurisdiction that is so well defined that some overlap will not occur.

The Senate has traditionally resolved this overlap by referring proposed legislation to that committee with jurisdiction over the matter

to which the bill principally relates. Where the interest of two committees in the measure is strong, joint or sequential referrals have occurred.

I believe that these traditional solutions will be effective with respect to intelligence matters which may be of interest to committees other than the Standing Committee on Intelligence Activities.

The members of this committee, the Rules Committee, are best qualified to choose language which is sufficiently flexible to permit the traditions of the Senate to be carried out with respect to the jurisdiction of a new Intelligence Committee. At the heart of those traditions is the courtesy which the members of this body have heretofore extended to each other, and the spirit of cooperation with which jurisdictional conflicts have been received.

I would like to repeat, however, that it is imperative that the new committee, in order to serve the Senate, have jurisdiction over all legislation directly affecting the national intelligence community and over all bills to authorize appropriations for national intelligence purposes.

Without the power of the purse, the committee cannot acquire the knowledge and the authority necessary to exercise effective oversight which has been lacking for 30 years.

Senator Mondale has now joined me at the table.

The CHAIRMAN. Senator Mondale, do you want to make your statement now and then we can go to the questions?

STATEMENT OF HON. WALTER F. MONDALE, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator MONDALE. Mr. Chairman, I have a longer statement that I would ask to be placed in the record. I would just like to make a few points in support of the position taken by our distinguished chairman who has performed so ably and effectively as chairman in this unique and historic effort to investigate for the first time the operations of our intelligence agencies.

The CHAIRMAN. Your statement will be made a part of the record.

[The written statement of Senator Mondale follows:]

STATEMENT OF HON. WALTER F. MONDALE, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Mr. Chairman and Members of the Committee: I am grateful for the opportunity to appear here today and to give you the benefit of my views on some of the jurisdictional questions raised by Senate Resolution 400.

I would first like to associate myself with the remarks of our distinguished chairman, Senator Church, and to commend him for his dedication and his leadership during the past year.

These have been truly historic months. For over a year, a select committee of the Senate, on which I have been privileged to serve, has conducted an in-depth, exhaustive examination of the entire intelligence community of this country. Some of what we learned was not pleasant. Some of what we learned was even shocking and painful. But a lot of what we discovered gives us reason for great pride.

I believe that this nation can take a great deal of comfort in knowing that we have a national intelligence apparatus which is truly second to none. The dedicated intelligence officers who daily risk their lives in the service of this country deserve our respect, our esteem, and our thanks. We must give these people our support, and we must never let them down.

It seems to me that the best kind of support that we can give our intelligence community is a mechanism that will ensure that the good works of the many

will not again be undermined by the mistakes or the excesses of the few. The past year has not been a pleasant experience for these agencies. Our focus has been on the negative side—on the wrongs, the abuses, and even on some illegal activities which went on. But—unfortunate though it might have been—it was a problem whose time had come. It had to be examined, it had to be faced, and it has to be exposed. And it was all necessary because that is the way this nation has survived as a democracy for 200 years. We have confronted our mistakes, admitted them, and then—together—we have moved on.

The task before us now, it seems to me, is to make sure that this situation never arises again. I unequivocally support the creation of a new standing committee on intelligence as the mechanism to achieve that goal. If this past year has taught us anything, it is that continuing, sustained and objective vigilance, is the only system which will work. We cannot now close our eyes and make believe these things did not happen. They did! And *we* in the Senate must now create a new and special machinery to make sure that these abuses never ever happen again.

For the past several months, I have served as chairman of the select committee's subcommittee on domestic intelligence operations. Our focus has been primarily upon the intelligence and counterintelligence operations of the FBI, and I would like to spend a short time here this morning addressing the question of oversight jurisdiction as it relates to the FBI.

Let me say first that:

I believe the Judiciary Committee should continue to exercise oversight over the Department of Justice, including the FBI.

Second, the new Committee on Intelligence should have jurisdiction over all the so-called "national security" and foreign intelligence operations of the Federal Government, no matter which agency is conducting them.

Third, the new Committee on Intelligence should not have jurisdiction to examine any of the FBI's operations which relate to traditional law enforcement, such as organized crime.

Fourth, wherever there is overlap between the jurisdiction of the new committee and the Judiciary Committee, I think the oversight should be concurrent. I am confident, as Senator Church said, that any questions which overlapping jurisdiction might present can be resolved by such traditional solutions as joint referral and the usual spirit of mutual cooperation.

I would like to respond briefly to an argument which I understand has been made that the FBI does not engage in intelligence activities, or, conversely, that the FBI only engages in law enforcement activities, and that therefore there are no FBI intelligence operations which a new standing Committee on Intelligence would oversee. Let me say, first of all, that I wish that were so. As a matter of fact, our subcommittee for a time carefully considered the possibility of recommending that the Bureau be restricted only to traditional law enforcement. What we discovered, however, was that in doing so, we would have had to transfer many of the FBI's foreign and national security intelligence operations to either the CIA or some other agency of the Federal Government. And that would have meant that those operations would no longer have been supervised by the Attorney General. It was our conclusion that because those operations are sometimes directed against, or affect, the rights of American citizens, they must remain under the control of the Department of Justice and the Office of the Attorney General to insure that the rights of our citizens will not be abridged.

So the FBI is not just a law enforcement agency.

Their intelligence activities, which are both foreign and domestic, are extensive, and are an integral part of the entire national intelligence apparatus.

They actually have a separate division at their Washington headquarters which is called an intelligence division.

The President's recent Executive order on intelligence covered the intelligence activities of the FBI as well as the CIA.

The Bureau's intelligence operations are separately examined by the Justice Department for budget purposes.

Agents receive special training in intelligence operations and techniques.

The FBI not only conducts intelligence programs, but counterintelligence operations as well, in order to counter, and protect this country from, threats from abroad. These activities include a whole range of techniques designed to keep our own intelligence operations secure, and also to find out what the other side is up to. These activities have included not only the protection and acquisition of defense intelligence, but the collection of economic intelligence as well. Many of the targets of these operations are foreigners, but we have also discovered

that in many cases they involve the use of similar techniques against our own citizens as well.

Foreign and domestic intelligence operations are often closely intertwined, and I think it might be useful to spend just a few minutes recalling some of the FBI activities that were the subject of our own committee's public hearings.

Most of the FBI abuses we discovered in our investigations occurred not during the FBI's law enforcement operations, but as a result of what the Bureau actually perceived to have been their mission to go out and collect pure intelligence. For instance, for years the FBI conducted an operation called "Cominfil"—that stands for "Communist infiltration"—and investigated virtually every aspect of American life—schools, colleges, women's groups, youth groups, and even churches and other religious institutions. The FBI's theory was that the FBI had a mission to determine whether any of these institutions were being influenced by communism, or by the Communist Party, or by a foreign power. The investigations were designed purely and simply to collect intelligence—not evidence for use in criminal prosecutions, but information to enable the Bureau to assess what was going on in the country at a given time. I might add that "Cominfil" investigations are still permitted by the FBI's manual today.

"Cominfil" was the theory for the Bureau's 5½-year investigation of Martin Luther King. It was the theory for the investigations of dozens of women's lib groups, antiwar groups, and many, many more organizations which were not violent, were not so-called subversive, and which merely advocated peaceful change in this country. The FBI's theory was that maybe—just maybe—those groups or institutions were being influenced by Communists or by a foreign power and that the FBI had a responsibility to find out if that was so.

Another theory was that the FBI had to infiltrate and gather intelligence information about peaceful groups and individuals who might become nonviolent at some time in the future.

We also examined the FBI's so-called Cointelpro operations. Those were the programs which were actually designed to disrupt groups, destroy family relationships (husbands and wives, parents and children), get people fired from their jobs, and try to get one group fighting with another group. What we discovered was that one of the reasons these operations came into being was because the FBI was frustrated that they had been unable to obtain prosecutions and convictions under the existing Federal criminal laws. As a result, they decided to use an alternative means and go outside the traditional legal process to accomplish their own disruption of groups and individuals they perceived to be "threats" to the national order. Of course, it was under this theory that the FBI actually designed and implemented a program to destroy Martin Luther King as a civil rights leader, and then put together a plan to actually cultivate and promote someone else of their own choosing as a new leader to take Dr. King's place.

I think it is useful to recall some of these abuses because most of them occurred, not during FBI law enforcement operations, but as a part of intelligence operations, designed and operated by an FBI intelligence division which still exists today.

We have seen the bugs in the bedrooms, the opening of thousands of letters, and the warrantless wiretaps, and all the other techniques which intelligence investigations include, and we must make sure that these situations never arise again. To that end, our committee is now completing work on a whole series of recommendations for legislation. It will, in effect, constitute—for the first time in history—a legal charter for FBI intelligence. That charter must be considered here in Congress by a committee whose jurisdiction involves the entire national intelligence community, for it is in the context of that community that the charter must be examined.

In conclusion, I urge you not to exclude the FBI's extensive intelligence and counterintelligence operations from oversight by the new committee. It would be a strange anomaly indeed to create a new Committee on Intelligence with oversight responsibilities where intelligence affects people from other countries, but no responsibility to guard against abuses against our own citizens. That is the danger of unrestricted, unsupervised intelligence power, and we must act now to keep it in check. In my judgment, that is a role to be exercised by the new standing Committee on Intelligence. In the long run, it will strengthen all of our intelligence agencies and enable us to give them our unwavering support.

Thank you very much.

Senator MONDALE. Mr. Chairman and members of the committee, I think we must be very clear about what we are dealing with here, because the record shows that, contrary to the Constitution, contrary to the laws, contrary to the authority of Congress, for many years and in many different ways, our intelligence agencies in the foreign field started wars without our knowledge and without authority, and subverted foreign governments without our knowledge. Indeed, there was evidence that we received that they decided to assassinate foreign leaders without our knowledge and without our approval, and, indeed, in some instances, without the knowledge of some people high in Government.

They pursued a course really of a private foreign policy, often based on violence, without the authority or knowledge of Congress.

If that can happen, then it seems to me that we have fundamentally undermined the accountability provisions of the Constitution. If uncorrected, then we will have conceded a vast area of authority to the Executive in a way that would have been abhorrent to the framers of our Constitution.

Similarly, at home, there has been a pattern of conduct by our intelligence agencies who illegally and often unconstitutionally infringed upon the rights of the American people, once again without the knowledge of the Congress, and also without the knowledge of persons higher up in the executive.

Since I have been chairman of the Domestic Task Force of the Senate Select Committee, I would just like to give a few examples of what was going on.

Practically every telegram that Americans sent overseas was picked up in the sweep and was reported to many agencies of the Government. Mail was read illegally.

The statute on mail reading is very, very clear. You must have a warrant, according to Supreme Court decisions.

Nevertheless, knowing that it was illegal, for years thousands of letters were read—I mean everybody's letters—Richard Nixon, Leonard Bernstein, Arthur Burns, Frank Church—no one's mail was free from reading. And all of it was illegal.

Thousands of tax returns were reviewed in circumstances where there was no tax-related investigation whatsoever. Tax investigations were started against Americans who were guilty of nothing, but it was thought if they were intimidated that way, maybe it would chill them from political conduct someone did not like.

It not only involved tax investigations. It was also through activities such as COMINFIL, which stands for "Communist infiltration," and also through COINTELPRO, the counterintelligence program where the Bureau decided, for whatever reason, that they had the authority to seek out and punish Americans to neutralize, or to "knock them off their pedestal," outside the law, and outside the courts, simply because the FBI thought they had the authority to play God in American society. The program was directed against Americans who had not violated the law, who were not thought to be violating the law, but who were considered to be dangerous by someone in the Bureau.

The classic case is Dr. Martin Luther King. He was visited with a host of intrusive and often illegal and unwarranted surveillance tech-

niques. Fifteen hotel rooms he went into were bugged. Telephone calls he made were tapped. And that was not all.

When it was heard that he was going to be seen by the Pope, efforts were made to try to stop that visit.

When he was going to get doctorate degrees from some universities in our country, efforts were made to stop him from receiving those.

Senator GRIFFIN. May I interrupt?

Could you put a time frame around this?

You mentioned Mr. Nixon. Are you talking just about the Nixon administration?

Senator MONDALE. No, no, no.

I want to make that very clear—if you let the police secretly play God, I think it is inevitable that every administration, regardless of political party, will use it.

Our report will make the time frame clear. The blame for some of these abuses runs over many administrations and both political parties. I want to make it clear that this is not a partisan thing.

The thing that, above all, the constitutional framers feared was abuse of governmental power and secret police. That is the thing that they were afraid of above all.

The CHAIRMAN. Senator Mondale, I think everyone agrees that abuses have taken place.

Now, the question is, how do you correct it?

Senator MONDALE. That is correct.

The CHAIRMAN. It seems to me it is sort of a knee-jerk reaction to say: "OK. Let us form a new committee to do this."

We have a lot of committees. We have committees that have jurisdiction in these areas and have expertise in these areas.

Is not the way we normally proceed if we find abuses in the welfare program or Internal Revenue Service or the Department of Agriculture, that we go to the established committees and tighten up when the abuses exist rather than immediately have a knee-jerk reaction and say let us go back and form a new committee to get back into the same area?

Senator MONDALE. The reason I recite this history is that it is an exceedingly grievous one that occurred over many years and under many different administrations. It occurred while sitting committees had jurisdiction to oversee and prevent this from happening.

I am not visiting blame on anyone, because I was in the Congress during a good part of this time. But I think the risk of abuse of constitutional power, and the risk of the abuse of the rights of the American people, and the risk that is attendant upon chilling, uninhibited political conduct and debate in this society is such that it makes sense to have a doubly protective system in the Congress. In addition to establishing new guidelines by law, which we must, it seems to me that we must also correct what has been the lack of oversight by the Congress.

The best way we can do that, in my opinion, is to establish an oversight committee which, in the domestic area, has concurrent jurisdiction. It should not be exclusive—I would not take that power from the Judiciary Committee—but this committee must have concurrent legislative authority over domestic functions.

I understand the key argument made by those who oppose it is that there is no way of separating domestic intelligence from law enforcement. In fact, it would be far more difficult to try to combine them than to keep them separate.

The record shows domestic intelligence can be separated out for budget purposes.

I ask that there be placed in the record the organizational chart of the FBI, which shows a separate Intelligence Division, and also a part of our subcommittee's transcript which shows that they can separate the budget.

[The excerpts from the transcript follow. But because of technical difficulty of reproducing the FBI organization chart in the printed hearing, it has not been included here. It has been made a part of the committee files on S. Res. 400.]

EXCERPTS FROM TESTIMONY OF GLEN E. POMMERENING, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE, BEFORE THE SENATE SELECT COMMITTEE ON INTELLIGENCE, FEBRUARY 3, 1976

Answer. In developing the 1976 fiscal year budget, it was necessary that we return to individual organizations, including such law enforcement organizations as the FBI, DEA, and the Immigration Service, and ask them . . . [for] further information and data . . . as to the resources which they would require to achieve certain objectives which they identified in the budget process.

Question. Could you give us some examples of how that would have worked with respect to the Bureau's intelligence division?

Answer. Yes, I can. For instance, in 1976, the way the Federal Bureau of Investigation broke down—we're talking fiscal years—their intelligence operation, they had devoted or were planning to devote 3,470 man-years and $90,031,000, and this was one of their programmed areas.

Question. Which was what, intelligence?

Answer. Intelligence. As sub-elements of that program, they further broke down those expenditures into six categories: internal security investigations, counterintelligence investigations, internal security intelligence, counterintelligence intelligence, organized crime intelligence, and general crimes intelligence, and in each of those categories separated out the man-years of effort and the dollars to be expended.

* * * * * * *

Answer. I think that the four initial elements largely comprise the total activity of the Intelligence Division of the FBI. . . .

Question. You would get roughly $77 million or $78 million or thereabouts for the internal security and counterintelligence related programs.

Answer. It would be about $79 million is roughly, looking at these figures.

Senator MONDALE. The issuance of guidelines reflects that domestic intelligence is a separate function and that it is outside the normal criminal law process.

People are trained to deal with it, and to say that it cannot be separated is to ignore, that it has been separated from the beginning, and that it would be more difficult to unseparate it, to put it back together. And, for all of these reasons, and because the potential for abuse is so profound and the need for effective oversight so clear, I think the creation of a Select Committee with oversight jurisdiction is essential.

Senator CHURCH. May I also address your question, because it is a very central question?

The CHAIRMAN. Yes.

Senator CHURCH. I agree with what Senator Mondale has said.

I have tried to conduct an investigation that would reflect credit on the Senate. We have done it without leaks. We have demonstrated

it can be done in a responsible way. So I think I am at least in a position here to argue the case that the Committee concluded was necessary, the case that underlies and underscores the need for a special permanent oversight committee.

The problem is, Mr. Chairman, that there are several committees, depending on how you want to count them—quite a few that have a little bit of the action.

That is not the way the executive department organizes and runs the intelligence community as it relates to strategic or national intelligence. We are not attempting to reach tactical military intelligence directly related to the uninformed services or anything of that kind.

There is such a thing as the national intelligence community, and it is composed of a number of different agencies. The Congress has no unified place to look at that community the way the executive looks at it and controls it. And that is the reason why the present arrangement has so conspicuously failed in the past, and thus permitted abuses which, if they had ever been brought to the knowledge of any one of these committees, would have been strenuously objected to.

Let me say one other thing.

The present law is chaos if you want to keep secrets and you want to conduct covert operations. It cannot be done.

If this information is to be scattered among six or eight different committees of the Congress, composing half of the membership of the Congress, now, if that is the purpose, then it will be better served through the establishment of a permanent oversight committee which would be the principal depository of information of that kind. And unless such a committee is formed, I see no prospect that the Hughes-Ryan amendment would be amended.

Therefore, we have proceeded, in collaboration with the executive branch, in what we thought was a responsible manner to determine how this present chaotic condition could be regularized and how we might deal with a twin problem which is: one, how to keep legitimate secrets secret; and, two, how to reveal to the public abuses of power and illegal actions which must be revealed if they are to be corrected.

We think this can be best accomplished through the establishment of this oversight committee.

We think the status quo, based upon 25 years of history, will not work. And every one of the Directors of the CIA came before our committee and testified, approved in principle, the establishment of an oversight committee that would have sufficient reach and expertise and time to do this job.

The CHAIRMAN. I think you were here yesterday during part of the testimony; I am not sure you were here when Senator Stennis pointed out the fact that the Armed Services cannot operate in a vacuum, cannot make the determination on the budgets and their requirements without having the proper input from the intelligence side of the arena, and so when you say that this committee would be able to hold tightly the information, I think you are just saying that one more committee should be in on the act, and the Director of Central Intelligence pointed out yesterday that they have been having to respond to 11 different subcommittees and/or committees or agencies in addition to the 8 that normally assert some jurisdiction in this area.

Senator CHURCH. Mr. Chairman, first of all we recognize and have tried to take into full account the legitimate need of other committees for intelligence activity.

The Foreign Relations Committee gets a full briefing from the CIA. Obviously the Armed Services has received that kind of information in the past as well and would get it in the future.

It is possible that in the wisdom of the members of the Rules Committee, a provision could be worked out that would assure such committees as the Judiciary, Armed Services, and Foreign Relations of the necessary access to intelligence information in order for them to adequately perform their own principal tasks, but if you are going to endeavor to find a solution to the present dilemma, even the executive, even the Directors of the CIA have said this, that it can only be found through the establishment of a permanent oversight committee that can handle the extremely sensitive matters to which there would be an affirmative duty laid out to make disclosures in a sufficiently timely way and where the budget would come through the CIA and the other elements that compose the national intelligence community.

I am sure the jurisdictional problems can be worked out, but I know that without this permanent oversight committee, Mr. Chairman, the status quo, the existing chaotic condition of the law cannot be corrected and it is that which has produced the problems concerning the leaking—not from our committee, but in the Congress as a whole, the leaking of highly sensitive information.

I cite to you that the Joint Committee on Atomic Energy has a remarkable record of maintaining secure sensitive information in the nuclear field. I know that an intelligence committee, properly composed, could do likewise.

This resolution also sets out a means for dealing with the problem of how to disclose information when it is the judgment of the majority of the committee that such information should be disclosed.

We are not talking about identifying agents in the field or sources or methods. Everybody recognizes those are legitimate secrets and must be kept. We are talking about quite a different matter—improper conduct of the kind we have revealed. Wait until you see the full report of the extent of the abuse that has gone on. When that kind of information comes to the attention of the committee, the committee under the proposed resolution has the authority by a majority vote to make a public disclosure. If we were to accept Mr. Bush's argument that classified information may not be disclosed by the Congress without the consent of the President, then of course we have taken the fateful step of subordinating the Congress to the Presidency. Classified information is not classified by the President in the first place, but by thousands of executive agents. If Congress cannot disclose wrongful conduct because it has been classified without the President's consent, then it is subservient to the executive branch.

Senator GRIFFIN. You said the resolution would give the committee the power to make public classified information by majority vote. Do you recognize now, that the committee under the present rules of the Senate does not have that authority, or do you contend that a committee does have that authority?

Senator CHURCH. It is my understanding that the committees normally do have that authority under our present rules. That is the interpretation that I place on Rule XXXVI.

Senator GRIFFIN. Then you do not need to put that in the resolution, I take it?

Senator CHURCH. No; but I think the resolution tries to add some additional safeguards. For instance, it says if the President takes strong exception, then it gives the President the opportunity, which the normal practices of the Senate do not, to impose an objection and also to take the matter to the Senate for a vote.

Senator GRIFFIN. I will not argue this. We argued it on the Senate floor in executive session. The record has been made public.

However, I will read into the record section 5, Rule XXXVI of the Senate which reads as follows:

"Whenever, by the request of the Senate or any committee thereof, any documents or papers shall be communicated to the Senate by the President or the head of any department relating to any matter pending in the Senate the proceedings in regard to which are secret or confidential under the rules, said documents and papers shall be considered as confidential, and shall not be disclosed without leave of the Senate."

I regard that report from your committee having to do with assassinations was made public, even though it included classified information, without the authority of the Senate. The Senate had not voted on it. I say most respectfully that you have said several times there have been no leaks from your committee.

I have no doubt in my mind that your report was made available to the press and had been in the hands of the press at the very time the Senate was debating the question.

Senator CHURCH. I take issue with that, Senator. Besides, I take issue with several things that you have said.

In the first place, Rule XXXVI refers to matters communicated to the Senate. The Parliamentarian ruled that it was not applicable in the case to which you refer. The select committee did bring and did report its principal findings with respect to the assassination matter to the full Senate. We did our best to comply with our understanding of the rule and, indeed, our conduct was in conformity with the Parliamentarian's interpretation of the rule. We have tried to draft the provisions and I know the Government Operations Committee tried to draft provisions that were consonant to the rule, that were consonant with disclosure.

Senator GRIFFIN. I do not want to argue. I just wanted to keep the record straight.

Senator CHURCH. I am happy to participate in the effort to keep the record straight.

The CHAIRMAN. You heard the CIA's concerns expressed here about the procedure that has been recommended. I also have a letter here from the Secretary of Defense. He makes two points. I am going to make this letter a part of the record. He says:

> For example, Sections 3(D) and 11 would place authorization for appropriations jurisdiction in the new Senate Committee on Intelligence Activities. This creates two problems:
>
> From the standpoint of maintaining the overall confidentiality of our sensitive, important and expensive military and defense intelligence sources and methods, particularly our most modern collection systems, the visibility created by a separate budget formulation process would entail grave risks;

That was a point that Senator Stennis also made yesterday.

> In addition, our Department would still be required to maintain a budget formulation process for the House of Representatives which would continue to be conformed to appropriation accounts. The two separate processes would require double accounting, additional expense, additional staff, and additional automation equipment.
>
> Thus, I would hope the Committee would consider deleting Sections 3(D) and 11, leaving the important and worthwhile oversight function for the new Committee to provide the country with a more effective intelligence production.
>
> Second,

and this is a point you discussed earlier—

> the last sentence of Section 13(a) attempts to draw a distinction between tactical foreign military intelligence, on the one hand, and all other intelligence activities, on the other hand. Distinctions between tactical intelligence activities and other kinds of intelligence are extremely difficult to draw, and as our technological collection and processing capabilities improve, such distinctions will be even more difficult.

The Secretary then goes on to point out that the President recently assigned to the Committee on Foreign Intelligence, created by the President, in Executive Order 11905, the responsibility for working out useful and appropriate definitions of national and tactical intelligence, but it seems to me that he raises some very good points there as well as those raised by Senator Stennis and the Director of the Central Intelligency Agency, that would lead me to believe that what we are going to get here is a greater visibility in an area that can only be helpful to foreign countries that may be interested in what we are doing.

Senator CHURCH. Mr. Chairman, I really have to take issue with that because I think based upon our year's study, it is not really a valid argument.

In the first place, the President in his own executive orders has recognized that the distinction between national strategic intelligence and tactical intelligence. I do not know how the executive can argue they can make the distinction, but the Congress cannot.

Second, as to a matter of exposure, I think that there is a long likelihood that the select committee in its final recommendations may very well include the recommendation that an aggregate figure relating to intelligence activities be disclosed because the Constitution requires it, and we have for 25 years not been proceeding in a way that is constitutional.

Furthermore, we have listened to many arguments about this matter, and no persuasive argument has been attempted that such an aggregate figure would really impair the security of the United States.

Now, the Congress does not even know how much it is appropriating. It is not only an undignified posture, it is an unconstitutional posture. I do not see how it can be justified, particularly the acceptance of arguments that are not sufficiently scrutinized.

The Atomic Energy Commission has made an aggregate figure available. That has not greatly impaired our sensitive nuclear secrets. We argued the military defense budget including every kind of new weapons system on the floor of the House and on the floor of the Senate and that has not impaired our Government. The Senate must recognize its mandate. We have not for 25 years. It should and can be corrected without any serious problem to the national security of this country.

The CHAIRMAN. You are not suggesting that the Constitution provides a right for the general public to know all sensitive and classified information, are you?

Senator CHURCH. No, of course not, Mr. Chairman. Nothing I have said should imply that. I have said that the Constitution requires that, from time to time, the appropriations of public money and the purposes for which they are appropriated must be made public. We are not doing that. We are not complying with that provision of the Constitution. We have the best constitutional experts studying this question for the committee and they are all in agreement, and even the former Directors of the Central Intelligence Agency, four of them, in testifying before us have said that they see no real security problem in the use of an aggregate figure. I really think that we ought to bring our processes back into conformity with the Constitution. That does not mean at all that I think every detail should be made public. Of course I do not, but the Atomic Energy Committee has found a way to deal with this within the framework of the Constitution, and I think we can in the intelligence field as well.

The CHAIRMAN. The problem, it seems to me, is not whether there is any aggregate, but what you are suggesting is that this issue ought to be debated on the Senate floor, and there is no way you can come out with an aggregate figure for intelligence without getting into the specifics for debating it, as I see it, and I think that is where the very real and serious problems lie and where the dangers lie. I am as much concerned as you are about the mishandling of the problem at the present time and the way things have been done which should never have been done, but I don't think the way to get at that is to come out and debate the whole appropriation process for all the nuts and bolts.

I think we used the example yesterday of the U–2. You can see what would have happened had the debate on the U–2 gone forward, whether it should be authorized and appropriated for on the Senate floor to develop that airplane.

Most of the Senators did not even know there was such a thing until we ran into the situation of having it shot down over Russia, and that is the type of thing that gives me a lot of concern when we talk about visibility in the budgetary process.

Senator CHURCH. I think a reasonable balance can be drawn between the constitutional requirement and our common sense about legitimate security interests of the country. I again cite the example of the Joint Committee on Atomic Energy.

They have managed to handle it with an aggregate figure and they have managed to have the bill handled in such a way that legitimate, sensitive matters were withheld from debate. I really believe it can be done. I do not think we can any longer justify disregarding the expressed provisions of the Constitution, and I see no compelling national security argument for doing so.

The CHAIRMAN. I just do not want my silence to indicate that I agree with you that we are disregarding the provisions of the Constitution. I completely disagree with you on that because the figures are in the budget and we approve the budget.

Senator CHURCH. Nobody knows what they are. They cannot be in compliance.

The CHAIRMAN. Somebody knows, and it is possible to find out. You are saying that everybody does not know. With that I agree.

Senator CHURCH. The Congress does not make it public in a form intelligible, or even on the appropriation. I cannot regard that as a compliance with the constitutional provision.

Senator MONDALE. Mr. Chairman, may I make just one comment?

The CHAIRMAN. Certainly.

Before you do, without objection, I will insert in the record the two-page letter from the Secretary of Defense dated March 31, 1976.

[The letter referred to follows:]

THE SECRETARY OF DEFENSE,
Washington, D.C., March 31, 1976.

Hon. HOWARD W. CANNON,
Chairman, Rules and Administration Committee,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: While I recognize and fully respect the distinct responsibilities and prerogatives of the Senate to organize its various committees and their jurisdictions, I would like to share with you some concerns I have with regard to the impact of S. Res. 400 on my ability to discharge my responsibilities as Secretary of Defense.

For example, Sections 3(D) and 11 would place authorization for appropriations jurisdiction in the new Senate Committee on Intelligence Activities. This creates two problems:

From the standpoint of maintaining the overall confidentiality of our sensitive, important and expensive military and defense intelligence sources and methods, particularly our most modern collection systems, the visibility created by a separate budget formulation process would entail grave risks;

In addition, our Department would still be required to maintain a budget formulation process for the House of Representatives which would continue to be conformed to appropriation accounts. The two separate processes would require double accounting, additional expense, additional staff, and additional automation equipment.

Thus, I would hope the Committee would consider deleting Sections 3(D) and 11, leaving the important and worthwhile oversight function for the new Committee to provide the country with a more effective intelligence production.

Second, the last sentence of Section 13(a) attempts to draw a distinction between tactical foreign military intelligence, on the one hand, and all other intelligence activities, on the other hand. Distinctions between tactical intelligence and other kinds of intelligence are extremely difficult to draw, and as our technological collection and processing capabilities improve, such distinctions will be even more difficult.

It was in the light of these difficulties and realities that the President recently assigned to the Committee on Foreign Intelligence (created by the President in Executive Order 11905) the responsibility for working out useful and appropriate definitions of national and tactical intelligence. It is anticipated that the Committee on Foreign Intelligence will have these complex questions under continuing review. I would hope, and expect, that the Executive Branch would, over the years, work closely with the Senate so that both branches could retain flexibility to respond realistically to changes in the information collection, processing and production of our nation's foreign intelligence. In this spirit, it might be well to consider simply dropping the last sentence of Section 13(a), rather than attempting to distinguish in a single document or in a single sentence between different kinds of intelligence production.

With warm regards.

Sincerely,

DONALD H. RUMSFELD.

Senator MONDALE. The laws in the Constitution are at times inconvenient, and they were intended to be because they were intended to restrain the unlimited exercise of power by Government. As I hear the Secretary of the Defense's letter, he seems to find it inconvenient to come up and report to a newly created committee charged with the

oversight of intelligence operations. Sure, it is inconvenient, but in the face of the abuses we have seen, certainly we are warned that that "inconvenience" argument is puny compared to the risks to American democracy and the need for accountability under the Constitution of the United States and the laws of this land. The record is there. It cannot be denied, and the record does not have to be repeated in order to draw the conclusion that we must demand an accountable foreign policy in the future.

Similarly in domestic affairs. There, they do not even have arguments about international security, or other arguments of that nature. They just do not want to come up and report to an Intelligence Oversight Committee and reveal what they are doing. Even though internally that is exactly how they are structured, they still argue there is no way of separating law enforcement from the domestic intelligence function. It is a strained argument that collapses after a moment's analysis; nevertheless, here they come repeating it again. They present an argument that they do not want to report because it is inconvenient, but in actuality they do not want to tell us what is going on. That is wrong. It is unconstitutional, in my opinion.

Similarly, with respect to the public reporting of appropriations, it is not what Senator Church might want, and it is not what I want, but it happens to be that the Constitution of the United States requires that no money can be spent except by appropriation from the Treasury, and it cannot be spent without a public report because the Founders of this Nation were scared to death that money would be spent secretly and illegally.

And as for the term itself where the Constitution says "public report." That does not mean they have to publicly report every detail. Many of the details are classified and would be dangerous to reveal. But I do not see how they can be permitted to get around the responsibility of filing an aggregate report unless they are allowed to violate the Constitution. We have not heard an argument to the contrary. Four successive Directors said they had no objection to it.

The CHAIRMAN. Senator Griffin?

Senator GRIFFIN. Since it has been referred to, let me read into the record the provision from the Constitution which I am sure is the one being discussed, it is section 7 of article I:

> No money shall be drawn from the Treasury but in consequence of appropriations made by law and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Senator Church, you have made several references to the Joint Committee on Atomic Energy and their success in performing their functions without leaks, and I wonder why you do not carry the analogy to this situation. What is your objection, if you have any, to a joint committee to perform this function as far as intelligence oversight is concerned? Would it not provide some safeguards in that perhaps the numbers, the overall numbers, would be reduced as between two different committees, and would we not avoid the possibility that we would get into rivalries and competition of sorts between committees of the two Houses?

Without asking you to comment on it, I was just observing as an observer what you have recently gone through. It is my evaluation, that there seems to have been a rivalry between the House committee

and your committee investigating intelligence, not that you are promoting that kind of competition, but it seems to me that it was apparent.

Senator CHURCH. Well, Senator Griffin, if through resolution we were to establish a Senate permanent oversight committee and, following that, it was possible to enact a law that would establish a joint committee with the concurrence of the House and the concurrence of the President, I have never taken a position against the establishment of a joint committee. I only see a very real need in the face of the magnitude of the abuses that we have uncovered to set into place some responsible committee of the Congress, and I see the best way of doing that, the surest way of doing that, is to act now. We can always later, when the House is disposed, when other wrinkles have been worked out with the administration, we can always later go to a joint committee. I do not oppose that on principle.

I know now we need to act and it is within our power through the rulemaking power to establish a Senate committee now which may be subsequently replaced by a joint committee if a suitable law can be enacted. I am not opposing the joint committee.

Senator GRIFFIN. You are not opposing that possibility?

Senator CHURCH. If it is possible later to establish a joint committee, it could replace the Senate committee. I do not take issue on principle with that concept.

Senator GRIFFIN. Thank you.

The CHAIRMAN. Senator Pell.

Senator PELL. Thank you.

In facing up to this problem, we are all aware of the excesses that have been carried out in the past. I do not think we are fully aware of the previous oversight practices and procedures. I was wondering if you will give us a brief overview of what the actual oversight was and how often the CIA Oversight Committee actually met, for how long, and in what detail? Do you have any knowledge to that effect so that we know what we are replacing?

Senator CHURCH. Our review of that matter shows that the oversight that was exercised in the past was very, very limited. Oftentimes the so-called watchdog committees never met at all for long periods at all, for long periods of time. When they did meet, they were not informed. They did not press for the information. I do not fault them for this because I recognized for a long period of time there was an attitude in the Congress that the Executive could be trusted in these matters and that the Congress ought not to inquire. I remember when I first came to Congress, some members of the Oversight Committee made the statement that they did not know, they did not know and they did not want to know because there were things gentlemen ought not to know.

Well, obviously that day there was a trust in the Executive to handle these matters within the law, not to trespass on the constitutional rights of American citizens, and there was no great compulsion in the Congress to exercise a proper oversight. I believe we all recognize that. The attitude changed once we discovered that even at the highest levels of Government, even in the White House itself, the laws were not being obeyed, and thus it became possible for the creation of the committee that I have headed up. The atmosphere, the political climate was never such that there were ever the votes, even though some 200 proposals were made during the years to establish an adequate

oversight committee with competent jurisdiction to do the job. Now we have the opportunity.

To fail to do so would be a fateful error.

Senator PELL. Do you have the information regarding this past year, Senator Church? The attitude has changed because we became aware of some of these abuses more than a year ago. I am thinking of calendar year 1975. How many times did the watchdog committee meet and for what period of time?

Senator CHURCH. I do not know that because I was too busy with my own committee investigation. Perhaps Senator Cannon knows, I do not.

The CHAIRMAN. I could not say the exact number of times, but I do recall that the CIA appeared before the Armed Services Committee and briefed a number of the committee members on many, many occasions throughout the year. Now, Senator Tower is here and he sat in on many of these meetings, not the oversight committee precisely. That is limited to a smaller group. Other members of the Armed Services Committee were invited.

Senator PELL. Maybe you could submit that for the record, Senator Church.

Senator CHURCH. I would like to respond to your question in this way, Senator Pell. When you take the entire national intelligence community, it is astonishing how large it is. It consists of the CIA, NSA, DIA, the Intelligence Division of the State Department and the other side of the intelligence coin is counterintelligence, espionage. That has nothing to do with enforcement law. That is CIA.

If you are going to watch over these various agencies and watch the community and permit so much power and permit them to operate in so much secrecy, you have got to have a committee that is up to the task. It cannot be a subcommittee with one, two, or three staff members that is a part of the bigger committee which 95 percent of the time deals with other matters. It will not work.

We have 25 years that demonstrate that it will not work, so if we are going to assume our responsibility, we must establish a committee that has a jurisdictional reach sufficient to cover the national intelligence community in the executive branch, and we have to have it full time operating with a competent staff. That is our only chance.

Senator PELL. I would agree with you, but I also think there may be a mood to drag things out and say let us leave things alone. For the record, could you submit the number of times the watchdog committee met in the previous calendar year, also the length of time and how many votes took place?

Senator CHURCH. We will attempt to obtain that information.

Senator PELL. Thank you.

[The information referred to, subsequently received by the committee, is as follows:]

According to information available to the Select Committee, the Intelligence Subcommittee of the Armed Services Committee met twenty-six times between January 1966 and December 1975. It met five times in 1975, twice in 1974, once in 1973 and once in 1972 and not at all in 1971. In the same ten years the full Armed Services Committee met approximately thirty-five times for intelligence briefings or in regard to intelligence agency nominations, and other sub-committees of the Armed Services Committee met for specific intelligence briefings approximately twenty-five times. The length of time of the meetings and the number of votes is not available to us.

Senator PELL. One thing that has always concerned me is the difference between operations and intelligence, and I am sure in your study, you would have come to the conclusion that about 90 percent of our effective intelligence is derived from either overt means or from whatever is called mechanical means—satellites, et cetera.

Senator CHURCH. That is correct.

Senator PELL. The cloak-and-dagger portion of the budget is operationally minimum. I became particularly conscious of this in Cuba where I went shortly before the Bay of Pigs and advised against the operation. It was done anyway. The reason for it, in my view, is that the operational people were under the same roof as the intelligence people. They wanted to cut the cloth of the intelligence appraisal to suit their operational plans. I was curious why in your report you have not touched on the importance of separating operations and intelligence collection?

Senator CHURCH. We will do that in our final report.

Senator PELL. But you have not done it in this bill?

Senator CHURCH. In this bill we have not done it because we were dealing with the existing executive arrangement. We have a provision in this resolution which says any changes in that executive arrangement would be accommodated. Of course, covert operations have nothing whatever to do with intelligence. It is part of the obfuscation of our times to lump them together, the fact is that covert operations have tended to be the tail that has wagged the intelligence dog, and those engaged in the cloak-and-dagger aspects of the CIA have tended to be those that have controlled the entire Agency, and thus undue emphasis has been given to covert operations, and I think that our intelligence has suffered as a result.

Senator PELL. I would agree with you and I think our foreign relations have suffered.

Senator CHURCH. Yes; I would do that.

Senator PELL. I remember in talking with Mr. Castro a year and half ago, I didn't know that a contract had been issued and it had failed. It obviously makes many a little sensitive about his relations with us. I think we should have—at any rate, another question here. I notice that you require that no professionals or anyone on the staff remain more than 6 years. Isn't that an error because to really grasp the nuts and bolts of the intelligence operations, it will take many, many years and you need some dedicated professionals to remain on?

Senator CHURCH. We have learned a great deal in 1 year of intensive review of all these intelligence agencies, and we really think that we ought to try—here is an opportunity to experiment with something new that I think will work, at least we ought to see if it will work, and that is rotation of members and staffs to award the co-option. It is true you can get staff members who become extremely expert in every detail, but they tend to fall in love with the programs and then they have a great influence upon the Senators whose time is limited, who tend to lean upon the staff, so the co-option of the committee and the co-option of the staff is to be avoided if the committee is to preserve its independence. We think we have a formula here which accomplishes that. It is a 6-year period. That is a long period of time. As for members, two-thirds of the members will be seasoned, experienced

all the while. One-third will be coming in each year so that you have a fresh perspective and that can operate with the staff, too. We think it will work both for the staff and for the members.

Senator PELL. Finally, I am a little bit skeptical of the portions of the bill that deal with the release of information. Could you give me and enlarge on your reason why you feel that this is important, why there should be so much emphasis in the bill, in the resolution, for the release of information?

Senator CHURCH. The only reason there is so much attention given to it was because of the executive branch's concern. I think we get very myopic on these matters. The worst leak I can remember didn't come out of any committee of the Congress, it came out of the CIA a week or two ago at a cocktail party where it was revealed that Israel had 10 or 20 nuclear weapons. I can't imagine a greater breach of security. I haven't even heard a word of reprimand. We include a good deal of language partly to accommodate the expressed concern of the Executive and, under the present rules, you not only have the chaotic situation where six or eight different committees of the Congress must be informed with respect to every new covert action which is inherently insecure and which the creation of the committee of the kind we recommend, would tend to correct by paving the way toward a repeal or modification of the Hughes Act, but under the present rules of the Senate—and I must defer to Senator Byrd who is the real expert on the rules—it is my understanding that the committees of the Congress presently have authority to make disclosures which they believe to be in the public interest. They are not bound by the President's determination of what we may or may not do, otherwise we become subservient to the presidency.

The CHAIRMAN. That is not entirely correct. The criminal code has some very strict limitations that are independent and apart from the classifications that may be imposed by the executive branch by Executive order so, frankly, I would think that there would be some modifications in the law if this resolution were adopted, some changes in the law.

Senator CHURCH. I don't mean to argue details with the chairman, but from my examination of criminal laws, they refer to unauthorized disclosure. This is an attempt to regularize the procedure by which disclosures could be made. Under the law and Constitution, an individual Senator under the debate clause, can go to the floor of the Senate and make such disclosures as he pleases. He is not accountable to any court of the land. He is only subject to the discipline that may be applied to him by the Senate itself. We are trying to work out a method which will accomplish two objectives, taking into account everybody's concern. One objective is to keep legitimate objectives secret. The other objective is to disclose wrongdoing, whether or not the President approved, because we can't give him a shield that is impervious to the right of the Congress to reveal unlawful conduct or improper conduct.

Senator PELL. Thank you, Mr. Chairman. I congratulate Senator Church and his cochairman and vice chairman and Senator Tower for the really responsive and disciplined way in which you have conducted this inquiry, and I applaud you both for it.

Senator CHURCH. Thank you, sir.

Senator BYRD. Senator Church, I congratulate you on your statement and beyond that, I congratulate you on the work that you and your committee have done. It has been a very difficult assignment and I think one could make some criticisms here and there, but on the whole, I think that your committee and you have justified the confidence of the Senate and have performed a very difficult task in an admirable way. As I indicated yesterday, the experiences that we have been exposed to, which have indicated excesses and abuses by various intelligence-gathering agencies require a tightening up of the oversight procedures. The political atmosphere throughout the country, I think, as of now at least, would appear to me to demand some kind of intelligence oversight committee.

I can't say that other means are not available or cannot be found by which the excesses and abuses could be guarded against and the public could be assured that due diligence would prevent such excessive abuses in the future. I cannot say that such procedures and means cannot be found without the establishment of an oversight committee, but I have the impression that as of now, at least, the political climate would indictate the necessity for the establishment of some kind of committee. That is my own personal viewpoint.

Now, given that situation as I see it, there is also a growing concern among the people, myself included, that we must, as we correct these abuses and move to prevent them in the future, that we also guard carefully against the unauthorized disclosure of sensitive information that would not only endanger the lives of persons who are employed in the gathering of intelligence, but even more importantly, jeopardize the security interest of our country.

How do we find the difficult path by which we serve both of these necessary interests?

Senator CHURCH. Senator——

Senator BYRD. No.

Senator CHURCH. I wanted to respond to that. It wasn't a question. I agree with everything you say.

Senator BYRD. I am just feeling my way. This is one of the most difficult assignments that the Rules Committee of the Senate has had, and we have had our share in recent years. The measure before us, S. Res. 400 would establish a new standing committee of the Senate. It would give that committee the oversight responsibilities as well as the responsibility of authorizing the funding of intelligence activities. Now, if we are merely talking about oversight, it seems to me that is the crux of the issue. It seems to me that is the thing that we have to come to grips with.

If we are merely talking about, and I use the word "merely" not in a way which might be interpreted by some, if we are seeking to establish an oversight committee without authorization responsibility, that oversight committee could be a standing committee of the Senate. It could be a select committee of the Senate, in which case, a Senate resolution would suffice. It could also be a joint committee of the Congress, and I can see certain advantages to having a joint oversight committee. That would require a concurrent resolution. It would not require the President's signature.

Now, if we go that route, I have to say to you that I, as of today, think our prospects for accomplishing the objectives are greatly en-

69-450 O - 76 - 8

hanced over the route which would give such committee the authorization authority.

If we are talking about authorization, I think that here, if this is what we want, we are going to have to go the joint route because if we set up a standing committee in the Senate or a select committee and we could give it legislative authority. If we do that, we are going to have structures in the two Houses that are not parallel as to the authorization process. The Senate Select or Standing Committee would have authorization authority. In the House, the authorization authority would rest with a multitude of committees. In going to conference, we would have problems, entirely aside from the problems that have been enumerated by Senator Stennis and others who feel that their respective committees should retain the authorization jurisdiction. Now, if we establish a joint committee that would have authority to authorize funding of intelligence activities, this too would be a very difficult path because not only would we have a great deal of opposition in the Senate, but we would also run into considerable opposition in the House, I would suspect.

There the various committees would feel that their jurisdiction to authorize funding was being impinged upon or taken away from them, so I should think that at this late date in this year and with the many days of recess ahead of us, it would be extremely difficult, if not impossible, to overcome such a formidable task of getting a measure passed or agreed to that would provide for a joint committee which would have authorization authority, so I think what I am getting at here is that, first of all, in our efforts to find a way, we need your assistance and we need the assistance of Senator Ribicoff and Senator Tower and Senator Mondale and the assistance of Senator Stennis and Senator Sparkman and others who are chairmen and members, ranking members of committees that presently have oversight jurisdiction and authorization jurisdiction, so what I say is not to be interpreted as an attack on the procedure that you recommend. It is merely an attempt to evaluate the dangers, the difficulties as well as the prospects for ultimate fruition of our efforts in the form of an establishment of some kind of committee. I do think authorization requires a parallel structure between the two Houses, so going this route will not attain that parallel structure. Going the joint committee approach would achieve the parallel structure, but we double the prospect for obstruction opposition by virtue of the fact that the other body would have its views which, in many instances, would be opposed to the approach.

Let me talk a little about the resolution itself——

Senator CHURCH. Senator, may I just interject because I listened very attentively to what you have said.

Senator BYRD. Yes, Senator Church.

Senator CHURCH. The reason, of course, that these provisions have been included in the resolution giving the oversight committee authorization authority over the national intelligence community, is our evidence to you shows it would greatly increase the committee's authority if we had that power. The power of the purse is the ultimate power. As it is exercised, it gives access to everything else ultimately, so I think that a committee adequate to the task in the long run needs the power of the purse battened up. I understand how the committees feel about their own jurisdiction and how they wish to retain it. I have

looked at the language that would give a certain concurrent jurisdiction which would protect the essential interest of the established committees of the Senate. I would hope that we could go that route. But I cannot envision an effective oversight committee that did not have jurisdiction, including the power of the purse, with respect to the Central Intelligence Agency—that is correct. I know what you are stressing, you were stressing political difficulties. I know our time constraints. If we do not cease the opportunity, we may lose it again for 25 years. I am conscious of those things and I know how aware you are of the difficulties, the political difficulties, the time problems that we have in this particular session of the Congress, but there is an awfully strong case to be made for giving the oversight committee purse-strings power if it is really exercised with complete effectiveness.

Senator BYRD. I can understand the strength of your argument with reference to the power of the purse. There is no doubt but that that is the ultimate power. But there is a power that is almost as ultimate here and that is the power of subpena, and the oversight committee, if it has the power of subpena, can get whatever information it needs. It seems to me, I may be wrong, if we find that road is going to be so formidable, so difficult to travel, that we may achieve the desired objectives by creating an oversight committee and giving it subpena powers and leaving the authorization jurisdiction where it presently lies for the reasons that I have suggested.

What I want us to do is to find a way. Now, very frankly, I cannot vote for this resolution as it is written. There are many reasons for that. And the only reason I take the time of the committee and your time now to enumerate those reasons is so that you and Senator Ribicoff and others may be fully apprised of the concerns we have so that in the final analysis maybe we can come out with the working product. In the first place, I have already alluded to the conflict in structure as between the power of the Senate and the authorizing committees. Second, I have difficulty with this resolution because I think it not only provides insufficient protection against unauthorized disclosures of sensitive information but in my judgment, it actually opens up the possibilities and makes easier and even invites disclosure of sensitive information. Now, why do I say that?

Why do I say that? First, rule XXXVI which was mentioned today says, I will read it in part only because it is part of my exposition of my personal views:

> Whenever, by request of the Senate or any committee thereof, any documents or papers shall be communicated to the Senate by the President or the head of any department relating to any matter pending in the Senate the proceedings in regard to which are secret or confidential under the rules, said documents and papers shall be considered as confidential, and shall not be disclosed without leave of the Senate.

Now, a moment ago, reference was made to this rule by Senator Griffin himself. Of course, the explanation for what happened on the occasion to which he alluded was simply the Senate in the judgment of myself and a good many Senators, the Senate had waived this rule as to the disclosure of documents and papers. The rule says "shall not be disclosed without leave of the Senate."

I took the position and argued it in the closed session that the Senate in creating the committee of which you are the chairman, gave the

authority to your committee in the organic creating resolution for the committee to make its decision as to the disclosure of information. I think I am right and I would argue that case again.

Senator CHURCH. I recall that very vividly.

Senator BYRD. Of course, there are those who would not agree with me. We can do that again. If we enact this resolution, that is what we are doing. We are waiving that paragraph of rule XXXVI. The Senate can do that. I don't want to do it again.

Now, the resolution in paragraph (b) of section 5, on page 7 reads as follows:

> No employee of such committee or any person engaged by contract or otherwise to perform services for or at the request of such committee, shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing to be bound by the rules of the Senate and of such committee as to the security of such information during and after the period of his employment or contractual agreement for employment with this committee.

There is no sanction. He simply agrees in writing, not under oath, he agrees in writing to be bound by the rules of the Senate and of such committee. Those rules are going to be in conflict. The rules of the Senate are going to be in conflict with the rules of this committee by virtue of the language in this resolution, so we don't require much of such an employee. There is a second subparagraph.

Senator CHURCH. May I come in on your first observation?

Senator BYRD. May I just complete what I am saying here? There is no sanction against such employee. Many people would not suffer any pangs of conscience and would have few compunctions or anything to agreeing in writing to be bound by the rules of the Senate during and after their employment, they would be employed for 6 years and it was just a piece of paper that was signed. That gives me some difficulty then, continuing with the employee who may make such disclosures—on page 13, paragraph (e), I quote:

> If at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of a member, or removal from office or employment, in the case of an officer or employee.

Now that is a much looser and softer sanction against unauthorized disclosure by an employee of the Senate than is provided for in paragraph 4 of rule XXXVI which says in part: "Any officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer dismissal from the service of the Senate and to punishment for contempt," so the present standing rule provides a much stronger and more persuasive and inhibiting stand against the divulgence of confidential information by an employee of the Senate than would this resolution. So much for the employees.

Senator CHURCH. I agree with you. The sanction you suggested in the present rule is the proper section. I am not wedded to the present language in that regard and I share with you the feeling that there ought to be an adequate sanction against those who reveal confidential or classified information in an unauthorized manner, so I have no problem with the argument you make in that regard.

The agreement in writing that is provided for in section 5(b) simply corresponds with the practice that is now followed by the CIA. They enter into such an agreement. We were simply conforming the practice of the committee with the practice of the CIA in this regard. There are proposals that a criminal sanction be imposed against those who breach this agreement but I suggest to you that we should look very carefully at any criminal laws to be sure we specify what kinds of secrets shall be protected, otherwise we might find ourselves interfering with the free press and free speech amendments when we start to write criminal law. I will work to conform the present sections to the rules of the Senate. It is a very valid point.

The CHAIRMAN. I was just going to ask, Senator Church, in the final report of your committee, are there likely to be findings there that this committee ought to know about that would be helpful in drafting whatever we decide to come out with?

Senator CHURCH. Well, Senator, it is my view that all of the recommendations the committee had to make that are relevant to the need for such a standing committee were made at the time that we introduced our bill for that purpose and made our arguments for the standing committee. The final report will be very extensive. We are working closely with the executive to avoid any problems with respect to classified information, but I think we have already said what we had to say with respect to the need for a permanent committee.

Senator BYRD. Other areas of the resolution that trouble me are with respect to the unauthorized disclosure of information. I think that could be corrected and would have to be corrected.

For example, the committee or a Senator on the committee, could divulge classified information to another Senator who in turn could divulge such information to another Senator, who in turn could divulge such information to another Senator or to staff people. Of course, the requirement is here that if the Senator on the committee divulges such information to another Senator, he is supposed to report to the committee, identifying the Senator and the date and so on. But there is no requirement that the Senator who hears this second hand, or third hand or fourth hand do that and it would be unendorsable in any event. But I think it would have to be greatly tightened up there.

The procedures whereby the committee would make public, information, it seems to me requires a great deal of tightening up also, and also, the procedures for taking the matter to the Senate, require considerable study—at least eight rules, at least eight of the standing rules of the Senate will be changed, not for all times, but for purposes of implementation of this committee's work, beginning with rule XII, paragraph 3, which has to do with the ordering of a final vote on a matter. The resolution provides for a final vote at the expiration of 5 days or during that time after the Senate has debated the matter and, of course, there is no request for unanimous consent which is required under paragraph 3, rule XII, to be followed by a quorum, et cetera. That is not too bothersome, but that is one of the rules.

Now, rule XIII, which provides for a motion to reconsider is abrogated by this resolution; at least in some circumstances, it would be abrogated because at the expiration of the fifth day, if the Senate votes to disclose the information and the information is immediately disclosed, any Senator who might within two days of the legislative

session thereafter, upon the securing of additional information, want to change his mind on the vote, would be prohibited therefrom. There is no provision for such a contingency. One of the rules that would be vitiated by this measure, not vitiated as a standing rule, but vitiated in its purposes and functions in connection with the carrying out of this legislation would be rule XVI. This measure on page 15, section 11, requires authorization by law of any appropriation. It says:

> It shall not be in order in the Senate to consider any bill or resolution, or amendment thereto, or conference report thereon, which appropriates funds for any fiscal year beginning after September 30, 1976, to, or for the use of, any department or agency of the United States to carry out any of the following activities, unless such funds have been previously authorized by law to carry out such activity for such fiscal year.

This would rule out appropriations by continuing resolutions, so if we ran into a snag in the Senate with respect to authorization of appropriations for certain intelligence activities, such funding could not go forward under such continuing resolution. Moreover, rule XVI provide that new items of appropriations may be added to any general appropriations bill "if the same be moved by direction of a standing or select committee of the Senate or proposed in pursuance of an estimate submitted in pursuance of the law."

At the present time, it is not necessary that an appropriation be authorized by law. It is sufficient if such an appropriation, if such authorization has been moved by direction of a standing or select committee of the Senate, so that would no longer be possible.

Now, continuing, Rule XXII would be inoperative. The only actions that the Senate may take under this resolution are three: (1) to approve the publicizing of information; (2) to disprove the public disclosure of information; and (3) to commit the matter back to the committee. There is no provision to amend. There is no provision to postpone to a day certain. Rule XXIV as to appointment of committees would not be adhered to in the establishment of this committee and the designation of its committee members or its committee chairman.

Rule XXV would be amended in three or four places.

Rule XXIX, as to the printing of the papers, would give the Senate Committee on Rules and Administration jurisdiction over any motion to print documents, reports and other matters transmitted by either of the Executive departments, so what you not only have is the oversight committee taking a look at these papers, but this rule is not being changed by the resolution and, therefore, unless the Senator would otherwise order, any such order would be referred to the Committee on Rules and Administration so you have broadened the authorities for unauthorized disclosure of public information. We have talked about Senate rule XXXIII. I would call your attention to the Legislative Reorganization Act and in subparagraph (f), section 133 dealing with committee procedures, we find the following language:

> A measure or matter reported by any standing committee of the Senate [including the Committee on Appropriations] shall not be considered in the Senate unless the report of that committee upon that measure or matter has been available to the Members of the Senate for at least three calendar days [excluding Saturdays, Sundays, and legal holidays] prior to the consideration of that measure or matter in the Senate.

That provision may be waived by joint agreement by the majority or minority leader of the Senate, but in the event that they don't waive it, I think you would be in trouble because the resolution provides for only 5 days of consideration by the Senate beginning immediately upon the day subsequent to the day that that matter is reported to the Senate, so there would be a clamor for the execution of that requirement under the law which could not be waived simply by the majority leader alone, or by the minority leader alone.

Section 133(b) of the Legislative Reorganization Act of 1946 provides in part: "Each standing, select, or special committee of the Senate shall adopt rules not inconsistent with the standing rules of the Senate."

We are going to be adopting a good many rules here, this committee will, I assume it would be inconsistent with the standing rules of the Senate governing the procedure of such committee. I can see some problems with the new sunshine rule that the Senate has adopted.

Now, finally, under the Legislative Reorganization Act of 1946 as amended on page 98 of the manual, section 137, I read: "In any case in which a controversy arises as to the jurisdiction of any standing committee of the Senate with respect to any proposed legislation, the question of jurisdiction shall be decided by the presiding officer of the Senate, without debate, in favor of that committee which has jurisdiction over the subject matter which predominates in such proposed legislation; but such decision shall be subject to an appeal."

Now, I contemplate a good many jurisdictional questions and issues and debates arising if this legislation is passed as it is written. I think there will be challenges to the jurisdiction of this committee because the subject matter predominating in the proposed legislation would be claimed by your respective authorizing committees and thus precipitate controversy which, if not settled by the presiding officer, would be open to appeal and debate.

Now, these are but a few of the problems that we on the Rules Committee are going to have to grapple with. They are not insignificant ones. They are significant problems. When we bring this measure to the floor, all of these questions are going to be raised—unless they have been resolved beforehand—and the resolution will be subject to unlimited debate, and inasmuch as it proposes to change certain standing rules of the Senate, as now written, it would require two-thirds to invoke cloture. In any event, it is going to be difficult. Now, these are our problems. They bring me back to the point at which I started and that is, having had the opportunity to lay in the record some of our concerns, and some of the difficulties as I see them. I would hope that this transcript would be read by the members of your committee and the staffs so that perhaps a way can be found to circumvent these problem areas and approve some kind of a resolution that will meet the need for action.

Senator CHURCH. Senator, you can be assured of the members of the select committee staff, and I think also reflect the general view of the Senators on the select committee. I want to work together. You have pointed out various complications that are introduced by the establishment of a committee of this character. We want to work with you. We invite your suggestions in finding solutions to the various problems. I appreciate what you have said.

Senator BYRD. Thank you.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Thank you. I believe Senator Byrd has made a real contribution in pointing out the problems that this resolution will create when we get to the floor to consider this resolution as it now stands or as the committee may possibly amend it.

Senator Church, I might inquire if we are not presented here with not only a national problem, of course, but a congressional problem, for Congress as a whole, and not just a senatorial problem. Is that not recognized in providing for congressional oversight of intelligence agencies' activities?

Senator CHURCH. Yes, Senator, it is a congressional problem, yet however inadequately designed and empowered, an oversight committee could be established by the Senate itself and it could accomplish the oversight purpose. I think you would see that the Senate could act in its own capacity to establish such, and I would hope that we would do so. It may well be that afterward there will come a time when we will want to move from the Senate committee to a joint committee based upon a statute giving it definite powers. That is always open to us for the future.

Senator ALLEN. Wouldn't it be well to solve the problem in the first instance?

Senator CHURCH. I think now, it would not be possible to do it without putting the whole matter in serious jeopardy. If you let time pass and you do not seize the moment, I think we will fail the country.

Senator ALLEN. You think it might work so well in the Senate that the House would see the wisdom of the Senate procedure and follow suit; is that what you believe?

Senator CHURCH. Possibly, or following upon the proof of the merit of this proposal, a joint committee might be established rather than two committees, one in each House.

Senator ALLEN. Yes, I prefer the joint committee approach, but even if that is not the prevailing thought in the Congress, a concurrent resolution could provide for separate committees if that is the wish of the authors of the bill.

Senator CHURCH. Yes.

Senator ALLEN. So I just question if we ought to create these complications by setting up a single oversight committee in one body and still allow proliferation of committees over in the other body which would be conducive to the possibility of divided authority jurisdiction, with increased possibility of leaks of information?

Senator CHURCH. Senator, I think this is a case in which the Senate can lead the way. The present situation is chaotic.

Senator ALLEN. You say the present situation is chaotic, and you testified on your direct testimony that under the present situation, as many as half of the Members of Congress could get this information, but under this resolution, as Senator Byrd pointed out, the information that the committee has voted should not be disclosed. Yet, that same information could be imparted to any Senator who drops by the committee and asks for a briefing on intelligence and then that can be passed on ad infinitum on down to the 100th degree.

Senator CHURCH. Senator, I don't believe that there is any perfect solution to the question of keeping secrets. I do think the arrangement

we propose here would be a great improvement over the present law—I don't think that it guarantees that no secret will ever be divulged in the future, but then neither can the executive branch make such a guarantee. I have already pointed to what I think is by far the worse breach of security in my recollection. It came right out of the CIA itself at a cocktail party, I don't know which way we can give ourselves actual protection as far as secrets. I suggest this is a real improvement.

Senator ALLEN. Where a Senator can pass information on to any other Senator, that ought to be tied up.

Senator CHURCH. I think that the Senators are ultimately responsible to their own conscience for what they do in their effort to represent the people in their State and in their capacity as U.S. Senators. The speech and debate clause of the Constitution clearly allows any Senator to do what he thinks serves the national interest, and he isn't accountable in the courts for what he does. He may be censored by his own body for what he does, but I don't know how you get away from the proposition that ultimately each Senator has to make his own decision of what best serves his country and then take such consequences as his peers mete out to him if he violates the rules of the body.

Senator ALLEN. Well, with the proclivity of many Senators to pass information on, you don't think there is any danger to the national interest that sensitive matters that the committee voted not to disclose, could be tossed out to 100 Senators? You don't see any danger in that?

Senator CHURCH. I can only say that I have confidence in Members of the Senate, and I have particular confidence in members who would serve on this kind of committee. The members who have served on my committee and Senator Tower is the vice chairman, both on the Republican side and Democratic side, have demonstrated that such a committee would be highly responsible.

Senator ALLEN. Yes, I believe that is true, but what about other persons who might not be quite as sensitive to the need to keep this secret?

Senator CHURCH. The first obligation would fall on members of the committee to be careful about disseminating highly sensitive information that could injure the national security, making it the subject of gossip, I just don't think they would.

Senator ALLEN. I see. Now, your Select Committee on the Investigation of Intelligence Agencies which did truly an outstanding job, and for which I commend you, in a sense was carrying out an oversight function?

Senator CHURCH. Yes.

Senator ALLEN. How would you have felt if Senators had approached you and inquired of you as to what you have found out? Would you have imparted that information to them, or would you have been afraid of premature disclosure of that information?

Senator CHURCH. We follow a rule at our committee that any request for information from whatever source would be taken up by the committee and decided by the committee, so that individual members would not, on their own, make disclosures. That rule worked very well. It is consonant, incidentally, with the rule contained in Senate Resolution 400.

Senator ALLEN. I didn't understand what you said.

Senator CHURCH. A similar rule applies in Senate Resolution 400, where the right to disclose information or to make public information has to be decided by the majority.

Senator ALLEN. But they can disclose it to Senators, even though there has been a vote that it shall not be disclosed publicly, Senator Church?

Senator CHURCH. Senator Allen, the Joint Committee on Atomic Energy, recognizing that all Senators are equal and have a right to know, has a session from time to time to which Senators are invited and they are briefed with respect to information that the committee may have.

At times, it might be very appropriate for an oversight committee to call to the attention of the Armed Services Committee something that they have discovered that deals directly with the military in a way that the Armed Services Committee should know about. The same is true with foreign relations. I don't see this overnight committee as a vault that other committees cannot penetrate or other Senators cannot penetrate, but I do see it as the most regularized way I know of for a singular depository for highly sensitive information which now is being broadcast to any number of committees in the Congress.

Senator BYRD. Will you yield?

Senator ALLEN. Yes.

Senator BYRD. I would address my question not only to Senator Church, but Senator Ribicoff and Senator Huddleston if they care to comment. Our time is running short, so I will be very brief.

Why would it not be better to have language restricting or prohibiting disclosure by a Senator on that committee of information that the committee has decided not to make a disclosure, prohibiting any member from disclosing it, rather than writing into the law a specific authorization for members of the committee to tell other Members of the Senate when such information has been voted by the committee should not be disclosed? It would be difficult to enforce the sanctions in the proposed resolution. If the committee members are specifically authorized to tell other members who then in turn may tell other members, there would be no way to apply any sanctions, the committee member could say: "I told Senator Byrd and Senator Randolph was sitting with him and, you know, I have great confidence in those two West Virginians, and I also told Senator Allen from Alabama and I acted under the authorization of the resolution. It said that I could do this."

Senator CHURCH. I can only answer the question this way, and then I will defer to the other Senators present. It was our practice on the select committee to make no disclosures except upon vote of the committee and we received many requests and, to my knowledge, I think they were all denied.

Senator BYRD. I am talking about writing it into the legislation.

Senator CHURCH. This is the practice we followed.

Senator HUDDLESTON. I would like to make one comment. It seems like we are overlooking one provision which is found starting with line 2 on page 12. This type of disclosure shall be made only under such situation as the committee shall prescribe to protect the confidentiality of such information.

I can assure you, having served on the select committee, that the regulations that would be written by this committee would be such that

this type of information wouldn't be passed along in the Senate dining room and so forth.

Senator ALLEN. Of course. It ought not to be so wide open.

Senator HUDDLESTON. What we need to do is to balance out the needs of Members of the Senate is entitled to know something about intelligence, and to have information on matters that he is supposed to vote on, as Senator Clark brought out, in the operation of our Government against the need to protect certain information. It may be that the provision ought to be stricter, but it is a problem of balance.

Senator BYRD. The problem is that you have a conflict. On page 12 you say the committee may under such regulation prescribe to protect the confidentiality of such information and, in the committee they say well, we will have a regulation that says no member of this committee may tell any other Senator. That is not what the law was.

Senator RIBICOFF. If the Senator would yield, this is how that came up. What is in there now was not in the original bill presented by Senator Church. During the markup of the resolution, Senator Javits pointed out that we had one problem. Suppose the Senate went into secret session to determine whether there should be a disclosure of confidential information. Now, if you go into a secret session, where there will be a vote whether you do or do not disclose, shouldn't a Senator on one side or another, at the request of a colleague, be able to explain to him what the issue is?

A Senator would come up to one of the proponents or opponents of a position and say why is this, and you would have to give him the background because under rule XXXV, you can go into closed session, and then you can have a disclosure of what the facts are and what the issues are. That is why this provision was put in.

I have been listening very carefully, Senator Byrd, to your colloquy with Senator Church. If I may, I will comment for a few moments.

There are many points raised by Senator Byrd and other members of the committee that are very well taken. We have got a very complex situation and I think it would be most unfortunate if this session of the Congress, rather this session of the Senate for I cannot speak for the House, adjourned without establishing an intelligence oversight committee. It is obvious that there are many gray matters. It is obvious that the intelligence committee cannot foreclose the Armed Services Committee from doing its work and performing its functions. It is obvious that the Foreign Relations Committee must have information. It is obvious that the Judiciary Committee to handle its work with the FBI must have information.

There are gray areas here. As I listened to your colloquy with Senator Church, there isn't a single point that you made, in my opinion, that cannot be reconciled with the objectives of Senator Church, with the objectives of this resolution. If I may be so bold as to suggest, there should be a meeting of the respective staffs—including the majority and minority of the Rules Committee, the Church committee and Government Operations—to discuss these differences. I would assume that the members of the staff would be made aware of the thinking of the Rules Committee, the thinking of the Church committee and the thinking of Government Operations Committee, both majority and minority members. I know Senator Mansfield feels very

strongly about this. My feeling is that I have thoughts in my own mind that I would communicate to the staff. I think this could be worked out. I am pleased that you raised these points, but if you are going to have an intelligence committee that is going to work, its original charter should be a correct charter.

Senator ALLEN. I took exception to this provision in the Government Operations Committee. I pointed out where I thought it was a problem.

Senator RIBICOFF. Yes. Senator Mansfield said time and time again there are no such things as unequal Senators. Every Senator is equal. There is this question of confidentiality and the time of disclosure. There is a time a Senator has to know confidential information, especially if you are on the floor in a closed session. If this intelligence committee works, and it is going to work, there will be very few instances that you will have a confrontation between the executive branch and the legislative branch requiring closed sessions.

The testimony of practically everyone that came before the Government Operations Committee, and that included Mr. Colby, Mr. McCone, Mr. Helms, and Mr. Kissinger and also David Phillips, the president of the Association of Retired Intelligence Officers indicated that almost all feel that there should be one oversight committee on intelligence. It was practically unanimous. There was a question raised about a joint committee. Originally, I started out being in favor of a joint committee, but without casting any slights on the House at all, the difference between the Church committee and how it handled its inquiry and the other House becomes very obvious. Suppose this intelligence committee had authorizing power. The Senate and House handles this legislative business differently, and it is going to be very hard to have a joint committee make a determination on legislative business. The Senate has a constitutional responsibility to advice and consent. In order to get this intelligence committee going, it was my suggestion that we try to establish this Senate committee and set out that there were certain gray areas. We tried to settle all the problems that we could, but we request the new intelligence committee to report back to the Senate by July 1, 1977, its basic recommendations in many of the gray areas. Those of you who were at the White House at the time President Ford related what he had in mind with the intelligence committee might recall that I suggested to the President that he was going to run into a problem because of differences that I sensed in the Senate, the Church committee and Government Operations and that it would be wise to have a meeting between the executive branch and a representative of the Government Operations Committee, and the President agreed. The next morning, Mr. Marsh, Mr. Buchen, Mr. Kendall and Mr. Rogovin, who had been retained by the CIA, spent time with the staff and myself and Senator Percy to try to reconcile many of these problems.

What became obvious from the testimony our committees received from most everybody, people who had been involved in the CIA in the past and the present, was that the standing of our intelligence community in the Nation has been really shattered. This is tragic. There isn't a member of the Government Operations Committee that doesn't feel that we need a strong intelligence community, and Senator Church agrees with this. Practically everyone who appeared before

our committee, it was almost unanimous, felt it was very important to establish an oversight committee to restore the confidence of the Nation and the Congress and the intelligence community.

This was what was important. It became important as we started to consider this, that it not become a question of jurisdiction, a question of committee power, a question of committee prestige. After all, there isn't anything in here that gives any additional powers to the Government Operations Committee. We were given a charter by the Senate to report back by March 1. The committee worked continuously, we had 9 days of hearings, and ordered the resolution reported February 24. The attendance at the hearings and markup was excellent.

The Government Operations has members of the Armed Services, Foreign Relations and Judiciary Committees, although in all fairness, Senator McClellan was busy with his Appropriations Committee and he did not attend, I don't believe, many of the hearings or markup. The action of the committee was by a unanimous vote. I have yet to see a perfect bill come on the floor of the U.S. Senate. It would be unfortunate to have this a long, drawn out, drag out fight which would frustrate the establishment of a committee. It would reflect on the Senate and it would reflect upon the Intelligence Committee which would be hanging in mid-air. It would not be in the best interests of the Nation. I would hope, Mr. Chairman, that within the next few days you could designate someone from your staff to meet with someone from Senator Church's staff and someone from the Government Operations Committee staff to work out the questions in your mind.

The CHAIRMAN. I think that is a very good suggestion. I don't see how we can do it in the next few days. We can only go for a limited time for our hearings. We have to recess in 15 minutes. I am not sure we will be able to finish with Senator Church. We haven't been able to get to Senator Clark and Senator Allen didn't finish. We will have to recess until tomorrow and then recess to hear more witnesses on Monday. It will take several more days. Until that time, it would be premature to try to pull everyone together with ideas when we don't know ourselves precisely what we want to do based on the benefit of the people who are appearing before us. I appreciate what you are suggesting, though.

Senator ALLEN. In line with your general statement, I shall be brief, if there is not any more discussion during the questioning.

Senator Church, if this committee becomes the sole committee that has jurisdiction over the authorization process for the Intelligence Agency, how would you manage to give the committees who have been carrying out the authorization function and who need that information in preparing their bill for their programs, particularly the Armed Services preparing a defense program, how would you go about imparting the information that you have learned as to intelligence?

Senator CHURCH. Well, Senator, I think that could be handled by an appropriate amendment to this resolution in two ways: First, if the subject had to do with the authorization or the amount to be authorized for any given department or agency, that information could be transmitted to the Armed Services Committee, so that it would have available that piece of information to fill in with the other parts of the general authorization for military expenditures.

And I can see cases where it might be advisable to give such amendment an opportunity for the Armed Services Committee or the Judici-

ary Committee or even the Foreign Relations Committee in appropriate cases to assert current jurisdiction, that is to say, to review. There would be some cases of that character, I don't think many, for the 30-day period to review the bill that was reported out by the Intelligence Committee. There are ways of accommodation, I am sure, because we do that all the time.

Senator ALLEN. Isn't that a splintering of authority and jurisdiction—to put them back in the picture?

Senator CHURCH. No, Senator Allen, I would think we have exceptions in Senate Resolution 400 in the application, with the exception of the right of the many to pass judgment and right of authorization legislation, and with the exception of its jurisdiction over the CIA, which would be exclusive to the committee, that if other bills that it reports out, happen to be of interest to some standing committee that otherwise exercises jurisdiction, then this concurrent arrangement, I should think, would accommodate their need.

Senator ALLEN. Would you anticipate in your oversight responsibility that the intelligence agencies would submit to the committee general information as to projects or programs that they would like to institute and then have the committee say yes, you can do this one, and this one, but we do not approve of this one. Is that what you consider oversight would consist of in one phase?

Senator CHURCH. Senator, in most instances, established programs would be routinely approved, the only question being——

Senator ALLEN. It does take approval?

Senator CHURCH. I mean in this respect, the only question being how much money will be appropriated like every other committee when it determines how much money is to be authorized, it establishes a ceiling for the operation of this agency.

Senator ALLEN. I am not talking about money, I am talking about the propriety of the project.

Senator CHURCH. Where covert operations are concerned, which have to do not with the gathering of intelligence, but with secret intervention in the affairs of other countries to secure particular objectives, we think that this resolution is right in requiring that the Intelligence Committee be fully and promptly informed—not for the purpose of exercising in detail, but for the purpose of expressing its disagreement if indeed it disagrees.

As to the wisdom of such an operation so the President may be advised of the committee's views, we think that falls entirely within the scope of the constitutional provision that the Senate should exercise its proper role in foreign affairs.

Senator ALLEN. Would it be possible for intelligence agencies to go ahead, contrary to the expressed wishes of the committee?

Senator CHURCH. Well, the Constitution provides that the Senate gives its advice and consent. In order for this committee to give advice in the question of covert operations which relate to the foreign policy of this country and to our reputation in world affairs, to our moral influence in many, many cases, the committee would have to know what is going on.

Senator ALLEN. Would it be possible for it to go on with a program that many disagree with?

Senator CHURCH. Oh, sure. Surely. The President—if the money is available.

Senator ALLEN. That is the power of the purse. But you can't very well go on with it, if you cut off the funds?

Senator CHURCH. Senator, you know and I know from long experience in the Senate that it is only in extreme cases where there is a very profound disagreement between the Presidency and the Senate on an extreme course of action that we cut off the money. Only in such extreme cases would the committee so act and that would have to be decided by the Senate as a whole and indeed the Congress as a whole, so it is only a beginning process in the committee. Our major objective is to enable the committee to play a consultative role. The President would have been much better served if he had some political advice in the past, rather than relying on cloak-and-dagger men who love their work and who think exclusively in terms of how they can accomplish a given objective through the use of highly technical means in which they are infatuated. Good commonsense, political judgment could have kept us out of trouble in the past. The President is a very busy man and he might very well heed the political advice of a committee of this kind, but he would not be bound to it.

Senator ALLEN. Wouldn't it be possible this might be an extreme example, wouldn't it be possible for intelligence agencies to submit a plan to the committee, and the committee approve it, but one member felt so strongly that that was not the thing to do, that that information might be made available to the point where it would be public knowledge which would ruin the chance of carrying on such a covert operation?

Senator CHURCH. The present law requires that all significant new covert operations be reported to seven different committees of the Senate—six or eight different committees of the Congress, depending on how you count them, and your question could just as well be directed toward the present arrangement in which far more Senators and Representatives share these secrets and any one of them could go to the floor of the House and Senate and under the speech-and-debate clause make his disclosure.

Senator ALLEN. This thought occurs to me as to the thrust of the resolution, that in a sense, it makes a hybrid group out of the committee. I note that something over one-fourth of the space of the lines in the bill are devoted to the method of disclosing information and less space is devoted to methods of retaining and protecting the secrecy of information. I am wondering if we haven't combined here really an oversight committee plus the continued operation of the Select Committee on Investigation? I don't mean your particular committee, I mean that function.

Senator CHURCH. Senator, I think you are unduly suspicious of the language regarding disclosure. I think it operates both ways. It sets up limitations on disclosure, but I, for one, must admit that I am more concerned about the commission of the crimes that I have seen than about their exposure because I want to see this country stay free and from what I see in the abyss in which I looked this last year, we are in a serious problem if we are keeping secrets that ought not to be kept. There are legitimate secrets that ought to be kept. We are trying to strike a method for accomplishing both objectives. The oversight

committee would be charged with investigating and doing as the select committee was charged. That would be part of its oversight. If it finds wrongdoing, it is going to investigate and have subpena power to get at the facts and it must have the power to disclose the facts if in the judgment of the committee that best serves the public interest.

Senator ALLEN. Even if the disclosure of that information might give aid and comfort to potential adversaries?

Senator CHURCH. That is a judgment that reposes not exclusively with the President and his hierarchy. Under the Constitution, that also reposes in the Congress. It, too, is thought to have patriotic intention.

The CHAIRMAN. May I interrupt.

Senator ALLEN. One more question.

The CHAIRMAN. The Democratic caucus is meeting now, I am reminded. And if we finish that, could you be back in the morning because Senator Clark has some questions.

Senator CLARK. I will not take more than 3 minutes.

Senator ALLEN. Information is made available to Senators here as to these procedures. What about if a House Member came knocking at your door asking for a little briefing? Would that be made available to him?

Senator CHURCH. The practice of my committee has been not to pass information to the other body. The other body is competent to establish a committee of its own. It has the same basic authority.

Senator ALLEN. I have no other questions.

Senator CHURCH. It may keep its own house in such order as it chooses.

The CHAIRMAN. You don't mean to imply they are not a coequal body.

Senator CHURCH. No.

The CHAIRMAN. Senator Clark.

Senator CLARK. I want to join the others in complimenting you on the excellent job that your committee has done. I will be very brief. I just want to make one comment based on the observations here this morning and generally, and ask for your response.

As a result of your committee's investigation, we have learned of foreign assassination attempts, foreign assassination attempts that were unrelated to our central national security interests—we have learned that people at the very highest levels of the Government violated the law, in some cases people in the law enforcement agencies themselves.

We have learned through your investigation that the congressional oversight process has failed for 25 years. It seems to me that based on all that information, most of which has not been discussed here this morning, the choice before this committee and indeed before the whole Senate is whether, having gained that knowledge, we are prepared to do anything effective about it. It seems to me that is where we are at. And I suppose it is as apparent to you as it is to me, that there is a very good chance that we are not doing anything effective about it. Not that we are not going to do anything about it, but I think there is a good chance that we are not going to do anything effective about it. If that is the case, it will be very, very difficult for

people throughout this country who know that their representatives in Congress are aware of these inequities and illegalities, to learn that we are not prepared to take action. I wonder if our own constituents are really going to understand that we are not going to do anything effective here because of what we call jurisdictional problems or rules of the Senate?

I might say if the barnacles on our own institution have become so thick that even when we see illegalities and injustices we are not prepared to act, there is no doubt our citizens will lack confidence in us and with good reason.

Our rules are our creations of the Senate. They are not written in stone. They can be changed.

I would appreciate having your comments about what you think this country's attitude is going to be, having gained this information, if this body simply sits by and takes no action; no effective action?

Senator CHURCH. I concur wholeheartedly in everything that you have said, Senator Clark. I think it would be a national tragedy if this body were to fail to take effective action in the light of the tremendous numbers of abuses that we have uncovered in our investigation, a systematic disregard for the law, and arrogance of power that is enhanced by the secrecy which leaves those involved unaccountable. Despite all the violations of the law, I see the Executive taking no action, bringing no cases to court, issuing no indictments and holding no one responsible. This is the corruption of a lawful society that ultimately needs a commentary of Government. It is the Congress which must protect the constitutional system if the President can't lead. If Congress fails in that responsibility, then I think the outlook is bleak to this Republic.

Senator CLARK. Thank you. No other questions.

The CHAIRMAN. Thank you very much, Senator Church. You have been very helpful to the committee. We will stand in recess until 10 o'clock tomorrow morning and hopefully proceed with some of our colleagues who have been so patient as to sit here and wait.

[The committee recessed at 12:35 p.m. to reconvene at 10 a.m., Friday, April 2, 1976.]

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Approved For Release 2001/07/27 : CIA-RDP90-00735R000200160003-5

PROPOSED STANDING COMMITTEE ON INTELLIGENCE ACTIVITIES

FRIDAY, APRIL 2, 1976

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The committee met in room 301, Russell Senate Office Building, at 10:05 a.m., Hon. Howard W. Cannon (chairman) presiding.

Present: Senators Cannon, Pell, Allen, and Griffin.

Staff present: William McWhorter Cochrane, staff director; Chester H. Smith, chief counsel; Hugh Q. Alexander, senior counsel; John P. Coder, professional staff member; Dr. Floyd M. Riddick, professional staff member; Jack L. Sapp, professional staff member; Ray Nelson, professional staff member; Larry E. Smith, minority staff director; Andrew Gleason, minority counsel; Peggy Parrish, assistant chief clerk.

The CHAIRMAN. The committee will come to order.

We will have as our first witness this morning Senator Barry Goldwater.

Senator Goldwater, we are happy to hear from you today.

STATEMENT OF HON. BARRY GOLDWATER, RANKING MINORITY MEMBER OF THE COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES

Senator GOLDWATER. Mr. Chairman, my statement is not long.

Thank you for granting me the opportunity to testify before your committee.

Before going into the details of Senate Resolution 400, I would like to make some brief general comments.

In the last few years, the Congress has attempted to exert greater influence on the nature and conduct of our foreign policy.

What are the results?

Two good allies, Greece and Turkey, have been alienated.

Jewish immigration from Russia has been reduced.

The hands of our President have been tied in the day-to-day conduct of foreign policy.

U.S. intelligence is demoralized and its effectiveness greatly diminished.

Our allies seriously question America's reliability, if not our collective sanity.

Our adversaries take comfort in watching us tear ourselves apart.

And just in the interest of the committee, I have the front page of

the Washington Post of January 7, 1976. Three headlines paint a picture of American foreign policy today.

The left-hand column is entitled, "CIA Giving $6 Million to Italian Centrists."

In the middle, below the picture, "CIA Agent Welch Buried" with the subtitle, "Ford, Kissinger Among Mourners at Arlington."

On the right, the headline reads, "Two Soviet Ships Head for Angola."

Taken together the headlines describe an impotent giant—our Nation.

Disclosure of covert aid to Italy is the direct result of the Hughes amendment to the foreign aid bill adopted by the Senate on October 2, 1974.

Under its provisions, six committees of the Congress are required to be informed of any covert action. This means approximately 50 Senators and over 120 Congressmen may receive highly sensitive information on a covert action. It also means public disclosure is almost inevitable.

Worst of all, it gives a personal veto to any Member who disagrees with a covert action—with the veto coming in the form of subrosa release to the Washington Post or the New York Times.

Mr. Chairman, I shall oppose any general legislation dealing with the intelligence community which fails to provide for:

One, a repeal or severe modification of the Hughes amendment.

Two, criminal sanctions against any member of the intelligence community who releases classified information having voluntarily entered into a secrecy agreement.

Three, the same sanctions against any Member of Congress or staff who releases classified information.

And four, a flat prohibition against any intelligence agency revealing the name or identity of any foreign agent employed by the United States to the Congress or any of its committees or Members.

These vital matters need attention now, if we are to restore confidence in our intelligence services.

Here are my specific reasons for opposing Senate Resolution 400:

(1) The Senate needs one more standing committee about as much as the Nation needs more inflation. We are merely adding another layer on the cake.

Let me state that I rechecked the figures on "Hill" employment I had been using as late as yesterday. Instead of 17,000 staff members on the Hill, there are now 22,500 and we are not turning out any more work than when I first came here.

(2) The ratio of committee membership is 6 to 5. By longstanding precedent the majority party is entitled to a ratio on the standing committees equivalent to its ratio in the entire Senate. Moreover, requiring five minority members put an added burden on the minority party when the total number of slots is considered.

(3) Limiting the tenure of Senators to 6 years on the proposed commitee is an assault on the seniority system and, more important to me, inhibits the development of expertise.

(4) At variance with the practice of other standing committees, the proposed committee would have a chairman and a vice chairman. Also, unlike other standing committees, the chairman would be appointed

by the proposed committee instead of the entire Senate. The vice chairman, a member of the minority party, would have the authority to act for the chairman in his absence. This is contrary to Senate precedent where the ranking majority member acts for the chairman in his absence, or whoever is senior on the majority side. I believe the majority party should maintain control of any standing committee.

(5) No single committee of the Senate should be given legislative jurisdiction over all the intelligence activities of the U.S. Government. There is too much concentration of power. Moreover, this functional approach to jurisdiction tends to fragment the activities of the departments and agencies involved. The proposed committee would also have the authority to reorganize the intelligence activities of the U.S. Government and might do so without regard to departmental needs such as military R. & D.

(6) The requirement that the proposed committee "shall make periodic and regular reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States" strikes me as being open ended. The Senate as a whole has a poor track record of being able to maintain secrecy.

(7) Limiting the tenure of professional staff members to 6 years is contrary to the Legislative Reorganization Act of 1970, which is quoted in section 271.1 of the Senate Manual as follows:

> Professional staff members authorized by this subsection shall be appointed on a permanent basis, without regard to political affiliation, and solely on the basis of fitness to perform the duties of their respective positions.

Moreover, the best Senate staffs have at least a few persons of long service thereby providing continuity and reducing the possibility of legislative error.

(8) The proposed new committee would have ultimate authority to disclose any intelligence secrets by majority vote. No matter how strongly a Senator may feel about a foreign policy issue to overturn a policy through the disclosure of secrets can only lead to peril for the Nation. Such a provision may raise constitutional questions; questions I shall leave to those who are experts in constitutional law.

(9) Senate Resolution 400 states the following:

> The Committee on Intelligence Activities of the Senate, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States.

I submit that such regular and periodic reports will either be valueless or will compromise the Nation's security. If such reports are ever issued, inevitably there will be demands for greater and greater detail.

(10) On March 31 the Senate adopted Senate Resolution 109, creating a temporary select committee to study the Senate committee system in its entirety. I submit it would be folly for the Senate to create any new committees until the Select Committee on Jurisdiction has had a chance to do its work. If for no other reason, Senate Resolution 400 should be deferred during this session of the Congress.

(11) The Senate Select Committee on Intelligence Operations has yet to submit its final report. Under these circumstances, it seems strange to me that we should be creating a new standing committee before we have been provided with any justification.

I might say, Mr. Chairman, that the select committee is headed for a gigantic job in producing the final report. It will be a voluminous document and the problem of clearing information for security is great. I anticipate that a number of Senators on the committee will have individual views. Moreover, there may be a minority report. I believe it will be some time before we will see publication of the final report in its entirety.

Mr. Chairman, in appearing before your committee on a matter concerning the intelligence operations of our Nation, I would feel remiss if I did not state how proud I am of the men and women who constitute the intelligence community. Overall, their dedication and loyalty is of the highest order.

And, Mr. Chairman, I will repeat what I have said before. In my attending the meetings of the Select Committee on Intelligence, I cannot find the CIA at fault. When the chairman announced he would investigate the assassinations, I said it is going to wind up in one place: the White House. If there is fault to be found that is exactly where it is. There has been no indication that we need any more oversight of the CIA than we already have on the committee on which you and I serve. I am, frankly, opposed to any more Senate probing in this whole field.

Finally, I would like to urge this committee to proceed with the utmost deliberation in considering any changes involving the intelligence community. Through the actions of the media and some Members of the Congress, great damage has been done to the Nation's first line of defense: our intelligence services. Let us not compound the problem through any hasty actions.

Mr. Chairman, I want to thank you for the opportunity to appear.

The CHAIRMAN. Thank you, Senator Goldwater, I must say that I agree with a very substantial amount of the statement which you have read. On your point No. 2, the ratio of Committee membership, and limiting the tenure, in my own judgment would destroy the effectiveness of such a committee if we were to limit the tenure, because the Senators with expertise and experience would not be inclined to give up a position on some other committee if they were to be limited in their time of service on this committee. Therefore, you would have on that committee Senators who were not on the committees that need so much the basic information such as the Committees on Armed Services, Foreign Relations, Appropriations, and the Judiciary—if the FBI is to be left a part of this.

I agree with your suggestion on the ratio; that the traditional ratio ought to be maintained if we are going to establish a standing committee. That would likewise carry over to the staff. I think we would not be able to get staff with the expertise that should be built up if we were to have the staff limited to a 6-year tenure. Furthermore, we do point out, this would be contrary to the provisions of the Legislative Reorganization Act, and I don't think we could do that by simple resolution which is contrary to law.

Senator GOLDWATER. I agree with you. I would point out something that you are, no doubt, very well aware of, that it is almost impossible to find people who are experts in this field. They are working or retired. Very few Members of the Congress have ever had any exposure at all to the need of intelligence and the use of intelligence. Frankly,

with all due respects to my colleagues, I would hate to see a committee made up of people who had never been exposed to intelligence operations and methods and the need for maintaining confidential and secret material. That really bothers me.

The CHAIRMAN. One of the suggestions that has been voiced is the establishment of a select committee, much on the order of the Select Committee on Small Business, which was organized without legislative jurisdiction, but did have oversight responsibility. It had subpena power and was able to go in and exercise oversight responsibility, but the legislative authority still lay with the respective committees, and that, again, was a committee that cut across the jurisdictional lines of several other committees.

That suggestion went further along the lines of membership made up of three members from the Armed Services Committee, three members from the Foreign Relations Committee, and three members from the Appropriations Committee, and three members from the Judiciary—the latter retaining its jurisdiction over the FBI. Such select committee would have a customary ratio of two from the majority and one from the minority, which would provide the basic expertise from the authorizing committees, and which would make information available to them from the oversight activities. Have you given any thought to that sort of approach?

Senator GOLDWATER. Yes; I have, but the danger is that it would become a standing committee probably overly staffed. I would like to see us keep on the way we are. I found nothing that would indicate to me that we have to drastically change our Senate jurisdiction on intelligence, whether it be domestic or foreign.

The subcommittee of the Armed Services Committee, I feel, has given adequate attention to this. Frankly, as a member of it, I don't like to be briefed on material that is very sensitive. I don't care how careful you are, it is pretty hard to remember what is in the public domain and what is not. I think we have done a good job on the Armed Services Committee. Maybe we could have more meetings. The thing that I am afraid of, it happened in the House and it happened to some extent in the Senate, the leaking of very highly classified material that has done damage to us. During my last visit to NATO a few months ago, that was the top subject of conversation. They would ask, "What has gone wrong with you people?" Why are you destroying the intelligence-gathering organization which frankly they felt was approaching the best in the world.

The CHAIRMAN. It seems to me that part of the proposed resolution in Senate Resolution 400 is directed toward how you could make information available, rather than how you could keep classified information from being made readily available.

Senator Stennis made the suggestion that what we ought to have is perhaps the funding of a subcommittee within the respective committees, particularly the Armed Services Committee, to exercise oversight and provide for a permanent staff with expertise in that area.

Senator GOLDWATER. I urged Senator Stennis to do that about 6 months ago. I know that he has been considering it. I think that would be a logical and much better approach to any Senate oversight that would result from the creation of a whole new committee.

We have the additional problem, and I don't have to tell you, you are a member of the majority and you have far more responsibility on committees and subcommittees than I do as a member of the minority, but in the Armed Services alone on which we both serve, I am on four subcommittees and they meet practically every day and you can't get your job done. We spend all our time walking to the floor to vote on things that usually don't mean a damn thing to the country, so we are not getting our committee work done. One more committee isn't going to help a thing.

The CHAIRMAN. I think the hearings and the investigation of the Select Committee on Intelligence, of which you are a member, certainly has pointed up that there have been many abuses, and the question arises, how do you go about correcting them. Is the way to correct them to create another committee, which increases the proliferation of committees? I have generally opposed that procedure, and additional staffing, and adding to the committees over and above those recommended by the Legislative Reorganization Act. That act was to limit the committees and get them down to a manageable proportion. Since that act was passed, we have had a lot of pressure to increase the number of committees. We have increased them to some extent since that time.

You suggested that this matter should be deferred during this session. We made a commitment to report out something to the Senate by the 30th of April. I note that Senator Mansfield has gotten the unanimous consent agreement that they would bring up whatever is reported out for consideration on the Senate floor, whether it is Senate Resolution 400 or whatever it happens to be, on the 6th of May. So it looks like the matter will be brought up at that time. But, of course, we don't know, yet, the form in which it will actually be reported out of this committee. That is what we are trying to arrive at.

Senator GOLDWATER. The more the people see of this Senate Resolution 400, the more opposition there is considering it in its present form or in any other imaginable form. I would hope a group of us would approach Senator Mansfield with the idea of attempting a unanimous consent request to give you 30 more days or whatever you might need, if we fail in unanimous consent to try to do it by vote. I think this is far too important a matter to have anybody in the Senate feel that we have to legislate. I am completely convinced that we need no new legislation in this field.

The CHAIRMAN. We did get the added time requested. When our time was extended to April 8 because Judiciary asked for an extension, and because we are still going with our hearings and won't conclude them until next week, I took up with the leadership the need for a 30-day extension from the other day, so we could properly do our work, or else our work will be meaningless. Last night a unanimous consent was agreed to which would give us until the 30th of April to report back, which is the first Friday after we come back from the Easter recess. That would be our reporting date. It is my hope that we would be able to conclude our hearings next week. That would give us a period of time to try to arrive at an agreement in the committee as to what we can recommend.

I must say that I myself cannot recommend that we go along with Senate Resolution 400 as it is proposed here. While I do think we

need something, I certainly can't go for Senate Resolution 400 as now drafted and presented.

Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

Senator Goldwater, apparently because of your expertise and your background in your field and your patriotism, I have a very high respect for your views.

You have pointed a number of criticisms and objections to features of the resolution which I, in general, certainly agree with.

You do not feel that it would be possible for this committee or any committee to draft a resolution setting up an oversight committee with which you would agree or that you could support?

Senator GOLDWATER. I wouldn't make that flat statement. I haven't seen what you gentlemen are going to propose. My basic opposition is based on the fact that there is no reason for the Senate or the House to know in detail what the intelligence community is engaged in. I would much rather be engaged in covert actions than watch my grandchildren march off to war, and I think that is the alternative. The action that we took in Angola was made hopeless by the Hughes-Ryan amendment. It would not result in our going to war. Instead, it has resulted in a very embarrassing time for the United States. This is a field where too much congressional interference can be dangerous. I am going to lean against any general legislation, but I am not saying I won't support the resolution that you gentlemen report.

Senator ALLEN. You don't think another committee is necessary at this time?

Senator GOLDWATER. Not only do I think it isn't necessary, but I think it would be dangerous.

Senator ALLEN. Do you sense that there is a large body of public opinion in the country that feels that the Congress is out to destroy our Intelligence Agency?

Senator GOLDWATER. Well, that is an interesting question because we discussed this yesterday. I have had few letters on this whole subject in 1 year. I think the highest indication I have ever seen in my poll showed 7 percent of the American people had an interest in what we were doing relative to the intelligence community.

I believe the American people support the CIA. They are in support of the FBI and the DIA and all the other intelligence-gathering agencies. The average American can see just as much danger in a supposed American citizen spying on its own country as a Soviet spy in our mid-street and they should be ferreted out.

Senator ALLEN. You served on the Intelligence Committee?

Senator GOLDWATER. Yes.

Senator ALLEN. I sensed at the time the committee started this operation, there was a considerable hysteria abroad in the land that something needed to be done about our intelligence activity, but I must say the longer the select committee operated, the less support there seemed to be for making further disclosures and taking actions against, you might say, our intelligence agencies.

Do you feel that my sense of the situation has some validity?

Senator GOLDWATER. I think you are exactly accurate. Now, you recall the words of the resolution creating the select committee. Sub-

stantially, we were directed to look into reports that American citizens had been unduly spied on. This came out of a story in the New York Times. I think that was a perfectly proper resolution. But, the first thing we did was to get into the subject of foreign assassinations, and the minute we did that, I think we began to lose the interest of the American people. I don't say that Americans want to see people assassinated, but you remember the time that supposed attempts were made against Castro, we were nearly at war with Cuba. I was on duty myself. If we had put on one more airplane in Florida, it would have sunk. What would the Americans rather have, 1 dead dictator or 60,000 dead Americans?

Covert action is a necessary and powerful tool in averting war.

Senator ALLEN. I pointed out in the hearing yesterday to Senator Church that more than one-fourth of the resolution has to do not with keeping information secret, but with the methods by which information can be disclosed, and I suggested to him—it seemed to me that what we were setting up here would be a hybrid organization that on the one hand was seeking to ferret out information that it would promptly disclose and, at the same time, supposedly give oversight to the intelligence agencies.

I called his attention to the fact that even after the committee acted not to disclose information, a Senator could come and get secret information and have the power to pass it on to other Senators on down the line, and that this hardly seemed the way to keep sensitive information a secret.

Do you feel that national security is going to be protected if we have a committee of this sort abroad in the land?

Senator GOLDWATER. I don't see any way we can maintain any secrets. There is no way we can keep any secrets on the Hill as hard as we try. Of course, it is going to effect our national security if our enemies know what we are up to. The first thing a commander in the field wants is an estimate of the situation. What is the opponent going to do to me next. I am going to try to keep him from doing that. If he knows what I am going to do, I am dead before I start.

Senator ALLEN. There seems to be a strong push to ram this resolution on through. I am certainly delighted that the chairman has asked for more time in order for the committee to eliminate some of these bugs, or, as he points out, we are going to have to report out something under the mandate of the Senate, but I am hopeful that it will be a far different bill than the bill that has come to us. I was prepared to go along with your suggestion that we let this matter lie over until the next Congress and then, as a result of further consideration of the problem and then the possibly more efficient operation of the present oversight committees, based on past experience—I think they recognize they can improve their present oversight—and following your suggestion that the matter not be acted on in this Congress, we can really take a more objective view of it during the next Congress.

Senator GOLDWATER. Well. I am very hopeful that this committee will take the proper action. I have great confidence in the committee. I don't feel that there is any great sense of urgency that is going to require us to pass a bill before a date certain. This is too important to our country at a time—we have probably never been in as much peril as we are now.

Senator ALLEN. When do you think the report of the Select Committee on Intelligence Activity will be available?

Senator GOLDWATER. That is a good question. I can only tell you that I don't know. We have had meetings scheduled almost daily that are canceled. There will probably be three sections of the report: one containing staff reports, one on domestic activities, one on foreign military activities. We were supposed to have completed this report about a month ago. I see no possibility of publishing the entire report in the next 2 or 3 weeks.

Senator ALLEN. Has it been turned over to the printer? Has it been finally edited?

Senator GOLDWATER. Some of it has. The total amounts to about 2,500 typewritten pages. It will be a massive publication. It will probably rot in the basement of the Old Senate Office Building.

Senator ALLEN. You suggest that we ought to wait until this report is made available and also until after the committee studying the jurisdiction of committees has an opportunity to make some sort of recommendation, because this does certainly take away the jurisdiction of at least three standing committees in the Senate now.

Senator GOLDWATER. That is true.

Senator ALLEN. The fact that this bill has had to go not only to the Judiciary Committee and the Rules Committee and legitimate criticisms have been made of the bill would certainly indicate that if we just turn this jurisdiction over to one committee and concentrate it in one committee, we might find them recommending action that possibly might need more consideration.

Senator GOLDWATER. I would agree with that.

Senator ALLEN. I notice, too, from your statement the veto power that could be exercised by this committee, not only direct veto power over activities, but the one-man veto of the release of information which, of course, would torpedo any effort that the intelligence agencies would want to perform. That would certainly, it seems to me, be a legitimate criticism.

So you see no reason based on your service on the select committee, you see nothing in the present situation involving our intelligence agencies that demands this accelerated action with regard to this resolution? You don't think the national security will be jeopardized by the failure to act promptly on this resolution?

Senator GOLDWATER. I think we would be much better off without any action. If the subcommittee of the Armed Services Committee charged with oversight on the CIA is at fault, then we can call on the Armed Services Committee to correct that. I don't know who can be the judge of whether we are at fault or not. I am one member of that subcommittee who frankly—I don't want to know what the CIA is up to. The only way the CIA will get into trouble is through the White House, because when ordered they have to salute and go and do the job. That is where all the criticism of the CIA stems from.

Then you ask yourself: What would I have done if I were President at that time? It is a pretty interesting thing as to what you might have to do to overthrow a foreign government which might be a threat to our freedom and security. You don't talk to the editor of the New York Times, Newsweek, the Washington Post, Time, and Harpers. You talk to the National Security Council and your staff and the

Senate, which you are charged to do in the Constitution, and you make up your mind. If at any time during the discussion word gets out, then you abandon the whole thing. It can't be done unless there is secrecy.

Senator ALLEN. This bill would make it possible for every Member of the Senate to get sensitive information, information which the committees said should not be made public, information which shouldn't be published. I asked Senator Church of the select committee whether he thought any Senator could properly come and ask for information, but he did not seem to feel that any Senator would have that right, that the committee would decide whether or not it should be released, but it looked like you all had a much tighter restriction on the work of your committee than is provided for in this proposed oversight committee.

Senator GOLDWATER. I will say this for the committee: The Senate committee has done a pretty good job of keeping secrets. Of course, the House just blew it wide open. But I will remind you of the action that took place on the floor the morning we had the executive session to discuss the assassination. Through some very clever parliamentary maneuvering the report was issued in spite of the fact that the CIA objected to it because it did contain secret material. And, the President objected to the release, but we, in effect, violated a rule of the Senate and that document was published despite the Senate rules.

A committee cannot publish willy-nilly anything it wants to. It has to get permission of the Senate, and we didn't give it. That is a very interesting thing to read sometime and realize that by just getting the floor, we were prevented from stopping action on that report.

Senator GRIFFIN. Would the Senator yield?

Senator ALLEN. Yes.

Senator GRIFFIN. Before the Senator leaves that point, I would like to inquire about the provision to give the committee the power to, by majority vote, make public classified information. Yesterday when Senator Church was here, I asked him why was it necessary since he took the position that the committees already had that power—and that is his position, incidentally——

Senator GOLDWATER. Yes.

Senator GRIFFIN. He makes that assertion under the rules of the Senate even though the language is clearly to the contrary, so I can't understand how he—or the Parliamentarian—could arrive at that interpretation. They claim under the rules of the Senate, the committees have authority to make public information.

Senator GOLDWATER. That was a subject of long and hard debate. There were Members of both parties opposed to the release of the information. The chairman maintained we did have that power. I think the rules of the Senate are just as clear as print.

Senator GRIFFIN. Didn't the press have that assassination report before the Senate got through with its debate?

Senator GOLDWATER. Didn't the press?

Senator GRIFFIN. Yes.

Senator GOLDWATER. Yes; it was released immediately. The Senate under the rule, and Doc, back there, probably wrote it, the Senate sitting in a closed session to hear secret material has to vote whether or not that material can be released, and a vote was never taken. In fact,

a proposal was never made because we couldn't get the floor to make it. The leadership took care of that. The report was available almost as soon as the session closed. I think it was in the Press Gallery shortly after it closed.

Senator GRIFFIN. My impression is that they had it before the session was closed, but I don't think I could prove it.

Senator GOLDWATER. It could be.

Senator ALLEN. I think it was handed to the press, but it was embargoed.

Senator Goldwater, I know that you don't favor setting up an oversight committee, but assuming that one should be set up, should it not be a joint committee, joint with the House?

Senator GOLDWATER. I don't feel that I can comment on that. The way the House has abused this whole affair—I have got great confidence in the House. But there are more of them than there are of us, so they have more troublemakers than we have.

Senator ALLEN. What about the ratio situation?

Senator GOLDWATER. I would say it is about the same.

Senator ALLEN. What about those who see some defects legislative-wise in not having parallel committees?

Senator GOLDWATER. I don't think you will ever get away with one committee, and if you are going to wind up with two, I think you are safer with a joint committee.

Senator ALLEN. Thank you very much.

The CHAIRMAN. Senator Griffin.

Senator GRIFFIN. Senator Goldwater, you made one statement that bothers me. I think you said something along the line as a member of the Armed Services Oversight committee, you didn't want to know some of the things that the CIA was doing. I really think in all deference, and with respect for your viewpoint, that that is not a posture that the Senate can accept. I would like to think that there is a small group of very responsible colleagues who do know what is going on and I am willing to repose some trust in them, but if nobody in the Senate knows what the CIA is doing, then I really think we are in a position where we have to do something about it.

Senator GOLDWATER. We know generally what is going on. I am talking about the details of a clandestine or covert operation. I can think of one that I can't discuss that I had to be overseas in a battlefield to see and it is still not known. I don't think it should be.

I don't mean we shouldn't know how much money they spend. We know that every year, but getting into the details of agent operations—this doesn't take place in any country that I know of.

KGB is not held responsible to anybody except maybe the politburo, and I don't think intelligence should be bandied about and it would be.

Senator GRIFFIN. It is hard to accept the idea with the constitutional responsibility that the Congress has that we would accept the proposition that only people in the executive branch are able to handle intelligence or be conscious of it.

Senator GOLDWATER. I said before you came in that I am very pleased with what we have now, and if the Senate feels that the Armed Services Committee should be brought up to date on it, if they don't feel we are doing the job, then I think we should be talked to. As far as I am concerned, I think the subcommittee of the Armed Services Com-

mittee does the job it is supposed to do. As far as the Constitution, the intelligence problems we have could not have been foreseen by the Founding Fathers.

Senator GRIFFIN. This resolution goes so far that this constitutes the entire membership of the Senate: "The Committee on Intelligence Activity or any such member of such committee may make any information available to any other Member of the Senate."

Senator GOLDWATER. Or the public. It doesn't say that.

Senator GRIFFIN. I suppose a Senator is supposed to be slapped on the wrist if he makes it public, and the Committee on Standards and Conduct can find out about it—but to take the position that all 100 Senators know it and it can't get out is naive in the very extreme.

Senator GOLDWATER. It is a very dangerous resolution.

Senator GRIFFIN. Very dangerous.

The CHAIRMAN. The Senate has just approved Senate Resolution 109, which would establish a select committee to study the jurisdiction of committees, and report back to the Senate recommended revisions therein. Do you believe that that committee ought to take a look at this particular problem as well?

Senator GOLDWATER. I sure do. I talked to a member of the Foreign Relations Committee yesterday on that subject. You know, serving on the Armed Services Committee, they are slowly moving into our field. There are many other committees moving into the Armed Services Committee's jurisdiction. I would hate to think that other committees would undertake oversight over the intelligence community, but I think the purview and purpose of Senate Resolution 109 should certainly include a good hard look at this.

Senator GRIFFIN. Do yo think the Armed Services Committee could carry out its basic responsibility for defense and deciding on weapons systems if they weren't concurrently exercising jurisdiction over the CIA, and foreign intelligence to make a determination as to what was actually required?

Senator GOLDWATER. No; we couldn't. As you know, our rather regular CIA briefings on weapons and other matters are very important to us in our making decisions. There is some of that information that I think could be made public to the advantage of the United States. We have had long arguments on that. On the other hand there is much that we have to keep secret.

The CHAIRMAN. Senator Pell, do you have a question?

Senator PELL. No.

The CHAIRMAN. Thank you very much, Senator Goldwater. We appreciate you being here.

Senator GOLDWATER. Thank you.

The CHAIRMAN. Senator Huddleston.

STATEMENT OF HON. WALTER D. HUDDLESTON, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator HUDDLESTON. Mr. Chairman and members of the committee, while I principally want to address one specific section of the proposed Senate Resolution 400, I would like at the beginning to assert my strong belief that the formation of a separate intelligence oversight committee is essential.

I recognize the difficulties that formation of such a committee proposes. I recognize the conflicting jurisdictions that are involved. I think the manner in which the Chairman has detailed these conflicts has been very helpful. I recognize the questions regarding Senate rules which Senator Byrd delineated yesterday and the various problems that would have to be resolved before this committee could be formed. I know there are other problems, too. What is being proposed in Senate Resolution 400 is not the formation of an ordinary committee for an ordinary job. Oversight of the intelligence community of this Nation is vastly different from oversight of the Agriculture Department or HEW, or any other agency of the Government that operates in the open and operates pursuant to specific legislation and well within accepted constitutional bounds.

If one thing has been learned during the course of our investigation into the intelligence community, it is that this Nation does need a very strong and effective intelligence operation. This operation has to perform to a great extent in secrecy and to carry on activities that are contrary to some of the normal precepts of what democratic systems ought to carry on.

As a matter of fact, the entire operation of a secret agency is almost anathema to our Government, but in the intelligence area, secrecy is necessary and we have to recognize that.

Everybody in the Congress and certainly everybody in the Senate ought to understand that oversight of this type of operation is necessary. Indeed, those who are engaged in these services—nearly all of the agencies have indicated to us on the Select Committee that they would welcome better oversight, they would welcome better rules and regulations and laws to operate under. It is my judgment that the way to get better rules and better regulation and better laws is through a separate committee that has primary responsibility for that task, a committee that has the tools to complete its task, that has jurisdiction over the operations and can make proper recommendations to the Senate and to the Congress as to what ought to be done.

Moreover, I am particularly interested in one section of Senate Resolution 400, that which is sometimes referred to as the Roth-Huddleston amendment and which appears in section 7(c), (d) and (e) of the resolution as reported from the Committee on Government Operations.

As a member of the Senate Select Committee on Intelligence Activities, I have become more keenly aware than ever of the need for a strong and effective U.S. intelligence community, responsive to the needs of both national security and the Constitution. I am also, however, convinced that Congress must take upon its shoulders a larger responsibility for overseeing the activities of the various intelligence agencies through the creation of an effective oversight mechanism such as that proposed in Senate Resolution 400. This, in turn, requires that the Senate be advised of the general nature and extent of intelligence matters. And, that in turn, requires that the Senate keep secrets and control itself internally, which is what our amendment seeks to insure.

Basically, the Roth-Huddleston amendment is designed to provide a practical, workable system of sanctions which could be utilized should we have the unfortunate experience of an unauthorized dis-

closure of intelligence information which either the proposed Senate Intelligence Committee or the full Senate has determined should be kept secret pursuant to procedures recognized in Senate Resolution 400. Under our amendment, any unauthorized disclosure of information which the committee or the Senate had determined should be kept secret would have to be kept secret. It could not be publicly disclosed. Should there be a disclosure either by a member or by a staff aide, that person would be subject to sanctions. The authority to recommend sanctions would be placed in the Senate Select Committee on Standards and Conduct. In the case of an unauthorized disclosure, we would expect that the Select Committee would usually initiate an investigation of its own. In case it did not, however, either 5 members of the Intelligence Committee or 16 Members of the Senate could require such an investigation. The Committee on Standards and Conduct would, of course, be free to recommend a range of sanctions—or even no sanctions—depending upon what its investigation indicated was appropriate. In order for sanctions to be imposed, they would have to be approved by the full Senate.

Senator ALLEN. Excuse me for interrupting. What do you mean by "sanctions"? Give me two or three examples as to a Senator and staff member.

Senator HUDDLESTON. Sanctions, as to a Senator, could mean removing him from the committee, excluding access to certain information all the way to expulsion from the Senate.

Senator ALLEN. What about a staff member?

Senator HUDDLESTON. A staff member could be fired. He then, of course, would be subject to any other provision of the law that would apply to the situation.

Senator ALLEN. It could not go to the extent of a fine or imprisonment?

Senator HUDDLESTON. I am not sure that the Senate has the authority to provide for that in a resolution unless it is under its contempt authority.

I believe that our amendment is important for several reasons. As a member of the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, I have been extremely sensitive to the need to make more of our intelligence information available and yet at the same time to protect our sources, methods, means, and other very sensitive data.

Certainly our jobs as legislators and policymakers in a number of areas would be easier if we had access to the tremendous amount of information which our intelligence agencies collect from a variety of sources about a wide scope of subjects. There is no doubt in my mind that more of the information—more of the material which informs, evaluates and assesses—could be made available to Members of Congress and to the public. For that reason, I also recommended language which appears in section 4(a) of Senate Resolution 400 and which requires periodic reports by the Intelligence Committee to the full Senate.

On the other hand, it seems to me obvious that it is not only counterproductive but irresponsible to release information which could endanger the lives of those who collect and assemble our intelligence information, which could alert unfriendly nations to our methods of

collecting information so that they could render those methods ineffective, which could reveal certain technological capabilities which we have, or which could seriously harm our security. To determine when such information would have these results is not an easy task. A cursory reading of material may not reveal the implications which one with expertise in the field could glean. The way material is presented or the perspective can often give hints as to where the information was obtained. The proposed committee will have to deal with this matter. Indeed, along with oversight, the distinguishing between what information should be released and what should be closely held, will certainly be one of its prime concerns.

Thus, if we in Congress are to prove that we are capable of handling this information in a responsible manner, if we are to demonstrate that we can release that which should be released and protect that which must be protected, we must have viable and effective processes.

Our amendment seeks to provide such a process with regard to sanctions.

In reading it, one must recall that it goes hand in hand with the other provisions of the bill. Those provisions provide for sharing of information among Senators under supervised situations, and I think that ought to be stressed, for sharing among appropriate committees, for reference to the full Senate for resolution those cases where a small minority of Members believe that information should be released.

But, it seems of paramount importance to me that when the proposed intelligence committee or the full Senate determines that information is so sensitive that our Nation's security and public good demand it should be closely held, then to disregard this determination cannot go unnoticed.

Unfortunately. many of our citizens see Congress as a sieve for headline-grabbing data which adversely affects our Nation's interest and security. Unfortunately, our intelligence agencies are often reluctant to cooperate with Congress because they do not believe we either understand that certain secret information must be just that—secret—or that we are capable of containing it.

This is not to say that there is not an unnecessary degree of classification or to deny that there are instances of classification to protect mistakes and policy misjudgments. The whole matter of proper classification procedures is another issue that should be addressed by the Congress.

But our basic responsibility in this legislation is to balance the needs of legislators for information in order to perform their tasks and the needs of the people in a free and open society to know and understand the policies which their Government takes in their name against the need to protect that information upon which our Nation's security depends.

Mr. Chairman, I believe the ability of the Senate to exercise proper and responsible oversight of the Nation's intelligence activities will depend to a large extent on the degree to which we can discipline ourselves in the handling of sensitive information. The sanctions provisions of Senate Resolution 400 will go a long way toward assuring that discipline.

Mr. Chairman, I have, as you are aware, addressed letters to you relating to the reporting requirements of this bill and the membership

69-450 O - 76 - 10

requirements for the proposed committee. I will, with your permission, submit those for the record at this time, rather than comment on them.

[The letters referred to above follow:]

U.S. SENATE,
Washington, D.C., March 16, 1976.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in regard to section 6 of S. 2893 which, in slightly modified form, became section 4(a) of Senate Resolution 400.

This section requires the Committee on Intelligence Activities to make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies and to call to the attention of the Senate or any appropriate committee or committees of the Senate any matters which might require their attention.

I am enclosing a copy of my testimony before the Government Operations Committee in which I explained my reasons for proposing the section. I believe reports such as those required by the section could not only contribute to an understanding of the role of intelligence activities but also, in doing so, help restore confidence in these agencies.

I would, however, like to call your committee's attention to a particular paragraph on page three of my testimony in which I discussed what I thought the guidelines or parameters of the report should be. That paragraph reads as follows:

> "Secondly, I think it important to note that the provision does not envision a wholesale release of classified or sensitive information. The section itself directs that national security be protected. It does not contemplate the naming of agents, the revealing of specific details of on-going operations, which can only lead to undesirable results. Instead, it refers to reports on the 'nature and extent' of intelligence activities. Thus, it does contemplate the provision of *general* information on the total *range* of activities to *all* Senators. For those instances where classified materials might be involved, section 6 should be read in conjunction with section 11."

Should your committee decide to include section 4(a) in your version of the legislation, and I certainly hope you will, you might also want to consider inclusion of report language along the lines of the above paragraph, suggesting the parameters which are envisioned for the report.

Finally, I would like to refer to two statements in the Govenment Operations Committee report on this section (page 17 of Senate Report 94-675) which I believe are important. One indicates that the Government Operations Committee expects a minimum of one such report a year, with which I would certainly agree. The other notes that the section is to be read in conjunction with the sanctions provision, i.e., it is not to be read as a way of making disclosures which either should not be made or should be made in another manner. Furthermore, the report must be prepared and released in such a way as to protect national security.

Should you have any questions concerning the above, please do not hesitate to contact me.

Sincerely,

WALTER D. HUDDLESTON.

STATEMENT OF HON. WALTER D. HUDDLESTON BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS, FEBRUARY 6, 1976

Mr. Chairman, I am pleased to appear before the Committee on Government Operations this morning to testify on proposed legislation to establish a new Standing Committee of the Senate on Intelligence Activities.

My service on the Senate Select Committee on Intelligence Activities has served only to reinforce my commitment to a strong and effective intelligence community, responsive to the needs of both national security and the Constitution. That service has, however, convinced me that the Congress must take upon its shoulders a larger responsibility for overseeing the activities of the various intelligence agencies. This, in turn, requires that the Senate be advised of the general nature and extent of intelligence matters. And, that in turn, requires that the Senate keep secrets and control itself internally.

Section 6 of the legislation introduced by certain members of the Select Committee provides that:

"The Committee on Intelligence Activities of the Senate, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the committees or to other appropriate committee or committees of the Senate any matters deemed by the Committee on Intelligence Activities to require the immediate attention of the Senate or such other committee or committees. In making such reports, the committee shall proceed in such manner as will protect national security."

Within the Select Committee, this section has sometimes been referred to as the Huddleston amendment. As a result, I would like to make a few comments concerning it.

First, it is important, I believe, to note that the section is modeled on similar language pertaining to the Joint Committee on Atomic Energy, which deals with the very sensitive matter of development, use and control of atomic energy. Section 2252 of Title 42 of the U.S. Code established a Joint Committee on Atomic Energy. That section provides in pertinent part:

"The [Atomic Energy] Commission shall keep the Joint Committee fully and currently informed with respect to all of the commission's activities. The Department of Defense shall keep the Joint Committee fully and currently informed with respect to all matters within the Department of Defense relating to the development, utilization, or application of atomic energy. Any Government agency shall furnish any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy."

That part of the Atomic Energy Act funnels the information to the Committee. Perhaps more important for our purposes, however, is a latter portion of that same section which provides that:

"The members of the Joint Committee who are Members of the Senate shall from time to time report to the Senate . . .

Second, I think it important to note that the provision does not envision a wholesale release of classified or sensitive information. The section itself directs that national security be protected. It does not contemplate the naming of agents, the revealing of specific details of on-going operations, which can only lead to undesirable results. Instead, it refers to reports on the "nature and extent" of intelligence activities. Thus, it does contemplate the provision of *general* information on the total *range* of activities to *all* Senators. For those instances where classified materials might be involved, Section 6 should be read in conjunction with Section 11.

Perhaps the Angola situation best illustrates the need for Section 6. Some time ago, the Select Committee learned of the United States interest in Angola. We, of course, as we did throughout our investigation, kept this information in the strictest confidence, even to the point of not informing our fellow Senators. As the situation developed and information came from other sources, I saw conclusions being drawn on the basis of partial information and became increasingly aware of the real need of the Senate to know what was transpiring in Angola. Certainly, the U.S. Senate could have been provided more complete information on the situation—without naming contacts, sources of information, etc.

Third, I think it important to note that the reporting provision should not be read in a vacuum. Instead, Section 6 must be read in conjunction with Sections 7, 9 and 10, which involve the disclosure of information. Section 10, for example, seeks to create a process for the release of information, which the President and other specified members of the Executive Branch have objected to having disclosed. I believe your committee will want to examine this proposed process closely and perhaps strengthen it. And, for my own part, I would like to see it operate in conjunction with some type of sanctions for those who fail to honor and respect the responsibility which knowledge of sensitive matters of national security carries with it.

Certainly, it is reasonable to ask, "How will Congress act once it has received sensitive information?" I am deeply concerned about this issue. Indeed, it shares equally in importance with my desire to have the Senate fully informed so that it may intelligently decide questions of grave national importance. As one commentator so aptly put it recently, if Congress is to be taken seriously in exercising its oversight function, then it will have to devise ways for securing information

and for the orderly declassification and disclosure of information. I firmly believe that the task of dignifying and solemnizing this process falls squarely upon the shoulders of the Senate and that it must not flinch from this responsibility. Recently, I have at times had the feeling that we were all riding a "runaway horse"—with information galloping forth and no one able to pull in the reins. That must be eliminated and replaced with understanding and acceptance of the fact that some secrets have to be just that—secret.

That is why I urge that the Senate consider the Section 6 reporting provision in conjunction with its consideration of provisions dealing with disclosure. Such provisions are designed not only to accord more sanctity to the process of disclosure but also to delineate a method for dealing with this complex issue. I personally believe that once individual Senators become exposed to the problems of intelligence that the full burden of responsibility will be felt and appreciated. But, that cannot be left to chance or hope or wishful thinking.

Consequently, I believe it is incumbent upon the Senate to develop the internal sanctions it deems appropriate for unauthorized disclosure by its Members. Whether these should be fines, denial of access to classified materials, automatic expulsion from an intelligence committee should the person be a member, censure or even expulsion are matters of such grave import that they should receive the most studied and thoughtful consideration by the Senate. But, whatever the specifics decided upon, I believe it is imperative that the Senate adopt some standard which it believes in and will enforce with wisdom.

During most of the Select Committee's deliberations on proposed legislation, the draft contained the following provision regarding sanctions for Members who fail to comply with secrecy requirements:

"No Member of the Senate and no member of the staff of the Senate shall disclose outside the Senate any information conveyed to the Senate in closed session or otherwise made available to Members of the Senate in confidence by the Committee on Intelligence Activities, unless authorized by the Senate.

"The Committee on Intelligence Activities of the Senate shall refer to the Select Committee on Standards and Conduct of the Senate for investigation and other action (1) any disclosure outside the Committee on Intelligence Activities of the Senate, not authorized by such committee, of any information in the possession of or obtained by such committee relating to the activities of the Central Intelligence Agency or any other department or agency of the United States engaged in intelligence activities, or otherwise held in confidence by such committee; and (2) any disclosure outside the Senate, not authorized by the Senate, of any information conveyed to the Senate in closed session or otherwise made available to Members of the Senate in confidence by the Committee on Intelligence Activities. The Select Committee on Standards and Conduct shall investigate any breach of confidentiality referred to it pursuant to this subsection and shall recommend appropriate action, such as censure, or removal from office."

I regret that this language was dropped from S. 2893 as introduced, and I am recommending comparable language be included in any bill reported to the full Senate. With the Committee's permission, I will in the next few days offer some specific suggestions regarding the original language as well as some recommendations on my own, which will include a broader range of sanctions. If comparable language is not added within committee, it is my intention at this time to offer such language as an amendment when the bill reaches the floor. If we are serious about being responsible, we will impose on ourselves sanctions sufficient to guarantee that responsibility.

In addition, it is my intention to offer separate legislation which will provide criminal penalties for ex-employees of the intelligence agencies and the proposed intelligence committee who reveal classified information subsequent to their employment by the agency or committee. As you know, ex-employees of intelligence agencies are now sworn to secrecy through an employment contract. I do not believe this contractural arrangement is sufficient, as evidenced by the unhappy episodes of late in which ex-employees have revealed the names of present C.I.A. undercover agents. I would like to strengthen the bond of secrecy by providing criminal penalties for such unauthorized revelations of national security information.

The experiences of recent years have taught us that our institutions are strong and worthy of the confidence of the people. During this period, conflicts on policy issues have often taken the form of attacks on individual institutions. Many have been unmercifully buffeted. Yet, they have borne well the brunt of each sally. What is desperately needed now is a method of conciliation and mediation which

would turn the focus away from these entities themselves and on to the issues involved. If we in the Senate wish to enter a new era of sharing the burden in the foreign policy arena, part of our task is to show the American people by both word and deed that we understand the role we wish to fulfill and that we take our responsibility with the profound seriousness it demands. That will require knowledge—and it will require an appreciation for the manner in which that knowledge must be used.

U.S. SENATE,
Washington, D.C., March 17, 1976.

HON. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: While I co-sponsored the legislation recommended by the Select Committee on Intelligence Activities and co-sponsored Senate Resolution 400 as reported by the Committee on Government Operations, I have continuously been concerned about the proposal for rotating membership.

I recognize the desire for increased oversight of our intelligence operations and the fears of some that members of such a committee can, through long tenure, become captives of the agencies they are supposed to oversee. These are understandable reactions.

But, I also have some very deep concerns regarding the result of rotating memberships. Such a procedure is unusual in the Senate, and for obvious reasons. No matter what one may say, as a member of the Select Committee, I can assure you that it takes time and effort to understand the mechanisms and operations of the intelligence community and to evaluate the role the agencies are playing or should play in the wide-ranging defense and foreign policy fields. It is no secret that our intelligence agencies furnish vital information on an expansive number of subjects from analyses of Soviet military strength, background for SALT and other negotiations, materials on the intentions of various nations whose interests conflict with ours, to data on agricultural production and other resources. To understand not only how these agencies work but also to evaluate their contributions in these other fields is a time-consuming job. Yet, these are the activities which the members of the new committee are to oversee. And, as a result, the ordinary workload, if the committee is to carry out its duties in a comprehensive manner, must be viewed as a substantial one.

Furthermore, it should be remembered that this workload will be compounded by the fact that much of the material with which the committee must deal will be extremely sensitive and the utmost care and consideration will have to be given to determining what can be disclosed and what must remain secret. This could require protracted negotiations with the agencies and departments involved and could, under section 7 of S. Res. 400, result in new Senate proceedings.

In view of the workload, the fact that the proposed committee would be a "B" committee, which means that each member would continue to serve on two "A", or major committees, and the fact that each member would go on the committee knowing that his time was limited and possibly wondering if, in view of that, it might not be better to concentrate on other activities or to seek another "B" committee where he could begin to accumulate seniority, I have serious questions as to whether or not consistent and effective oversight will result, especially several years down the road when intelligence activities might not command quite the attention which they do today.

Consequently, after the Government Operations Committee raised the membership from nine to eleven, it occurred to me that a comprise position might be possible. Such a compromise is included in the attached amendment. Basically, it provides that five seats on the committee would be permanent. Six of the seats would rotate, two at the beginning of each Congress, with one new member of the majority and one new member of the minority coming on every two years.

The result would be some consistency and continuity through the minority of permanent seats, together with an infusion of new representatives every two years.

I believe such a procedure would satisfy a number of concerns both among those who fear a lack of continuity and expertise on the proposed committee and those who fear that the members will become too closely associated with the agencies involved. Membership would continue to be determined through normal committee assignment practices which should allow both parties to see that various interests are adequately represented.

I would, of course, be pleased to discuss this matter with you at your convenience.

Sincerely,

WALTER D. HUDDLESTON.

The CHAIRMAN. You had in your letter expressed reservations with a rotating membership on the Intelligence Committee and recommending that some seats would be permanent and some rotated. What did you have in mind there?

Senator HUDDLESTON. This was not one of the areas in which I was in total agreement with the recommending committee, that the membership of the proposed committee should be rotated. I recognize the problem that they are trying to avoid. They are seeking to prevent committee members from being so-called taken over by the agencies that they are supposed to supervise, but I think it has some disadvantage, too, as I outlined in my letter.

I was simply suggesting the possibility of considering a compromise. If you have an 11-member committee, you could have five permanent and six rotating seats, which would provide an opportunity to have a buildup of expertise and knowledge and at the same time assure of new and fresh people coming on the committee. I just suggested that as one way you might resolve that problem.

The CHAIRMAN. Do you believe it would be possible for the committee to build up a staff expertise if they were to limit the staff membership to 6 years?

Senator HUDDLESTON. I think it would be more difficult than the other way. That is not a provision I am strongly wedded to by any means. Certainly, there are some arguments both ways, because staff, also, can, of course, be pretty well captured.

Senator ALLEN. You may have been here when Senator Goldwater and I were discussing that. That proposal is in violation of existing law and we can't change existing law by resolution. It is contrary to the Legislative Reorganization Act.

Senator HUDDLESTON. I don't see that provision as being a key feature of the proposal.

Senator ALLEN. What about the proportion of the membership being different than that between the majority and minority parties in the Senate which is the traditional membership on the committee? Do you see any problem with that? What is the reason, the rationale?

Senator HUDDLESTON. The only reason I can see for it, as I mentioned earlier, is that we are trying to establish a special kind of independence, a special kind of committee that would enjoy the confidence of the entire Senate, both the minority side and the majority side. There, again, I don't think that is a major issue that couldn't be resolved one way or another without doing any harm to the overall purpose.

The CHAIRMAN. I don't know whether you were here when I posed the question to Senator Goldwater about some suggestions that had been made, one of those being in the nature of a select committee with the basic membership to be made with three members from Armed Services, three from Foreign Relations, three from Appropriations, and if the FBI were to be kept in, three from the Judiciary and possibly others at large, so that the committees that are involved essentially with intelligence information would have a ready source of information available.

Do you see any problem with that?

Senator HUDDLESTON. No, I see nothing wrong with that approach at all. I think committee membership ought to include membership from among those committees as has been the case with the select committee, if it were to be made into the law or the rule that it be made that way, I see nothing wrong with that so long as those chosen reflected a variety of views.

The CHAIRMAN. Senator Griffin?

Senator GRIFFIN. I don't have any questions. I want to thank our colleague for taking the time and coming and giving us the benefit of his background and recommendations.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

Senator Huddleston, I supported your sanction amendment in the Government Operations Committee. I feel it is a constructive amendment. It, of course, would not take the place, I assume, of criminal prosecution for disclosing information?

Senator HUDDLESTON. No, I think that is another question that has to do with our criminal law. There are those, including myself, who think there should be some movement in that direction. But, I think that has to be done in another vehicle.

Senator ALLEN. Now, on the one hand, you are providing for the security and the secrecy of information and then provide that this committee shall make periodic reports to the Senate. I assume that would not be of any sensitive or secret information, but just what sort of reports would you envision?

Senator HUDDLESTON. What I envision is that the committee, first of all, would establish a method under which these reports would be made, and this method, as the result, as the resolution says, would be "Consistent with the national security." But I think periodically, at least once a year, or even more often, the full Senate ought to be advised as to the general nature and extent of our intelligence operations, certainly not as to details regarding methods and sources, but on the scope of what we are doing in that field which is proper to reveal to the full body. This is part of what I think is necessary in order to have the confidence of the Senate that these agencies are being supervised and that oversight is on record.

Senator ALLEN. One thing that disturbs me is the fact that so much of the bill is devoted to the manner in which information can be disclosed, not the manner in which it can be kept secret. Over one-fourth of the bill has to do with the manner and method of disclosing information.

Do you feel that these provisions are constructed so that would allow this sensitive information, information that the committee has voted not to disclose—that despite that, it could be made available to any Senator on request?

Senator HUDDLESTON. First of all, as to the amount of space used on disclosure, I would just say to you that the establishment of procedures for disclosure requires more space. It requires more space and I think it is important that it be spelled out in greater detail and that the proper restrictions be included. As to that problem, you know that was debated quite a bit in the Government Operations Committee and what came out was somewhat different than what we proposed in the very beginning.

On the sanctions part, we had thought and had expected that the committee would establish a procedure under which any Member of the Senate could come for a briefing or could receive information under a very controlled situation and the information given would be consistent with what the committee felt was in the national interest and within protection of the national security to give. It was not anticipated that this would permit members of the committee in any other way to communicate with another Member. It was not anticipated that he would convey information over lunch or at a cocktail party or whatever. That is my judgment of the way it would still work.

Senator ALLEN. The bill says that it discloses, too.

Senator HUDDLESTON. That is correct, it changed what we—

Senator ALLEN. And that a Member could disclose it to another Senator, provided he told the committee he disclosed it, but as Senator Byrd pointed out yesterday, that second or third man would not have to make any report.

Senator HUDDLESTON. I would suggest that the provisions in the bill that authorize the committee to prescribe a system of protecting the confidentiality of information can work, I think the intent is to protect information at one point and yet to be prepared should there be a closed Senate session on this. As you know, such sessions have been somewhat rare, and usually held in connection with legislation.

What I would foresee is the committee would set up a procedure whereby a Senator could come to the committee and be briefed on the situations in such a way he would have the information needed.

Senator ALLEN. Well now, on the matter of jurisdiction of the committee, and the fact that the jurisdiction of the authorization of appropriation would be vested in the new committee, members of the Armed Services Committee have appeared before this committee and have argued that as they plan a defense program for our national security that they need as a factor in their deliberations to be on top of all of the intelligence information that is available.

How then, if all of this power is concentrated in a new committee, how would the committee—I assume you are advocating this—but how would that committee get around to imparting this information, shall I say, to the Armed Services Committee?

Senator HUDDLESTON. I do not think that this committee would interfere in any way with the requirements of the Armed Services Committee to be briefed on intelligence information when the CIA or DOD, or any other intelligence agency has information relating to weaponry, or potential strength of the adversary, or anything of this nature.

I do not think the proposed committee is to be a great repository of all of the intelligence information that is gathered by our agencies, and then dole it out. I do not see that at all. I think the proposed committee is designed to supervise the mechanics, the operation of the intelligence collecting process.

Senator ALLEN. In other words, the existing committees would keep what they have, and then we would create another committee with overall jurisdiction, is that right?

Senator HUDDLESTON. I would not say exactly keep what they have got. This resolution envisions an oversight committee having the authorization authority, but what is left for the Armed Forces Com-

mittee and other committees is certainly the ability to obtain information they need. There is simply no reason they cannot get that from the——

Senator ALLEN. But the Armed Service Committee would just get briefings; they would no longer have the oversight function?

Senator HUDDLESTON. As to the intelligence community?

Senator ALLEN. Yes.

Senator HUDDLESTON. Yes, sir.

Senator ALLEN. They could pick up a little information as they went along?

Senator HUDDLESTON. Pick up all of the information to perform their responsibilities. There would be now——

Senator ALLEN. Now, you foresee no problems with the fact that the House does not have any comparable committee to handle the authorization bills?

Senator HUDDLESTON. I would not say it does not present a problem, and as you know, most of us started out with the idea of a joint committee.

Senator ALLEN. Why was that abandoned?

Senator HUDDLESTON. Well, in the first place, a joint committee would not be a legislative committee. It cannot draft legislation and present it, and there are no authorities for funds whatever.

Second, I think Senator Goldwater pointed out that it is a little questionable now as to what cooperation you might get out of the House. Third, I think many of us decided the Senate itself, even if the House does nothing, can exercise this oversight responsibility through this type of committee.

Senator ALLEN. Do you feel as strongly today that there is need for a separate oversight committee such as envisioned by Senate Resolution 400, as you did 6 days ago?

Senator HUDDLESTON. Yes, sir.

Senator ALLEN. Thank you very much.

The CHAIRMAN. Senator Huddleston, do you think there needs to be some distinction made on the classification of information? For example, on a need-to-know basis, or information of a particular sensitive nature?

For example, members of the Armed Services Committee frequently receive briefings of a military classified nature, as well as intelligence classified nature which is on a sensitive basis, so that it is not even made a part of the classified record.

Senator HUDDLESTON. First of all, the whole matter of classification has to be dealt with somehow, that is, to make sure that material that is classified should be classified.

We all know the potential problem there, and the difficulties that have arisen over classification.

Second, there is a great deal of what you are saying going on now in all of the intelligence agencies. It presents some problems.

For instance, the so-called departmentalizing is one of the things that has made accountability so difficult to trace on many of these activities, because certain officials see only such a small part of the overall action.

I can certainly see that in some areas that there are those who do not want to know beyond what they need to know, and it does go on.

There is some justification for it, I think, but I would just say there is in it that inherent danger of blurring the whole line of accountability when you are trying to find out who is responsible for some action that may not have been proper.

The CHAIRMAN. Senator Griffin.

Senator GRIFFIN. No questions.

The CHAIRMAN. Thank you very much, Senator Huddleston. We appreciate having your views.

Senator Ribicoff.

STATEMENT OF HON. ABRAHAM RIBICOFF, CHAIRMAN OF THE COMMITTEE ON GOVERNMENT OPERATIONS

Senator RIBICOFF. Thank you very much, Mr. Chairman, and members of this committee, for giving me the opportunity to discuss Senate Resolution 400 with the membership.

Mr. Chairman, earlier this year the Government Operations Committee held 9 days of hearings on the issue of congressional oversight of the intelligence community. And, on the basis of these hearings, we came to the following conclusions which were in turn embodied in Senate Resolution 400, as reported by a unanimous vote of the committee:

First. There is a need for vigorous congressional oversight of the intelligence agencies. The disclosure of abuses in the intelligence community over the last few years has dramatized the need for vigorous congressional oversight to protect civil liberties at home and to insure that the Government's intelligence program is responsive to the will of the people. Congress cannot simply proceed in the future as if nothing has happened.

Second. A new standing Senate committee must be established to provide effective oversight of the intelligence agencies. The present committees have too many other important responsibilities to permit them to devote the time and resources necessary for really effective oversight.

Third. Oversight and legislative authority over the intelligence community should be centered in this new Senate committee.

If a new committee is forced to share legislative jurisdiction with a number of other committees it will not be able to do an effective job. There are now three committees in the Senate sharing legislative responsibility for oversight of the intelligence program.

Simply adding a fourth committee on top of these three would lead to a confusion of responsibility within the Senate, distrust between the executive branch and Congress, the possibility of unauthorized disclosure of sensitive information, and ultimately ineffectual congressional oversight.

It was the opinion of an overwhelming majority of the expert witnesses that testified before our committee that for national security and practical reasons, jurisdiction should be centered in as few committees as possible.

Fourth. Because the Government's intelligence activities both here and abroad are so interrelated, the new committee's jurisdiction must cover all agencies that engage in intelligence activities, including the

Departments of State, Defense, and Justice, and the Central Intelligence Agency.

It is very important that the new committee's jurisdiction include the intelligence activities of the FBI. The FBI is considered by the executive branch to be part of the intelligence community.

The FBI's conduct of counterintelligence is an integral part of the Government's overall national intelligence program.

They both involve the United States in important ways in foreign policy matters. Many of the abuses which the Church committee explored in its investigations involved the domestic intelligence activities of the FBI, including burglaries, mail openings, the counterintelligence program (Cointelpro), and the actions against Dr. Martin Luther King, Jr. More vigorous congressional oversight by a new committee would help prevent such abuses in the future.

The Government Operations Committee received testimony from members of the select committee that the FBI's domestic and foreign intelligence activities are frequently linked and that as a practical matter the Bureau's entire intelligence division and its budget may be separated from the remainder of the FBI's activities. Without jurisdiction over the FBI, the new committee's jurisdiction would be incomplete in a crucial respect.

Mr. Chairman, I believe that if the Senate is really serious about effective congressional oversight over the intelligence community it must create a new standing committee with primary responsibility for Senate oversight over the intelligence community.

I do not believe any less will work. I do not believe the public would understand why the Senate did any less.

It is for these reasons that the Government Operations Committee unanimously reported Senate Resolution 400 in its present form.

As chairman of the committee I strongly support this resolution.

Mr. Chairman, in my view it is absolutely essential that the new committee, if it is to be able to effectively oversee the intelligence community, have exclusive authorization authority over the intelligence activities within its jurisdiction.

In the area of legislative authority, however, there may be some cases where the jurisdiction of the new committee will overlap with the legislative interests of other committees, such as the area of defense, foreign relations, or the Nation's traditional law enforcement functions.

In these areas of overlap there can be somewhat greater latitude, as there is now where two committees share common interest in legislation.

With this in mind, the following changes in Senate Resolution 400, I believe would go a long way toward alleviating the concerns which have been expressed here in the last 2 days.

Mr. Chairman, I have the highest respect for every Member of the U.S. Senate, and I have the highest respect for this committee. I have been listening for the last 2 days to your questions, your thoughts and your concerns, and many of them have caused me concern as I have listened to the points that you have brought out, and were not brought out before our hearings by witnesses, or were not brought out in the markup session by other members of the committee.

So with that in mind, the last few days I have worked up this suggestion, which I would like to give to you for your consideration.

Strike section 3(c) of the bill.

The CHAIRMAN. Do you have a copy of that so that we could have it to follow you?

Senator RIBICOFF. Yes, I will read it, and this is sort of rough.

The CHAIRMAN. All right.

Senator RIBICOFF. Strike section 3(c). This is a provision that specifically defines the jurisdiction of the Armed Services, Foreign Relations, Judiciary, Government Operations Committee, by removing from these four committees all matters under the jurisdiction of the new Intelligence Committee.

Senator PELL. Excuse me, 3(c)?

Senator RIBICOFF. 3(c).

Senator PELL. Page 4, line 7?

Senator RIBICOFF. Page 5.

Senator PELL. It is not 3(c)——

Senator RIBICOFF. Page 5, line 9, Senator Pell.

Page 5, line 9.

The CHAIRMAN. I think we have two prints, and that is causing this difficulty. We have the Judiciary Committee print, which was reported to us from the——

Senator RIBICOFF. I see.

I do not know—do you know that the——

Senator GRIFFIN. Page 5, line 15, amending rule 25.

Senator RIBICOFF. Yes, paragraph 3 of rule 25.

Senator ALLEN. I believe I have got the draft you have. You said section 3(c)?

Senator RIBICOFF. 3(c), page 5, line 9.

Senator ALLEN. How far down would that go?

Senator RIBICOFF. I would say strike the whole 3(c), Senator Allen.

Senator PELL. All the way over through line 2 on page ——

Senator RIBICOFF. Excuse me?

Senator PELL. I just cannot follow. What page are you on, page 5?

Senator RIBICOFF. I think as I go along you will see the consequence.

Striking this provision which would give the Senate greater flexibility in working out the matters which fall in gray areas between the jurisdiction of the Intelligence Committee and other committees. It would remove any suggestion that the four other committees would have no opportunity to look at matters that affect the substantive areas under the jurisdiction of these committees.

Then I would add language to make it clear that no committee will be denied access to the product of the intelligence agencies. The Foreign Relations Committee especially has been disturbed, that they will no longer be obtaining briefings from the CIA on political developments of certain countries.

I was listening to your inquiry this morning, Senator Cannon, about sensitive information for the Armed Services Committee.

Three, remove from the new Intelligence Committee legislation or authorization jurisdiction, the FBI's domestic intelligence activities. These activities are conducted by the Internal Security Section of the Intelligence Division. They concern purely internal threats to the

Government. It is part of the FBI's intelligence operations most closely related to traditional law enforcement functions.

The Intelligence Committee would have jurisdiction over the Counter-Intelligence Section of the Intelligence Division, activity against agencies of foreign countries or U.S. citizens under the influence of foreign countries.

Four, add language specifically providing that in the area of intelligence, the committee with present jurisdiction in the area would continue to have concurrent oversight jurisdiction in the new committee.

For example, Armed Services could investigate the extent to which the DOD intelligence arm is providing the intelligence needed by that Department when shaping overall defense policy. That is just the question that you addressed yourself to 5 minutes ago, Mr. Chairman. Legislative, including authorization jurisdiction would remain in the new committee.

Also, provide for automatic referral of legislation whenever the chairman of any other committee feels that any legislation reported by the new Intelligence Committee falls within the gray area between the Intelligence Committee's jurisdiction and its own committee's jurisdiction, as amended by Senate Resolution 400.

Referral would be for a period of 30 days. The chairman of the Intelligence Committee would have the same right of referral. For example, if the Intelligence Committee reports legislation on the FBI's counterintelligence activities which will also affect the way the Department conducts its law enforcement activities, the bill would be automatically referred to the Judiciary Committee.

If the Judiciary Committee reports legislation involving national security wiretaps, the Intelligence Committee would get 30 days to look at the legislation, if it wishes.

Authorization legislation, and legislation affecting just the CIA, would be specifically exempted from this automatic referral provision.

Just one thought, Mr. Chairman. I was impressed with the witnesses that we had before us. I came to these hearings with a completely open mind. I had no preconceived ideas what should or should not be done.

I followed, as all of us did, the Church committee's findings, whatever was made public in the press. I followed very closely the discussion in the closed session of the Senate. I have been always convinced, and am convinced now, and always will be convinced that it is absolutely essential for the United States of America to have a strong and effective intelligence community.

There is no way a great power can operate in the world today without a strong intelligence community. Also, we have to be realistic that what transpired rightfully or wrongfully, before the Church and the Pike committees shattered the structure and confidence of the intelligence community in itself, and raised great doubts in the Congress and the American people.

I believe it is absolutely essential for us, as Senators, to do everything we can to reconstitute those agencies, and see that that confidence is restored.

What came through in testimony from men like Dean Rusk, former Attorney General Katzenbach, Mr. Philips, who represents an orga-

nization of some 600 former members of the CIA, Mr. Colby, Mr. Bundy, Clark Clifford, Mr. Helms, Mr. McCone, Secretary Kissinger, was that they all felt it was very important to have an oversight intelligence committee.

Their feeling, I think, was about unanimous, with the possible exception of a few witnesses including Senator Goldwater.

There was a wide feeling that you should not have four or five intelligence committees. I think that there is great concern about what has happened with the Hughes-Ryan bill, where so many committees, and so many people are briefed.

I think that Senator Allen was in the committee the morning that Secretary Kissinger testified how important it was to establish one committee.

Personally, I am convinced that the greatest problem we find ourselves in, as a nation, in international affairs today, is division and suspicion between the executive branch and the legislative branch.

You can say anything you want about the problems of America all over the world, but if there was ever a time that we had to have some understanding, and some sense of unity between the executive and legislative branch, it is now. There are those who recognize this and it is a majority. And listening to Mr. Colby, Mr. Helms, Mr. McCone and Mr. Phillips about the great uncertainties in the intelligence field, and how important it was to have the feeling and sense that the legislative branch was seeing eye to eye, and has established a relationship with the executive branch. For example, take Angola.

In discussion with representatives of the White House, the President asked Mr. Marsh, Mr. Rogovin, Mr. Buchen, and Mr. Kendall to come and talk with me, and we spent a good part of a morning and a good part of an afternoon to try to reconcile some of the differences and thinking of the executive branch, and the thinking of the legislative branch. I was anxious to get their point of view and talk about the nature of bureaucracy, and how it works, and how it was standing in the way between the President and the Congress and the Senate. I said then, and I say it again, now. I have always been amazed, from experience as a Governor, Member of Congress, a Secretary, and a Senator, what happens to a President who has been a Member of Congress.

Now, from my own close experience, I have seen President Kennedy, President Johnson, President Nixon, and President Ford, all of whom have come out of Congress. They start off with a desire and intention to have a close relationship with the men that they have known all of their years and worked with, but it is a strange thing. Within a short period of time after they become President of the United States, a chasm opens up between Congress and these men who know us personally and have worked with us personally, and know how the congressional system works.

And I think the only exception for these four men was a short period of time after President Kennedy's assassination and the Lyndon Johnson election in 1964.

Watching Lyndon Johnson work, he worked very closely, harmoniously, but once the 1964 election passed, the chasm opened up. And I said, you know, having been a Secretary and watching what happens with the President, having been a Senator, it is the staff—it is

the men who surround a President. They become bureaucratic and they have their own piece of turf themselves.

Every President is so busy, it is impossible for him to pay attention to all of the problems of 100 of us, and the 435 Members of the House. And before you know it, everybody—each man around him, everybody takes a little piece of turf and he guards it with his life. And before you know it, he separates the President and Congress. Tragically, I would say, only 1 percent of policy in the executive branch is ever made by a President of the United States.

It comes up, and everybody puts their initials on it, from the lowest all the way up to the Members of the Cabinet. And it is put on the President's desk and he sees 12 initials or 15 initials from people down the line. And he says, "My God, 15 people signed it, signed off on it. It must be OK." He says yes, too.

So the President often never gets the message of what is going on.

You start getting into a situation with the President, and the men with whom he should be getting along with where they are at cross-purposes to each other. Sometimes it does not make any difference, but when it comes to foreign policy, it becomes a tragedy.

Take Angola as a key case. Since the Congress voted against Angola, it would have been better off if we had never started Angola. It leaves the Secretary of State, the President, and the people of this country in a very bad position.

How do we conceive this Intelligence Committee working out?

We would conceive, in a case like Angola, that the head of CIA, if he was contemplating such an operation, would ask for a meeting with the Intelligence Committee, and he would tell them what he had in mind.

I would hope that the members of that Intelligence Committee who are selected would be as broad based and as cool a group of heads as we have in the U.S. Senate, and also reflect every point of view of the U.S. Senators. The head of CIA would tell them that this is what we intend to do in Angola, and then he would start getting the vibrations from this committee, either for or against.

If the vibrations and the discussion indicate to him that this group of men on an important operation felt it was a bad operation that would not get support, he would report back to his boss, the President of the United States, and tell him of the discussion. And in the case of an important matter—it would not happen too frequently—I can conceive of him calling this group of men to the White House for a discussion very privately. And if it was a matter like Angola that could not have either congressional support or public support, any President would be foolhardy to undertake it.

I think the men who have been engaged in the intelligence community section of the United States have said that they would not then engage in this type of an operation under such circumstances.

This is how I conceive of this working. I see this Intelligence Committee, as properly appointed and properly constituted and working, being a means and a method of really drawing together the Senate and the House—if the House has a comparable committee, which I would hope they would eventually have—with the executive branch, so we would again have a unified approach to world problems.

As long as the legislative and executive branch are divided on foreign policy, we are going to suffer one defeat after another. We are going to look bad in one place or another.

So it becomes very important to have an intelligence community.

It is also important for us to have an Intelligence Oversight Committee, and I would hope that this Rules Committee would see it in that light. There is an obligation for us to establish an Oversight Committee and shunt aside the question of legislative jealousy where one committee feels it is set aside.

I think, and may I say, Mr. Chairman, I do not think that Senate Resolution 400 really solves all the problems.

As a matter of fact, if you will, look at section 12, section 12 on page 15. When we were marking up this resolution, it became very obvious to me that there is no way that in Senate Resolution 400 we can solve all of the problems in intelligence.

So I thought priority should be given at this time to establishing a committee to let it get its feet wet, to let it start working. By the time this resolution passed and the committee was established, we would be through the July recess, the August recess, and there would not be very much work. And then we would have a new Senate in January.

I thought that this resolution would give an opportunity within the next few months for this committee to establish itself, to get a staff. There were many problems that remained open for clarification. And it was my suggestion that by July 1, 1977, the committee should report back to the Senate with some recommendations, along the lines of section 12, concerning the different problems that I saw in this whole field.

This subject is very complex. And the questions that you and Senator Byrd and Senator Allen and Senator Griffin and Senator Clark are asking are legitimate questions. There has to be an awful lot of work in the next 6 months or 1 year to try to find out where we are going. To the extent that you can clarify the questions in the Rules Committee, all very well and good. But whatever you came up with here, there would still be an awful lot of work for this Intelligence Committee to do to bring back to the Senate by July 1, 1977, recommendations. I am under no illusion, and I am not saying to you or the public, that we have sent you a perfect resolution that solves all of the problems of intelligence.

What I am asking this committee is to help in making sure that we do establish a meaningful Intelligence Committee in the Senate of the United States. We then are going to have to do a lot of work to improve the committee and make its oversight meaningful.

The CHAIRMAN. Thank you, Senator Ribicoff, for a very fine statement.

This has been really helpful to the committee. I have reviewed your section 12, and I think it is very good. I think it is something that needs doing—the items outlined there. But then the question arises in my mind, and I posed this earlier, as to whether or not these things could not be done by a select committee without legislative jurisdiction.

This is directed entirely toward recommendations. And what I am thinking of now, and I am interested as you are in trying to simplify the process, and I think we have far too many groups that the intelligence community has to be accountable to, as Director Bush pointed out the other day.

Senator RIBICOFF. This was a very practical approach, that we do it with a resolution, and I will tell you why.

I said to the representatives of the White House that we are in a situation where no one knows where we are going, and we are really going into new ground.

The resolution route is not binding on the President of the United States.

If we pass legislation that he signs, it would be binding on the President of the United States. If the President is unhappy with what this committee asks him to do under this resolution, he can refuse to undertake it.

I looked at this now as a shakedown cruise. I looked on the establishment of this committee and the period until July 1, 1977, as an opportunity for the Senate and the President, the Secretary of State, the intelligence community, to restore confidence in one another and the United States of America.

A resolution that is not binding on the President will help stop the confrontation. This resolution will help establish comity over the short-run between the executive branch and the U.S. Senate.

I would prefer a joint committee, but we are not ready for a joint committee. Because of what happened in the Pike committee, and the followup on the Pike committee, I do not know what the House is for, but we have got a responsibility as Senators, and the Senate is ready for the type of committee established in this resolution.

I would hope you would notice subsection 12(6), requires the committee to study the desirability of establishing a joint committee of the Senate and the House of Representatives. Eventually I would look forward to that happening, I would hope that by next July 1 there would be recommendations on this, and that before 1977 is up we then pass full legislation, Mr. Chairman, establishing a joint committee, and filling in all these gaps. But I think what would be tragic is if we went home and adjourned without passing Senate Resolution 400 establishing this oversight committee.

The CHAIRMAN. I was not relating my remarks of a few moments ago to an establishment of a joint committee, because I recognize the same problems that you do, that there is no way we can get a joint committee established this year.

I do think that perhaps in the long run, that perhaps a committee—joint committee, such as the Committee on Atomic Energy, might be the way to proceed, but what I was directing my remarks to, is that these things can be done by a select committee, and a select committee without legislative authority, and I think one of the big problems that we have here, if we could draw from the membership of the committees with jurisdiction in these respective areas to put on this oversight committee, give them oversight authority, and then through that authority they can furnish all information that is necessary for the authorizing committees, we would have a situation similar to that with the Select Committee on Small Business, which has oversight authority, but does not have legislative jurisdiction, and does not get into the problem with the cross jurisdictional aspect that other committees have with relation to small business.

Senator RIBICOFF. On that, Mr. Chairman, I was debating myself, for some time, spelling out in the resolution seats for members of the

Armed Services, Foreign Relations, and Judiciary, but then it was thought we would put it in the report. Page 12 of the report says the resolution reserves no seats on the committee on intelligence activities, for members of particular existing committees, such as Armed Services, Foreign Relations, and Judiciary that will continue, of course, to have an interest in the work of the Intelligence Committee. The report states, however, that it is expected some members of those committees will be chosen to serve on the new Intelligence Committee. As far as I am concerned, I would have no objection personally—I cannot talk for the entire committee—to spell out that there would be representation from these committees.

The thought that I have is that if it is a committee of 11, there ought to be at least 5 members of those 11 that come from Foreign Relations, Armed Services, and Judiciary——

The CHAIRMAN. And Appropriations.

Senator RIBICOFF. Appropriations, all right.

You could include Appropriations, but you must enlarge the committee, or you could do this, without enlarging the committee if the leadership could be thoughtful enough to designate somebody, so the committee would not be too large, who was on two committees, such as Appropriations and on Armed Services. You have got a lot of overlapping there.

I would hope that the committee would not be too big. I think this ought to be a small, tight committee. I would hope that the majority of that committee would come from other than those four committees, but I think this could be worked out. I think it becomes important that the members of this oversight committee not just be the chairmen of other committees.

I would try to do the selection not only on seniority and experience. There is wisdom in the leadership on both sides on these matters.

I think they understand the problem. This would be a really top-notch committee that could call upon a lot of wisdom in the Senate, a lot of experience, in manning it with the membership and the staff. But, as I say, if you want to take this idea on membership out of the report, and put it in the legislation that you report out, by saying how many Senators should come from other committees, personally, I would have no objection to that.

The CHAIRMAN. In light of the fact that you charged the committee with studying the desirability of changing any law, Senate rule, procedure, or any executive order, or so on, do you see any necessity for the requirement for the committee to have legislative jurisdiction, per se?

Senator RIBICOFF. If it does not have legislative jurisdiction not much is going to happen. The intelligence community should know that this committee is going to have some clout; that this is a committee that has got some authority; that this is a committee which it basically goes to. If you look at this proposed amendment, series of amendments, that I have suggested to you, I think you get some comity between it and the other committees. But I think that if it is just going to be a discussion group, where the intelligence community is going to come up and talk with them, not much is going to happen.

The committee is going to have to get right into the intelligence community to know how it works, and what it is made up of.

The CHAIRMAN. Give it subpena power.

Senator RIBICOFF. Yes.

The CHAIRMAN. They certainly can do that, and using again the example of the Select Committee on Small Business, they have contributed a very valuable service by subpenaing witnesses and holding extensive hearings.

Senator RIBICOFF. They have, but if you are going to restore the intelligence community's confidence in itself, and restore the status of the intelligence community, after what has passed, then I would hope that we would recognize the importance of the intelligence community to American society, and give this committee legislative jurisdiction. Where there is an overlap I have read from these notes what I would do. I will leave these notes with you. I do not think Mr. Riddick would have very much trouble putting it in better form.

The CHAIRMAN. Of course, I think, in fairness to the intelligence community, the remarks of Senator Goldwater were very pertinent, that the abuses that have been disclosed here really came out of the executive branch, and were not basically initiated by the intelligence community, as such.

I remember that during the earlier days of Watergate, some of the information that we discovered of improper activities by both the FBI and the CIA was through hearings that we were having with representatives present to testify, and we did discover the improper uses that were being made, and that information was relayed on to Senator Ervin.

Senator RIBICOFF. That is right.

Now, I think that Mr. Phillips, in testifying, said that as an agent out in the field for many years, he would like to feel that there was an intelligence committee, so that they would know what they were doing was always legal, or not legal.

I think there is something in here requiring all illegal actions to be reported to the committee. The provision in section 10(c), on page 14, says it is the sense of the Senate that each department, agency of the Government of the United States should report immediately upon discovery to the Committee on Intelligence Activities of the Senate any and all intelligence activities which constitute violations of the Constitution, and the rights of any person, any violation of law, or any violation of an Executive order, Presidential directive, or department or agency rule or regulation. Each department or agency should further report to such committee what actions have been taken, or are expected to be taken by the departments or agencies, with respect to such violations.

What you say is correct. What Senator Goldwater says is correct. It is a tough spot for a man to be in, to get an order from a Member of the Cabinet, or the President of the United States to do something that he knows is wrong.

That is a tough position for one to be in and, you know, you can feel for these men. That is why we think that once a proper oversight committee is established, members of the Executive branch would not be giving illegal orders.

We sat down after the Church committee was finished, and as a matter of fact, we went ahead before the Church committee was finished, since last fall Senator Mansfield indicated that the Church

committee would be finished by December 1, and that our committee should then come up with its recommendations by March 1.

Well, as the year went by, the Church committee had not finished. I did feel that there was an obligation on our part to go ahead any way, and we started our hearings before the Church committee finished. We had 9 days of hearings, and the committee then met in executive sessions, for markup. We went right along until we finished this. We finished by February 24, and we reported to the Senate by March 1.

But again, I want to try to be constructive here, just as you are in your committee.

I am not involved in any other of these committees. I am not a member of the Armed Services Committee. I am not a member of the Judiciary Committee, and I am not a member of the Foreign Relations Committee.

So I do not have any personal axe to grind in this, at all. I think we are all trying to do a job here.

The CHAIRMAN. Do you think there is any likelihood for there to be any information in the committee report from Senator Church's committee that ought to be available to the Senate before we act in this area?

Senator RIBICOFF. I do not know. Senator Church testified that he knew what was being done. Senator Church put in a bill of his own. We then exchanged views to a considerable extent on that bill.

I have told Senator Church what my thinking was as we went along. I told Senator Church of the changes we were making in the bill, and asked how he reacted to these changes.

We had discussions, and I said this was what we were thinking of, how does it strike you, and this is what the administration would like, how does it strike you, and as we went along Senator Church approved what we were doing, and the changes we were making.

Now, I assume that if there is something additional in the report of the select committee he would have said something to us, but he did not, and I was alert for it throughout his testimony, so I do not think there is anything additional.

The CHAIRMAN. I asked that question or someone did. But Senator Goldwater, who is a member of the committee, thought we ought to wait until we get the information out of the Select Committee, and both Senator Tower and Senator Goldwater indicate that it may be some time before the committee is able to finally agree on what they are going to report.

Senator RIBICOFF. The staff tells me that Senator Church testified yesterday that his testimony before the Government Operations reflects his thinking on the new committee. I was not here, so you will have to recall that yourself.

The CHAIRMAN. I am sure it reflected his thinking but, as I say, we know two members of the Select Committee do not agree with that, because one so testified, and we have the written statement of one who will testify on Monday. I do not know whether there are any others in the committee who feel the same.

Senator RIBICOFF. Senator Goldwater, I think, testified before our committee—Senator Tower did, too. They both made their positions known.

Now, naturally, if there is something new that the Senate ought to know, or this committee ought to know, then I think the Select Committee ought to tell you before you report back by April 30.

The CHAIRMAN. We are committed to report something.

Senator RIBICOFF. If there is something that you should know, I would hope the Church committee, long before the 30th of April, would make it available to this committee, even though they do not have completed the actual full report. They must know what they stand on at this time.

The CHAIRMAN. Senator Griffin.

Senator GRIFFIN. Senator Ribicoff, it has been said over and over again here that there would be no hope to the establishment of a joint committee, and why is that?

If a joint committee is the more appropriate route or approach to deal with this problem, why are we not trying that?

Senator RIBICOFF. I find little interest in the House in establishing a joint committee. There is great division.

Again I know, and you all know, by reading the papers, there is a great schism over the Pike committee's report, its procedures, its statements, and I do not think that his report has even been accepted. There is great uncertainty.

I think that when you come to the authorizing or legislative process the Senate and the House should be authorizing, legislating for its own body.

I do not think that there should come out of a joint committee a piece of legislation to be submitted to the Senate or to the House. Each House should do its own legislating, and then if there is a difference, we should reconcile them. Furthermore, I think the Senate has a greater obligation, under the advise and consent responsibilities, in a matter of foreign policy and foreign relations.

So while I was originally for a joint committee, I am not now. I would hope that if the House followed our lead and appointed a committee of its own, I would contemplate that we would work out an arrangement where the two committees could meet jointly, especially to be briefed on sensitive matters. And this could be done even though they would have separate authorizing and legislative authority.

Senator GRIFFIN. Yesterday, when Senator Church appeared, he said it may be afterwards there will come a time when we want to move from the Senate committee to a joint committee.

It seems that in his previous statement and his testimony before the committee, he also talked about the possibility of going to a joint committee.

Having been a Member of the House and having tried to think how they might view this situation, it would seem to me that after their experience with the Pike committee, they might be more likely to go the route of joint committee than to set up another committee. We are just displacing that out of hand, and yet everybody thinks that what we should ultimately end up with the concept of a joint committee.

Senator RIBICOFF. Mr. Chairman, I ask unanimous consent to submit at this time a memo on the advantages of a separate subcommittee rather than a joint Senate-House committee.

The CHAIRMAN. That may be made part of the record.

Senator RIBICOFF. This just gives the headings.

"Preserving Traditional Bicameral Structure;"
"Increased Opportunity for Independence Oversight;"
"Better Coordination With Other Committees."

You are talking now of coordinating the work of the Armed Services, Judiciary, Foreign Relations with the new committee. My proposition suggests an amendment along these lines. I think it would be a lot easier to have a separate Senate committee doing this coordination than a joint committee.

The Senate's unique role in foreign policy; the Senate committee can be established now; the Senate committee will still reduce proliferation of the committees, and the witnesses support separate committees.

I would like to submit this memorandum for the record.

The CHAIRMAN. So ordered.

[The memorandum referred to follows:]

SENATE INTELLIGENCE COMMITTEE OR JOINT HOUSE-SENATE INTELLIGENCE COMMITTEE

The following are advantages of creating a separate Senate committee rather than a joint House-Senate committee on intelligence:

Preserving Senate's independence

A separate Senate committee would preserve the traditional prerogatives of the Senate. It would not deprive the Senate—as a joint committee would—of its own independent decisionmaking powers. For example, the Senate Select Committee on Intelligence set different priorities and different procedures than the House Select Committee on Intelligence. One house may want to adopt different policies toward the treatment of secret information than the other. The Senate should not be put in the position of having to submerge its interests and priorities to the possibly predominant will of the House members serving on a joint committee.

Preserving traditional bicameral structure

A separate Senate committee preserves the traditional way in which the Senate operates. It would avoid having a single committee write legislation for both Houses. Only once in our history—with the JCAE—did the Senate agree to a joint legislative committee with the House. It did so then because of the need for secrecy, because of the highly complex nature of our nuclear program, and because of the tightly circumscribed nature of the subject matter. Although the need for secrecy is also present here, neither of the other considerations applies here—intelligence activities are not exceptionally technical, and they have extremely broad policy implications. (And secrecy is a matter which other Senate committees, such as Armed Services and Foreign Relations, have handled successfully for many years.)

Increased opportunity for independent oversight

By assuring involvement of at least one House and one Senate committee, separate committees reduce the danger that the entire Congressional oversight mechanism will be co-opted.

Better coordination with other Senate committees

A Senate committee enables the Senate to exercise complete internal control over how it wishes to exercise oversight, rather than being subject to the wishes or actions of the House or individual Congressmen. A Senate committee will be free to coordinate with other Senate committees, and individual Senators, as it deems best. If a joint committee were established, the ability of the Senators on the committee to coordinate with the rest of the Senate would be subject to the wishes of a joint committee, half of whose members are Congressmen. This problem could be especially acute when a Congressman is Chairman.

Senate's unique role in foreign policy

The Senate has unique responsibilities in the area of foreign relations not shared by the House. The Constitution places these special responsibilities on the Senate partly because the six year terms of its members gives it a unique per-

spective not shared by the House. A joint committee on intelligence would blur this special role of the Senate by placing it, as far as intelligence matters go, in a joint House-Senate committee.

Senate committee can be established now

As a practical matter the Senate could act quickly to create a Senate committee by resolution. A *joint* committee would require approval of the House with the chance of either delay or defeat of the bill. If the idea of a joint committee is rejected by the House, the momentum for change in the Senate may be lost and nothing will be done.

Senate committee will still reduce proliferation of committees

Part of the impetus for a joint committee has been a desire to reduce the number of committees dealing directly with sensitive intelligence information. Creation of separate Senate and House committees, though, will also significantly reduce the proliferation of committees; instead of 8 oversight committees, including the two select committees, there would be only 2.

Similarly, having separate committees does not necessarily mean that more members of Congress will have access to sensitive intelligence information. S. 2893 suggests a Senate committee composed of 9 members. If the House were to establish a committee with the same number of members, the total (18) would be the same as the present Joint Committee on Atomic Energy. Thus, it is possible to keep the number of legislators who deal with intelligence information small, while still maintaining separate committees.

Witnesses support for separate committees

Support for separate committees came from a number of sources. Senators Cranston, Church, and Baker expressed support for separate committees. Said Senator Baker: "I rather suspect, in the long term, that the Congress would be happier with and would have a better experience with the traditional system of House and Senate committees." (R.T. 103).

The CHAIRMAN. Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

In connection with your testimony, you mentioned there were three committees sharing legislative responsibility—Appropriations also shares the responsibility.

Senator RIBICOFF. Yes; you never take away Appropriations in anything. They should know everything. That is right.

Senator GRIFFIN. So there are really four committees that you are discussing in sharing legislative responsibility?

Senator RIBICOFF. That is right.

Senator GRIFFIN. In connection with your thought about Angola, I question whether we could have voted on the Angola situation. We really could not, depending on who the people were on the committee, the members of the Intelligence Committee, the senior Senators in general and presumably who they would be.

Senator RIBICOFF. I would hope so.

Senator PELL. They would be supportive.

Senator RIBICOFF. I would hope that the new Intelligence Committee would take into account the full range of Senate thinking and philosophy. In order for this committee to work, it should have that type of membership and makeup. Of course, it is up to the leadership to understand that, and I think they understand, that in setting up the committee the differences in seniority, philosophy, and such between all of us should be rejected. This would be so if this is going to work, if, as I indicated before, we are going to get back again to a sense of comity in foreign policy between executive and legislative branches. I think this committee probably is as important as any committee in the Congress to try to make that work.

Senator PELL. Should, presumably, and with the views of some of our members, with emphasis to have a close lip with respect to this review?

Senator RIBICOFF. That is right. I would say, Senator Pell, that there is not one of us, you know, even though we do not talk about it publicly, who does not know who would keep their mouth closed. We do not have to get back to the FBI. You have got a pretty good idea who you can trust, and who can keep a secret, and who cannot.

It is up to the leadership to do the selection.

They have got the responsibility to pick those 11 men, or whatever number, Democrats and Republicans, and to make sure you have got the type of men that are competent.

Senator PELL. As de facto representation from the Standards Committee, if it was like the previous Oversight Committee, it would likely be the senior men——

Senator RIBICOFF. I would hope it would not be the senior men.

Senator PELL. Should you spell that out in the report language?

Senator RIBICOFF. If you want to; yes, I have no objection to it. I asked Senator Mansfield, how he saw the makeup of this Intelligence Committee, and if I recall his testimony, he said he would like to see it made up of a complete spectrum of philosophies and thinkings and seniority. Young men, older men, and so it would really be representative of the Senate, as a whole. That was the majority leader speaking how he would view the makeup.

I would say the problem that all of us have is to try, when we get a piece of legislation, to think not only principles, but of what kind of bill can you get together to get 51 votes.

Everyone after a while tries to find out what kind of a bill can you get together to get two-thirds, and this is a problem that we all face. But I would say that you could get 11 men on that committee, so that when the Director of CIA, the Secretary of State talks about a matter, you get the thinking of how that Senate is going to divide. That is why I would much rather have a separate committee, for I think that we are a lot more sensitive to one another in this body of 100 than a committee would if it were trying to deal with 535.

Senator PELL. One other area here is this question about the eventual division of the CIA from other operational activities. We have not had the intelligence collection, the overt, which is a majority of the efforts now, and also the use of satellites as opposed to the rather small segment of the budget devoted to covert activities, which I believe, according to testimony of Senator Church, would be probably recommended to separate in their final recommendation, I was wondering if your committee had focused on that?

Senator RIBICOFF. We did, and I personally stated that the one thing that we did not want to do was reorganize the entire intelligence community.

There was no question that in the future that would have to be taken. I think, if you look on page 16, paragraph 3 refers to the organization of intelligence activities, within the executive branch to maximize the effectiveness of the conduct, oversight, and the accountability of intelligence activities; to reduce duplication or overlap; and to improve the morale of the personnel of the foreign intelligence agencies, I was under no illusion, Senator Pell, and I did not think the Government

Operations Committee was, that after 9 days of hearings we could reorganize the whole intelligence establishment.

I think there has to be a reorganization, but that is going to be a tough job, and if we are going to do it, we ought to do it right.

I would say it is going to take you a whole year of the committee's work to try to do it, and I was not going to personally try to undertake for the Government Operations Committee to reorganizing the intelligence community, just to set up an oversight committee.

Senator PELL. You would have no objection to insertion of these things?

Senator RIBICOFF. Not at all; no.

Senator PELL. To consideration of the separation of operational activities in the intelligence collection?

Senator RIBICOFF. I do not have an objection at all, Senator Pell. You could, when you get your resolution out, put this in the study section. If your thinking goes that way, and the committee backs you up, I would welcome it.

Senator PELL. Thank you very much.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

Senator Ribicoff, I have the honor to serve on the Government Operations Committee, and under your able chairmanship, and I certainly want to commend you for the work of your committee, and the in-depth investigations and hearings that you held, and the dedicated fashion with which you held the hearings.

It has always been my observation that you are an extremely fair man, and that you lean over backwards to accommodate opposing views. You are a most able and dedicated man, and I sincerely enjoyed your conduct of these hearings by the Government Operations Committee.

Senator RIBICOFF. Thank you very much.

Senator ALLEN. This has been an outstanding job.

You did mention the fact that Secretary Kissinger testified, and I asked him this question: "Do you think then—on page 426 of the hearing—do you think that the creation of an oversight committee will be in the interests of national security?"

Partly on the recommendation of Secretary Kissinger, and the other witnesses that have experience background and expertise in this field, I did vote in the committee for this resolution, reserving, of course, the right to try to accommodate the resolution to my views of what would be in the national interest and——

Senator RIBICOFF. I think you may recall, Senator Allen, that during the discussion I made the same statement, if there were a few things that you were unhappy with, you would have another crack in the Rules Committee.

Senator ALLEN. Well, there are some things I am unhappy with, and I feel that I could outline them, but it would take considerable time.

One thing I would like to inquire about is your testimony about section 12, calling for the study.

Certainly, that is a constructive suggestion, but what occurs to me is that what is being suggested is that we set up this committee, give it all the power the resolution provides, including exclusive jurisdic-

tion in the authorization process, and then say well, now, let us study and see what it is all about, and what we are supposed to do, and how we are supposed to do it. It seems to me to be running the risk of getting the cart before the horse.

If the committee has to conduct in-depth investigations to find out what it is all about, how it is going to operate, and how it is going to be measured with the present process, legislative process and, its conduct, oversight of the intelligence agencies, would it not be best to make this study before the committee is set up, to determine—and you might also put an item there to study whether or not a separate oversight committee should in fact be established—whether it not be best to make the study before the setting up of the committee?

Senator RIBICOFF. No, because right now I do not think that we have got a committee in the Congress that has that capability.

I would say if Government Operations were to reorganize the intelligence community, we could do nothing else for a couple of years.

I do not look at that as an ongoing problem to be done. My thought was that you were going to get this committee established. It is going to be in an advisory position for about 6 to 9 months before anything takes place.

We are going to get a staff, and I am assuming a good staff, and then they are going to have to find out, with their rules and regulations, what this is all about, and they should be in a better position than any other group in the Senate to come up with recommendations as to what should be done.

They will be living with all of the intelligence community, with the CIA, Department of Defense, FBI, and they will know these people. They will be coordinated, and it will not be a question that each committee will have a different part of the intelligence community with a responsibility to determine how best to operate a portion of the intelligence community. It would be just for that reason that I did not feel that Government Operations should go into all this. I did not think that we were competent at this time, and I also felt that this is going to take a considerable period of time. But in the meanwhile I do believe for the sake of our Nation that there should be established a rapport between the committees of the United States Senate and the executive branch in this field.

I think this is the most important thing that we can do for the future of our country. It certainly does not exist now. There is suspicion, the question of going public on everything, tearing ourselves down.

I just have finished reading Hendrick Smith, "The Russians," and it is a fascinating book, and the problems they have and how they operate. They are not 10 feet at all, but whatever they do outwardly, they do outwardly as one, and they present themselves to the world as a juggernaut. They have plenty of problems technologically, agriculturally. You realize through Hendrick Smith's book that there is no comparison between the United States' overall capability and capacities and the Soviet Union's.

But, yet, as far as policy to the entire world is concerned, there is always one Soviet policy. They are always impressive because they always act as one, in unison and in harmony.

We, however, have lost that, and it is tragic. It is tragic because I do not think that a nation can keep itself tied together if it is clawing at its own entrails, and we are clawing at each other's entrails. Every country makes mistakes. Every organization makes mistakes. Every political system may be making mistakes. And we are going to continue to make mistakes.

Senator PELL. Each time we make a mistake, ought it be advertised to the world?

Senator RIBICOFF. No, but you are not going to be able, in an open society, to be able to sweep all of it under the rug. However, I would hope that that intelligence committee would prevent mistakes from being made, would get this esprit and the sense of confidence that basically we have impact on American policy in the Senate of the United States and are taken into account by the executive branch. Arthur Vandenberg said to President Truman, that if it is to be true bipartisanship, we have to be in on the takeoff as well as the landing. It is my feeling at the present time that once we have had a sense of confidence that these were 11 men in whom we all had confidence and who were in on these things we have been discussing, I think you will find that a different spirit exists today in this way.

I think the establishment of this committee is more important for that than anything else. You may say it is not substantive, but it is the frame of mind. And I think what this country wants—I think if there is anything this country wants at the present time is a sense of unity. We want to have that, and I would hope after the elections are over, whoever the President of the United States is, that we can find a way to end discord between the Congress and the President. Not that we have to agree with each other, but that we have a sense of unity on important matters. And I happen to think personally the establishment of this Intelligence Oversight Committee is one of the methods that we have to do this. I am saying it is only one, but I would think it would go a long way.

The CHAIRMAN. Well, now, do you feel that it is absolutely essential to the proper function of the committee in the performance of its desired role that it have the authorization jurisdiction over that?

Senator RIBICOFF. Yes, I do.

As I listened to the discussion within the last 2 days, there are some things such as the suggestion that I have submitted to this committee, that should be considered. I am sure that you have considered this, and you will change it, you will revise it, I think if you will do this, you will eliminate the frictions that would exist between many important committees.

I mean, it is absolutely essential that the Armed Services Committee have access to intelligence, and there is no question about it; absolutely essential for Foreign Relations to have access to intelligence, and it is absolutely essential for the Judiciary to have access to the FBI. And I think that along the lines of the suggestion I made this morning you can bridge that problem. I just chatted with Senator Stennis a few minutes after our caucus yesterday, and I told him what my thinking was. And he was rather pleased that I was thinking that way. I have not had a chance to talk with Senator Eastland or Senator Sparkman——

The CHAIRMAN. Unquestionably, the national problem is present.

Dropping on down from that congressional problem presented, would it not be the best to have legislation if it did not exempt a committee that would at least set up a separate oversight committee in

both Houses and to handle the senatorial approach only without handling the same problem in the House at the same time, would not that fall short of really the desirable goals of concentrating the oversight of the intelligence activities in the committee of each House, or one committee serving both Houses?

Senator RIBICOFF. I would say that it would be desirable, but it would not work at the present time.

The present state of the Congress, the legislative calendar, what we have to do with the national elections coming up, if we follow that route, Senator Allen, it would be hard to do in this session of Congress. And I think it would be very unfortunate, with the Church committee completing its work, for us as Senators not to follow through. And, unfortunately, for this country, and also for the executive branch, I think the executive branch welcomes it. As I said before, we are doing all this in a resolution instead of legislation, and also eliminating suspicion by the executive branch, because the President and the executive branch is going to have to find its way—the way we do. And if there is something the President does not like, he can say, "I am not for that at the present time."

In this period of time to work out a relationship, I would just as soon not try to bind the President's hands in this field, and the President could say, "I am not bound." And I can say, "Yes, you are not bound."

I pointed that out to the Advisory Board of the White House. Before, they came to discuss this, and they said they liked this and they welcomed this because, as I said, this is going to be a period where we are going to be in a trial marriage, finding out whether we can live with one another. If you are concerned about something that is being done, as some of the questions that were raised around the room suggest, the President will know about that concern. And, secondly, he can say no if he finds the arrangement to be unsuitable.

But my feeling is that we will learn how to live together during this period. And by July 1, 1977, we will know whether we can do it or not. And if you cannot do it, the thing is going to fall of its own weight.

If it cannot work, I would hope the House would move to create a joint committee. And then we go to the legislative route, as you suggested, Senator Allen.

Senator ALLEN. Well, I was truly fascinated by your portrayal of how you envisioned this committee would operate and how it would be advising the President and the visit of the committee to the White House and discuss the matter with the President, but also have to call on the various House committees, as well, and would not be such a close-knit small group as represented by one Senate committee.

Would it not also have a multitude of people representing three or four House committees?

Senator RIBICOFF. As a matter of fact, unfortunately, you do know this has been a consideration under the Hughes-Ryan bill.

I think Secretary Kissinger told me, as I recall a figure, of briefing about 120 different Senators or Congressmen dealing with this Angola problem under the Hughes-Ryan bill.

You have to tell so many people. But I have always had a piece of philosophy, Senator Allen, that 50 percent of something is better than 100 percent of nothing, you know.

Maybe I have been in Government too long and realize you cannot get everything at one time. And my thought is that I would like to see the Senate take the lead. I respect this body.

When it has to do something, it does it. I think that we have to do something, and I would like to see us try.

It is my feeling if we do act, the House will follow us. My hope is that the people on this committee will come up with a lot of solid recommendations and in the meanwhile, the executive branch is not bound. Again, I want to emphasize that because we went the resolution route, this is a trial marriage.

Senator ALLEN. I expressed my concern in the Government Operations Committee about the way I felt about the methods that were set up for disclosing information, and I still feel it is not advisable to have a system whereby information that the committee has ruled should not be made public, yet conceivably can be perfectly legally made available to every Member of the Senate, I mean, that just seems like it is going to be going way beyond——

Senator RIBICOFF. Any one Member of the Senate can answer this discretion, and we have got this.

Senator ALLEN. That is true. It is passed down by chain, or talked over the dining room table, or something of that sort.

Senator RIBICOFF. I think it takes three members of that 11-member committee body, and then, of course, there are always rules and regulations.

Senator ALLEN. It would not take but one Senator to make a disclosure to another Senator, and you are talking about the Presidential disclosure here, where he obtains this.

Senator RIBICOFF. This is a question whether you should confine it to 11 Senators, or are 100 of us qualified. I mean, this is a problem. There are different opinions.

Senator ALLEN. Well, I really look forward, and I would prefer the delegation of that authority to the committee—that would be my thought. I think if 100 Members of the Senate, and then—of course, the Senator is talking with the top staff man, or something of that sort, pretty soon it becomes common knowledge. It is sensitive information, and it seems it ought to be kept within the Committee, and that is what occurs to me. Are you not disturbed by this method of policing information?

Senator RIBICOFF. Well, not disturbed, but I am bothered about everything in this area.

I do not know all the answers. Again, I would like to see how this works.

Again, it is a resolution, and if it does not work, we can make changes. I do not know if you were at the markup, and know the way it was adopted, I think it was put in by Senator Javits, who made the statement that suppose we have a closed session, and a Senator wants to know what it is all about, such as whether we should disclose or not disclose information. Is not that Senator entitled to know what the facts are upon which he is going to be asked to vote in the closed session?

I think this provision was not in the original draft.

You may recall this was an amendment of Senator Javits put in at the markup, and, of course, there was logic in it.

If a Senator is going to know, any way, should he not have the right to go to the source and back up, whether he will or will not vote, in secret session, to disclose this information? I think there may have been room there, too, to work this provision over. I have listened to the doubts around this circle, and my feeling is, as a result of these hearings, and the doubts that you have raised, that you are going to get a better resolution out of this.

The CHAIRMAN. Certainly, you have done a real fine job of studying this, and I certainly feel that the resolution was arrived at after consideration of all possible alternatives. I certainly want to commend you for fine dedication and hard work. You personally have done a fine job, and the committee itself has done a fine job in this area.

Senator RIBICOFF. Thank you very much. And thank you, Senator Allen.

The CHAIRMAN. Thank you very much. I do appreciate your testimony. You have been very, very helpful to the committee, and I thank you, Senator.

I just started to read one thing here from the "Constitution of the United States of America, Annotated," that I would like for you to hear before you go. I know that in your approach here you have not been attempting to assert the congressional authority over the conduct of foreign relations, but I was just starting to read something with relation to the authority of the Executive in that regard. Jefferson wrote in 1790, "The transactions of business with foreign nations is executive altogether. It belongs, then, to the head of that department, except as to such portions of it as are specially submitted to the Senate. Exceptions are to be construed strictly."

Reading further here elaborating on the necessity of judicial abstinence in the conduct of foreign relations, Justice Jackson declared for the Court, and I quote:

> The President, both as Commander in Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit *in camera* in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution on the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or injuiry.

Senator RIBICOFF. May I make available for the record two briefs, one submitted for the CIA, by Mr. Rogovin, and another that was commissioned by the intelligence community on the question of legal responsibility for both the CIA and FBI. You will find this fascinating. There is a responsibility that we have in the Congress in this field. Thank you for calling that to my attention. I will submit those briefs for the record.

[The briefs referred to, subsequently received by the committee, may be found as exhibits 1 and 2, respectively, in the appendix of these hearings.]

The CHAIRMAN. Thank you.

Senator Nunn.

STATEMENT OF HON. SAM NUNN, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator NUNN. Thank you, Senator Cannon.

I know you have a series of witnesses, and I am going to cut my testimony as short as possible.

I participated in the Government Operations Committee markup of this legislation. I voted for the legislation, although I had some doubts about it then. We were, however, under a severe time restraint. I think Senator Ribicoff did an excellent job in leading our committee through deliberations, particularly with the time restraint he had.

I do, however, think there is a requirement for the Rules Committee to take another look at Senate Resolution 400 and see if it can be strengthened and improved on.

I believe that almost everyone would agree that, since the National Security Act of 1947 Congress has failed to provide effective oversight of intelligence activities. Many corrective proposals have been advanced during that time frame, but none has received final approval by Congress.

The jurisdiction of the proposed committee encompasses budgets for the intelligence activities of not only the CIA, but the State Department and Defense Department. I, among others, have raised the following question: Can the Senate Foreign Relations Committee meaningfully oversee our relations with nations throughout the world, consider treaties and agreements with nations, approve aid programs for nations, and at the same time permit another committee to determine the scope and character of our intelligence activities in these nations and monitor them for the Senate?

I am not a member of the Foreign Relations Committee, but I suspect that the division of responsibility could jeopardize prospects for coherent congressional contribution to the formulation of our foreign policy. In other words, I think the Foreign Relations Committee has a strong interest in intelligence activities.

I am a member of the Armed Services Committee, and I am confident that the Armed Services Committee cannot authorize procurement, research and development, tactical air, personnel, and other matters, and let another committee have authority to call its shots of so-called national intelligence.

I do not believe this will work. I believe that certainly the chairman is more familiar with that than I am because of his long service on the Armed Services Committee. Intelligence activities directly relate to the overall budgetary decision that we make, and without intelligence input, we would have a difficult time making decisions.

Now, I know that Senate Resolution 400 does not prevent us from getting substantive intelligence information. My view, however, is if another committee has total authority over the budget of the intelligence community and total authority over the legislative affairs of that community it would be difficult for Armed Services to have the kind of meaningful interchange with the intelligence community that we must have to insure that community has the resources and wherewithal to produce the type of information that is essential for us to make decisions on the overall military budget.

One of the difficult distinctions Senate Resolution 400 attempts to draw is between tactical intelligence and international or strategic intelligence. This is reflected on page 3 of the Government Operations Committee report. Those who deal in this area obviously know that this is virtually an impossible distinction to make.

For example, many of the ships we build are equipped with sensors. These electronic detection devices produce valuable intelligence information, some of it tactical and some of it strategic. It would be very difficult under Senate Resolution 400 to determine which of these hundreds of overlaps we have.

Then there is the question of who is to decide how much of the Department of State or Defense budget is to be spent on intelligence, as against sums authorized or appropriated for other foreign policy—or defense—programs; and how much is to be spent on intelligence overall, as against all other Government expenditures.

Clearly, here the Appropriations Committee also has a stake in the intelligence budget.

Boiling it all down, the Senate's constitutional responsibilities in the area of foreign policy are exercised primarily by the Foreign Relations, Armed Services, and Appropriations Committees. No new Senate intelligence oversight mechanism can function idependently of these committees, in my view, nor can these committees be divorced from the oversight function.

We must recognize this reality while at the same time avoiding needless proliferation and duplication of responsibilities.

So the question is, can we recognize this reality and can we come up with an answer that has that as an assumption without having a proliferation of committees.

With these reflections in mind, I would like to give you some of my preliminary thinking that I hope would be of some assistance to your committee's deliberations.

I would suggest that a new oversight panel should include members from the Armed Services, Foreign Relations, and Appropriations Committees.

For instance, for an 11-member committee, three members each could be drawn from Armed Services, Foreign Relations, and Appropriations. It could have two at-large members. I think we could also consider whether the majority and minority leaders might be ex officio members of this committee. Although I personally do not think they would have time to participate on a day-to-day basis, fellow Senators could ask the majority-minority leaders to pursue a matter for them. With that kind of structure being set up, I believe we could get a broad-based committee representing the entire Senate, and yet concentrating in the area where we have indispensable, constitutional duties in this field; that is, Appropriations, Foreign Relations, and Armed Services.

Another factor that this would help alleviate is the 6-year limitation on the terms of members of this committee. I understand the reasoning behind the limitation, both on the staff and the members. Yet when you take all of the glory away from an investigation, then my grave concern—with the 6-year limitation—is, I wonder who is going to want to serve. While the interest still is up, perhaps we would have a lot of volunteers. Over a period of time, however, I wonder if we will

not get two kinds of people: One kind would be interested in preserving the status quo, and the other kind would be interested in making tremendous changes for the sake of change.

In other words, what kind of Senators are going to want to be on this committee? I think that is all-important.

The composite panel which I am suggesting would be required—or this would be a question for the committee to determine—to make timely recommendations to the Foreign Relations, Armed Services, and Appropriations Committees before those committees act on the overall authorization and appropriation for State, Defense, and CIA. They would be the oversight committee; they would keep up with activities of the intelligence community, and they would recommend to the Armed Services Committee what the authorization would be. But you would not have the impossible situation of having a separate kind of intelligence committee that was authorized independently which would virtually preclude any kind of secrecy regarding budget, no matter what protective mechanisms are set up.

A new oversight committee group, constructed along these lines, could assume a role in consideration of legislation, and nominations related to the intelligence community. It could be done, but it would be focused primarily on oversight, and it would be required to review, and to make recommendations annually on the scope of intelligence programs.

For these reasons that I have outlined, I think this would be a better procedure than the ones outlined now under Senate Resolution 400.

One immediate advantage would be, and I have already said, the annual authorization for intelligence would remain secret, until Congress, by law, or by joint resolution, decides to make the information public. Senate Resolution 400, involving only the Senate, apparently would make information public annually, and in some detail. The intelligence community opposes that and I certainly think that this matter should be carefully considered.

One final note—I have not, in my proposal, mentioned the FBI, or included the Judiciary Committee, among those represented on the new composite panel.

Certainly, if the panel is, or the committee is going to have jurisdiction over the FBI, I think the Judiciary Committee should have certain representation. On the other hand, I would think it would be better to assume that the Judiciary is going to be making sure the FBI is only in areas intended under the original act of 1947. For that reason I tilt toward leaving the FBI oversight under the Judiciary Committee.

Mr. Chairman, I know you have a tight schedule, and I have tried to cut this short. I will be glad to answer any questions, and I would ask that my full statement be submitted for the record.

The CHAIRMAN. Your statement will be made a part of the record, and I thank you for your very fine presentation.

You certainly raise some very serious points that this committee has been concerned with.

In line with your suggestion that one of the suggestions that has been made that perhaps this ought to be in the nature of a select committee made up of members of either the three or four committees that you referred to, and possibly some members at large.

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It may be made up from the four committees, and if we exclude the FBI, then this should be made up of members of the three committees, and we eliminate the 6-year limitation, both on staff and on membership and service, and we provide only an oversight function, not a legislative function, which would mean that the authorization function would still remain with the committees that are in need of that information in carrying out their programs.

Your suggestion is quite close to this—quite close to some suggestions that have been under discussion during these hearings.

I thank you very much. Your recommendations certainly have been very helpful.

[The written statement of Senator Nunn follows:]

STATEMENT OF HON. SAM NUNN, A U.S. SENATOR FROM THE STATE OF GEORGIA

COMPOSITE OVERSIGHT PANEL

I want to thank you, Mr. Chairman, for the opportunity to present my views on S. Res. 400—a resolution to establish a Senate Committee on Intelligence Activities.

The issue of Congressional oversight for intelligence operations is vitally important to our national security. It is my strong impression that Congress, representing a view widely held by the public, wants a better, more aggressive system.

Further, I know that leaders from the intelligence community, Mr. Colby and others, feel there is a crying need for effective oversight and support the idea of a new blueprint for Congressional action.

In that spirit I listened to testimony before the Government Operations Committee. Given the strong sentiment for action, and given the tight reporting deadline imposed upon that Committee, I voted to send S. Res. 400 to the floor for Senate action.

In the weeks that have followed, I have continued to give the matter serious consideration. It is clear that since the passage of the National Security Act of 1947, the Congress has failed to fulfill its responsibility to provide effective oversight for intelligence activities. Proposals have been advanced; they have been debated; but actual progress has always eluded us.

These precedents make it imperative that the charges in Congressional oversight should be able to stand the test of time. Frankly, I have some misgivings.

The jurisdiction of the proposed Committee encompasses budgets for the intelligence activities of not only the CIA, but also the State and Defense Departments.

Can the Senate Foreign Relations Committee meaningfully oversee our relations with Nation X, consider treaties and agreements with Nation X, approve aid programs for Nation X, and at the same time permit another committee to determine the scope and character of our intelligence activities in Nation X and monitor them for the Senate? I am not a member of the Foreign Relations Committee, but I suspect that this division of responsibility could jeopardize prospects for coherent Congressional contribution to the foreign policy.

I *am* a member of the Armed Services Committee, however. I am confident that the Armed Services Committee cannot authorize procurement, research and development, and personnel strengths and let another committee call the shots of so-called "national" intelligence. I am quite sure that will not work.

Part of the problem arises from the fact that S. Res. 400 seeks to draw a distinction between "tactical" intelligence and "national" intelligence. (This is reflected on page 13 of our Government Operations Committee report.) Those of us who are privileged to serve on the Armed Services Committee know that this fine distinction cannot be maintained.

For example, many of the ships we build are equipped with certain sensors. These electronic detection devices produce valuable intelligence information, some of it tactical and some of it strategic, or "national" intelligence. Under S. Res. 400, how would you determine which was which?

There are many, many overlaps of this sort. Even the highly classified reconnaissance satellites which are keystones of our capacity to monitor compliance with strategic arms limitation agreements, also provide essential tactical intelligence information.

Then there is the further question of who is to decide how much of the Department of State or Defense budget is to be spent on intelligence, as against sums authorized or appropriated for other foreign policy—or defense—programs; and how much is to be spent on intelligence overall, as against all other government expenditures. Clearly, the Appropriations Committee has a stake in the intelligence budget, too.

With these reflections on S. Res. 400 in mind, I have reached some tentative conclusions on how a better oversight panel might be designed. May I suggest to you that:

A new oversight panel should include members from the Armed Services Committee, Foreign Relations Committee, and Appropriations Committee. For an eleven member committee, three members each might be drawn from Armed Services, Foreign Relations and Appropriations Committees leaving two "at large" members. If members were selected by the majority and minority leaders, I believe a broadly-based membership could be guaranteed without resorting to the six-year membership assignments proposed in S. Res. 400. The six-year limitation amounts to a death sentence for staff as well as for committee members.

Such a composite panel should be required to make timely budget recommendations to the Foreign Relations, Armed Services and Appropriations Committees before those Committees act on the overall authorizations and appropriations for State, Defense and CIA.

Such a panel should be given broad power to consider, hold hearings, and report on all matters relating to intelligence—including allegations of illegal or improper conduct by or in the intelligence agencies.

This new oversight group constructed along the lines I have suggested *could* assume a role in the consideration of legislation and nominations related to the intelligence community. But it would be *focused* on oversight. It would be *required* to review and make recommendations annually on the scope of intelligence programs, and it would have authority to inquire into any irregularities.

For the reasons I have outlined, I think this would be a better procedure than the one outlined in S. Res. 400. One immediate advantage would be that annual authorizations for intelligence would remain secret until Congress, by law or by Joint Resolution, decided to make information public. S. Res. 400, a resolution involving only the Senate, apparently would make information public annually and in some detail. The intelligence community opposes that, and certainly the matter should be carefully considered.

One final clarifying note: I have not, in my proposal, mentioned the FBI or included the Judiciary Committee among those which would be represented on the new panel. I should explain that I hope the FBI will, in the future, confine itself to counter intelligence activities as was envisioned in 1947. I think budget authorization for the FBI should continue to be a part of the responsibility of the Judiciary Committee. If there were indications of wrongdoing in the FBI—or the IRS or any agency with collateral intelligence responsibilities—I believe the oversight group, under my blueprint, would have power to investigate and report to the Senate.

Thank you, again, Mr. Chairman, for the opportunity to present these views.

The CHAIRMAN. The committee will now adjourn until 10 o'clock, Monday morning for the continuation of this hearing.

[Whereupon, at 12:55 p.m., the committee recessed, to reconvene at 10 a.m., Monday, April 5, 1976.]

Approved For Release 2001/07/27 : CIA-RDP90-00735R000200160003-5

PROPOSED STANDING COMMITTEE ON INTELLIGENCE ACTIVITIES

MONDAY, APRIL 5, 1976

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The committee met in room 301, Russell Senate Office Building, at 10:07 a.m., Hon. Howard W. Cannon (chairman) presiding.

Present: Senators Cannon, Allen, Hugh Scott, and Griffin.

Staff Present: William McWhorter Cochrane, staff director; Chester H. Smith, chief counsel; Hugh Q. Alexander, senior counsel; John P. Coder, professional staff member; Dr. Floyd M. Riddick, professional staff member; Jack L. Sapp, professional staff member; Ray Nelson, professional staff member; Larry E. Smith, minority staff director; Andrew Gleason, minority counsel; Peggy Parrish, assistant chief clerk.

The CHAIRMAN. The committee will come to order.

Senator Tower, we are happy to have you here with us today as our first witness, and you may proceed.

STATEMENT OF HON. JOHN TOWER, VICE CHAIRMAN OF THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES; ACCOMPANIED BY CURT SMOTHERS, MINORITY COUNSEL

Senator TOWER. Thank you, Mr. Chairman.

Mr. Chairman, I am the vice chairman of the Select Committee on Intelligence Activities, however, the views I express here are my own and may be the views of some of the Members of the committee but certainly not all of them.

I have with me the minority counsel of the Select Committee, Mr. Curt Smothers.

My experience with the Select Committee has taught me that the role of Congress must be that of a partner—and not a silent one—in the intelligence business. But as in any partnership—that relationship must be grounded on mutual confidence and each partner's respect for the prerogatives of the other.

The Executive must understand, as the Ford administration has clearly demonstrated again and again, that Congress has a legitimate right to know about intelligence activities. In exercising this right to know, the Congress must recognize the extreme sensitivity of these executive branch initiatives, and accept the obligation to hold this knowledge secure.

If there is agreement in principle with these concepts—which I regard as fundamental—establishment of a separate intelligence oversight committee may be feasible.

Mr. Chairman, both your inquiries and the testimony of many others have highlighted the serious inadequacies of Senate Resolution 400 as a vehicle for competent and secure Senate oversight of the Nation's intelligence activity.

In considering the resolution before you, I would urge the Committee to make a clear distinction between the much needed task of examining abuses—which we have been engaged in for the past year—and the overriding and more permanent requirement for responsible congressional involvement in intelligence policy in the future.

We must keep in mind that the critical questions are both multifaceted and complex. While weighing the best interests of our national security, together with the need to protect the people's liberties, we must, also, ask whether our adversaries will be deterred or heartened by such actions as disclosing the intelligence budget and the inevitable opening of senitive activities to even limited public forum debate.

To perform this task, I am not at all prepared to accept the idea that a separate committee on intelligence is necessary or even desirable. To meet the task of oversight, intelligence should continue to be viewed as integrally related to the other questions within the general jurisdiction of the present standing committees on Foreign Relations, Judiciary, and Armed Services, and I might add to a limited extent, the Finance Committee—rather than exist in the spotlight where intelligence has lived for the last several months.

It is pure fiction to suggest that if a separate intelligence committee is not created, oversight of the intelligence community must necessarily fail. To the contrary, there are a number of steps which could be taken which would insure more effective oversight.

For example, one of the critical findings of the Select Committee will be that the Congress has failed to define its role and aggressively pursue definition of intelligence policy and practices. It would appear to me that a logical first step for the Senate would be a mandate to the effected committees to cure those past deficiencies.

The present standing committees should be mandated, rather than allowed through custom, to oversee intelligence and to participate more actively in the policies of the different agencies.

Where there is a felt need for the committees to exchange information among themselves, then the mandate might include a requirement that each of the present standing committees create a permanent subcommittee on intelligence which would meet jointly and regularly with the other subcommittees to share information of common concern.

There are those who would divide such mandates by labeling them a return to the status quo and I suggest to them that such an approach, though well meaning, is inconsistent with the facts.

First, we must not allow the Congress' past oversight record to dictate simplistic or ill-conceived alternatives for the future. The panacea of a new committee is always attractive as a signal of apparent change. But we must not elevate form over substantive issues.

The Senate clearly signaled its commitment to substantive change when the select committee was established 15 months ago. We were mandated under S. Res. 21 to bring the problems of intelligence into sharper focus and to recommend remedial action strengthening the balance between the rights of American citizens and the Nation's intelligence needs.

I believe the Senate recognized that our inquiry would examine many matters within the jurisdiction of existing committees and subcommittees of this body.

I believe the Senate recognized that the overlapping jurisdiction of our select committee was necessary because intelligence touches so many aspects of American life.

But it does not follow that the overlapping jurisdiction required for a genuine look at a many-faceted problem should be adopted as the vehicle for permanent oversight.

Effective permanent oversight will require that intelligence policy be closely coordinated with other affected government activity. Senator Stennis made this point in his testimony and the Judiciary Committee has taken the position that FBI intelligence activity should not be separated from law enforcement determinations.

I believe that the commitment so evident in this body when S. Res. 21 was adopted continues, and that it would be a gross underestimation of our colleagues to assume that committees having any jurisdiction over these critical issues would ignore mandates designed to correct the abuses of past years and simply return to business as usual.

I do not seek to minimize the political impact of Senate action establishing a new committee, but I believe we need more than political impact. We need realistic, workable oversight. We should and must avoid the expedient solutions. We should and must turn our efforts to the tough task of providing definitive guidelines and mandates to our colleagues—the same persons who would sit on any new committees—that we believe will enhance the Senate's participatory role in intelligence policy.

In addition to the question of form, there is also a need to be more explicit regarding our anticipated role as policy partners. While the intelligence community needs participatory guidance—it does not need a senatorial board of directors.

The Congress must understand that it is not its role to manage or second-guess what the intelligence community does. Rather, the role of the Congress must be to insure that this country gets what it deserves—the assurance of the continuation of the best intelligence in the world, conducted in a manner consistent with basic American principles of freedom and decency.

Then finally, we can accomplish our goals without the continuing myth that the people of this Nation should continue to be misled, as they have been, that secrets are kept from them because their Government does not trust the people or wishes to deceive them. It is clear that our adversaries are the real targets of efforts to insure effective secrecy. However, it is equally clear that to accomplish the goal of keeping our enemies from penetrating our national defense, we must necessarily restrict the number of Americans, and that includes Senators, having full knowledge of intelligence operations.

The principle underlying limited access is, and always has been, quite simple. As the number of people having access to knowledge increases, the greater the risk of disclosure and consequent damage to the Nation.

It is for this reason and this reason alone that I have disassociated myself with any effort to increase the number of committees, Senators, and staffers that are briefed on sensitive ongoing operations.

The drafters of the resolution appear unwilling to delegate to the proposed committee sole knowledge and oversight over intelligence activities. The language of the report accompanying the resolution reported out by the Committee on Government Operations purports to take away from the committees having oversight jurisdiction over intelligence agencies.

But such treatment fails to take into account the fact that a statute presently on the books—the so-called Hughes-Ryan amendment—requires the President to inform numerous committees of contemplated covert actions.

Unless repeal of the Hughes-Ryan amendment is an expressed condition precedent to enactment of any resolution creating an oversight committee, any claim to limiting the proliferation of intelligence information by this procedure is a well-meaning but hollow promise.

Not only do I find that the resolution does too much at times and too little at others, it also sets dangerous precedents for the operation of the Senate itself. Some of the language in the resolution is unnecessary as the Senate Rules already make provisions, for example, for procedures for disclosing classified information to the public.

The resolution grants to a committee authority contrary to the express provision of rule XXXVI, subsection 5, requiring leave of the Senate before a document, secret or confidential, can be released to the public.

In conclusion, Mr. Chairman, thank you for allowing me this opportunity to appear before this esteemed committee. I hope that I have been able to express my deep concern over this matter and hope that the committee, when it reports out this resolution, will say that it seeks to arrest, rather than contribute to, the present-day atmosphere of a vendetta against those agencies of our government and the persons within them, who seek only to strengthen and protect our national security.

The CHAIRMAN. Thank you, Senator Tower, for a very good statement. The subject has been made during the course of the hearings by some people that what we ought to do other than have a standing committee on legislative authority is perhaps organize a select committee with purely oversight responsibilities made up of the membership of the committees that are necessarily heavily involved in intelligence now, that is, Armed Services Committee, the Foreign Relations Committee, and the Appropriations Committee.

Do you have any feel for something along that line?

Senator TOWER. I would prefer that approach to a regular standing oversight committee with legislative and authorization for appropriations jurisdiction. I would prefer, however, to see the CIA Subcommittee or an intelligence subcommittee of the Armed Services created by appropriate resolution with permanent staff, mandated to perform the oversight task.

When we recommend the creation of a select or oversight committee, there is inherent in that recommendation the suggestion that members of the Armed Services Committee are not competent to carry on oversight, and therefore, it has to be taken away from them and given to somebody else when in fact you may be giving it to the same people in Armed Services. Obviously, you cannot prevent proliferation when it is vital to the dealings of the Armed Services Committee, the Foreign Relations Committee, and the Appropriations Committee to have some access to sensitive, classified information.

The CHAIRMAN. As a result of your committee's investigation, do you see any need of granting legislative authority to a committee of this nature if it is acting in an oversight capacity?

Senator TOWER. I do not believe it should. I am opposed to the committee in the first place, but I would certainly not let it have legislative authority. I think such authority would run the risk of being at odds with the Armed Services and could get into a jurisdictional squabble.

The CHAIRMAN. Then, the resolution, of course, as drafted would mean a very wide dissemination of intelligence information, much of which is very highly classified and some of which is on a need-to-know basis.

Senator TOWER. It would mean more proliferation of classified information, not less. I really think that the mood of the country is such now that the American people want to feel that they are being protected, that their security is being assured by the ability of the Government, one, to gather intelligence effectively and, two, keep it closely held. The complaints that I get from my constituents are that we have disclosed too much information and not too little.

The CHAIRMAN. What is your best estimate as to when the select committee will issue its final report?

Senator TOWER. We expect to have it out in the middle of April and it probably will not get to the floor before the recess. We have mandated the report for the 15th, and that is the day after recess begins, I believe. The report will be ready but probably we'll not take it to the Senate until after the recess.

The CHAIRMAN. Senator Scott.

Senator SCOTT. Senator Tower, I think your testimony is illuminating and extremely helpful, and I would like to compliment you and all of the members of the committee for the careful work done and for the restraint exercised by contrast with experience elsewhere. It certainly stands out in its desire not to turn this committee into what you have mentioned—into another context of a vendetta.

I think that your final point is well taken, that when the committee "reports out this resolution, it will say that it seeks to arrest, rather than contribute to, the present-day atmosphere of a vendetta against those agencies of our Government and the persons within them, who seek only to strengthen and protect our national security."

The phenomenon which I believe the Senators have observed carefully, has been the quite evident reaction of the general public that the Nation needs to be able to prevent the release of that information which would aid those who wish us less than well. Certainly, that has represented a turnaround from the initial hysteria and headlines.

It is interesting that Judiciary, has with only two dissenting votes, recommended to this committee the removal of the jurisdiction of

tion is now and the arrangement as far as the Foreign Relations Committee is concerned, and you can describe it yourself better than I can, has had a satisfactory relationship with the Intelligence community.

Senator SCOTT. I do not recall a single instance of the Foreign Relations Committee leaking any matter of secrecy confided to them by the intelligence agencies. There have been some leaks at times, staff leaks of more minor matter that came out of the State Department or something of that sort, but I think they have carefully observed all of the restrictions on testimony from intelligence agencies.

Senator TOWER. And, I think the Armed Services Committee has been very responsible in that connection, too. I think that the Armed Services Committee is fully competent to do what the Congress apparently wants and that is to maintain oversight on a continuing basis of the intelligence agencies. I think Judiciary is prefectly competent to monitor the FBI and the Finance Committee is competent to monitor the Secret Service, and et cetera, and I do not think the super committee serves anyone. I think it can make our work here in the Senate less efficient and not more efficient.

Senator GRIFFIN. Mr. Chairman, I did think of one other thing. That gets to the matter of whether or not a majority on a committee or a majority on a subcommittee should have the authority to make classified information public. The resolution which is before the committee speaks to this, even though Senator Church says it is not necessary. He claims that under the present rules the majority of a committee already has the authority to release classified information, nevertheless he has language in there to permit a majority of a committee—without the authority of the Senate as a whole—to make public classified information.

Senator TOWER. I will refer to that as reservation on that matter and perhaps some clarification of that rule can be made. I happened to be one who disagreed with the Church decision when we got into the question of releasing the assassination report.

The CHAIRMAN. Anything else?

Thank you very much, Senator Tower, and we appreciate your being here. Thank you.

The CHAIRMAN. Senator Taft, we will be pleased to hear from you at this time.

STATEMENT OF HON. ROBERT TAFT, JR., A U.S. SENATOR FROM THE STATE OF OHIO

Senator TAFT. Mr. Chairman, members of the committee, I would like to thank you for the opportunity to testify before you today on a proposal which I believe to impact in many serious ways on a vital aspect of our national policy: Senate Resolution 400.

I believe that Senate Resolution 400 must be of concern to all Members of the Senate. I am certain that there is no Senator who wants to see abuses of power or authority in or by any arm of the Government. This is certainly true of those agencies and authorities involved with our national intelligence functions. When we look at the world around us, we see all too many cases where national security is used as a justification for domestic repression. We see, equally, cases where foreign intelligence services of various states, especially the Soviet Union,

engage in practices on foreign soil that violate the rights and sovereignty of other states. We cannot view any of these practices with equanimity or approval.

At the same time, I am sure there is no Member of this body who is not aware of the vital national needs for adequate and accurate foreign intelligence. Our international opponents, particularly the Soviet Union, are closed societies. They do not publicize their capabilities or their intentions.

I think the question of intentions is particularly acute for this country. We know that the ideology of the Soviet Union calls for the spread of communism. What we may not know is how seriously that ideology is taken, in terms of policy plans. We cannot obtain such knowledge without using covert intelligence collection, yet without it, how can we establish a policy toward the Soviet Union other than one based on general mistrust and suspicion of Soviet intentions? This is, of course, only one example of the need for intelligence, but at a time when we are hotly debating the merits of détente, it is a timely example.

There are, as the members of this committee well know, many aspects to the problem of how to exercise adequate oversight over the intelligence community so as to prevent potential abuses, while at the same time not impairing our vital intelligence-gathering capability. I would like to discuss two aspects of the problem as they relate to and I fear originate in Senate Resolution 400.

One major problem that I see with the proposed Senate Resolution 400 is that, in my opinion, it is impossible to separate budgeting for the intelligence function from the process of authorizing and appropriating funds for national defense, generally. It is clear to me from my work on the Armed Service Committee that intelligence is a part of national defense. Certainly anyone who has served in the armed services in a staff capacity will have found very quickly that intelligence is inexorably intertwined with operating decisions. I served on a naval staff in planning capacities during several invasions with the intelligence officer—I was an administrative person on the staff and the intelligence officer actually lived with me, practically in the same room throughout the entire planning phase of the operations, and there is no way which you could separate the functions, in my opinion, at any level in the military establishment, of intelligence and planning of operations as well as execution.

They are linked together in a complex network that could not be unraveled. For instance, Navy ships and military bases carry intelligence-gathering equipment, for both tactical and national intelligence. How are funds for these systems to be authorized and appropriated? In practice, it is impossible to draw a distinction between national and tactical intelligence, much less say that one system gathers only national, and another only tactical intelligence. These differences exist only on paper, in Senate Resolution 400, not in fact.

I would like to point out one further fact that is not in my prepared statement. It occurs to me that we have this problem in part today because of the fact that we take the CIA budgeting in separate items, and then provide by law for the transfer on certain approvals from various other budgetary items to the CIA finance. If you put military intelligence in that same area, you would have the same problem of transfer or disclosure, if you do it as a separate itemization of the authorization or the appropriations for intelligence in the military.

So, you would make a problem of military intelligence much worse, which is, as you know, a very large percentage of our total intelligence activity. Actually, it is budgeted in the Defense budget to the departments involved and you do not have that problem arising.

A second aspect of Senate Resolution 400 that disturbs me——

Senator GRIFFIN. Senator Taft, I think before you go on it would be well if we focus the record to the language in Senate Resolution 400 where the attempt is made to separate tactical foreign military from national intelligence. As I understand it, it is in section 13 at the bottom of page 18 to the top of page 19—at least in that one place there is an effort to make that distinction.

Senator TAFT. Yes; that is not the one I was concerned about.

Senator GRIFFIN. Which you are pointing out as impractical?

Senator TAFT. I do not think there is any way you can do it, in military operations, particularly.

Senator GRIFFIN. I just want to be sure everybody knows where it is.

Senator TAFT. The Normandy operations, for instance. We had on our ship's maps material which certainly related to tactical intelligence, but at the same time the entire timing of the operation was certainly national and strategic intelligence. There are many aspects of that information. We could not have drawn up operation plans or orders if you did not know the time, the tides and everything else.

Senator GRIFFIN. As I understand it, this resolution, as now drafted, would require the intelligence community to make an arbitrary separation or distinction as between tactical and national intelligence, a distinction for which there is no basis and which would just make it very difficult to operate in the field.

Senator TAFT. Take the strategic weapons in the Soviet arsenal today. I suppose that the information about the weapons themselves, how they might be used, certainly is military intelligence whether you call it strategic or tactical, and I suppose it is a matter of terminology. But also let us take the most important thing about those weapons, in many instances, how the Soviet is expected to use them or why they are going ahead with a particular program. That is national intelligence. Yet in making our plans, we must have an assessment of those overall considerations in order to be able to make any kind of sound judgment where our programs, our countermeasures, and retaliatory measures will have to go.

Senator SCOTT. If I could inject—I had somewhat the same, and maybe a more limited experience, as executive officer to the intelligence officer of a naval force. I have had some experience in working on the drafting of operation plans, and I agree with the Senator, it is totally impossible to carve out one area as tactical and one area as national or policy-type intelligence. It is just not possible to do it.

The CHAIRMAN. If the Senator will yield. In one of the Armed Services Subcommittees, of which I am chairman, as an inherent part of our proceedings, we have to have our briefings from our intelligence community on the foreign threat and that is known from a tactical standpoint, and also from a strategic and national standpoint, so we start off our hearings every year with the assessment of the threat from the intelligence community, both CIA and DIA, and then go into our requirement from a tactical standpoint.

Senator TAFT. That is the same procedure exactly as followed in the R. & D., with Senator McIntyre's concurrence.

A second aspect of Senate Resolution 400 that disturbs me profoundly is the stipulation that it be a "B" committee, with not only members but staffs limited to a 6-year term of service on the committee.

In fact, as every Senator knows, "B" committees do not always receive the attention from their members which they might deserve. This is fully understandable in terms of the severe constraint on time faced by every Member of the Senate. In recognition of this fact, we usually designate as a "B" committee those committees responsible for areas which, while vital, are perhaps not as vital as certain other areas.

Extending this logic, by designating the committee a "B" committee, we state that its area of concern is not as vital as a number of other areas, and that it is recognized that members may not be able to give its committee business as much attention as they would like to. Can we do this in regard to the area of national intelligence? I strongly think we cannot. It is clear to me that national intelligence is one of the most critical areas for which the Congress has some responsibility.

In fact, is it not contradictory that the increasing awareness of the importance of the intelligence community has brought us to consider a bill, which implies strongly, by designating the proposed committee as a "B" committee, that the subject in question is comparatively less important? I do not think this aspect of the proposed legislation can be considered at all satisfactory or acceptable.

The restriction to a 6-year term on the committee for both members and staff has equally disturbing implications. In theory, every Member of the Senate would be happy to serve on a committee on intelligence, even if there were a 6-year "death sentence" imposed on membership.

But let us face the facts: How many Members would really seek to serve on such a committee under such a condition? We cannot let ourselves be blinded in this case by senatorial dignity or our penchant for complimenting one another; the matter at hand is too vital to play with. In fact, there would be little enthusiasm for serving on this proposed committee under a 6-year limitation.

Members, particularly those with the greatest abilities, would tend to seek to avoid such a committee assignment. Can we afford to have this committee regarded by the membersip as one of the "dogs," as far as committee assignments are concerned? Given the tremendously important nature of the national intelligence function, I do not believe we can afford that. We want our very best people to serve on this committee, if such a commitee is established; and we want them to be motivated to devote their full attention to it.

The same considerations apply, I think, to the committee staff, who are also limited to a 6-year term. In this case, however, there may equally be a danger that a staff position on the committee would be regarded as a steppingstone; that staff members, knowing they would be unemployed 6 years in the future, would use their 6 years on the committee to build a personal reputation or personal connections that would lead to future employment.

There is also the fact to be considered that, by replacing the entire staff every 6 years, you are putting out a steady stream of people knowledgeable about all of the most sensitive aspects of our national

intelligence system and many sensitive aspects of our overall national security policy.

Do we want to put a steady flow of such people into the job market? The possibilities for subsequent employment might include some positions that would not serve the national interest, in terms of the ways the knowledge of our intelligence functions could be used.

These aspects of Senate Resolution 400 make it impossible for me to support the measure as reported from the Committee on Government Operations. I would like to indicate my support for the proposals of Senator Nunn, that we consider the establishment of a new intelligence oversight panel to be composed of members from the Armed Services Committee, the Foreign Relations Committee, and the Appropriations Committee. Such a panel, given the broad power of oversight, should be able to deal with the problem of potential abuses without dividing the authorizing and appropriating functions on nonfunctional lines.

I might say that one of the problems I see here came just recently in this entire matter. It relates to the Angola experience. As soon as that issue arose, I went to the staff of the Armed Services Committee and asked if we had any information whatsoever dealing with the intelligence situation on Angola. I found that we did not have such information. I then began making inquiries as to what exactly and where is the legal authorization or rules authorization for handling this matter of transfer of CIA funds. The statute I have already mentioned provides for transfer and makes it legal for the CIA to accept such a transfer. So, when I got down to trying to find out what the rules were, there are not any rules. We all think there are rules but if you actually take a look there are no rules in the book as far as I know that have been used for this method of authorizing the transfer.

It has been an informal, institutionalized procedure under which the chairman and the ranking members of the Armed Services, Appropriations, and the Foreign Relations Committee have been consulted, but we all thought—I thought it was in the books, but it is not in the book as far as I have been able to find out, and I do think some purpose might be served by the committee if they could somehow institutionalize this somewhat more so there is a more direct responsibility. I do not disagree with Senator Tower on his proposal, but, I think we do need some institutionalization of the procedure for approving the transfer of funds.

Senator SCOTT. Mr. Chairman, let me comment on the question of Angola. The Senator raises a good illustration because the only information that we in Foreign Relations were able to get on Angola at the time the matter was current and crucial came first in a very fine briefing from one member who was totally opposed to the entire matter, which led to some attempts at rebuttal from the Department of State, but there was no input whatever from the Armed Services. There was no military input, so that Foreign Relations was actually working in the dark or in an area of obscurity, and an oversight panel would have that advantage. I just mention that because I have not made up my own mind whether this suggestion, or that of Senator Tower or the others, is the alternative way to go. But certainly we ought to have some way of knowing, when some group of Senators

raise the question like Angola, what the whole picture is and not two or three pieces out of a jigsaw puzzle.

Senator TAFT. Somebody said the transfer was made, presumably some transfer of funds under the statute was made to the CIA for this purpose. I do not know whether it was in a big lump sum amount or it was an individual item. It was put up to some Members of Congress but I never found out who was actually consulted on it and who did it, and there is no responsibility and no real way of checking back on that after the fact when it occurs. I think it would be helpful if we had some kind of separate procedures that we know about that will take care of it at the same time and with the maximum degree of security.

Mr. Chairman, I urge the members of this committee to consider these points, and those raised by other witnesses, carefully. I believe that it is vital that we exercise oversight over the intelligence community in a rational and functional manner, and in such a way that the work of that community is not jeopardized. We must not let momentary headlines push us into action which will have long-term negative consequences. Too much is at stake here for us to be hasty or frivolous in this matter.

The CHAIRMAN. Thank you, Senator Taft, for a very fine statement. I must say that I agree with a great deal of the points you made in your statement, and they are certainly very valid points. I think we do have to consider them in a rational atmosphere rather than have what I have referred to earlier as a "need" reaction. Every time something happens our first reaction is that we need to appoint another committee to take care of it, but that simply will not make the problem go away.

Senator Scott.

Senator SCOTT. I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Griffin.

Senator GRIFFIN. I have no questions. I think that this is a very, very excellent statement and points out some problems that I think are just unanswerable in the terms of this resolution. I appreciate the time that the Senator has taken to come here.

Senator TAFT. Thank you.

Senator SCOTT. I would like to make one point for the record, not directly to the Senator's testimony, but what are the contrasting motivations here. Those who conceive of Senate Resolution 400 in its present form had an excellent motivation; that is, to prevent future abuses, but they did not really go to the question of how the abuses occurred.

The abuses did not occur in the Senate of the United States or the House of Representatives. The other motivation which has been exemplified by the testimony of most of the witnesses is how, as a Nation, we are entitled to have secrets, and if so, how can those secrets be preserved and what distinction can be made between the right of a nation to protect its national security on the one hand and the right of the people to know those things which are essential for them to know. If this committee were conceived on the basis of the first motivation, presumably the dominating membership would be concerned continually and throughout the future with prevention of abuses, and that is a good thing, but it would not be necessarily comprised of the

people who would be aware of the danger to national security through massive dissemination of classified information.

The CHAIRMAN. I think Senator Allen pointed that out the other day when he stated that the substantial percentage of this resolution is devoted to how information could be made available, rather than providing mechanisms for not disclosing classified information—information that should not be made available.

Thank you again, Senator Taft, and we have appreciated your statement. That concludes our witness list, and without objection I will insert at the conclusion of this hearing a number of letters from Members of the Senate and others relating to Senate Resolution 400. Also the committee will hold these hearings open until noon tomorrow to receive any additional statements relative to the resolution. We hope that we would be able to get a meeting next week to start to consider a markup of this proposal or to take whatever other action the committee may decide upon.

Senator SCOTT. When will we do that?

The CHAIRMAN. Sometime next week. I will get a day open and schedule it. The committee will stand in adjournment.

[Whereupon, at 11:04 a.m., the committee was adjourned.]

[Additional written statements and letters received by the committee from persons expressing their views on the provisions contained in S. Res. 400 are as follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., March 1, 1976.

Hon. HOWARD CANNON,
Chairman, Committee on Rules and Administration, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Senate Resolution 400, which the Government Operations Committee reported to the Senate today and which has been referred to your Committee, establishes a new standing Committee on Intelligence Activities.

Section 7 of the Resolution sets out a procedure for the disclosure of classified information by the new Committee. Under that procedure, the President would have to be informed of any committee decision to disclose such information, and the Committee would be required to wait five days before making any public disclosure. If, during the five day period, the President certifies his objection to disclosure, the matter would be referred to the full Senate for action at the request of three or more members of the Committee. The provision also provides the Senate the opportunity to review a decision by the Committee not to disclose certain information. Finally, it establishes a procedure to govern instances when the new Committee may make certain information available in confidence to other committees or other Senators. Any Senator who fails to comply with these procedures may, under the provisions of section 7, be cited to the Senate Committee on Standards and Conduct for appropriate action.

The Government Operations Committee believes this is a workable solution to the difficult problem of disclosure of information. Further, it is the strong feeling of members of this Committee that the procedures should apply to *any* Senate committee in dealing with sensitive information of any kind. The Committee did not, however, believe that its jurisdiction extended to committees other than the committee which S. Res. 400 would establish. Accordingly, S. Res. 400 makes no provision for restrictions on disclosure of information by any committee other than the new Committee on Intelligence Activities. However, the Committee votes unanimously to recommend to you, as you consider this measure, that these procedures be made applicable to all standing Senate committees and all Senators dealing with sensitive information.

Please let us know if we can be of further assistance in this matter.

Sincerely,

ABE RIBICOFF, *Chairman.*

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON SEPARATION OF POWERS,
Washington, D.C., March 31, 1976.

Hon. HOWARD W. CANNON,
Chairman, Senate Rules Committee, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I wish to commend to the attention of the Rules Committee two amendments which I had intended to propose to S. Res. 400 during the Judiciary Committee's consideration of the measure. Because I was called out of town unexpectedly, however, I was unable to attend the mark-up in order to do so.

These amendments are directed to the issue of access to and disposition of sensitive information. As Chairman of the Separation of Powers Subcommittee I am concerned that certain procedures in S. Res. 400 may permit the executive branch to assert unacceptable limitations on the proposed Committee's operation. Specifically, I proposed the elimination of all references to the executive branch's classification system and the procedure in Section 7 which formalizes presidential review of every committee decision to disclose sensitive information obtained from the executive branch.

My first amendment is designed to ensure that the committee is not bound by the executive branch's classification system.

Without question there will be information which is deemed too sensitive to be publicly disclosed. Such a designation, however, should be made by the Committee and not by virtue of a bureaucrat's classification stamp. The Committee's work will be seriously hampered if it allows the executive to control the release of information by the Congress through a classification system established and controlled by the executive branch. Congress should not rely upon any classification system unless it is one established by law.

The second amendment I propose is, in my estimation, required to preserve the concept of separation of powers. Cooperation between the branches is essential if the arrangement contemplated under S. Res. 400 is to work. However, such cooperation can be accomplished by less intrusive means. The formal procedure for Presidential review that the resolution would establish institutionalizes an unprecendented involvement by the Executive in the operations of Congress. And, it is made even more dangerous by the loose trigger mechanism. The report on S. Res. 400 states that, "The request that information not be disclosed may consist simply of a restrictive security classification attached to a document at the time it was provided the Committee or it may consist of a specific request to the Committee in response to an inquiry from it." In effect *no* classified information (which presumably will include almost everything of significance the Committee will receive) can ever be disclosed without first checking with the President.

I seriously doubt that the drafters of this resolution intended to restrict in such a manner the ability to the Committee to discharge is responsibilities.

The amendment I propose would retain the appeal procedure to the full Senate when three or more members of the Committee object either to the disclosure or withholding of information, without institutionalizing a Presidential check over the Committee's powers. Any objections by a President to the disclosure of certain information could be worked out with the Committee through an ad hoc or informal procedure. And if the Committee disagreed with the President on the necessity to withhold the information, an appeal could be made on behalf of the President's position by Committee members through the normal appeal procedure.

In view of the serious consequences which would result to the prerogatives of the Senate if the above provisions are not changed, I urge the adoption of these two amendments.

Sincerely,

JAMES ABOUREZK,
Chairman.

CLASSIFICATION AMENDMENT

On page 7, line 12, strike the word "classified" and insert in lieu thereof "sensitive intelligence".

On page 7, line 23, strike the word "classified".

On page 11, line 16, strike "classified".

On page 19, between lines 11 and 12 insert the following new subsection:

(d) As used in this resolution, the term "sensitive intelligence information" means intelligence information in the possession of the Committee and which, regardless of any security classification, the Committee has determined should not be publicly disclosed . . . because the threat to the national interest of the United States posed by such disclosure is vital and outweighs any public interest in the disclosure.

APPEAL OF COMMITTEE DECISION AMENDMENT

On page 8, beginning with line 24, strike all down through "days" on line 16, page 9, and insert in lieu thereof: "such information it shall be disclosed unless within three days after the vote".

On page 9, line 22, strike the word "any" and insert in lieu thereof "such".

On page 9, line 22, beginning with "sub-", strike everything following through the word "information" on line 24 and insert in lieu thereof "it".

On page 10, line 8, strike "(5)" and "(6)" and insert in lieu thereof "(3)" and "(4)".

On page 10, line 11, strike "(3)" and "(4)" and insert in lieu thereof "(1)" and "(2)".

On page 11, line 24, strike "2" and insert in lieu thereof "1".

Redesignate sections 4 through 6 as sections 2 through 4, respectively.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., March 17, 1976.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR HOWARD: As you know, S. Res. 400 was reported by the Government Operations Committee, on which we both serve, by a unanimous vote and referred to your Committee.

In discussing this legislation with our colleagues, it has become apparent that there exists a substantial body of opinion within the Senate which believes that the disclosure provision in Section 7(c)(2) should be further tightened. This section deals with the ability of a member of the proposed committee to communicate classified information to another Senator or to a Senate committee.

As the resolution now stands, any Senator is free to make such communications on his own authority, without authorization by the Committee.

As an alternative, we suggest that you consider amending Section 7(c)(2) on lines 1 through 6 on page 12 to read "The Committee on Intelligence Activities or any member of such committee may, upon majority vote of the full committee, make any information described in paragraph (1) available to any other committee or any other Member of the Senate." Additionally, we feel that the deletion of all language after the words "Senate" on line 15 through the end of line 19 is appropriate in that it would not allow disclosure without committee approval.

We believe that such an amendment would substantially improve S. Res. 400, and we hope that you will give it your consideration.

Sincerely,

SAM NUNN,
CHARLES H. PERCY.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 5, 1976.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR HOWARD: In your consideration of S. Res. 400, I would like to make some comments in support of the purposes the Government Operations Committee was attempting to achieve.

S. Res. 400 seeks to achieve one basic goal—to consolidate the current fragmented oversight of the U.S. intelligence community by the Congress. It seeks to cut down on the proliferation of committees involved in the intelligence oversight process. I totally agree with George Bush, Director of the CIA, when he

testified before the Rules Committee and said, "I strongly urge the Senate, in considering the oversight issue, to concentrate oversight of foreign intelligence activities."

In the extensive hearings that Government Operations had on this issue, the theme of consolidation was struck time and time again. Among others, then Director of the CIA Colby urged consolidated oversight and that one committee should have exclusive, ultimate jurisdiction. Secretary Kissinger also urged that one committee review the intelligence process, although all committees could still review intelligence product.

In response to questions from Senator Allen at the hearing, Director Bush stated that creation of a new intelligence committee causes no problems. In fact, he said that consolidated oversight with more information being provided to the new committee, along with better protection of that information, has "enormous appeal."

He also stated in response to a question from Senator Allen that he is not happy with the proliferation of committees as it now exists. He said that he does not favor the status quo.

Therefore, I feel that George Bush and members of the Government Operations Committee agree. We need to have more consolidated oversight.

Mr. Bush did have some specific concerns, however. Let me address those.

1. Mr. Bush is concerned about the Budget Committee involving itself in the intelligence process and asking for sensitive information.

This issue had not surfaced before Government Operations at the time we were considering S. Res. 400, but I too hope along with Director Bush that an accommodation can be reached that will provide the Budget Committee the information it needs while maintaining security. I will speck specifically to the security of budget figures later.

2. He mentions that under the terms of the Hughes-Ryan amendment, Section 662 of the Foreign Assistance Act, that information regarding covert action is required to be reported to Appropriations, Armed Services and Foreign Relations. It is true that S. Res. 400 does not affect this law. However, should a new intelligence oversight committee be created to consolidate intelligence community oversight, then I think Hughes-Ryan should be repealed and I will introduce legislation to that effect.

3. Mr. Bush mentions that the committee or any member of the committee can disclose information to any other member of the committee can disclose information to any other member of the Senate. While he says that this information may be necessary for substantive intelligence, he sees no justification for unlimited dissemination of information about the Agency's sources and methods and feels that this provision must be tightened up. I agree, Mr. Chairman. Pending before the Rules Committee at the present time is a letter written by Senator Nunn and myself on precisely this point. In that letter we state that this provision is too loose. and we recommend that the Rules Committee change this section to require that no information can be disclosed to a member of the Senate not on the Intelligence Committee without the affirmative vote of the Intelligence Committee.

4. Mr. Bush is also concerned about disclosure of information over the objections of the President. S. Res. 400 as drafted would require that no such information could be disclosed by the Committee if 3 members of the new Committee objected. The full Senate would than have to decide. If the Rules Committee wanted to, it could tighten this provision even further by simply requiring that, in a case where the President objected to disclosure of information, the issue would automatically go to the full Senate. This would totally eliminate the committee's right to unilaterally disclose.

I would like to make one point in this regard. In his questioning of Senator Hruska, Senator Allen made the point that it seemed to him that there was more emphasis on disclosure of information in this resolution than on protection of security. Let me just say that there are tougher sanctions on staff, and members, in this resolution than exist for any other committee of the Senate at the present time. Further, there are *NO* disclosure prohibitions on the part of any other committee of the Senate. Any committee can now disclose anything it wants to. Any prohibition on disclosure written into S. Res. 400, no matter how weak, is stronger than anything covering any other committee. Today, for example, Foreign Relations or Armed Services could disclose anything it wants to to the full Senate. If the Rules Committee wants to write even tougher sanctions. fine, but it should be noted that the proposed sanctions are tougher than any other committee has at the present time.

5. Mr. Bush is also concerned about an annual authorization process of the intelligence budgets. He states that an annual authorization bill reported from the new committee would reveal at least the budget total. Why, I ask? Reviewing a budge and authorizing a budget are not the same as disclosing the budget. There could be a secret authorization process. Currently the Armed Services Committee looks at the CIA budget and decides whether it is appropriate. They don't put it in the Washington Post the next day. Nor would the new Intelligence Committee do so either. There is no contradiction between annual authorization and secrecy.

6. Mr. Bush's last point is that the FBI should not be included in the jurisdiction of the new Committee. I disagree. I feel that the FBI intelligence division is an important part of the national intelligence community. In FBI counterintelligence the only difference between it and the CIA is that the CIA keeps track of people beyond the water's edge and the FBI keeps track of them within the continental U.S. One picks up where the other leaves off but they do the same thing.

The Government Operations Committee has tried to do precisely what Mr. Bush has advocated—consolidate intelligence oversight. A continuation of the present system means greater proliferation of oversight, gives greater rise to leaks of information, and is contrary to the wishes of the Executive branch.

I look forward to working with you on this issue to reach consensus on how to resolve this most important matter.

Sincerely,

CHARLES H. PERCY, *U.S. Senator.*

STATEMENT OF WILLIAM V. ROTH, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Mr. Chairman, I want to thank you and your colleagues for affording Senator Huddleston and myself this opportunity to discuss the provisions and rationale of our amendment to provide for sanctions against Senators or staff members who make unauthorized, harmful disclosures of legitimate intelligence secrets. This amendment is incorporated in subsections (c), (d), and (e) of section 7.

I regard the inclusion of this provision in the resolution to create a new permanent Intelligence Activities Committee as essential for two reasons: First, to protect vital national secrets, and second, to help the Committee do an effective oversight job by winning Executive branch and public confidence in its ability to protect information that is necessarily secret.

I have been deeply interested in the problem of government secrecy for a number of years. The problem is two-sided. First, there is far too much classification in the Executive branch. To a certain extent this is inherent because each agency which classifies tends to interpret the public interest from a standpoint heavily colored by its own bureaucratic interests. The other side of the problem is that in some quarters excessive secrecy has bred a lack of respect for any secrecy. If there has been too much classification by agencies acting in their own interests, there has also been too much leaking by individuals for their own interests without proper and careful consideration of the reasons this material may be classified.

In a 1957 article in the Yale Law Journal, Joseph W. Bishop, Jr., stated the problem very succinctly in this way: "The files of the executive bulge with documents which Congressmen, from the best and worst motives, are eager to examine and which bureaucrats, also from the best and worst motives, are determined to keep for themselves. Many of these documents, if published, would certainly cause headlines and headaches all across the nation, and some might create a stir in foreign chancelleries—a prospect from which the average legislator, especially if he be up for re-election, shrinks about as much as Brer Rabbit shrank from the briar patch, but which may cause exquisite pain to the executive branch."

In my judgment, our job consists in trying to ensure full public access to government information for which there is no compelling reason for secrecy, and at the same time protecting the information for which there is a public interest in secrecy from being disclosed by individuals acting from the "worst motives" or simply through carelessness.

It is not possible to define by legislation or Executive Order any precise, objective line between what must be kept secret and what should be available to the public. Two individuals, both acting honestly and in good faith, could arrive at quite different judgments about any particular piece of information. What we are saying in this amendment, however, is that when a majority decision has

been made by the Intelligence Activities Committee or the Senate that an item of information must be kept secret, in the public interest, then an individual senator or staff aide will not have the right to thwart that majority decision without an appropriate sanction.

It has been suggested in some quarters that this amendment violates the spirit of the "Speech and Debate Clause" of the Constitution. That clause, however, provides that for any speech or debate in the House or Senate, no Member of Congress shall be questioned "in any *other* place." As the Supreme Court noted in *Gravel v. United States*, the fundamental purpose of this clause is one "of freeing the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator." It does not mean that Congress cannot discipline its own members. That right is provided for in Article 1, Section 5 of the Constitution and has been long recognized by the Senate in cases of the kind we are discussing here in Rule XXXVI permitting the censure or expulsion of Senators who "shall disclose the secret or confidential business or proceedings of the Senate . . ." The Roth-Huddleston Amendment is an extension of this Rule.

We have suggested this extension for several reasons. First, Rule XXXVI does not cover staff members. Secondly, our amendment establishes procedures to permit the free flow of classified information between committees which need it or among Senators under conditions so that it will be known who has received it. Thirdly, this amendment contains provisions to prevent a "cover-up" by a committee of any significant, harmful leak by a powerful or well-liked Member or staff assistant. To accomplish this, we have included a procedure under which 5 members of the proposed 11 member Intelligence Committee or any 16 Senators to require an investigation by the Senate Select Committee on Standards and Conduct and a report of that Committee's findings. This should be regarded as an exceptional procedure which will hopefully rarely have to be invoked, but will be readily understood and available if it is necessary to invoke it.

Finally, Mr. Chairman, let me point out that the Members of the Government Operations Committee believe that careful consideration should be given to extending whatever rules cover the disclosure and protection of classified information by the Senate Intelligence Committee to all Senate committees which handle sensitive information. This is a matter we felt was outside the scope of our jurisdiction on this resolution, but which we strongly hope your committee will address.

Whether or not you do deal with this question at this time, I believe it absolutely essential to have such procedures in place for the new Intelligence Activities Committee. This Committee will be handling some of our nation's most sensitive information and, very possibly, material that could be a life or death matter for those who serve our country as intelligence operatives. It is, therefore essential that this legitimately secret information be given the strongest possible protection while at the same time we establish the mechanism needed by our democracy to prevent any further misuse of intelligence agencies or further misconduct by those agencies.

U.S. SENATE,
Washington, D.C., March 18, 1976.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As authors of the so-called Roth-Huddleston amendment which is included in section 7(c), (d), and (e) of Senate Resolution 400 as reported from the Government Operations Committee, we wanted to advise you of our commitment to a strong, effective sanctions provision for Members of the Senate or employees who make unauthorized disclosures of intelligence data and to offer our assistance in any way which might be helpful to you.

Our amendment provides that no Senator or employee shall disclose, other than in a closed session of the Senate, information regarding intelligence activities which either the Intelligence Committee or the full Senate has determined should not be disclosed. If there is such a disclosure, the Select Committee may investigate and recommend appropriate sanctions. If five members of the Intelligence Committee or sixteen members of the Senate so request, the Select Committee on Standards and Conduct must investigate the matter.

As you may know, the amendment was discussed at some length in the Government Operations Committee. There was, we think it fair to say, both some confusion and some controversy over what was intended and what should be intended.

Because we are charting somewhat of a new course here, we are certain that you will want to review both the language of the amendment and the report language in some detail. Basically, we are convinced that the amendment is entirely consistent with the Supreme Court decisions in *Powell* v. *McCormack* and *Gravel* v. *U.S.* and with the speech and debate clause of the Constitution. We view it as an exercise of Article 1, section 5 of the Constitution which authorizes each House of Congress to determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and with the Concurrence of two-thirds, expel a Member.

We would appreciate the opportunity either to testify, should public hearings be held, or to meet with the committee, should you deem that useful.

Thank you for your consideration.

Sincerely,

WALTER D. HUDDLESTON.
WILLIAM V. ROTH, Jr.

UNITED STATES SENATE,
Washington, D.C., April 6, 1976.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Committee on Rules and Administration is presently considering S. 400 to establish a new Intelligence Oversight Committee in the Senate. Last month the Senate Committee on the Judiciary met to discuss the issue concerning the extent of jurisdiction the new committee should be given regarding intelligence activities of the Federal Bureau of Investigation; we understand that the views of the committee, adopted by voice vote, have been provided to the Committee on Rules and Administration.

While a majority of the members of the Committee on the Judiciary present at our executive session last month favored the Committee on the Judiciary's retaining exclusive jurisdiction over F.B.I. intelligence activities, we, the undersigned members of the Committee on the Judiciary, wanted to bring to your attention our conclusions to the contrary: that the Intelligence Oversight Committee should be vested with concurrent or joint jurisdiction in this area.

Unquestionably the F.B.I. is predominately a law enforcement agency which sets it apart from both the C.I.A. and the Defense Department intelligence operations. At the same time, however, we recognize that the F.B.I. exercises both domestic and foreign intelligence responsibilities. The Bureau's foreign counterintelligence activities often do not relate directly to law enforcement purposes; its domestic security intelligence activities also frequently involve both law enforcement concerns and matters relating to activities of foreign powers or groups. Counterintelligence activities relating to foreign agents in the United States fall peculiarly in this category.

The Judiciary Committee, we believe, must maintain its historic jurisdiction over all aspects of the F.B.I. in light of this committee's responsibilities for and expertise in the areas of law enforcement and protection of constitutional rights and civil liberties. On the other hand, we feel that the new committee must also have oversight responsibilities over the F.B.I. intelligence activities for several reasons.

Such review will be necessary for the new committee to analyze properly the foreign aspects of activities of other intelligence agencies. Because of the potential foreign aspects of counterintelligence, legitimate domestic security and anti-terrorist intelligence activities, the new committee should have authority to review the Bureau's operations in those fields as part of the overall picture of the American intelligence effort and in view of the threats it must meet.

We thus conclude that the Intelligence Oversight Committee should be given overlapping jurisdiction with the Judiciary Committee with respect to all F.B.I. intelligence activities.

Sincerely,

EDWARD M. KENNEDY,
PHILIP A. HART,
BIRCH BAYH,
QUENTIN N. BURDICK,
JOHN V. TUNNEY,
CHARLES MCC. MATHIAS, JR.,
JAMES ABOUREZK.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 19, 1976.

B–179296.
B–133200.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate.

DEAR HOWARD: I am enclosing a copy of my letter to Chairman Frank Church on the subject of General Accounting Office audit authority with respect to intelligence activities.

Since S. Res. 400 is pending before your Committee, I thought you might be interested in our views prior to final Senate consideration of the resolution. Without a clearer indication of congressional intent, we can conclude only that no change in our role is intended.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Enclosure.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 19, 1976.

B–179296.
B–133200.

Hon. FRANK CHURCH,
Chairman, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, U.S. Senate.

DEAR MR. CHAIRMAN: The General Accounting Office has been observing the progress of recent congressional and executive inquiries with regard to the intelligence functions of the Federal Government, particularly the investigations conducted by your Committee and the House Select Committee on Intelligence. Our interest has been to determine whether this activity will result in a clearer definition of the role we are to play in relation to the permanent congressional oversight structure that will exist after the conclusion of these studies. We are now writing to your Committee because the time for making critical decisions appears to be at hand and we have not yet seen strong evidence of a congressional intent to provide the kind of clarification we believe is necessary.

To date, neither your Committee report nor the report of the House Committee has been published. However, the House Committee has published its recommendations (H. Rept. No. 94–833, February 11, 1976). Recommendation "H," entitled "FULL GAO AUDIT AUTHORITY," represents the only clear indication of congressional sentiment on this issue; this recommendation states:

> "The select committee recommends that the General Accounting Office be empowered to conduct a full and complete management as well as financial audit of all intelligence agencies. There shall be no limitation on the GAO in the performance of these functions by any executive classification system, and the audit function of GAO shall specifically apply to those funds which presently may be expended on certification of a Director of an Agency alone."

However, even within the House Committee there was a degree of uncertainty as to the GAO role, in that the ranking minority member submitted an alternative recommendation which speaks only of "financial audits," a position which in our opinion would not produce a material difference in the type of audit work we are now able to perform.

Furthermore, legislation is now under consideration by the Senate Committee on Rules and Administration which would establish a standing Senate Committee on Intelligence Activities. The pending bill, S. Res. 400, derives from S. 2893, which was introduced on January 29, 1976, by you and a majority of the members of your Committee. S. Res. 400 was favorably reported by the Senate Committee on Government Operations on March 1, 1976 (S. Rept. No. 94–675).

Neither S. 2893, S. Res. 400, nor the Government Operations Committee report makes any reference to our Office and there is nothing in any of these documents which would enable us to know, better than we do now, what assistance the Congress will expect us to render in aid of the oversight function.

Other pending legislation, for example H.J. Res. 806, is similarly silent on this matter. In fact, we are aware of only three current bills which are directly related to GAO audit activity in the intelligence area. Two bills focus primarily on the problem of auditing funds spent pursuant to statutory certification authority (H.R. 1523, introduced January 16, 1975, by Congressman Bob Eckhardt and others, and S. 1817, introduced May 22, 1975, by Senator Richard Schweiker). The third bill, S. 653 (introduced by Senator William Proxmire on February 11, 1975) represents a broad authorization for GAO audits of intelligence activities. No action has been taken on any of these bills.

Within the last two years we have established, in a series of documents, a full record of our experiences, comments, and views with regard to GAO audits of intelligence activities. It is not necessary here to restate all that has been said before; however, we have attached a list of the more significant documents for ease of reference. There is one theme in all of these documents which merits singular attention, and which can be best illustrated by quotation from these documents:

1. From the May 10, 1974, letter to Senator Proxmire:

"From prior experience, it is our view that a strong endorsement by the congressional oversight committees will be necessary to open the doors to intelligence data wide enough to enable us to perform any really meaningful reviews of intelligence activities."

2. From our July 10, 1975, letter to your Committee:

"We believe a strong congressional endorsement will be necessary to open the doors to intelligence data wide enough so that we can make the meaningful reviews of intelligence activities that would assist the Congress in performing its oversight function."

3. From our November 10, 1975, letter to the Chairman of the House Select Committee on Intelligence:

"The Congress must first make certain fundamental determinations as to the manner and methods by which it will exercise its oversight role. Once this set of basic decisions has been made, the role of the GAO in support of the legislative review function can be more easily and precisely determined. Until these matters are resolved, GAO's review activity with respect to the intelligence agencies will be severely circumscribed by the combination of legal and practical inhibitions outlined in our July 31 testimony. Therefore, we see any expansion of our sphere of activity in this area as being particularly dependent upon a strong and clear endorsement from the congressional oversight committees."

We believe that it is of importance both to GAO and to the intelligence agencies to be provided adequate legislative guidance as to the scope and extent of future GAO audits of intelligence activities. Whether or not there is to be a significant change in our past role, the legislative intent should be made clear. The present record permits us to conclude only that no change is intended.

We urge you to help resolve the uncertainty either through appropriate action during the further consideration of S. Res. 400, or through comment on this issue in your forthcoming Committee report.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Attachment.

RECENT SIGNIFICANT GAO DOCUMENTS ON GAO ROLE CONCERNING INTELLIGENCE ACTIVITIES

1. Letter to Senator William Proxmire—May 10, 1974.
2. Letter to Chairman Frank Church, Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities—July 10, 1975.
3. Letter to Chairman Otis Pike, House Select Committee on Intelligence—July 31, 1975 (identical to July 10, 1975, letter).
4. Testimony of Comptroller General before House Select Committee on Intelligence—July 31, 1975.
5. Letter to Chairman Otis Pike, House Select Committee on Intelligence—November 10, 1975.
6. Report to House Committee on the Judiciary, "FBI Domestic Intelligence Operations—Their Purpose and Scope: Issues That Need to be Resolved" (GGD-76-50, February 24, 1976).

U.S. SENATE,
Washington, D.C., March 11, 1976.

HON. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Senate Resolution 400, as reported to the Senate by the Committee on Government Operations and referred to your Committee for consideration contains several provisions that constitute precedents insofar as a standing committee of the Senate is concerned.

Section 2 of the resolution contains a provision which limits membership of a Senator on the new standing committee to not more than six (6) years of continuous membership. To my knowledge, this would be the first instance in which membership on a standing committee has been limited.

Section 2 also contains a provision which provides for the election of the chairman of the committee by the Members of the majority party and the election of the vice chairman of the committee by the Members of the minority party and that the vice chairman shall act in the absence of the chairman. The authorization for the election of a vice chairman of a standing committee would be the first instance in which a vice chairman would be authorized for and elected by a standing committee with authorization to act in the absence of the chairman.

Predicated on a strict interpretation, the authorization for the vice chairman to approve vouchers for expenditures and to appoint employees to the committee in the absence of the chairman, would appear to require the committee to notify your Committee each time the chairman is absent for the purpose of your Committee's approval of vouchers signed by the vice chairman. For the purpose of staff appointments the committee would also be required to notify my office in the same manner. Otherwise, it would have to be assumed by your Committee and my office that the chairman was absent whenever the vice chairman signed a voucher or an appointment.

Section 3 of the resolution contains a provision which limits the employment of a Professional Staff Member to six (6) years, whether employed full time, on a daily basis, by contract, or by any combination of these three types of employment. The report of the Committee on Government Operations states that this provision would not apply to nonprofessional staff members. Except for temporary appointments which are utilized by many offices in the Senate, this is the first instance in which the employment of any regular employee has been limited to a specified period of time. This would require a very strict control of the affected employees to avoid an illegal payment of salary.

While all of the above provisions constitute a precedent insofar as standing committees are concerned. I am aware that Senate Resolution 400 is decreeing Senate policy and therefore would not want the information in this letter to be construed as anything more than a service to your Committee.

If I can be of further service to you and your Committee, please let me know.

Respectfully,

WILLIAM A. RIDGELY,
Financial Clerk, U.S. Senate.

Approved For Release 2001/07/27 : CIA-RDP90-00735R000200160003-5

APPENDIX

EXHIBIT 1

STATEMENT OF MITCHELL ROGOVIN, BEFORE THE HOUSE SELECT COMMITTEE ON INTELLIGENCE, DECEMBER 9, 1975

Re: The Constitutional, Statutory and Legal Basis for Covert Action.

By means of explicit, formal instructions to the Director of Central Intelligence, the President and the National Security Council have directed that the Central Intelligence Agency assume responsibility for planning and conducting "covert action" in support of this country's foreign policy objectives. The legal authority for the delegation of this responsibility to the CIA derives from three fundamental sources, each of which, in itself, constitutes a sufficient legal basis for the delegation. The three fundamental sources are: (1) the inherent constitutional power of the President with respect to the conduct of foreign affairs; (2) the National Security Act of 1947; and (3) the ratification, by Congress, of the CIA's authority to plan and conduct covert action.

The major portion of this memorandum is devoted to an analysis of these fundamental legal sources. Before proceeding with this analysis, however, it is useful to set forth a description of the kinds of activities which are comprehended by the term "covert action."

I. Covert action defined

In general terms covert action means any clandestine activity designed to influence foreign governments, events, organizations or persons in support of United States foreign policy, conducted in such manner that the involvement of the United States Government is not apparent.

There are four general categories of covert action:

(1) *Covert Political Action* or operations designed to exercise influence on political situations in foreign countries; this could involve funding a political party or other group, or the use of an agent in a high government position to influence his government's domestic or foreign policy in a manner beneficial to the United States;

(2) *Covert Propaganda* or the covert use of foreign media assets including newspapers, magazines, radio, television, etc., to disseminate information supporting United States foreign policy or attack the policies and actions of foreign adversaries;

(3) *Intelligence deception* operations involving the calculated feeding of information to a foreign government or intelligence service for the purpose of influencing them to act or react in a manner favorable to our purpose; and

(4) *Covert paramilitary action*, the provision of covert military assistance and advice to foreign conventional and unconventional military forces or organizations.

II. Fundamental sources of legal authority for CIA to engage in covert action

As indicated above, the legal authority for the delegation of covert action responsibility to the CIA by the President and the National Security Council derives from three fundamental sources: (1) the inherent constitutional power of the President with respect to the conduct of foreign affairs; (2) the National Security Act of 1947; and, (3) the ratification, by Congress, of the CIA's authority to plan and conduct covert action. Each of these fundamental sources is discussed separately below.

A. INHERENT CONSTITUTIONAL POWER OF THE PRESIDENT WITH RESPECT TO FOREIGN AFFAIRS

The Supreme Court, the Congress, and the framers of the Constitution itself, have all recognized that the President possesses broad powers with respect to the conduct of foreign affairs. No less a constitutional authority than John Marshall in an address to the House of Representatives, declared:

> The President is sole organ of the nation in its external relations, and its sole representative with foreign nations.[1]

The United States Senate, at an early date in its history, acknowledged the supremacy of the President with respect to foreign affairs, and recognized that he has broad powers in that area. In 1816, the Senate Foreign Relations Committee issued a report which concluded:

> The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how and upon what subjects negotiation may be urged with the greatest prospect of success.[2]

Each of these statements was cited approvingly by the Supreme Court in *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 311 (1936). In that case, the Court upheld the power of the President to proclaim it unlawful for United States citizens to supply arms to any of the belligerents in the Chaco War in South America. Although the Court could have rested its opinion solely on the grounds that the proclamation was issued pursuant to a Joint Resolution of Congress, it cited the statements of Marshall and the Senate Foreign Relations Committee excerpted above and spoke at length of the inherent constitutional powers of the President with respect to foreign affairs. Specifically, the Court spoke of:

> [T]he very delicate, plenary and exclusive power of the President as the sole organ of the Federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress . . . 299 U.S. at 320.

The Court has frequently reaffirmed the constitutional doctrine set forth in *Curtiss-Wright* that the President is supreme in the area of foreign affairs and that his powers in that area are "plenary." For example, in *United States* v. *Pink*, 315 U.S. 203 (1942), a case in which the Court upheld the power of the President to recognize foreign governments and to conclude executive agreements with them which have the force of domestic law, the Court repeated that "the President . . . is the 'sole organ of the Federal government in the field of international relations.'" 315 U.S. at 230. Then the Court added:

> Effectiveness in handling the delicate problems of foreign relations requires no less. Unless such a power exists, the power of recognition might be thwarted or seriously diluted. No such obstacle can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of the powers and responsibilities of the President in the conduct of foreign affairs . . . is to be drastically revised. *Id.*

Pursuant to this "historic conception of the powers and responsibilities of the President in the conduct of foreign affairs," the Court has made it clear that the President may: proclaim it unlawful for United States citizens to supply arms to foreign belligerents, *Curtiss-Wright, supra;* recognize foreign governments and conclude binding executive agreements with them, *Pink, supra;* use military force to protect United States citizens and property abroad, In Re Neagle, 135 U.S. 1, 64 (1890); and repel an armed attack by meeting "force with force," *Prize Cases*, 2 Black 635, 668 (1862).

The Court has never considered the precise question of whether the President may direct an agency of government to perform covert action in foreign countries. However, in view of the Court's recognition of the broad powers of the President with respect to the conduct of foreign affairs, and in view of the overwhelming historical precedents, it is clear that the President *does* have this power.

The historical precedents are every bit as compelling as the strong language used by the Supreme Court. Chief among these precedents is the longstanding practice whereby Presidents, acting on their own authority, have dispatched troops to foreign countries and authorized the use of military force short of war.

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[1] 10 Annals of Congress 613 (1800), reprinted in 5 Wheat. Appendix note 1, at 26 (U.S 1820).

[2] 8 U.S. Senate Reports, Committee on Foreign Relations, p. 24.

This practice was originated by Thomas Jefferson when he, on his own authority, sent the Navy to combat the Barbary pirates in an effort to protect American shipping. By 1970 it was estimated that Presidents, on their own authority, had asserted the right to send troops abroad in "more than 125" instances differing widely in purposes and magnitude.[3] Although the Constitution vests Congress with the power to "declare war (Article I, Section 8, Clause 11), Presidents have, throughout history, insisted on and exercised their right to use force short of war. President Taft, who later served as Chief Justice of the Supreme Court, wrote:

> The President is the Commander-in-Chief of the army and navy, and the militia when called into the service of the United States. Under this, he can order the army and navy anywhere he wills, if the appropriations furnish the means of transportation." [4]

Recent examples of presidential use of force short of war include: President Truman's peacetime stationing of troops in Europe; President Eisenhower's sending of Marines to Lebanon in 1958 to prevent foreign intervention in the affairs of that country; President Kennedy's imposition of a naval "quarantine" on Cuba during the 1962 missile crisis, and his sending of planes to the Congo to evacuate civilians in 1960; President Johnson's sending of troops to the Dominican Republic in 1965 to prevent formation of a hostile government; [5] and, President Ford's use of force against Cambodia in 1975 to obtain the release of American seamen held by Khmer Rouge troops.

Congress has formally acknowledged that the President has inherent constitutional authority to use military force short of war. This acknowledgement is implicit in the War Powers Resolution, which became effective on November 7, 1973.[6] In Section 3 of that Resolution, it is provided that:

> The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

Moreover, the Resolution specifically states, in Section 8(d)(1), that it is not intended in any way to "alter the constitutional authority" of the President:

> Nothing in this joint resolution—
>
> (1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties . . .

If the President has the power to dispatch troops to foreign countries and to use military force short of war—and the foregoing discussion clearly demonstrates that he does—then it would logically follow that he has the power to send civilian personnel to foreign countries to engage in covert action, since such action is rarely, if ever, as drastic as the use of military force. In fact, the historical precedents in support of the President's power to conduct covert action in foreign countries are every bit as clear as those in support of his power to use military force.

Long before the CIA was established, Presidents, acting on their own authority, directed executive agents and executive agencies to perform what has come to be known as covert action. Beginning with George Washington, almost every President has appointed "special agents" to engage in certain activities with, or against, foreign countries; although the activities conducted by these executive agents have included such overt assignments as negotiating treaties and conferring with wartime allies, they have frequently included covert action as well. In the first century of the nation's existence alone, more than 400 such agents were appointed by the President.[7]

Early examples of covert action performed by these agents are legion. The following three are typical: (1) in 1843 President Tyler secretly dispatched an agent to Great Britain to meet privately with individual government and opposition

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[3] *Background information on the Use of U.S. Armed Forces in foreign countries,* 1970 Revision by the Foreign Affairs Division, Legislative Reference Service, Library of Congress, for the Subcommittee on National Security Policy and Scientific Development of the House Committee on Foreign Affairs, 91st Cong. 2d Sess. 16 *et seq.* and Appendices I and II (hereafter, "Background Information.")

[4] Taft, W. H., *Our Chief Magistrate and His Powers,* pp. 94–95 (1916).

[5] Background information, *supra.*

[6] Public Law 93–148, 87 Stat. 555.

[7] S. Doc. No. 231, 56th Cong., 2d Sess., part 8, at 337–62 (1901); H.R. Doc. No. 387, 66th Cong., 1st Sess., part 2, at 5 (1919).

leaders and to attempt to influence public opinion with respect to matters affecting the two countries, without ever disclosing that he was a representative of the United States Government; (2) in 1845, when President Polk feared that Mexico was on the verge of ceding California to Great Britain, he secretly dispatched an agent to California for the purpose of "defeating any attempt which may be made by foreign governments to acquire a control over that country;" (3) in 1869, when the United States had territorial designs on central and western Canada, President Grant sent an agent to that area to foment sentiment for separation from Canada and union with the United States.[8]

These examples show that the practice of appointment of special agents by the President for the purpose of conducting covert action in foreign countries is deeply-rooted in our national history. The practice is so deeply-rooted that historians have acknowledged the existence of a broad presidential discretion with respect to appointment of such agents and assignment of functions to them. According to Henry M. Wriston, for example:

> Among all instruments available to the President in his conduct of foreign relations, none is more flexible than the use of personal representatives. He is free to employ officials of the government or private citizens. He may give them such rank and title as seem appropriate to the tasks. . . . He may send his agents to any place on earth that he thinks desirable and give them instructions either by word of mouth, or in writing, or through the Department of State, or in any other manner that seems to him fitted to the occasion. . . .
>
> Their missions may be secret, no one ever being informed of them. . . . The President may meet their expenses and pay them such sums as he regards as reasonable. In this matter there is no check upon him except the availability of funds which has never proved an insoluble problem. *In short, he is as nearly completely untrammeled as in any phase of his executive authority.*[9] (Emphasis added.)

Individual agents, appointed by the President, were the exclusive means by which covert action was conducted prior to World War II. During the war, the President created the Office of Strategic Services, and charged it with responsibility for secret subversive operations against the enemy, as well as general intelligence activities; the OSS thus became the first governmental agency to be assigned the task of planning and conducting covert action. The OSS exercised this task until it was disbanded in September 1945. Then, in January 1946, President Truman, by Executive Order, established the Central Intelligence Group.[10] Although the CIG was primarily a centralized intelligence organization, it was also assigned the function of conducting covert action.

What these historical precedents show is that, beginning long before the CIA was established, Presidents exercised their independent power to direct executive agents and executive agencies to perform covert action in foreign countries. Consequently, when the CIA was established in 1947, and when, shortly thereafter, it was delegated the responsibility for covert action, there was no attempt by the President to assert or exercise any new or theretofore unrecognized executive authority; he was merely delegating to the CIA various executive functions which were previously assigned to *ad hoc* special agents and other executive agencies.

In sum, the decisions of the Supreme Court, the actions of Congress, and the constitutional precedents developed by historical example clearly establish that the President has broad, inherent powers with respect to foreign affairs, and that these powers include the authority to assign an executive agency, such as the CIA, the responsibility for planning and conducting covert action in support of this country's foreign policy objectives.

B. NATIONAL SECURITY ACT OF 1947

The National Security Act of 1947 provided for the establishment of the CIA. However, the idea for a central intelligence organization was actually conceived three years earlier. In 1944, Colonel (later Major General) William J. Donovan, head of the wartime Office of Strategic Services, prepared a plan for President

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[8] Wriston, Henry Merritt. *Executive Agents in American Foreign Relations*, Baltimore, Md., Johns Hopkins Press (1929), reprinted Glouster, Mass., Peter Smith (1967).
[9] 38 Foreign Affairs 219 (1960).
[10] Executive Order 9690, January 26, 1946. 11 Federal Register 1337, 1339 (February 5, 1946).

Roosevelt which called for the establishment of a centralized intelligence service. Donovan's plan envisoned an agency similar to his own OSS, which would procure intelligence by overt and covert means and which would be responsible for "secret activities" such as "clandestine subversive operations."

The OSS itself, as indicated above, was disbanded at the close of World War II in September 1945. However, Donovan's plan, as developed and amended by the Joint Chiefs of Staff, reached fruition on January 22, 1946; on that date, President Truman, by Executive Order, established the Cenral Intelligence Group (CIG).[11] The CIA thus became the first peacetime central organization in American history devoted to intelligence matters. Heading the CIG was a Director of Central Intelligence, whose duties were to:

> (a) Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national intelligence policy . . .
>
> (b) Plan for the coordination of such of the activities of the intelligence agencies of [other] departments as relate to the national security and recommend to the National Intelligence Authority [composed of the Secretaries of State, War and Navy, and a personal representative of the President] the establishment of such overall policies and objectives as will assure the most effective accomplishment of the national intelligence mission.
>
> (c) Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.
>
> (d) *Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct.*[12] (Emphasis added.)

The National Security Act of 1947 called for the CIA to have the same powers and responsibilities as were accorded the CIG under the 1946 Presidential Directive. Accordingly, when the House Committee on Expenditures in the Executive Departments held hearings on the 1947 Act, it paid special attention to the broad authority delegated to the CIG by subsection (d).[13] During these hearings, for example, Representative Clarence Brown questioned Lt. Gen. Hoyt S. Vandenberg, Director of Central Intelligence, about the authority which subparagraph (d) conveyed:

> Rep. Brown. "[T]his other section (i.e., subparagraph (d)) was so broad that you could do about anything that you decided was either advantageous or beneficial, in your mind?"
>
> Lt. Gen. Vandenberg: "Yes, sir."
>
> Rep. Brown: "In other words, if you decided you wanted to go into direct activities of any nature, almost, why, that could be done?"
>
> Lt. Gen. Vandenberg: "Within the foreign intelligence field, if it was agreed upon by all of the three agencies concerned [i.e., State, War and Navy, the three agencies represented on the NIA]." [14]

A subsequent witness, Peter Visher, the draftsman of the Presidential Directive establishing the CIG, recommended to the committee that it pass the Act *without* authority for the CIA to perform any "other functions related to intelligence affecting the national security." He called this provision a "loophole" because it enabled the President to direct the CIG to perform almost any operation.[15] Various members of the committee discussed the provision with the witness.[16]

It is significant, then that when the bill was reported out, and when it was passed, it authorized the CIA to:

> Perform such other functions and duties related to intelligence affecting the national security as the National Security Council (which replaced the NIA) may from time to time direct. (Section 102(d)(5)).

In other words, the committee, with full knowledge of the broad implications of subparagraph (d) of the 1946 Presidential Directive, conferred the identical powers and responsibilities on the CIA. This legislative history indicates

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[11] Executive Order 9690, *supra*.
[12] Id. at 1337.
[13] Hearings before the House Committee on Expenditures in the Executive Departments. June 27, 1947, addendum No. 1 to Volume 1 (hereafter "hearings").
[14] Hearings, *supra*, p. 11.
[15] *Id.*, p. 88.
[16] *Id.*, pp. 78–108.

that the committee, by including Section 102(d)(5) in the final bill, intended that the CIA have the authority, subject to directions from the National Security Council, to conduct a broad range of direct operational assignments.

C. CONGRESSIONAL RATIFICATION OF CIA AUTHORITY TO PLAN AND CONDUCT COVERT ACTION

Throughout the 28-year history of the CIA, the Agency has reported its covert action programs to the appropriate members of its oversight subcommittees in both the House and Senate. Moreover, Congress, through the mechanisms it has established for funding the Agency, has continually appropriated funds to the Agency for these activities.[17]

The Justice Department, in its 1962 memorandum, discussed *supra*, provided the following description of the history of CIA reporting of its covert action programs to Congress, and Congressional appropriation of funds for such programs:

> Congress has continued over the years since 1947 to appropriate funds for the conduct of such covert activities. We understand that the existence of such covert activities has been reported on a number of occasions to the leadership of both houses, and to members of the subcommittees of the Armed Services and Appropriations Committees of both houses. It can be said that Congress as a whole knows that money is appropriated to CIA and knows generally that a portion of it goes for clandestine activities, although knowledge of specific activities is restricted to the group specified above and occasional other Members of Congress briefed for specific purposes. In effect, therefore, CIA has for many years had general funds approval from the Congress to carry on covert cold-war activities . . .[18]

The law is clear that, under these circumstances, Congress has effectively ratified the authority of the CIA to plan and conduct covert action under the direction of the President and the National Security Council. The leading case on this point is *Brooks* v. *Dewar*, 313 U.S. 354 (1941). In that case, a 1934 Act of Congress authorized the establishment of livestock grazing districts on certain federally-owned land, and charged the Secretary of the Interior with responsibility for administering and maintaining these districts; although the powers conferred on the Secretary were broad, the Act did not explicitly authorize him to require persons wishing to utilize the land to purchase licenses. Nevertheless, the Secretary promulgated regulations which imposed a license requirement, and sought to bar respondents who had not purchased a license, from utilizing a particular grazing district.

In the Supreme Court, the Secretary argued that, even though the 1934 Act did not explicitly authorize him to require users of federal grazing lands to purchase licenses, his exercise of this authority was lawful because Congress, by its own actions, had ratified it. The Secretary argued that, on several occasions, he fully informed the appropriate Congressional committees that he had imposed a license requirement and that, in light of this information, Congress continually appropriated funds for the operation of the grazing district program; this, he contended, amounted to a ratification of his authority to institute the license requirement.

The Supreme Court agreed that Congress, by continuing to appropriate funds with knowledge of the Secretary's actions, ratified those actions. The Court explained:

> The information in the possession of Congress was plentiful and from various sources. It knew from the annual reports of the Secretary of the Interior that a system of temporary licensing was in force. The same information was furnished the Appropriations Committee at its hearings. Not

[17] The history of CIA reporting of covert action programs and congressional appropriation dates back to 1948. In April 1948, when the House Armed Services Committee was considering the CIA act (ultimately adopted in 1949), Director of Central Intelligence Hillenkoetter told the committee that the act was needed to enable the Agency to, *inter alia*, do research on and purchase explosives, utilize and supply underground resistance movements in overrun countries, purchase printing presses for the use of agents, and do research for psychological warfare purposes. Passage of the act clearly reflects Congress' determination that the Agency be able to conduct activities, such as covert action, similar to those conducted by the OSS; for example, the permanent appropriations language in the CIA Act was modelled after the appropriations language for the OSS because of its flexibility and its provision for confidentiality of appropriations for secret operations.

[18] DOJ memorandum, pp. 12–13.

only was it disclosed by the annual report of the Department that no permits were issued in 1936, 1937 and 1938, and that permits were issued in only one district in 1939, but it was also disclosed in the hearings that uniform fees were being charged and collected for the issue of temporary licenses. And members from the floor informed the Congress that the temporary licensing system was in force and that as much as $1,000,000 had been or would be collected in fees for such licenses. The repeated appropriations of the proceeds of the fees thus covered and to be covered in to the Treasury, not only confirms the departmental construction of the statute, but constitutes a ratification of the action of the Secretary as the agent of Congress in the administration of the act. (Footnotes omitted.) 313 U.S. at 360–361.

The *Brooks* case requires the conclusion that Congress has ratified the CIA's authority to plan and conduct covert action. Relying on *Brooks*, the Justice Department reached precisely that conclusion:

> It is well-established that appropriations for administrative action of which Congress has been informed amount to a ratification of or acquiescence in such action. *Brooks* v. *Dewar*, 313 U.S. 354, 361; *Fleming* v. *Fohawk Co.*, 331 U.S. 111, 116; see also *Ivanhoe Irrig Dist.* v. *McCracken*, 357 U.S. 275, 293–294; *Power Reactor Co.* v. *Electricians*, 367 U.S. 396, 409. Since the circumstances effectively prevent the Congress from making an express and detailed appropriation for the activities of the CIA, the general knowledge of the Congress, and specific knowledge of responsible committee members, outlined above, are sufficient to render this principle applicable.[19] (Footnote omitted).

Recent legislative developments provide further support for the Justice Department's conclusion that Congress has ratified the CIA's authority to plan and conduct covert action. In September and October 1974, attempts were made in both the House and Senate to limit the Agency's power to conduct covert action; these attempts were soundly defeated. In the House, the attempt took the form of a proposal by Representative Holtzman for a joint resolution amending the Supplemental Defense Appropriations Act as follows:

> After September 30, 1974, none of the funds appropriated under this joint resolution may be expended by the Central Intelligence Agency for the purpose of undermining or destabilizing the government of any foreign country.

The proposal was defeated by the House on September 30, 1974, by a vote of 291–108.

In the Senate, Senator Abourezk attempted to amend the Foreign Assistance Act of 1961 so that it would state:

> (a) No funds made available under this or any other law may be used by any agency of the United States Government to carry out any activity within any foreign country which violates, or is intended to encourage the violation of, the laws of the United States or of such country.
>
> (b) The provisions of this section shall not be construed to prohibit the use of such funds to carry out any activity necessary to the security of the United States which is intended solely to gather intelligence information. . . .

This amendment was defeated by the Senate on October 2, 1974, by a vote of 68–17.

However, the following amendment to the Foreign Assistance Act of 1961 was enacted:

> Sec. 663. Limitation on Intelligence Activities.
>
> (a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

This provision prevents the CIA from engaging in any covert action unless and until the President makes a finding that such action is important to the national security. It also requires the President to report on the description and scope of the action "in a timely fashion" to the appropriate Congressional com-

[19] DOJ memorandum, p. 13.

mittees. The provision clearly implies that the CIA is authorized to plan and conduct covert action. The Association of the Bar of the City of New York has concluded, in fact, that the provision serves as a "clear Congressional authorization for the CIA to conduct covert activities." [20]

In sum, the history of Congressional action since 1947 makes it clear that Congress has both acknowledged and ratified the atuhority of the CIA to plan and conduct covert action.

III. Conclusions

There is ample legal authority for the Central Intelligence Agency to plan and conduct covert action in foreign countries. *First*, it is within the inherent constitutional authority of the President with respect to foreign affairs to delegate an executive agency, such as the CIA, the responsibility for planning and conducting such activities; in fact, by means of various National Security Council Directives, and National Security Decision Memorandum 40 (issued by the President himself), he has lawfully delegated this responsibility to the CIA.

Second, the National Security Act of 1947 authorizes the CIA, at the direction of the National Security Council, to engage in covert action in foreign countries. The legislative history of this statute, particularly in the House of Representatives, gives support to this conclusion. *Third*, the 28-year history of Congressional action with respect to the CIA clearly establishes that Congress has ratified the authority of the Agency to plan and conduct covert action.

MITCHELL ROGOVIN,
PAUL REICHLER.

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[20] *The Central Intelligence Agency: Oversight and Accountability*, by the Committee on Civil Rights and the Committee on International Human Relations of the Association of the Bar of the City of New York (1975), p. 15.

EXHIBIT 2

CONSTITUTIONAL AND STATUTORY AUTHORITY TO CONDUCT FOREIGN INTELLIGENCE ACTIVITIES

Authority for Activities Relating to Collection of Foreign Intelligence

Authority To Engage in Covert Operations

Limitations on the Authority To Reorganize the Civilian Intelligence Community

I. INTRODUCTION

This research study was made at the request of the IC Coordinating Staff and based on a recommendation by the General Counsel. It is divided into three parts:

A—Authority for Activities Related to the Collection of Foreign Intelligence.

B—Authority to Engage in Covert Operations.

C—Limitations on the Authority to Reorganize the Civilian Intelligence Community.

Each of these subjects is treated separately. Neither the text nor the references include classified information.

The conclusions reached were based on present knowledge of intelligence operations. It is conceivable that some of the conclusions may have overlooked some aspects of the practical functioning of intelligence operations and, therefore, may require further study.

We are confident that the case law in the field has been exhausted. It should be noted, nevertheless, that there are very few cases dealing precisely with the issues discussed in this paper. However, the cases played an important part in arriving at the conclusions, and our supporting views are based, in large part, on the rationale of some of the leading decisions, particularly those which involve Presidential powers.

It can be expected also that the issues discussed in this paper will suggest others on which research may be desired. Other topics which may be considered as additional research projects are the following:

1. Jurisdictional problems in conducting domestic intelligence activities;
2. Scope of authority to protect sources and methods;
3. Fourth Amendment problems in connection with domestic intelligence activities;
4. Limits on CIA authority to conduct investigations and other similar activities within the United States;
5. Limitations on covert operations under international law;
6. Authority of CIA to assist other Federal agencies in carrying out their responsibilities;
7. Nature and scope of the confidentiality of CIA records;
8. Legal responsibilities of CIA and its employees for lawful conduct within the U.S.

II. ANALYSIS OF SOME OF THE ISSUES

1. The Nature of Presidential Powers

The nature and scope of Presidential powers relating to foreign affairs are difficult to determine. The few references to such powers in the Constitution offer little guidance and court decisions are not too helpful, tending to keep within the narrow limits of the issues.

The clauses in Article II of the Constitution do not articulate the powers of the President in conducting foreign affairs, formulating and implementing foreign policy, and taking the steps necessary to safeguard national security. Some authorities contend that the Constitution contemplated that the President should possess the sovereign power which the founding fathers intended to vest in the

Federal Government as a whole. Whatever sovereign power that exists in the national government for conducting foreign affairs is distributed among the three branches, and the theory that the President has unrestricted sovereign power to act exclusively and independently in foreign affairs cannot be supported.[1]

The problem of ascertaining the true nature of the President's powers is made particularly complex because the Constitution has divided responsibility for foreign affairs between the President and Congress. The President negotiates a treaty; the Congress ratifies it. The Congress declares war; but the President prosecutes it. Since there is no explicit allocation of authority between the two branches of government, it remains uncertain as to which branch has authority to determine U.S. foreign policy and under what circumstances both branches must share in its formulation.

Traditionally, Congress makes the laws and the President executes them. If our Constitution required a strictly functional separation of powers, Congress would have the responsibility of making foreign policy and the President of enforcing it. But this concept has been rejected by history, and we have followed the general tradition of recognizing the authority of the President to "legislate" foreign policy and Congress to legislate in domestic affairs. On the few occasions the Supreme Court has reviewed the scope of the President's powers in foreign affairs, it has tended to avoid any ruling that offers much assistance in ascertaining the limits of the scope of such powers. In the *Curtiss-Wright* case[2], the court seemed to endorse the proposition that the President had inherent authority to legislate foreign policy. However, in *Youngstown*[3] the court seemed to favor a "natural" division of powers between Congress and the President, allocating those which are inherently "executive" to Congress. Whether the rule in *Youngstown* will be applied broadly to foreign affairs, or restricted to the domestic aspects of foreign policy, has not yet been decided.

Acceptance of the view that Congress and the President share authority in the field of foreign affairs belies any conclusion that the President possesses unrestricted inherent power. Moreover, to adopt the principle of the exclusive primacy of Presidential powers in foreign affairs is to ignore the doctrine of separation of powers. Therefore, an anlysis of Presidential authority in that area must take into account the statutory framework which Congress established under its power to legislate.[4]

2. Presidential Power and Intelligence Activities

The power of the President to collect foreign intelligence affecting our national security need not rest exclusively on a Congressional delegation of authority. The existence of such authority can be supported by the President's authority as Commander-in-Chief to acquire intelligence for use in making military decisions necessary for protecting our national security.[5] This is reinforced by Congressional policy as articulated in the NSA.

There is support for the view that the responsibilities of the President for conducting foreign affairs vests an inherent authority in him to collect intelligence necessary to intelligently carry out his responsibility. This is based on the proposition that the manifestly complex nature of foreign policy decisions requires that the President obtain information to aid him in formulating foreign and domestic policy. In discussing Presidential authority as related to executive privilege, the Supreme Court in *United States* v. *Nixon*[6] stated that "certain powers and privileges flow from the nature of the enumerated powers." Therefore, the authority of the President to collect foreign intelligence without legislative authority either can be implied from an enumerated power or it can be based on the power of the President to conduct foreign affairs and to formulate foreign policy. It may be concluded, therefore, that the mere collection of intelligence to assist in formulating foreign policy needs no supporting legislation.[7]

3. Authority to Conduct Covert Operations

There has never been any doubt as to the President's power to use whatever means, covert or otherwise, to meet the threats of war or national emer-

[1] See *e.g.* "Foreign Policy and the Constitution", *61 Va. Law Rev.* 751, 753 (1975).
[2] *United States* v. *Curtiss-Wright*, 299 U.S. 304 (1937).
[3] *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952).
[4] Unlike Article II which states that: "*The* Executive Power shall be vested in a President . . .", Article I states that "*All* legislative powers herein granted shall be vested in a Congress . . ." (underscoring added).
[5] *Totten* v. *United States*, 105 U.S. 106 (1875).
[6] 418 U.S. 683, 705 (1974).
[7] This is not to imply that if Congress legislates with respect to the collection of intelligence, the President can still act independently of the legislation.

gency. The authority is inherent under his power as Commander-in-Chief. When the President is not acting under his authority as Commander-in-Chief during times of war or national emergency, his authority to conduct covert operations involving political or military force directed at foreign governments and their leaders must be based on what is appropriately described as his "residual" power. This power includes the authority to conduct foreign affairs and the primary responsibility for safeguarding our national security from foreign threats. However, because it does not fall within one of the President's enumerated powers giving him an independent source of power, the authority to conduct foreign affairs and to safeguard the national security must be shared by him with Congress.

The right of a nation to act in order to protect its national security is based upon the rule of international law which recognizes the sovereign right of self-preservation. But under our system of government, authority to take action to safeguard our national security does not rest in the President alone.

Until the enactment of the Foreign Assistance Act of 1974, there was serious doubt that the CIA had authority to engage in covert operations involving the use of political and military force against, or in support of, a foreign government or its leaders. Such operations involve the implementation of foreign policy—a power which would be difficult to support as having been delegated to the CIA, the NSC, or the President by the National Security Act. Most of the duties delegated to the CIA under that Act are ministerial and do not involve policy making or policy implementation in the field of foreign affairs.

Using covert operations to implement foreign policy within the context discussed herein, independent of any Congressional grant, affects the equilibrium sought by the framers of the Constitution in providing for the separation of governmental powers. If this authority were recognized as independently existing in the Executive Branch, it would permit the President to secretly "legislate" foreign policy and then secretly execute it, using covert means in so doing.

It has been suggested that the special authority given to the National Security Council in section 102(d)(5) of the Act[8] to authorize "other functions and duties" provides the necessary authority for CIA to conduct foreign covert operations. Any such interpretation would strain the literal meaning of the language used. The "other functions and duties" which the NSC may assign are limited to those "relating to intelligence affecting the national security". It would be difficult to support the view that the implementation of foreign policy by the covert use of political, economic, or military force is related to the collection, evaluation or dissemination of intelligence.

Any question as to whether the President can authorize covert operations has now been removed by the enactment of the Foreign Assistance Act of 1974.[9] Section 662 of that Act limits the authority of the President to use appropriated funds for conducting CIA covert operations in foreign countries, other than those relating to intelligence collection, unless he makes a finding that each such operation is important to national security and reports such finding to Congress.

There are two ways to view this section. One view is to construe it as making an affirmative grant of power to engage in foreign covert activities. Another view is to construe it as placing a limitation on authority that is presumed to already exist in the President, the CIA or the NSC.

4. Covert Operations and International Law

This paper has not dealt with the scope of the authority of a nation to pursue foreign policy objectives by the use of covert operations. It also does not touch on the issue of whether some of the reported instances of the use of covert operations violate treaties or resolutions of the United Nations. However, we have expressed the view that international law should not be the basis for determining the legality of foreign covert operations to the exclusion of statutory and Constitutional considerations which are part of our domestic law. This view would seem to apply also to foreign intelligence collection activities.

5. Reorganization of the Civilian Intelligence Community

It is apparent from our study of the legal problems in reorganizing the civilian intelligence community that many of the administrative obstacles to improving the efficiency of the national intelligence operation cannot be overcome without Congressional action. Any attempt by the President to vest in a new appointee

[8] 50 U.S.C. 402(d)(5).
[9] Public Law 93–559 (1974).

authority that has already been delegated to a specific person or body under the National Security Act or any effort to reallocate duties already assigned by statute would be contrary to the Act and also may constitute an executive reorganization requiring legislation.[10]

III. SUMMARY OF CONCLUSIONS

A. Authority for Activities Relating to the Collection of Foreign Intelligence

1. The authority of the President to collect intelligence in times of war and national emergency is implied from his Commander-in-Chief power, supplemented by his authority to faithfully execute the laws. This authority needs no independent Congressional grant to support it.

2. The President also would appear to have authority to collect intelligence, independent of a Congressional grant, when necessary or appropriate in carrying out any of his other enumerated powers or powers which are implied from the nature of his responsibilities, such as the conduct of foreign affairs.

3. Nowithstanding the existence of independent authority in the President to conduct intelligence activities, Congress has concurrent jurisdiction to legislate in the broad field of foreign affairs and, therefore, when it does legislate, the President is subject to such legislation. Any objection by the President would have to be based on the claim that concurrent jurisdiction does not exist and the legislation encroaches upon Presidential powers in violation of separation of powers.

4. Under the National Security Act and amendments thereto, the CIA, DCI, NSC and the President are limited by the provisions of that Act in the conduct of intelligence activities and any actions which are inconsistent with the Act would be invalid and violate the separation of powers.

5. The DCI has plenary authority to protect intelligence sources and methods. This authority may be exercised in a quasi-legislative manner, but it may not be exercised in a manner which would violate the prohibitions against the use of law enforcement powers or involvement in internal security functions.

6. To the extent that foreign covert activities are used solely in connection with the collection of intelligence or the protection of sources and methods, such activities appear to come within the authority of the NSA.

B. Authority Relating to Covert Operations

1. The President has inherent authority under the Constitution, independent of any grant of legislative authority, to authorize covert activities involving the use of political, economic, or military force aaginst a foreign government or its leaders—

(*a*) In times of war or national emergency under his powers as Commander-in-Chief and his responsibilities for executing the laws; and

(*b*) To a limited extent, in times of peace under his residual authority as chief executive to take appropriate action when confronted with a foreign threat to the security of the United States.

2. Although there are differences of opinion, it is doubtful that CIA was intended to have authority under the NSA to implement foreign policy by the use of covert means targeted against foreign elements.

3. The use of the CIA by the President or the NSC for conducting covert activities unrelated to the collection of intelligence and prior to the enactment of the Foreign Assistance Act of 1974 is not supported by the provisions of the National Security Act or its legislative history.

4. In the enactment of the Foreign Assistance Act of 1974, Congress expressly recognized, and, by implication acquiesced in, the authority of the President to authorize covert operations subject to a finding that the operation is important to the national security and a report of such finding is submitted to the Congress.

5. The theory that the President has unrestricted sovereign power to authorize covert operations as long as they do not violate international law cannot be supported.

C. Limitations on the Reorganization of the Civilian Intelligence Community

1. The President can add to or change those duties of the Director of Central Intelligence (DCI) which would not amend the National Security Act (NSA)

[10] Reorganization under the procedure of the Executive Reorganization Act ended on April 1, 1973. 5 U.S.C. 901, 905.

and which are within the range of duties that can be implied from 50 U.S.C. 403(d). Such changes may be initiated by the National Security Council (NSC) or the President through the Council.

2. The appointment of a senior intelligence advisor, coordinator, or other assistant to aid the President is a valid exercise of Presidential authority provided that the duties and functions assigned to such appointee do not conflict with those expressly assigned by the NSA to the NSC or the CIA.

3. The President can direct the NSC to perform additional functions and duties provided that they do not conflict with the advisory role of the Council and are otherwise consistent with the provisions of the NSA.

4. The President should work through the NSC in directing the creation of additional advisory committees to aid the work of the CIA and the NSC. The President's own advisory committees can perform advisory activities which parallel the work of the NSC but such committees cannot usurp the management and supervisory functions the NSA directs the Council to perform.

IV. DETAILED ANAYLSIS OF ISSUES

A. Authority for Activities Related to the Collection of Foreign Intelligence

1. Presidential Powers Generally

"Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress."[1] This statement, made by Mr. Justice Jackson in his concurring opinion in the *Youngstown* case, describes the fundamental nature of Presidential powers and points to the problem in attempting to draw precise lines between Presidential and Congressional powers. In this case he described the powers of the President as falling into three broad categories:

> 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances and in these only, may be said . . . to personify the federal sovereignty.
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> * * * * * * *
>
> 2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.
>
> 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system."[2]

This analysis of the interaction of Presidential and Congressional powers offers some guidance in determining the scope of such powers in the field of foreign intelligence within the framework of the National Security Act.

2. Authority to Collect Foreign Intelligence

The President's authority to collect intelligence during war is unquestioned. The authority is implied in the power of the President as Commander-in-Chief of the armed forces. *Totten v. United States*, 92 U.S. 105, 106 (1875). Because of the need for accurate and reliable intelligence to enable the President to carry out his responsibilities for anticipating outside threats to our national security and conducting foreign affairs on a day to day basis, the collection of intelligence under conditions other than war or national emergency also seems

[1] 343 U.S. 579, 635 (1952).
[2] *Id.* at 635–38.

clearly justified. These powers aid the President in the conduct of foreig affairs and in the preparations to meet potential threats to our national sec city. In commenting upon the President's authority as Commander-in-Chief an in conducting foreign affairs, the United States Court of Appeals for the Th rd Circuit, in *United States v. Lutenko*,[3] pointed to the importance of the I resident having information to assist him in making an informed judgment in arrying out his responsibilities. "Decisions affecting the United States's relations ip with other sovereign states are more likely to advance our national interes s if the President is apprised of the intentions, capabilities and possible resp nses of other countries." In *United States v. Nixon*,[4] The Supreme Court recogn zed this broad concept of executive power in commenting on the Presidential ower of executive privilege. The Court stated that "certain powers and privil es flow from the nature of enumerated powers" and as such have "constitution l underpinnings." [5]

Although the President has inherent authority to collect foreign int lligence, this authority is not exclusive. There is no doubt that Congress has the uthority to legislate the administrative and organizational framework for the c duct of intelligence activities.[6] To provide this framework, Congress enacted the National Security Act of 1947 establishing the National Security Council and he CIA. To the extent the National Security Act has legislated with respect to int lligence activities, the President is limited. However, he is not limited by fun tions or activities not embraced by the Act and which can be supported under is independent authority as President under Article II of the Constitution.

3. Authority Under the National Security Act

Under the National Security, Act, the CIA is authorized to correlate, valuate and disseminate intelligence information derived from other intelligence gencies of the Government.[7] In the performance of this function, the Agency is authorized to require the submission by other agencies and departments of nforma-tion affecting national security.[8] The CIA is also authorized to perform services of common concern for the benefit of other intelligence agencies,[9] a d other intelligence functions and duties affecting national security as the National Security Council may direct.[10] In addition, the Director of Central Int lligence, under the direction of the National Security Council is given the resp sibility for the protection of intelligence sources and methods.[11] To delineate th respon-sibilities of the CIA in the foreign intelligence field and the FBI in the omestic field, the Act contains a specific prohibition against the utilization police, subpoena, and law enforcement powers, or the performance of internal security functions.[12]

Conspicuous by its absence is the "collection" function. This functi n is not readily implied from *correlation, evaluation,* or *dissemination,* but it is c ear that Congress intended the "collection" function to be included in the A t.[13] The legislative history is also clear that the CIA was limited to foreign int lligence activities with the possible exception of such activities relating to it s housekeeping responsibilities and the protection of its sources and methods.

The legislative history of the NSA disclosed the concern of several witnesses for the need of a central collection operation for foreign intelligence. In addition the language of the Act concerning "additional functions and duties" [14]

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[3] 494 F. 2d 593 (3rd Cir. 1974).
[4] 418 U.S. 683 (1974).
[5] *Id.* at 705–06.
[6] Congress has the power under the "necessary and proper" clause to limit Presidential authority in foreign affairs. U.S. Constitution. Art. I. § 8; *cf. Zweibon v. Mitchell*, No. 73–1847 (D.C. Cir. June 23, 1975) *slip op.* at 825, 880 n. 228.
[7] 50 U.S.C. 403(d)(3) (1964).
[8] 50 U.S.C. 403(e) (1964).
[9] 50 U.S.C. 403(d)(4) (1964).
[10] 50 U.S.C. 403(d)(5) (1964).
[11] 50 U.S.C. 403(d)(3) (1964).
[12] *Id.*
[13] *See Hearings on S. 758 Before the Armed Services Committee*, 80th Cong., 1st Sess. at 491–501, 469; *H.R. Rep.* No. 2734, 79th Cong., 2nd Sess. (1946) (Includes recommendation that collection authority be withheld, but prohibition dropped in later drafts); S. 3.L. Penrose, Jr., *Collection of Background Papers on Development of CIA* (15 May 1947); *Report, Commission on CIA Activities Within the United States* (hereinafter, *Rockefeller Commission Report*) at 59. The authority for collection would probably fall under the "functions and duties" section, 403(d)(5). *see* Note 16 *infra.*, although § 403(d)(4) providing authority for performance of "services of common concern" could also be used. Wallen, "The CIA: A Study in the Arrogation of Administrative Powers", *39 Geo. Wash. L. Rev.*, 66, 69 (1970).
[14] "(It) shall be the duty of the Agency . . . (5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." 50 U.S.C. § 403(d)(5) (1964).

was taken directly from the Presidential order establishing the Central Intelligence Group (CIG). A key witness testified that he interpreted the language of the order to include collection activities.[15] For Congress to use the same language in the act as used in the order indicates strongly that the CIA was intended to have authority to collect intelligence.[16] The practice of CIA performing collection activities since its inception leaves little doubt that the collection function is within the CIA's authority.[17]

4. Restrictions on Executive Authority

Although delegation of authority for the President's use of the CIA is broad, there are certain provisions contained in the NSA which limit the Executive Branch in conducting intelligence activities. The provision prohibiting the use of the CIA for internal security or police functions, along with the legislative history of the Act, make it clear that the Agency is limited in its conduct of intelligence activities within the United States, except possibly those of an overt nature relating to foreign intelligence[18] or those which may be justified in order to protect the intelligence sources and methods.[19]

In conducting intelligence activities, the Executive Branch also must keep within Constitutional limitations and any treaty limitations that may be applicable.[20] The President has no inherent power to authorize intelligence collection functions in violation of Constitutional provisions. The extent of the latter restriction is unclear. Court decisions concerning Fourth Amendment requirements have dealt only with domestic aspects of national security and have left unanswered the question of the applicability of the Fourth Amendment to the foreign aspects of national security, i.e., surveillance of agents or organizations operating in the U.S. but serving the interests of a foreign nation.[21]

Since Congress has acted in the foreign intelligence field, the President is limited in his use of CIA to the specific functions allocated to the Agency by the NSA. If Congress had intended to authorize the President to use CIA to carry out foreign policy generally, it could have so provided. There was, in the development of the Act, a concern over the President's apparent authority to assign functions to the Agency. This concern led to the specific assignment of CIA's functions in the statute.[22] It would appear, therefore, that the President can only direct CIA in its assigned functions—correlation, evaluation, dissemination, and collection[23]—and is not permitted to direct the performance of functions unrelated to foreign intelligence or not otherwise within the statutory grant.

5. DCI Authority

The Act confers on the Director of Central Intelligence special authority in relation to the other elements within the intelligence community. It states, in effect, that to the extent recommended by the NSC and approved by the President, the intelligence collected by other agencies and departments shall be made available to the DCI for correlation, evaluation and dissemination.[24] This seems to provide the President with ample authority to require all agencies and departments which collect intelligence affecting national security to report such

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[15] *Hearings on S. 758 before the Senate Armed Services Committee,* 80th Cong., 1st Sess. at 491–501.

[16] In an early version of the functions and duties of the proposed agency, an express prohibition was included forbidding collection activities. *H.R. Rep.* 2734, 79th Cong., 2nd Sess. (1946). In the final draft, however, that prohibition was excluded with the remaining language unchanged. 50 U.S.C. 403(d)(5) (1964).

[17] The administrative practice of including collection within the Agency's authority provides strong support for the interpretation that that function falls under § 403(d)(5), especially if Congress, with knowledge of such an interpretation, acquiesces in it. *United States* v. *Midwest Oil Co.*, 236 U.S. 459 (1915) ; *see Saxbe* v. *Bustos,* 419 U.S. 65 (1974).

[18] *Rockefeller Commission Report* at 48.

[19] *See* Note 26, *infra.*

[20] This discussion is not intended to judge the impact of a specific international obligation of the United States on the authority of the Executive to conduct intelligence activities. The vast number of treaties and other agreements to which the United States is party would make such an undertaking extremely time consuming and voluminous. It should be noted that treaties of which the United States is a party are the law of the land and, of course, any actions of the President must not be inconsistent with them. *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952). For a good discussion of espionage under international law, both in war and in peace, see Note, "Espionage in Transnational Law", 5 *Vand. J. Trans. L.* 434 (1972).

[21] *United States* v. *U.S. District Court*, 407 U.S. 297 (1972) ; *compare Zweibon* v. *Mitchell*, No. 73–1847 (D.C. Cir. June 23, 1975), *with United States* v. *Butenko*, 494 F. 2d 593 (1974).

[22] *Hearings on S. 758 before Senate Committee on Armed Services,* 80th Cong., 1st Sess. at pp. 78, 87–89, 96–99 (1947) ; *H.R. Rep.* 961, 80th Cong., 1st Sess., pp. 3–4 (1947).

[23] *See* text at Notes 13–17, *supra.*

[24] 50 U.S.C. § 402(e) (1964).

intelligence to the DCI for the purposes of correlation, evaluation and dissemination.

6. Protection of Sources and Methods

The Act contains another provision relating to intelligence that should be touched upon. This provision places upon the DCI the responsibility "for protecting intelligence sources and methods from unauthorized disclosure."[25] This authority is plenary and gives the DCI authority to establish the standards and rules for protecting such sources and methods for all agencies and departments collecting intelligence affecting national security. There is no indication as to the extent which the DCI might go in carrying out this responsibility or as to the methods which may be put to use. Also, in view of the prohibitions against the use of police or law enforcement powers and involvement in internal security functions, it could appear that the DCI's authority for protecting intelligence sources and methods is limited to rule making in nature rather than investigatory or prosecutory, particularly in exercising authority domestically.[26]

7. Conclusions

a. The authority of the President to collect intelligence in times of war and national emergency is implied from his Commander-in-Chief power, supplemented by his authority to conduct foreign affairs. This authority needs no independent Congressional grant to support it.

b. The President also would appear to have authority to collect intelligence, independent of a Congressional grant, when necessary or appropriate in carrying out any of his other enumerated powers or powers which are implied from the nature of his responsibilities such as the conduct of foreign affairs and faithfully executing the laws.

c. Notwithstanding the existence of independent authority in the President to conduct intelligence activities, Congress has, concurrent jurisdiction to legislate in the broad field of foreign affairs and, therefore, when it does legislate, the President is subject to such legislation. Any objection by the President would have to be based on the claim that concurrent jurisdiction does not exist and the legislation encroaches upon President powers in violation of separation of powers.

d. Under the National Security Act, the CIA, NSC and the President are limited by the provisions of that Act, and any amendments thereto, in the conduct of intelligence activities and any actions which violate the Act would be invalid and violate the separation of powers.

e. The DCI has plenary authority to protect intelligence sources and methods. This authority may be exercised in a quasi-legislative manner, but it may not be exercised in a manner which would violate the prohibitions against the use of law enforcement power or involvement in internal security functions.

B. Authority To Engage in Covert Operations

INTRODUCTION

The President's authority to order covert operations* must arise from his enumerated Constitutional powers or a statutory delegation by Congress. If acting under a grant from the Constitution, the President must draw upon his inherent powers or those implied from his express powers. If acting pursuant to legislative enactment, two statutes possibly provide the requisite authority: the National Security Act of 1947[1] and the Foreign Assistance Act of 1974.[2] This

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[25] 50 U.S.C. § 402 (d)(3) (1964).

[26] *See* generally *Rockefeller Commission Report* at 60–61, 165–70 (1975); Association of the Bar of the City of New York, *The Central Intelligence Agency: Oversight and Accountability*, at 10, 11, 34 (1975); *Heine* v. *Raus*, 399 F. 2d 785 (4th Cir. 1968), *on remand* 305 F. Supp. 816 (D.C. Md.) *aff'd*, 482 F. 2d 1007 (4th Cir. 1969). The language of the Act granting protection of sources and methods responsibility to the DCI is so general as to be subject to substantial variation in interpretation. It would seem reasonable, however, that the general restrictions on the Agency would also apply, at least in spirit, to the DCI, thus delegating him an extensive responsibility *abroad* in relation to protection of sources and methods, while substantially limiting the delegation as to his responsibility in that area *domestically*.

*For the purposes of this memorandum, covert operations embrace only those activities unrelated to collection of intelligence which are conducted on foreign soil against foreign nationals.

[1] 50 U.S.C. 402.

[2] Public Law 93–559, § 32 (1974).

analysis will determine whether Presidential power exists to authorize covert operations and, if so, whether the CIA is empowered to engage in them. Unless so empowered, any Executive Order would be without authority and appropriate legislation would be necessary.

1. Constitutional Authority of the President to Authorize Covert Operations

The determination of Presidential authority to formulate a peacetime policy of foreign covert operations requires an analysis of the powers granted in Article II. Specifically, this authority may arguably be implied from each of the following express powers.[3]

a. Responsibility to see that the laws are faithfully executed;
b. Commander-in-Chief power to command the armed forces; and
c. Grant of general executive power.

To claim authority under the first, the President must act pursuant to statute or treaty. There are only two statutes which could be interpreted as conferring such authority: the National Security Act of 1947 and the Foreign Assistance Act of 1974 (see discussion on page 34 *infra.*).

The President may order covert operations under his Commander-in-Chief authority in time of war.[4] However, in times of international tranquility, the President may be restricted to the collection of intelligence. Authority for covert operations would then arise from the need of the President, as Commander-in-Chief, to make informed decisions on deployment of forces to protect the national security.[5]

The last possible source of Presidential authority is the inherent or general "executive power".[6] It could be interpreted to allow covert operations in peacetime as a means of implementing foreign policy. This executive power can be interpreted broadly to grant discretionary authority to the President to engage in covert operations limited only by Congress' power to declare war.[7] A second interpretation would allow the President to engage in such operations, but subject to statutory restriction as well as Congress' enumerated powers.[8] The third and most reasonable interpretation of executive power would make the President's actions subject to statutory restriction except under those circumstances when he must conduct covert operations to eliminate a threat to the national security.[9]

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[3] Art. II, U.S. Constitution. This memorandum does not address any issues relating to international law. An analysis of covert operations and outstanding international agreements will be provided upon request.

[4] *Cf. Totten* v. *United States,* 92 U.S. 106 (1875) and *United States* v. *Curtiss-Wright,* 299 U.S. 301 (1937) for the proposition that authority to order covert operations against the enemy in time of war is implied from the Presidential powers as Commander-in-Chief.

[5] *Ibid. See* also *Federalist No. 23* (Hamilton) and *Federalist No. 48* (Madison), and *Federalist No. 69* (Hamilton) for endorsement of strong Executive power in the area of foreign policy. Rostow, E., "Great Cases Make Bad Laws: The War Powers Act", *50 Tex. L. Rev.* 833, 864 (1972). *Notes,* "Congress, the President and the Power to Commit Forces to Combat", *81 Harv. L. Rev.* 1771, 1777 (1968).

[6] General executive power was recognized as a distinct enumerated power of the President under Art. II by the Supreme Court in *United States v. Nixon* 418 U.S. 683 (1974). *See* also *Notes,* "Congress, the President, and the Power to Commit Forces to Combat", *81 Harv. L. Rev.* 1771, 1776 (1968).

[7] An overly broad interpretation of *United States v. Curtiss-Wright* 299 U.S. 304 (1937), would grant the President, as holder of the general executive power, residual authority to go beyond his enumerated powers to take whatever measures he deems necessary to implement foreign policy. The Presidential power would be exclusive and plenary in foreign affairs; subject only to the Bill of Rights and Congress' enumerated powers (i.e., power to declare war). Under this broad view, the President would have almost total discretion to use covert operations as an instrument of foreign policy regardless of existing statutes. *See* also Barry Goldwater, "The President's Constitutional Primacy in Foreign Relations and National Defense", *13 The Virginia Journal of International Law,* 463, 475 (1975).

[8] Art. I § 8. Necessary and Proper Clause; *McCulloch v. Maryland,* 4 Wheat. 316, 4 L. Ed. 579 (1819). President must adhere to an expression of Congressional policy in an area of share responsibility. *Youngstown v. Sawyer,* 343 U.S. 579 at p. 635–38 (1953) (Jackson Opinion). *See* also *Note,* "Presidential Power: Use and Enforcement of Executive Orders", *39 Notre Dame Lawyer* 44. 49 (Dec. 1963); Reveley: "Presidential War Making: Constitution Prerogative or Usurpation?", *55 U. Va. L. Rev.* 1243 (1969). *Federalist No. 47* (Hamilton) pp. 312–15 (Mod. Library ed.). There are limits to the extent of statutory control (see N. 9 below).

[9] The President's power to eliminate the threats to the national security is not properly subject to statutory restriction because it is implied from his exclusive power as Commander-in-Chief as well as an integral aspect of his more general executive power. *See generally Wiener v. United States,* 357 U.S. 349 (1958); *Myers v. United States,* 272 U.S. 52 (1926); *Muskrat v. United States,* 219 U.S. 346 (1911); *Federalist No. 48* at pp. 321–23 (Mod. Library ed.). The scope of Presidential discretion is governed by what is practically necessary under the particular circumstance. *See Federalist No. 72* at pp. 468–69 (Mod. Lib. ed. 1937). Rostow, "Great Cases Make Bad Laws: The War Powers Act", *50 Tex. L. Rev.* 833, 864 (1972); *Notes,* "Congress the President and the Power to Commit Forces to Combat", *81 Harv. L. Rev.* 1771, 1785 (1968); Reveley, "Presidential War Making: Consti-

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As such, the range of permissible Presidential actions is necessarily circumscribed by the nature of the threat to the national security.

The President may, therefore, establish policy guidelines for covert operations for he does possess the requisite independent authority. However, this does not mean that the President can establish a policy of *CIA*-administered covert operations for that is a question of statutory rather than Constitutional interpretation.

2. Statutory Authority of the President to Engage the CIA in Covert Operations

a. *National Security Act of 1947.*

Whether there exists authority for CIA covert activities involves analysis of both the authority vested in the National Security Council (NSC) and the President under the National Security Act (NSA).

The Act describes the function of the NSC as that of making assessments and recommendations to the President regarding matters relating to the formulation of foreign policy.[10] In the provisions stating the role of the NSC, no independent operational authority is conferred.[11] The NSC acts primarily in an advisory capacity. Whatever independent operational authority exists must be implied from those sections concerned with the functions and duties of the CIA.[12] As such, the NSC is limited under the Act to instructing the CIA in the performance of those ministerial tasks necessary for the production of more accurate foreign policy assessments and recommendations. Covert operations do not appear to fall within this class and, therefore, may not be authorized by the NSC without Presidential approval.

Under the NSA the President may utilize the NSC as an instrument of his Constitutional powers.[13] The NSA did not purport to delegate to the President any additional authority in the area of foreign policy.[14] Rather, the Act recognized and preserved existing independent Executive authority,[15] and established a statutory framework for its implementation to which the President must adhere.[16]

Assuming *arguendo* that the President does possess the constitutional authority to conduct covert operations, he may direct the NSC to establish "executive action" groups subject to appropriate guidelines as approved by him. However, with respect to the utilization of *Congressionally* created agencies, he is limited to the functions and duties they are assigned by statute.[17] Consequently, the Pres-

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tutional Prerogative or Usurpation", *55 U. Va. L. Rev.* 1243, 1257–65 (1969); Madison, *Notes of the Debates in the Federal Convention of 1787*, pp. 475–76 (Ohio Univ. Press ed. 1966)—(as cited in 48 *Chi. Kent L. Rev.* 13, pp. 131–32) (1971). Although Presidential discretion, when dealing with threats to the national security is broad, he may not act under a colorable assertion thereof. *Cf. United States v. Nixon*, 418 U.S. 683 (1974). Nor can he take actions which amount to a usurpation of Congress' power to declare war. *See* gen. War Powers Act of 1973, Hse. Rep. 93–287 on H.J. Res. 542, Committee on Foreign Affairs, 93rd Cong. 1st Sess. (1973).

[10] 50 U.S.C. § 402(a), 402(b)(1)(2).

[11] 50 U.S.C. § 401, 402.

[12] 50 U.S.C. § 403(d); 403(d)(5).

[13] 50 U.S.C. § 402(6).

[14] 50 U.S.C. § 402(d), 402(b). Note that NSC is an *advisory* body. Moreover, 50 U.S.C. 403(d) incorporated the CIA functions and duties as stated in the Presidential Directive of Jan. 22, 1946, 3 CFR 1080 (1943–48 Comp.).

[15] Art. II, U.S. Constitution. Particularly the general executive power and Commander-in-Chief clauses.

[16] Congress may prescribe the necessary and proper means for the execution of Presidential powers. Congressional action is unconstitutional only where it limits Presidential power rather than merely providing a means for its execution. (*See Notes* 8 and 9). *See* also *Zweibon v. Mitchell* No. 73–1847 at p. 880, *Note* 228 p. 228 (1975). For the proposition that under the NSA the CIA was to be limited to specific functions and duties *see:* (1) *Memorandum for the Record* by Lt. Gen. H. Vandenberg, Proposed Legislation for CIG, Chief Legislative Liaison Division. (2) Hse. Rep. 2734, 79th Cong. 2nd Sess. (1946). (3) Sen. Rep. 1327, 79th Cong. 2nd Sess. (1946). (4) Hse. Rep. 961, 80th Cong. 1st Sess., pt. 3 (1947). (5) *Hearing on H.R. 2319 before Hse. Comm. on Expenditures in the Executive Departments*, 80th Cong. 1st Sess., p. 170 (1946) (colloquy between Rep. Brown and Secretary Forrestal. (6) *Hearing on H.R. 2319 before Hse. Comm. on Exp. in Exec. Depts.*, pp. 456–58 (1946) (statement of Brig. Gen. Merritt A. Edison). (7) *Hearings on H.R. 2319 before Hse. Comm. on Exp. in Exec. Depts.*, pp. 166–81 (1946) (colloquy between Rep. Harness and Adm. Sherman). (8) *Hearings on S. 758 before Senate Committee on Armed Services*, p. 555 (1946) (statement of Lt. Col. Riddell). (9) *Hearings on S. 758 before Sen. Comm. on Armed Services*, 80th Cong., 1st Sess., pp. 437–39 (1946) (statement of J. J. Bracken). For the proposition that CIA was to have maximum flexibility in its functions and duties *see:* (1) *Memorandum to Gen. Magruder from Commander Donovan, General Counsel*, OSS, 23 Jan. 1946. (2) *Hearings on H.R. 2319 before House Comm. on Exp. in Exec. Depts.*, p. 228 (1946) (statement of Gen. Norstad). (3) *Hearings on H.R. 2319 before Hse. Comm. on Exp. in Exec., Depts.*, pp. 111–14, pp.119–21(1946) (colloquy between Rep. Busbey and Secretary Forrestal).

[17] *Id.*

ident's use of the CIA must fall within the ambit of the applicable provisions of the NSA.

Under the NSA, the primary function of the CIA is to collate, evaluate and disseminate foreign intelligence.[18] The motivation for the creation of the CIA was not to provide the President with an instrument of subliminal warfare, but to assure him access to an organized body of information necessary for making major foreign policy decisions.[19]

The only provision of the NSA that could be interpreted to allow CIA covert operations is § 102(d)(5).[20] Under this provision the CIA may be charged with "other functions and duties relating to intelligence affecting the national security." "Relating to intelligence" can be interpreted to mean "relating to the *collection* of intelligence." [21] Covert activities not related to collection (e.g., acts of economic or political subversion) are, therefore, arguably outside the scope of § 102(d)(5). Moreover, there are no references to these activities in the floor debates or Committee reports. There are only four references made to covert operations in the entire Hearings Record.[22]

To summarize, neither the provisions nor the legislative history of the NSA indicate that the CIA was to engage in operations not related to the collection of intelligence.[23] Therefore, it seems clear that any Presidential action directing the CIA to undertake covert activities other than those related to the collection of intelligence, cannot be based solely on the NSA.

b. Foreign Assistance Act

Section 662 of the Foreign Assistance Act of 1974[24] requires the President to make a finding that any proposed CIA covert operation not solely related to the gathering of necessary intelligence, is "important to the national security" and then report such finding to the Congress.

Two interpretations may be given to Section 662 concerning the existence of Presidential authority to use the CIA for the performance of covert operations. This provision can be construed as either an affirmative grant of power to the President or a limitation upon presumed Presidential authority[25] to engage the CIA in covert operations.

The legislative history provides support for both of these interpretations. In the House debates, statements were made to the effect that Section 662 was inended to permit CIA "to engage in nonintelligence gathering activities[26] and provide "a further statutory basis for the implementation of foreign policy-related operations of the CIA." [27] Conversely, there were also statements made

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[18] 50 U.S.C. 403(d)(1)–(4) and p. 18 of text.

[19] (1) Sen. Rep. No. 239, 80th Cong., 1st Sess. p. 2, 5 June 1947. (2) Hse. Rep. 961, 80th Cong., 1st Sess., 16 June 1947, p. 310. (3) Sen. Rep. 1327, 79th Cong., 2nd Sess. (1946). (4) Thomas Address, Congressional Record, 14 March 1947, p. 2139. (5) *Hearings on H.R. 2319 before Hse. Comm. on Exp. in Exec. Depts.*, pp. 166–81 (1946) (statement of Vice Adm. F. Sherman). (6) *Hearings on H.R. 2319 before Hse. Comm. on Exp. in Exec. Depts.*, 13 May 1947 (statement of Gen. Carl Spaatz). (7) *Hearings on S. 758 before Sen. Comm. on Armed Services*, 80th Cong., 1st Sess. (Mar. 18–May 9, 1947) (statement of Adm. Chester Nimitz. (8) *Hearings on S. 758 before Sen. Armed Services Comm.*, 80th Cong., 1st Sess., pp. 491–501 (1947) (statement of Lt. Gen. H. Vandenberg). (9) *Hearings on S. 758 before Sen. Comm. on Armed Services*, 80th Cong., 1st Sess., pp. 548–555 (1947) (statement of Lt. Col. Riddell). (10) *Presidential Directive*, 1/22/46 (3 CFR 1080). (11) *See* also floor debates: *Senate:* 93 Cong. Rec. pp. 8466, 8677, 9671; *House:* 93 Cong. Rec., pp. 9565, 9569, 9573, 9379, 9581, 9582, 9590, 9576. (12) *See* also N.Y. Bar Association Study, "The CIA Oversight and Accountability", p. 14. (13) Walden, "The CIA: A Study in the Arrogation of Administrative Powers", *29 Geo. Wash. L. Rev.* 66, 84 (1972).

[20] 40 U.S.C. § 403(d)(5).

[21] *See* (A), Note 14, *supra.*

[22] (1) Statement of Allen Dulles, *Sen. Comm. Hearings on S. 758*, p. 528 (1947). (2) Statement of Lt. Col. Riddell, *Sen. Comm. Hearings on S. 758*, p. 555. (3) Colloquy between Rep. Busbey and Secy Forrestal, *Hse. Comm. Hearings on H.R. 2319*, p. 120 (1947). (4) Colloquy between Rep. Brown and Gen. Vandenberg, *Hse. Hearings on H.R. 2319* (27 June 1947).

[23] Debates: *Senate*—93 Cong. Rec. pp. 8299, 8308, 8320, 8493, 8494, 9496–97, 8500–01. *House*—93 Cong. Rec. pp. 9397, 9400, 9403–04, 9412–13, 9419, 9421, 9430, 9443, 9447. Reports: Hse. Rep. 961 and Sen. Rep. 239, 80th Cong., 1st. Sess. (1946).. Cong. Rep. on S. 758, 80th Cong. (Hse. Rep. 1051, 80th Cong. 7/24/47 at pp. 17, 18, 19). Hearings: *On H.R. 4219 before Hse. Comm. on Exp. in Exec. Depts. On H.R. 2319 before Hse. Comm. on Exp. in Exec. Depts.*, 80th Cong., 1st Sess. (1947). *On S. 758 before Sen. Comm. on Armed Services*, 80th Cong., 1st Sess. (1947).

[24] P.L. 93–559, § 32 (1974).

[25] Any pre-existing Presidential authority must be based on § 102(d)(5) of the NSA (*see* text p. 33). Section 662 of the Foreign Assistance Act could be the recognition by Congress that 102(d)(5) was originally intended to allow the President to delegate his general executive or inherent power to the CIA. In fact, the Senate version (S. 3394) referred to acts taken pursuant to 102(d)(5) of the NSA. *See* p. S21413 Cong. Rec. (1974).

[26] Cong. Rec., Dec. 11, 1974, p. H11651–2.

[27] *Id.* at p. 2.

in House debates indicating that the Section was to "limit the instances in which foreign policy is in essence being created by the President, the CIA, and four committees of Congress" [28] and "to allow for closer supervision of CIA activities." [29]

However, whether Section 662 is an affirmative grant of power to the President or limitation upon Presidential authority to engage the CIA in covert operations is unimportant. The mere presumption by the Congress of Presidential power in the field of foreign affairs is the equivalent of an implied delegation of the requisite statutory authority.[30] Moreover, this interpretation of Section 662 appears consistent with the underlying intent of the NSA in that the latter did not disturb the independent power of the President to safeguard our national security. Consequently, the Foreign Assistance Act provides the President with the requisite authority to engage the CIA in covert operations, such operations to be authorized in accordance with the procedures of the NSA.

3. Conclusions

a. The President has inherent authority under the Constitution, independent of any grant of legislative authority, to authorize covert activities involving the use of political, economic, or military force against a foreign government or its leaders—

(1) In times of war or national emergency under his powers as Commander-in-Chief and his responsibilities for executing the laws; and

(2) To a limited extent, in times of peace under his residual authority as chief executive to take appropriate action when confronted with a foreign threat to the security of the United States.

b. Although there are differences of opinion, it is doubtful that CIA was intended to have authority under the NSA to implement foreign policy by the use of covert means targeted against foreign elements.

c. The use of the CIA by the President or the NSC for conducting covert activities unrelated to the collection of intelligence and prior to the enactment of the Foreign Assistant Act of 1974 is not supported by the provisions of the National Security Act or its legislative history.

d. In the enactment of the Foreign Assistance Act of 1974, Congress expressly recognized, and, by implication acquiesced in, the authority of the President to authorize covert operations subject to a finding that the operation is important to the national security and a report of such finding is submitted to the Congress.

e. The theory that the President has unrestricted sovereign power to authorize covert operations as long as they do not violate international law cannot be supported.

C. Limitations on the Authority To Reorganize the Civilian Intelligence Community

INTRODUCTION

With the passage of the National Security Act of 1947, Congress asserted its legislative authority over the structuring of the civilian intelligence community. The Act provided for the administrative and functional framework within which intelligence activities were to be performed by the CIA, designed to replace the CIG (Central Intelligence Group). The National Security Council was established as the new supervisory body, replacing the NIA (National Intelligence Authority).

Any administrative changes substantially affecting the present statutory framework for conducting intelligence activities could not be implemented unless approved by Congress. It should be noted, however, that because of the vagueness of certain provisions of the Act, coupled with the broad discretionary authority vested in the President to direct the activities of the NSC, the restrictive effect of the statutory limitations is considerably diminished.

[28] *Id.* at p. 2.
[29] *Id.* at p. 2.
[30] See *United States v. Curtiss-Wright*, 299 U.S. 301 at p. 302 (1937). *See* also Jackson opinion in *Youngstown v. Sawyer*, 343 U.S. 579 at p. 635 (1953) wherein he distinguishes *Curtiss-Wright* and also notes that the President's powers are at their fullest when Congress has either implicitly or expressly authorized the exercise thereof. *Cf.* Notes 5, 7, 9. Note also that the standard of "important to national security" set forth by Section 662 may include actions broader than those necessary to thwart threats to the national security. Therefore, Section 662 may constitute a Congressional enlargement of Presidential executive power within the broad confines of *Curtiss-Wright*. It should be noted also that there is support for the view that implied authorization for a specific operation is not effective in an appropriations bill unless the Congress is fully knowledgeable of the facts. *Cf. Holtzman v. Schlesinger*, 484 F. 2d 1307, 1316 (C.C.A. 2d 1973) involving the secret bombings of Cambodia.

1. Reconstituting the Duties of the Director of Central Intelligence

a. Existing statutory responsibilities

The NSA has elevated the role of the DCI to that of a senior intelligence official whose responsibilities include coordinating the intelligence activities of all the intelligence services as well as the management and direction of the CIA. (See CHART A at the conclusion of this section.) The CIA occupies a status which is in effect superior to the other established intelligence agencies. The function of the Agency in this context is to centralize the intelligence information and activities so as to provide the NSC with a comprehensive and coordinated intelligence product.

The DCI's statutory duties and responsibilities include:

(1) The coordination of the intelligence community activities as the head of the CIA and as the NSC's senior intelligence advisor. 50 U.S.C. 403(d) (1)-(5) (1964).

(2) Subject to the approval of the President, the right to inspect the intelligence products of all other intelligence services both military and civilian; the DCI must request in writing intelligence relating only to national security from the FBI. 50 U.S.C. 403(e) (1964).

(3) The protection of intelligence "sources and methods" for the benefit of all of the intelligence services under the direction of the NSC. 50 U.S.C. 403(d), (g). (1964).

(4) The joint responsibility with the Attorney General and the Commissioner of Immigration to determine which essential aliens can be permitted to gain residence in the U.S. if in the interest of national security or intelligence needs. 50 U.S.C. 403(h) (1964).

(5) The appointment of advisory committees. 50 U.S.C. 405(a) (1964).

b. Adding additional duties

Although the DCI has a broad range of coordinating functions, the NSA limits the use of the CIA and the DCI to the statutory duties and responsibilities contained therein. If the President were to direct changes in the functions of the DCI which are not authorized by statute, he must rely on Executive powers which are the least tenable, notwithstanding his extensive authority to conduct foreign affairs.[1]

Thus, it is difficult to support the President's reliance on inherent Constitutional authority as the basis upon which to initiate organic changes in the structure of the office of the DCI.[2] The passage of the NSA represents the

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[1] Senator Goldwater's argument that the President has broad authority to appoint and rely on whichever advisers he wishes reflects the view that the Executive Branch retains an almost unlimited power in the area of foreign affairs. Goldwater, "The President's Constitutional Primacy in Foreign Relations and National Defense," 13 *Va. J.I.L.* 463, 475 (1973). Goldwater's arguments are consistent with the very liberal reading of the *Curtiss-Wright* case which supporters of the Executive's power interpret to give the President an unencumbered authority in the conduct of "external" affairs. *United States* v. *Curtiss-Wright*, 299 U.S. 304, 320 (1936). Alexander Bickel, in contrast, views the "necessary and proper" clause of the Constitution as the power of Congress to limit Presidential action in foreign affairs. Bickel, "Congress, the President, and the Power to Wage War," 48 *Chi.-Kent L. Rev.*, 131, 140 (1971). In a note on executive orders, the position is taken in line with Bickel's thinking that Presidential directives are limited by the declarations of Congress in statutes like the 1947 Act. Note, "Presidential Power: Use and Enforcement of Executive Orders," 39 *Notre Dame Law*, 44, 49 (1963). The best approach is to follow the analysis of Presidential power made by Mr. Justice Jackson in his concurring opinion in the *Youngstown* case. Using the executive powers model which Jackson establishes as the basis for his analysis, the President, in reorganizing the intelligence community, must rely upon powers which, when exercised, run contrary to the will of Congress in this area of concurrent jurisdiction. Jackson finds this particular variety of Presidential power the least defensible. Referring to the steel mill seizure by Truman, Jackson said this type of power is "most vulnerable to attack and in the least favorable of possible constitutional postures." *Youngstown* v. *Sawyer*, 343 U.S. 579, 640 (1952). Justice Frankfurther, commenting on the President's duty to faithfully execute the laws, concluded that the duty does not transgress the laws as they exist "or require him to achieve more than Congress sees fit to leave within his power." 343 U.S. at 610.

[2] The argument has been advanced that the President's exercise of his wartime powers to create the OSS had the residual effect of vesting within the Executive office the power to alter or reassign the duties of the civilian intelligence community set up by the 1947 Act. The President can initiate executive action in those areas of concurrent authority with Congress where the Congress has failed to enact legislation. As Mr. Jackson explained in *Youngstown*, "In this area any actual test of power is likely to depend on the imperatives of events . . . rather than on abstract theories of law." 343 U.S. at 637. Thus, the nature of the Presidential initiative is often that of a contingent response where immediate needs require that a particular void be filled. President Truman's secret directive in January 1946 creating the Central Intelligence Group was issued only six months prior to the committee hearings dealing with legislative proposals which eventually resulted in the NSA of 1947. But once the Congress enacts legislation in an area of concurrent jurisdiction, the statute repeals those particular parts of executive directives which are inconsistent with the new legislation. *Cf. Zweibon v. Mitchell*, No. 73-1847 *slip op.*, note 228 at 880 (D.C. Cir., June 23, 1975).

exercise of Congressional power in an area of concurrent jurisdiction with the President and the Act thereby restricts changes to those which would not circumvent the provisions set forth in the NSA.[3] If, for example, the President where to remove the DCI from the supervision of the NSC, the change would be inconsistent with the organizational framework established by Congress.[4] This type of restructuring would constitute a usurpation by the President of legislative power and would thus be subject to challenge unless approved by Congress either as a governmental reorganization plan or by amending legislation.[5]

Although the President's inherent power to restructure the office of the DCI is questionable, the NSA itself provides the Executive with a significant amount of discretion in initiating internal changes. Under section 403(a) of the Act the office of the DCI is organized under the NSC, and the Council, in turn, is established as an advisory body to the President on national security matters. Strictly applied, the statute, in effect forecloses direct Presidential control over the DCI insofar as the administration of the provisions of the Act are concerned.[6] But the President indirectly controls the functions of the DCI in his role as chairman of the NSC, provided that the directives he initiates in the Council remain within the scope of the statute. The scope of the statute, though, is sufficiently broad to provide the President with a wide range of authority for utilizing the intelligence community as an advisory body.[7]

As a practical matter, the difference between the issuance of a Presidential order to the DCI or requiring the NSC to initiate such a directive should not be an organizational deterrent impeding Presidential action. The DCI and the members of the NSC are Presidential appointees and, therefore, there should be no obstacle to Presidential management of intelligence activities, including those of the DCI.[8] Apparently, this channel of authority established under the Act is intended to reflect the legislative view that a consensus management and control of the lower level intelligence staff and agencies provides the departments represented on the Council with a better means to secure information needed to advise both the President and the departments.

The direct supervision of the activities of the CIA by the NSC also provides an accountability factor which diminishes the potential for misuse of the Agency by the President or White House level officials.[9] Moreover, a clear, orderly administrative conduit through which Presidential policy directives flow to the various levels of the intelligence community can augment the effectiveness of both the CIA and the NSC.

c. The dual role conception

As an alternative expanding the functions of the DCI in his present capacity, the President could appoint the DCI to an additional White House level post reviewing the activities of the entire intelligence community. Making the DCI the equivalent of a national intelligence advisor to the President is similar to the status of the present Secretary of State. There are strong political and practical objections to this dual role conception. It would create, for example, a possible conflict of interest in the use of political power if such an advisor were to favor civilian intelligence over military intelligence or vice versa. The

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[3] 50 U.S.C. 403 (a), (d), (e) (1964).

[4] The legislative history of the 1947 Act shows that the understanding of members of Congress, during testimony in committee hearings, was that the DCI and the Agency would work under the direction of the NSC. [Office of Leg. Counsel—CIA] "Legislative History of the Central Intelligence Agency" at 64 (1967) classified SECRET).

[5] The Executive Reorganization Act (50 U.S.C. 901, 905) expired on April 1, 1973. Consequently, the President must pursue Executive reorganization plans through the regular and more cumbersome legislative process which the Reorganization Act bypassed if Congress did not act upon the plan in 60 days.

[6] "The Director (of CIA) reports, under the provisions of the statute, to the members of the National Security Council in the only corporate capacity in which the Council acts. In other words, the Council is a statutory Board of Directors for the CIA." Anderson, "The President and National Security", *Atlantic Monthly*, 1956, at 44.

[7] 50 U.S.C. 402 (a), (b) (1964).

[8] *Id.*, 402(a). The Act does provide for a Presidential designee to preside over NSC meetings but the same phrase is not included in 402(b). Thus, one would be hard pressed to construe 402(b), in light of the express power to designate someone to preside over NSC meetings, to imply a similar right to designate someone to exercise the President's powers to direct "other functions".

[9] Recommendation (26) of the Rockefeller Commission report emphasizes that any high level channel between the White House and the CIA should involve the NSC. The recommendation was the result of the need to prevent abuses of the CIA similar to the ones apparent in the Watergate related cases and the break-in of the home of Dr. Ellsberg's psychiatrist and the preparation of the psychological profile on Dr. Ellsberg by Agency doctors. *"Report to the President by the Commission on CIA Activities Within the United States."* At 33 (1975).

extent of any conflict would depend upon what authority is vested in the advisor by the President. Less conflict would probably develop if the authority was limited to executive oversight. But if the advisor were assigned management responsibilities over the intelligence community, the conflict could become irreconcilable.[10] In contrast with the DCI, the Secretary of State's direct responsibility to the President in either position he occupies, his advisory capacity, and the absence of an intermediate supervisory body like the NSC eliminates most of the organizational problems which the DCI would confront in a dual role.

d. Appointing a separate intelligence adviser to the White House

A second alternative is the appointment of a senior intelligence advisor apart from the DCI and not responsible to the NSC. The advisor would assume the additional duties the President would have assigned to a senior intelligence officer like the DCI. In fact, the use of advisory personnel whose functions would either supplement or duplicate the work of the NSC or the DCI is not a novel practice. Past Presidents have relied greatly on informal but regularly attended meetings of special advisory groups or advisors to help formulate intelligence related policies and operations. While there would not be legal obstacles to the appointment of an independent White House advisor on intelligence matters, it would encounter the same type of political objections as in the above dual role conception.[11] Also, the advisor's functions should be consistent with the Act.

2. Altering the Responsibilities of the National Security Council

Any changes in the duties and responsibilities of the National Security Council require a discussion of issues similar to those raised above. (See CHART B at the conclusion of this section.) The National Security Council is under the direct authority of the President and serves as the umbrella supervisory body over the intelligence community, filtering down the Presidential directives and assignments.

While the President has certain inherent powers over the conduct of foreign affairs, it is doubtful that he can delegate the use of such powers to a Congressionally created body unless the delegation is consistent with the broad outline of the NSC's statutory duties. Neither residual or independent powers exist in the Council other than the basic ministerial authority to perform the advisory function. The Council does have the equivalent of a derivative ministerial authority from the President by virtue of the broad statutory grant vested in him to direct the NSC's activities. In this respect, the organizational structure established by Congress in the NSA gives the President a significant amount of discretion in using the NSC in its *advisory* role. But despite the NSC's functional administrative utility, previous Presidents have found it desirable to rely on informal high level advisory committees. Professor Jerrold Walden's analysis of the administration of the CIA traces the development of this type of parallel advisory structure by reviewing the frequency of NSC meetings. He states, for example, that President Kennedy eliminated the regular meetings of the Council and President Johnson "virtually abandoned" the NSC (quoting a news magazine story), relying instead upon the "Tuesday Luncheon" group.[12]

The propriety in utilizing these so-called informal groups rather than pursuing the policy objectives through the NSC is questionable. To the extent that these groups supplant the role of the NSC in the formulation of policies, possible conflicts under the Act could arise unless the President has authority to act independently. The formation of Presidential level advisory groups to supplement the work of the NSC is not inconsistent with the NSA. However, a transfer of duties to these groups which the statute expressly assigns to the NSC would violate the statutory scheme again unless the President can act independently.

3. Appointing of Advisory Committees

Both the President and the NSC have established advisory committees to assist the intelligence community.[13] Section 405(a) of the Act provides that the DCI and

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[10] Earlier internal studies examined various options for the reorganization of the office of DCI. The primary objection raised in opposition to the appointment of what is in effect an intelligence "czar" was the control of the military intelligence apparatus. This recurring conflict between the military establishment's needs and those of the civilian intelligence community reflects the fundamental distinction between the foreign affairs and war-making powers and the institutional rivalries which the Constitutional dichotomy facilitates in the executive departments.

[11] *See* Note 10, *supra.*

[12] Jerrold Walden, "The CIA : A Study in the Arrogation of Administrative Powers," 39 *Geo. Wash. L. Rev.*, 66, 90 (October 1970).

[13] These would include PFIAB, set up by Presidential Directive, and the various committees created by secret NSCID's or DSID's which aid the work of the NSC or the DCI like the NSCIC, IRAC, and the IC Staff.

the NSC "are authorized to appoint" the advisory committees they deem necessary to assist them in the execution of their advisory functions and duties.[14] The President is not included in the authority conferred by this section of the Act.[15] The President's authority to appoint committees to aid the NSC or the DCI must, therefore, be implied from his authority to direct the NSC.[16] The President's power is thereby procedurally limited in that it must be exercised through the NSC.

In contrast with the advisory committees established to facilitate the work of the NSC and the CIA, the President has the direct authority to appoint advisory panels to advise him on intelligence matters. An example of such a panel is the President's Foreign Intelligence Advisory Board (PFIAB) which advises the President on intelligence activities after examining the "objectives conduct, management and coordination of the various activities making up the overall national intelligence effort." [17] However, as in the case of other delegations of Presidential authority to non-statutory bodies, and such delegations to PFIAB of functions or duties which have been expressly reserved by statute for a body like the NSC, would be contrary to the allocation of such functions and duties as set forth in the Act.[18]

4. Conclusions

a. The President can add to or change those duties of the DCI which would not amend the NSA and which are within the range of duties that can be implied from 50 U.S.C. 403(d). Such changes may be initiated by the NSC or the President through the NSC.

b. The appointment of a senior intelligence advisor, coordinator, or other assistant to aid the President is a valid exercise of Presidential authority provided that the duties and functions of such an advisor do not conflict with those assigned by the NSA to the NSC or the CIA. However, the appointment of such an assistant to the President would be politically undesirable because it would increase the rivalry between the civilian and military intelligence services.

c. The President can direct the NSC to perform additional functions and duties provided that they are consistent with the advisory role of the Council and are otherwise consistent with the provisions of the NSA.

d. The President should work through the NSC in directing the creation of additional advisory committees to aid the work of the CIA and the NSC. The President's own advisory committees can perform advisory activities which parallel the work of the NSC but such committees should not usurp the management and supervisory functions the NSA directs the Council to perform.

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[14] 50 U.S.C. 405 (1964).

[15] President Truman apparently circumvented the requirement that the NSC or the DCI, at the time, the Chairman of the Resources Board, appoint advisory committees they needed. Truman established the National Advisory Committee on Mobilization Policy by executive order to aid the National Security Resources Board. E.O. 101609, 15 F.R. 6901 (Oct. 13, 1960).

[16] Section 405 could be interpreted merely as a procedural provision, thus, not excluding the President from directly appointing advisory committees to aid the NSC and the DCI. The provision was probably enacted to facilitate the work of the NSC and the CIA and not to restrict the President from taking a direct and active role in helping to organize the then newly created civilian intelligence community. In contrast with the procedural nature of Section 405, Section 402, for example, is more substantive and the failure to include the President in direct CIA supervision reflects the Congressional intent to place the Agency under direct control of the NSC.

[17] PFIAB was created in 1961 by President Kennedy, replacing the President's Board of Consultant's on Foreign Intelligence Activities which was appointed by President Eisenhower in 1956. E.O. 10938, 26 F.R. 3951 (May 4, 1961). President Nixon changed PFIAB in 1969. E.O. 11640, 34 F.R. 5535 (March 20, 1969).

[18] *See* generally Note 8, *supra*.

CHART A

DCI'S FUNCTIONS IN THE INTELLIGENCE COMMUNITY

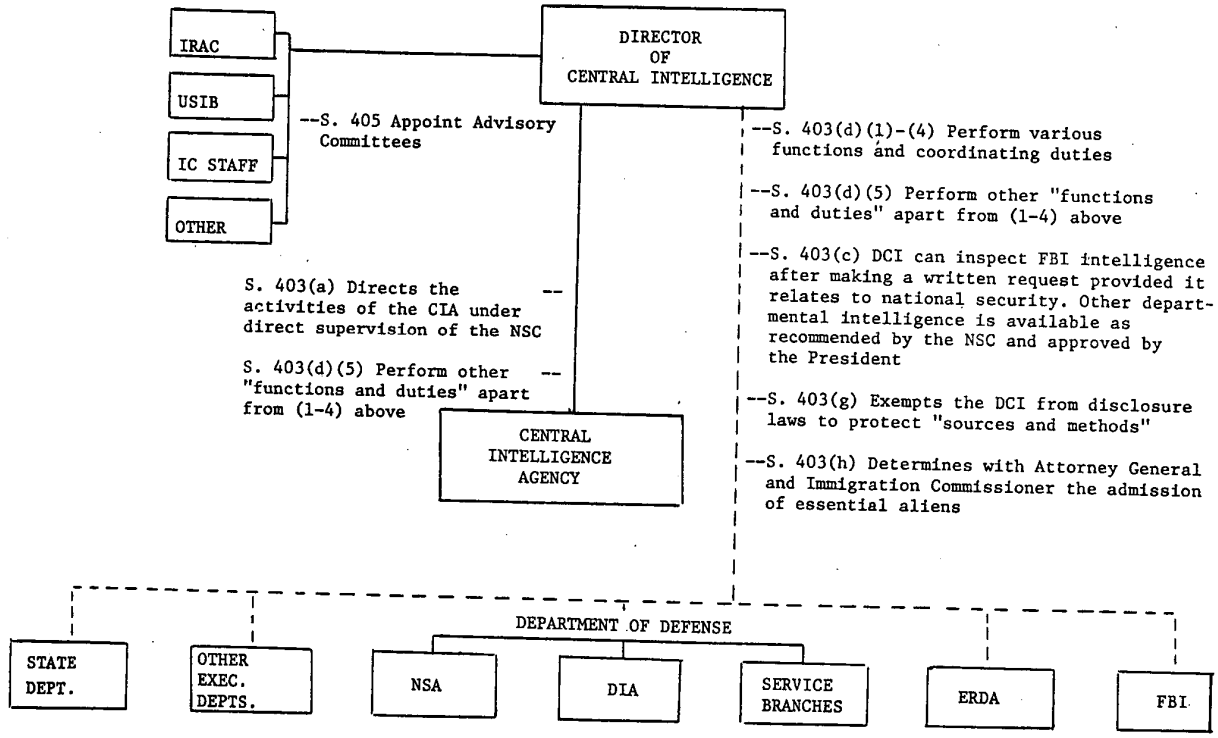
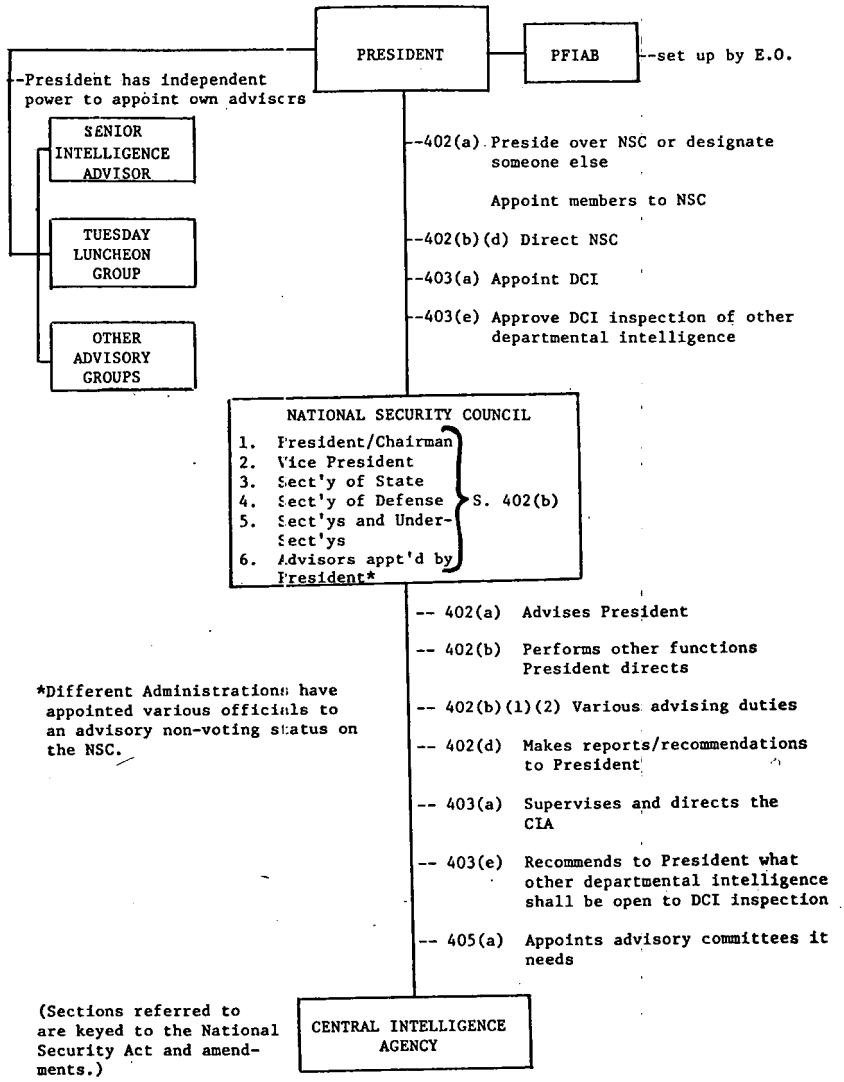


CHART B

THE NSC'S & THE PRESIDENT'S ADMINISTRATION OF THE INTELLIGENCE COMMUNITY



three votes at the last moment, and those things happen, but I've no apologies to make for my years in the leadership. I think the Senate has acted superbly, it has acted independently, and each senator has been considered as an equal. There has been no arm-twisting, and there could be no arm-twisting any more.

HERMAN. Quite a long time ago in this program, quite a long time ago in the Senate, you've expressed the opinion that the United States should leave the rest of the world alone, should stop acting as a policeman or even as a traffic cop—

Senator MANSFIELD. Not leave the rest of the world alone.

HERMAN. Well, I now bring you to the question of the United States' role in the Middle East.

Senator MANSFIELD. Well, I'm in favor of the sale of the C–130's to Egypt, and further sales if need be to maintain a reasonable equilibrium in that area. After all, if we can create divisions among the Arab states, I think it's in our interest, and I think it is in the interest of Israel as well, and here we have Sadat who has really thrown his cards on our table, who has broken with the Soviet Union, who is in economic difficulties, who has given up—who has reached an agreement on a part of the Sinai, and I think he ought to be given whatever assistance we can.

MCLAUGHLIN. Senator Mansfield, some of the other senators who have heard about Egypt wanting additional arms sales say that they think that that request would put the C–130 transport deal in jeopardy, that they are so opposed to it. You don't see that in the Hill at all?

Senator MANSFIELD. Well, I hope not. I'm not opposed to it. I think if we want to keep a friend and maintain some degree of equilibrium and fairmindedness in the Middle East, we've got to at least carry through the sale of C–130's to Egypt. And furthermore, as far as arms are concerned, I noted just a day or so ago that the Egyptian Foreign Minister concluded a sizeable arms sale with the French.

ROWAN. Senator, very clearly they are going beyond C–130's, Sadat is going to ask for fighter planes, maybe tanks and so forth. Are you saying that you also would favor the United States selling those kinds of arms to Egypt?

Senator MANSFIELD. If they don't buy them from us, they'll buy them from France, as elsewhere, and I think we ought to maintain some kind of a hold in the interest of achieving equilibrium and maybe peace in the Middle East.

HERMAN. Do you think there is a chance of expanding this foothold for America among the Arabs, for example Syria and Jordan?

Senator MANSFIELD. Syria will be difficult though Assad, I understand, is not an unreasonable man. King Hussein has been in a most difficult position, but you've got to give him some encouragement too on the other side, and I think that Saudi Arabia would come along, so if we can maintain this break and give these people some hope, I think it would be for the benefit of Israel in the long run.

HERMAN. Thank you very much, Senator Mansfield, for being with us today on Face the Nation.

ANNOUNCER. Today on Face the Nation, Senate Majority Leader Mike Mansfield, Democrat of Montana, was interviewed by CBS News Correspondent Marya McLaughlin, Syndicated Columnist Carl T. Rowan, and by CBS Correspondent George Herman. Next week Senator Henry Jackson, the candidate for the Democratic presidential nomination, will Face the Nation

THE PROPOSED STANDING COMMITTEE ON INTELLIGENCE ACTIVITIES

Mr. MANSFIELD. Mr. President, in Sunday's Washington Post there appeared a cartoon which I think was most unfair to the distinguished assistant Democratic leader, the Senator from West Virginia (Mr. ROBERT C. BYRD). The title of the cartoon is "We Don't Mind Your Getting a New Watchdog, As Long As He's Just Like This One," relative to the proposed oversight committee now under consideration in the Rules Committee.

I would point out that at the Democratic conference on Thursday last, the question of a permanent standing Committee on Intelligence Activities was taken up, on my initiative. I would point out also that at that conference, the Senator from Connecticut (Mr. RIBICOFF) and the Senator from Idaho (Mr. CHURCH), as well as the Democratic leadership and the Senator from Nevada (Mr. CANNON), the chairman of the Rules Committee, were in attendance.

It was stated at that meeting that it would be the intent to allow an extension of time, for good and sufficient reasons, to the Committee on Rules and Administration for the consideration of legislation reported out initially by the Government Operations Committe under Senator RIBICOFF, which had been referred, I believe, to other committees.

After that meeting, Senators ROBERT C. BYRD, RIBICOFF, CHURCH, CANNON, and I met, and we agreed that what the conference had recommended was the best way to face up to a situation which called for further consideration. In Thursday's RECORD, when I submitted Senate Resolution 400, to establish a standing Committee of the Senate on Intelligence Activities and for other purposes, for an extension, I said the following:

Mr. President, I ask unanimous consent that the Committee on Rules and Administration have until April 30 to file its report on Senate Resolution 400. May I say that this was unanimously agreed to in the Democratic Conference today. It meets with the approval of all the concerned parties and, I think, in view of the circumstances which have developed that it is in the best interests of this legislation to do so in this manner at this time.

Further on, I said, in reply to a question raised by the Senator from Illinois (Mr. PERCY) relative to the time taken by the Rules Committee to come up with legislation creating a Budget Committee:

The Senator is absolutely correct. The Rules Committee did a stupendous job on the budget legislation and because of the time it took and the care it showed we have a good budget committee at the present time which is making its weight felt and is doing an exceedingly good job.

I approve without equivocation this proposal . . .

That is, for the extension—

. . . which I made to extend the time of the committee to file its report because, on the basis of the facts explained in the Democratic Conference this morning, and there was no other alternative, and the idea is to do a good, thorough, and complete job.

As far as the Democratic majority leader is concerned, as soon as it is reported out it is his intention, in conjunction with the distinguished Republican leader, to call the legislation up as soon as possible.

May I say, Mr. President, it was at the suggestion of the distinguished assistant Democratic leader, the Senator from West Virginia (Mr. ROBERT C. BYRD), that the date for it to be taken up after it would be reported out of the Rules Committee on April 30 was May 6, and because of the suggestion by Senator ROBERT C. BYRD the Senate agreed that on May 6 we would take up the creation of a Committee on Intelligence Activities.

May I say that this met with the approval of Senators RIBICOFF, CHURCH, and all parties concerned.

I think the record should be straight. I do not like to see any colleague of mine in this body, Republican or Democrat, treated unfairly. I hope what I have had to say will help to clear the record.

I believe that it is only fair to give credit where credit is due and because of that I took it upon myself this morning to rise in support of my distinguished colleague, the Democratic whip, the Senator from West Virginia (Mr. ROBERT C. BYRD).

I hope that this clears the record and keeps things straight.

Mr. HUGH SCOTT. Mr. President, I think the cartoon was most unfair to the distinguished assistant majority leader and particularly in view of the explanation of the distinguished majority leader himself.

Actually, the status of this bill is one which has required the attention of four committees. It was reported by the Committee on Government Operations. The Committee on the Judiciary has fulfilled its function under the reporting provisions and has made its recommendations to the Committee on Rules and Administration. The Committee on Foreign Relations has before it certain recommendations and either has or will shortly make its recommendations, I would assume, to the Committee on Rules and Administration, or if not, to the full Senate. The Committee on Rules and Administration itself completed hearings this morning on the bill. We are prepared to proceed with markup, according to the Chairman of that committee, early next week.

There are many differences of opinion on this bill that go fundamentally to questions of the difference between oversight and overall jurisdiction, the questions of the difference between the displacement of functions which have been performed by existing committees, or whether or not there should be a committee on general oversight and surveillance or a committee which removes jurisdiction from other committees, a proposal which has run into very substantial resistence on the part of a number of distinguished witnesses.

However, the chairman of the Rules Committee has done a fine job, and he is

we have to be aware of what we are, what we have, what we can do, and not what some people would like to have us do on a worldwide basis.

HERMAN. Well, in a concrete legislative fashion then, should we be increasing the defense budget, should we be cutting the defense budget, or is it about right?

Senator MANSFIELD. I think we ought to cut it. I think that there is a lot of fat which could be done away with. I think we spend too much money on research and development of exotic weapons which don't turn out to be what their originators thought they would be. I'm for a strong defense, as is every American, but I'm not for wasteful expenditures in the Defense Department, or in any other department of government.

ROWAN. Well, they are now asking for about $113 billion in spending authority. What do you think would be the proper figure?

Senator MANSFIELD. Oh, I couldn't give you a figure, but I do think it could be reduced.

McLAUGHLIN. Senator Mansfield, when I asked you before if you thought that Secretary Kissinger should come up and talk with the Senate Foreign Relations Committee, what he said on Thursday and Friday was not exactly as you have just said what he has been saying in public; it was more modified. Does that seem right to you?

Senator MANSFIELD. Well, it's hard for me to say because I wasn't at the committee meeting. All I could note what the press accounts carried, and that was to the effect that there was a modification of what he had said out in the hinterland and what he'd said before the committee.

McLAUGHLIN. Well, you don't think there has been any change in his attitude? You just think he says one thing when he's before the committee and one thing when he's in public?

Senator MANSFIELD. Well, I don't think that's a good policy, if it turns out to be so categorized, because you just can't hide behind one thing and the other, when we have the kind of open information processes that we have.

ROWAN. Senator Mansfield, let me bounce back to this question of military superiority. Mr. Ford and Mr. Kissinger are under pressure from Reagan forces to say that the policy of détente has caused the U.S. to lapse into a second-class status. Now you get a lot of secret military data based on what you know, has the U.S. lost its position of military leadership?

Senator MANSFIELD. I would say that we are on a parity, at least with the Soviet Union, all things considered.

HERMAN. And which way are we moving?

Senator MANSFIELD. Up, but so is the Soviet Union.

HERMAN. No, relative to the Soviet Union—are we gaining or losing? Parity is just an instantaneous——

Senator MANSFIELD. Only the future will be able to answer that question.

HERMAN. You don't have any feeling that we might be losing ground, as a lot of people have said?

Senator MANSFIELD. No, I don't think we are. As a matter of fact, I think we've got too much in the way of military personnel scattered in too many areas throughout the world.

ROWAN. Then would you go ahead under the circumstances and press for another strategic arms limitation agreement?

Senator MANSFIELD. Yes, indeed, I would, not only a limitation, but I would adopt the Henry Jackson idea of a reduction in armaments because I think that is the ultimate answer, not limitations, because you can limit, but then you go up—if you reduce, then you go down.

HERMAN. Senator, as I listen to all the campaign talk, I suspect you might call some of it rhetoric—I seem to hear a lot of talk about two major villains—one is Cuba and the other is Washington, D.C. Is this a proper way for the people to hear a campaign explained?

Senator MANSFIELD. Well, Cuba has been the villain in the minds of people who don't like us, but we're used to it, and we can roll with it.

HERMAN. But what do you think of a politician who adopts that as one of his major points of rhetoric?

Senator MANSFIELD. Well, I think he's in with the mood of the people because people are blaming us, blaming the Congress especially, though they don't blame their individual congressmen and senators when they go home—they blame the administration—they are even blaming the courts more.

HERMAN. —mood of the people can either be sensitive and intelligent appreciation, or it can be called demagoguery.

Senator MANSFIELD. Well, I know, but the demogoguery is one side of those who are seeking office, when they campaign against Washington en toto. They don't get down to specifics, whereas as far as the votes will be concerned, I have an idea come November—I'm not talking about the primaries—that the American people will have a pretty good idea of what their government in Washington is and what it is all about.

McLAUGHLIN. Senator, one of those who has been criticizing Washington has been Jimmy Carter. Another man who is mentioned but has not been in any of the primaries is Hubert Humphrey. Is it getting too late for Hubert Humphrey, or can he waltz into the convention and pick up the tips?

Senator MANSFIELD. He can't waltz into it, but he's available, I'm sure. He's waiting on the sidelines, and it depends upon events.

McLAUGHLIN. Do you think he should get into the primaries?

Senator MANSFIELD. No, I think he's doing just right.

ROWAN. What about Senator Humphrey's comment that those candidates who are running against Washington are really indulging in racism, that they are really running against minorities and the poorest people in the land?

Senator MANSFIELD. Well, I really wouldn't agree with that, because I think what they're running against is the government, and that includes all of us.

ROWAN. Speaking of Humphrey again, as a matter of principle, do you think the Democratic Party ought to give the nomination, or can give it to some one who has not entered any of the primaries?

Senator MANSFIELD. Oh, yes, if he has the votes at the convention, and I would point out that Hubert Humphrey has campaigned many times for the presidency, and he's made his mark.

ROWAN. Carter says he's got a loser's image, and that that's why the party ought not nominate him. Do you think he's got a loser's image?

Senator MANSFIELD. Hubert's one of the best, broad-minded, intelligent, a keen capacity to understand people. No, I wouldn't agree.

HERMAN. Are you campaigning for him?

Senator MANSFIELD. No, I'm not. I'm trying to be honest about him.

McLAUGHLIN. Could it be a modified endorsement? I mean, can we——

Senator MANSFIELD. No, no, I'm not endorsing any one, because I've got to live with too many of them, and I'm going to get along with all of them.

ROWAN. Carter also says he's too old. He'll be 65 in May. Is that too old to put a man in the White House?

Senator MANSFIELD. Now, you are pushing me too far. (Laughter) But I don't think so. I have great admiration for all of the people running on the Democratic ticket, even when I disagree with them, and I think as far as Mr. Carter is concerned, that he cannot be underrated, he's a most formidable candidate, and he will have to be reckoned with in the weeks and months ahead.

HERMAN. I suppose we should just note for the record here that the Senator [redacted] his 73rd birthday a week and a half ago.

Senator MANSFIELD. That is correct.

HERMAN. Senator, what about charges that the administration in power can manipulate the economy, and that we have an improvement in the economy every four years when the incumbent president tries to get himself reelected?

Senator MANSFIELD. Oh, it can help, and it applies to both Democratic and Republican administrations. They can put out projects here and projects there, and they both do it.

HERMAN. Is that what is now happening? The economy is improving considerably—it is partially a political effort?

Senator MANSFIELD. No, I think it is mostly coming from the private sector. Unfortunately the government has done too little. The unemployment rate is still too high, and the inflation rate is still too high.

HERMAN. Do you favor, for example, the Humphrey-Hawkins bill to bring unemployment down?

Senator MANSFIELD. I do.

ROWAN. What about those who say that this improvement in the economy that we're seeing is proof that President Ford was right in vetoing all those big spending bills that you and your Democratic colleagues wanted to make into law?

Senator MANSFIELD. I think he was wrong because the kind of projects which he vetoed would have been very helpful to the economy, and would have reduced the unemployment rate still more because, while we have about seven, seven and a half million unemployed officially, if you'll look at the underemployed, those who have quit looking for jobs, those who would like to have jobs, I think the figure would be up around ten million.

McLAUGHLIN. Senator Mansfield, the fluidity in Congress caused by presidential veto and some changing attitude towards new social programs, did that have anything to do with your decision not to run again?

Senator MANSFIELD. No, this was a decision my wife, Maureen, and I had been considering for some time. We got together, and I never make a decision without consulting her—she has always been right—on occasions I've been wrong—much more wrong than I care to admit—so, no, this was something which was done in the family, and she was the one who made it official, as far as I was concerned, because what I am, she is.

HERMAN. It will take a moment to digest that one. (Laughter)

ROWAN. Let me ask a little personal question in terms of the vetoes and so forth—some critics say that your genteel, permissive leadership of the Senate led to an accretion of presidential power, decline in the power of the Senate. How do you answer those critics?

Senator MANSFIELD. They are wrong, because presidential power has been increasing ever since the time of Franklin D. Roosevelt under all majority leaders, and I think that what we've done in the Senate since I have been the majority leader has been constructive, has been in the interest of the nation as a whole, and the Senate as well, has received little publicity, but has been evolutionary in character, and I think the Senate is better off because of it.

ROWAN. Some people say that with a little Lyndon Johnson-type arm-twisting in the Senate and Rayburn-type badgering in the House, you would have overridden the President more times and would have some social legislation—

Senator MANSFIELD. Well, let me tell you, Mr. Rowan, that the last time I thought I had the votes to override the President [redacted] on the veto of the public works bill, public service works bill. Unfortunately, we lost

very anxious, as he told me this morning, to try to make our report before we even go to recess, but we will certainly make it within the time fixed by the Democratic Caucus.

So, there is no intent here to delay on the part of anyone.

I myself have, I suppose, been the object of as much press commentary and criticism as anyone around here. I have endured it for 34 years. I think I can endure it a little longer. I always remember that the Bible says that "it is hard for thee to kick against the pricks." You will find that in the New Testament, Mr. President, in the Acts, 9: 5. And I try to observe that.

I yield back the remainder of my time.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Colorado (Mr. HASKELL) is recognized for a period not to exceed 5 minutes.

TAX REFORM ACT OF 1975—H.R. 10612

AMENDMENT NO. 1557

(Ordered to be printed and referred to the Committee on Finance.)

THE EROSION OF THE TAX BASE

Mr. HASKELL. Mr. President, this year Congress has a unique opportunity to attack the erosion of our tax base for income tax purposes that has been proceeding with snowball effect over the last 20 years. In the Committee on Finance there is a bill pending, H.R. 10612, that bears the title of the Tax Reform Act of 1975.

I would like to say a word on the erosion of our tax base which I hope that some of our colleagues will read in the RECORD: In 1960, for example, the corporate income taxes accounted for 35 percent of Federal revenues. This fell to 27 percent in 1969. It further fell to 14 percent in 1975. As all of us know, the statutory corporate rate is 48 percent; however, the average rate paid by a corporation is about 35 percent.

Similarly an erosion of the income tax base in individual taxes has occurred. As I believe all of us know, the effective rate over $100,000 of income for an individual is 70 percent; however, based upon 1973 figures the actual effective tax paid by people who earn over $100,000, whether they earn $500,000 or $1 million or $2 million, is approximately 32.1 percent.

I think these figures graphically illustrate the fact that the base upon which taxes are levied has been eroded.

Basically this arises from two sources. Special tax rates are provided to people particularly well considered by Congress. Also many artificial deductions in the code exist.

An artificial deduction is defined by the Committee on Ways and Means of the House of Representatives in its report on the recent revenue act as deductions "that do not accurately reflect current expense." These are somewhat euphuistically referred to as incentives.

Obviously, if we continue this trend of giving special rates and giving special artificial deductions or incentives which lower taxes for the wealthy, only the average wage earner will be left to pay any tax.

This year I intend to introduce a series of amendments, which I will press in the Committee on Finance, and if not successful there I will press on the floor, designed to recoup the loss of revenue occasioned by these twin sources of erosion, artificial deductions and special rates.

Initially I have four amendments. I may have more later. But the four amendments I have would raise $15.5 billion. I pointed out that the 1976 income tax cut designed to help the lower- and middle-income groups is $12.3 billion. So, if enacted, my very modest amendments would net the Treasury somewhere around $3.5 billion and serve to reduce the deficit which members on both sides of the aisle, of course, decry.

The amendment which I will ask consent to introduce at this time would repeal the so-called DISC provision. The DISC provision permits anyone exporting goods for sale overseas to pay approximately one-half the normal tax rate.

The revenue loss for the year we are currently in is $1.5 billion.

The claim for DISC, of course, is that we should help our exports so we should subsidize them. However, I quote from an editorial in the Wall Street Journal. Incidentally, the Wall Street Journal decries the free enterprisers rushing to the House Ways and Means Committee, asking for export subsidies. Among other things, it says that the simon-pure Mr. Simon, now of the Treasury, late of Salomon Brothers, like Abou Ben Adhem, leads all the rest.

One sentence in this editorial bears consideration, and it reads as follows:

> The British have been almost fanatical in subsidizing exports, and if they keep at it much longer, they will be eligible for membership in the third world.

Mr. President, I ask unanimous consent to have this editorial printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HASKELL. One comment on the uneconomic effect of DISC is very important. Those who defend it claims it creates jobs. Actually, the converse, in all probability, is true.

Professor Horst, who is of the Fletcher School of International Law and Diplomacy, has testified as follows before the Senate Committee on the Budget; and I read this because it is particularly interesting:

> Let me turn next to the impact of the DISC on U.S. employment. If DISC contributed $3.3 billion to U.S. exports, those exports would immediately stimulate production in the export industries, and then, by the usual multiplier process, throughout the economy. This line of reasoning is fine, as far as it goes. The problem is it does not go far enough. In particular, it conveniently ignores the way those exports drive the value of the dollar up in foreign exchange markets, and consequently the greater ease our foreign competitors have in exporting to the United States.
>
> This process may be gradual. The exact timing may be difficult to predict. But if you have been following the way our growing balance of trade has been causing the dollar to go up in foreign exchange markets over the last year, you know the process is working. As the dollar goes up, our own multinationals are going to find exporting from the United States increasingly unattractive. Our foreign competitors will find it easier to export to the United States at a profit. American automotive workers, textile and shoe workers, and many others may find their jobs displaced by the growing imports.
>
> The multiplier process works in reverse. If you want to estimate the real contribution DISC makes to U.S. employment, you must first add the jobs created by exports, then subtract the jobs destroyed by imports. Because the industries which must compete with imports are often labor intensive, DISC may well be destroying more jobs than it creates.

I point out to those who claim that DISC is creating jobs, in addition to the reasoning of a preeminent authority on foreign trade that it does not create jobs, that it has a disincentive for creating jobs, we have the fact that the AFL–CIO, which I assume is interested in creating jobs, opposes DISCs as a giveaway.

For that reason, Mr. President, I ask unanimous consent to submit at this time the first of a series of amendments which I intend to submit to H.R. 10612. The amendment today, as I say, would remit to the U.S. Treasury $1.5 billion. I have three or four more amendments, which will total $15 billion in uncollected revenues which we are giving away in the name of "incentives."

The ACTING PRESIDENT pro tempore. The amendment will be received and appropriately referred.

Mr. HASKELL. Mr. President, I yield back the remainder of my time.

EXHIBIT 1

THE SOMETIMES FREE MARKETERS

There's hardly anything that discourages us more than seeing a long line of American businessmen trooping up to the House Ways and Means Committee to plead for export subsidies.

There is Reginald Jones of General Electric, who toasts the free market Thursdays through Tuesdays, on Wednesday pleading for export subsidies. There is David Garfield of Ingersoll Rand pleading for export subsidies. There is Russell Laxson of Honeywell, speaking on behalf of the National Association of Manufacturers—the foremost sometimes champion of the free market. Mr. Laxson says the NAM wants export subsidies. And look, the usually simon-pure free marketer William Simon, recently of Salomon Brothers, now of the U.S. Treasury, is also asking for export subsidies.

At issue is whether or not to continue the DISC gimmick to promote exports that was inspired by the idea that the U.S. economy had lost its "competitiveness." What this means, in theory, is that of American Widget can't sell its widgets abroad at a profit for less than $1, and foreigners are only willing to pay 95 cents, the American taxpayer should give the foreigners five cents for each $1 widget they buy.

Of course, the program arranges all this in a way that makes it look less blatant. U.S. companies that set up Domestic International Sales Corporations (DISCs) to handle exports get to defer federal taxes on 50% of

the DISC's earinings. The Office of Management and Budget estimates that DISCs last year increased U.S. exports $1.6 billion at a cost to the Treasury of $1 billion in lost revenues. If all this is in the name of earning foreign exchange is was an expensive way to go about it.

The lost revenues are of some significance in this year of massive federal borrowing. But the faulty principles that DISC represents are even more troublesome. First of all, it is a dubious argument that subsidies strengthen U.S. competitiveness abroad, as the checkered history of the heavily subsidized U.S. merchant marine will attest. Second, through the DISC subsidy, one sector of the private economy; that is the kind of inequity that ultimately destroys confidence in the fairness of the tax system. Finally, DISC enables foreigners to buy U.S. goods at lower prices than are available to Americans.

The revenue loss to the Treasury, which of course must be covered by bond sales, would be much more efficiently invested through a general reduction in business taxes. Folding DISC and using the anticipated revenue gain to that end would, for example, permit a cut to 46% in the corporate tax rate. While the net result might mean a reduction in exports, the change would mean that all U.S. companies, their employes, and their customers would share the benefits.

There's no economic reason why the U.S. government should intervene in the market to subsidize exports, just as there's no economic reason why it should intervene to restrain exports. The whole reason for trade, whether between Kansas and California or between Japan and the United States, is that each region benefits from the other's advantage in producing the traded goods. In departing from this principle, businessmen who argue for export subsidies—whether through DISCs or the Export-Import Bank—must perforce use the same logic employed by those who wish to restrain exports.

We are especially unimpressed by arguments that the United States must skew its economy toward export sales because its competitors are doing so. Because U.S. trading partners are so foolish as to design inefficiencies into their economies hardly makes the case that we should follow suit. The British have been almost fanatical in subsidizing exports, and if they keep at it much longer they will be eligible for membership in the Third World. The recent Common Market proposal for a European Export Bank is heartily supported by the British because the Germans would be paying the bills.

American businessmen are now being tangled in the samé snare that caught their British counterparts a generation ago. They are pleading for tax subsidies that drain other segments of the economy when they should be making the case for general economic growth through generalized tax reductions. DISC increases government's role in the free market; tax-reduction reduces it. It's disheartening to find so many free marketers lined up behind DISC on bended knees.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized for not to exceed 15 minutes.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Mr. Lee Rucker, of my staff, have the privilege of the floor during the consideration of and the vote on S. 3136.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

WE'RE NO. 1

Mr. BARTLETT. Mr. President, during the fall of every year, the students, alumni, and supporters of our best collegiate football teams, from time to time enthusiastically yell, "We're No. 1."

They are competing for the championship football ranking in the Nation—and there is only one No. 1 college football team finally determined shortly after the end of the season bowl games January 1.

There was a time when "We're No. 1" was more than the passionate declaration of a sports fan. It was a statement of pride and enthusiasm that characterized the spirit of an entire nation. In this spirit we proudly faced every contest, every challenge. Americans wanted always to be the first, the strongest, the best. We wanted to be No. 1, and nothing less.

As we strived to establish new standards of liberty, opportunity, and prosperity for our people we assumed a position as a leader among many nations, an example to all nations of efficient, strong, and just government by the governed. But, in our determination to preserve those rights of liberty, opportunity, and prosperity for ourselves and others, we also assumed a great burden—the burden of defending our ideals in international competition which, from time to time, would be threatening and treacherous.

The primary reason the founding fathers formed a new government to replace the Federation was to create a union strong enough to survive in a hostile world.

Recognizing this challenge we set about to establish a military capability to sustain our position as a world leader. In terms of military strength, and determination to use our strength whenever necessary to defend our interests, America at the close of World War II stood without question as not only the No. 1 military power, but the dominant military power in the world. A shattered world lay at our feet. There was no land we could not have conquered. Yet we were true to the principles which guided our Revolution. We dedicated our efforts to encouraging and defending freedom and rebuilding our allies and former adversaries.

Our time of dominance had to pass unless our weapons were ruthlessly employed. The Soviet Union through great sacrifice was bound to narrow the gap in military capability between us. They were bound to build the weapons which could harm us. We can no longer destroy any potential enemy and remain relatively unharmed. But we can still remain preeminent or No. 1.

Our military supremacy faces an awesome and continuing challenge. The Soviet Union, pursuing a goal of global application of its own Communist ideals, has charted a course designed to give it military superiority, not parity, in the world. In the heat of this competition, serious questions have arisen about America's resolve to remain the leader of the free world, to retain our position as the most powerful Nation and the most determined.

At question is not only America's military capability, but the American spirit which once, not so long ago, moved us to proclaim that we would always be the first, the strongest, the best—No. 1 and nothing less.

Now, conventional wisdom, hedonism, materialism, the distaste for war, and a myopic view of the U.S. international interests and obligations have tempered our military goals. To be "No. 1" is no longer in vogue in some circles. Now, we are told by some, Americans should be satisfied with a military capability that is "second to none." To demand only that we be "second to none" militarily is consciously to reject the goal of being No. 1, and is, unmistakenly, a sign of weakness.

Although the difference might be considered merely semantic, especially in the context of political/military rhetoric, I believe the difference provides a substantive, albeit subtle, distinction between superiority and inferiority. For the United States, and all those who rely upon us as the leader of the free world, that difference is one of critical importance.

With military parity there can be no margin of error—we rely on the CIA, a most expert and reliable assessor of military strength of the Soviets—But the CIA can only tabulate what it knows and not what it does not know. Its assessments may often be subjective, and it does not claim to be omniscient or infallable. Just recently, the CIA states that they may have underestimtaed the annual military expenditures of the Soviet Union in relation to its GNP by a factor of 100 percent. It is currently thought that the Soviet Union is spending close to 15 percent of its GNP on defense, while the United States spends approximately 6 percent of its larger GNP on defense.

If the United States believed it possessed military superiority, then our position relative to the Soviet Union would not necessarily change because of such a miscalculation; we might very well retain superiority. However, if our goal was only military parity with the Soviet Union, a serious miscalculation of Soviet capability would leave us with something less than parity—a position our Nation cannot afford to accept.

Conventional wisdom speciously begs the question when it says we should not be in an arms race with the Soviet Union. Obviously, we are in a qualitative arms race that recognizes a negative quantitative imbalance; and we must compete successfully with any nation so clearly dedicated to becoming the dominant military force in the world. The costs may be significant, but fortunately, America can maintain military superiority by sacrificing a much smaller share of our gross national product than the Soviet Union—if we have the will.

Certainly, this does not mean that we should refuse to limit the arms race wherever equitable limitations can be agreed upon by the United States and the Soviet Union. Such limitations, when applied to both nations equitably and

Plan for Hill Intelligence Unit Assailed

By Walter Pincus
Washington Post Staff Writer

Opponents of establishing a new Senate committee to oversee intelligence activities let fly with a barrage of criticisms yesterday in a hearing before the Senate Rules Committee.

The concentrated their criticism on the proposal that the new committee have exclusive jurisdiction over all foreign and domestic intelligence-gathering agencies.

But also present was a feeling described by Rules Committee member Sen. James B. Allen (D-Ala.):

"Hysteria has subsided. Congress is taking a more objective view" because people at home "feel Congress is out to destroy intelligence agencies."

Armed Services Committee Chairman Sen. John C. Stennis (D-Miss.) declared his strong opposition to the new committee and recommended instead funding a permanent subcommittee of his committee that would concentrate on intelligence.

Stennis' Armed Services Committee, under the new proposal, would lose its jurisdiction over the Central Intelligence Agency and the intelligence activities of the military services.

"You strip away this authority and leave the Armed Services Committee undressed and in public as far as being effective" in carrying out its defense responsibilities, Stennis declared at one point.

Sen. Roman Hruska (R-Neb.), speaking on behalf of the Judiciary Committee, said that body voted Tuesday to recommend removing FBI intelligence activities from the new committee's jurisdiction.

CIA Director George Bush, who had asked to testify, said that, "speaking as head of the intelligence community and for the administration," he "could not support" the proposal for a new committee as currently drafted.

"Certain section," Bush said, "would unnecessarily hinder our foreign intelligence effort."

Four of nine Rules Committee members indicated by their statements and questions yesterday that they have doubts about the new committee as proposed by a resolution the Senate Government Operations Committee passed.

Rules Committee Chairman Sen. Howard W. Cannon (D-Nev.), who also is a member of Armed Services, said that because of the conflicting views, he would recommend that the resolution remain in his committee for 30 days beyond the April 8 deadline he now has to report it to the Senate floor.

Sen. Frank Church (D-Idaho), chairman of the Senate intelligence committee and a chief proponent of the new committee, waited almost an hour to testify yesterday and then asked to be heard this morning so that he could prepare to meet the varied criticisms.

Stennis' presentation set the tone for those who followed. Stennis said the CIA overall had done an "excellent job" gathering intelligence in foreign areas.

"I'm ashamed, ashamed of what CIA had done at home in one of its bad moments," Stennis said, "but of course I knew nothing about it."

Stennis for years has b[e]n chairman of the Arm[ed] Services subcommittee wi[th] authority to oversee CIA activities.

"There's been more surveillance of the military part of CIA," he said, "than appears on the surface. I've been rather shut mouth on this myself."

Stennis argued that his Armed Services Committee needs budget authorization jurisdiction over all aspects of defense intelligence because the remaining part of the defense budget is dependent upon it.

He added that if his committeee did not au[thorize] the intelligence part of the budget, it could not have conferences with the House Armed Services Committee to iron out differences between defense authorization figures passed by the two houses.

Bush took aim at a provision in the resolution that would permit public disclosure of intelligence information over the objection of the President.

Arguing that the section "could impede the flow of sensitive information to the committee," Bush recommended it "be deleted."

Oversight Compromise Offered

By Walter Pincus
Washington Post Staff Writer

The powerful Democratic whip, Sen. Robert C. Byrd (W.Va.), declared yesterday that there is "no way" the resolution to establish a new Senate committee on intelligence activities could pass "as now written."

Saying the "political climate indicates a necessity for some kind of committee," Byrd offered a compromise plan to solve a jurisdiction fight that has entangled the present proposal.

Under the Byrd plan, a new, permanent Senate intelligence oversight committee would be set up with subpoena power but without budgetary control over intelligence agencies.

Byrd's suggestion came during Senate Rules Committee questioning of Sen. Frank Church (D-Idaho), chairman of the Senate intelligence committee and an architect of the proposal under attack.

Under the resolution approved March 2 by the Senate Government Operations Committee, the new intelligence committee would have taken jurisdiction over intelligence agencies' budgets from three powerful Senate committees—Armed Services, Judiciary and Foreign Relations.

All three committees have raised objections to the proposal.

Byrd told Church: "That road is so formidable, and difficult to travel." Instead he suggested that, "we may achieve the desired objective" by giving subpoena power to the new committee and "leaving the rest where it lies."

Otherwise, Byrd said, approval might be endangered because "the resolution will be subjected to unlimited debate."

In his initial statement, Church said overlapping or concurrent jurisdiction between the new committee and the old ones was the "traditional" Senate solution "where the interest of two committees... is strong."

After Byrd offered his compromise, Church argued "the power of the purse is the ultimate authority" and he "couldn't see effective oversight without" it.

A letter from Defense Secretary Donald Rumsfeld, introduced at the hearing yesterday, supported the position that it is impossible to separate cleanly the Defense Department's intelligence budget from its overall spending since many programs are intermixed.

Rumsfeld echoed the Byrd suggestion that the new committe undertake only intelligence oversight.

Other senators raised with Church the proposal that the new committee be authorized to disclose classified information over a President's objection.

Church responded, saying "the greatest breach of security" he had ever seen was the recent disclosure by the CIA that the Israeli government possesses 10 or more nuclear weapons. "I have never even heard anyone was reprimanded," Church said.

To emphasize his point that the resolution as now written was vulnerable to attack, Byrd spent 20 minutes listing more than a dozen Senate rules that would have to be revised in major or minor ways to conform to the resolution's language.

Sen. Abraham A. Ribicoff (D-Conn.), chairman of the Government Operations Committee that drafted the resolution, told Byrd "not a single point there can't be reconciled" by redrafting the resolution.

Ribicoff proposed a staff meeting to iron out differences but Rules Committee Chairman Howard W. Cannon (D-Nev.) said that was "premature" since "we don't know ourselves" what is needed.

THE WASHINGTON POST DATE 4 APR 76 PAGE

Hill Reform of CIA Review Stymied

By Laurence Stern and Walter Pincus
Washington Post Staff Writers

The congressional crusade to change the system of intelligence oversight on Capitol Hill is virtually dead—a casualty of shifting public mood, adroit White House political orchestration and territorial jealousies of congressional barons.

This is the current assessment of the battle despite the past year-and-a-half of skeleton-rattling in the closets of the Central Intelligence Agency, FBI and other compartments of the U.S. national security establishment.

Equally doubtful is the prospect for legislative reform of the intelligence community whose excesses—such as involvement in foreign assassination plots, illegal surveillance of American citizens and domestic political espionage—have been chronicled in volumes of congressional testimony and countless newspaper stories.

So profound has been the rout that one top CIA official remarked with a touch of contrition last week:

"I hate to say this, but I think we've won too much."

The prediction, if not the misgivings, is widely shared by his colleagues throughout the intelligence community. And so with hawkish elan buoyed by a favorable windshift in Con-

News Analysis

gress, the Ford administration is now pressing for at best a token form of oversight on Capitol Hill—an approach that would heavily circumscribe congressional power to investigate and give the President veto power over public disclosure of the findings.

It is a far cry from the state of affairs six months ago when, stung by the revelations of abuse, Congress appeared on the verge of taking an unprecedentedly strong hand in overseeing the intelligence community.

Leaders of the intelligence reform movement in Congress are now in the process of cutting back their ambitious legislative goals in keeping with their darkened political prospects.

The fate of the reform bill, S. 400, illustrates the old Washington truism that there is more political mileage in exposing governmental abuses than in acting to prevent their recurrence.

Six months ago the agenda of the reformers included such minimum demands as these:

- Creation of a new standing Senate oversight committee which would operate independently of the pliant Armed Services and Appropriations committee chairmen who tolerated the CIA and FBI abuses exposed this past year.

See OVERSIGHT, A4, Col. 1

OVERSIGHT, From A1

- Vesting power of disclosure in the new committee or the full Senate of any intelligence matter deemed to require public airing, even over presidential objections.
- Timely sharing of secrets by the intelligence agencies with the Senate overseers to give Congress a chance to blow the whistle on executive actions before they become irreversible policy, as in Indochina and Angola.
- Giving the new committee jurisdiction over the entire intelligence community, which spreads through 11 separate civilian and military agencies.

Now the reformers, led by Senate intelligence committee chairman and presidential aspirant Frank Church (D-Idaho), would be happy to settle for much less.

They would, for example, accept limiting the new committee's jurisdiction to the CIA and civilian intelligence functions of the FBI. They are also willing to have the new committee share legislative and budgetary authority with the Armed Services and Judiciary committees for the CIA and FBI, respectively.

Church and his allies have given up hope for favorable action in the Senate Rules Committee, which is now chopping up the original version of S. 400 to assuage the powerful elders of Congress who want to preserve their military and intelligence baronies intact. Church's strategy is to have the decisive shootout on the Senate floor in a major public debate. To this end he has timed the final reports of his select committee—the last salvos of disclosure—for

SEN. FRANK CHURCH
... eyes floor showdown

the end of April. The floor fight is now set for May 6.

The change of fortunes for the intelligence reformers began last December when the Senate investigating committee stopped its flow of hearings and reports detailing the abuses. At that point there were no new horrors to arouse indignation and fuel the crusade for corrective action.

On Dec. 23 the CIA's station chief in Athens, Richard S. Welch, was assassinated. The administration linked the murder of Welch by still-unknown assassins with the torrent of disclosure, including the names of operatives, of intelligence activities. Even the former director of the agency, William E. Colby, acknowledged that the Welch assassination was a major turning point in the politics of the intelligence controversy in the CIA's favor.

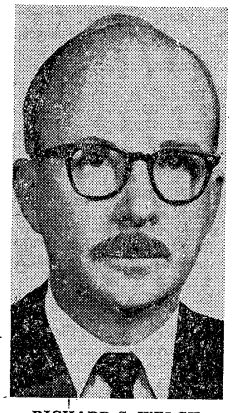
While most of Welch's colleagues killed in the line of duty are commemorated by anonymous stars chiseled into the entrance hall of the CIA's headquarters, his own funeral was conducted with impressive national panoply, with full television coverage, attended by President Ford and Secretary of State Henry A. Kissinger.

In January there ensued a controversy over the leak of the House intelligence committee's report to CBS News and The New York Times, then, in textual form, to The Village Voice. This further raised congressional hackles and fed the arguments of the administration that Congress could not be trusted with secrets. The result was an extraordinary House vote to suppress the report.

The House committee, chaired by Otis G. Pike (D-N.Y.), went out of existence in a bedlam of political recrimination, its staff the target of an FBI investigation and its report censored by vote of the House. Even in the leaked version the substance of the Pike report went virtually ignored because of the controversy surrounding its bootlegged publication.

At this point the administration began a series of well-timed public initiatives to foster the impression that President Ford was carrying out by executive action many of those very reforms upon which Congress embarked through the legislative process.

On Feb. 18 Mr. Ford announced to Congress his promulgation of an executive order that he said set forth "strict guidelines to control the conduct of these (intelligence) agencies." The order, said



RICHARD S. WELCH
... murder a turning point

Mr. Ford, "will eliminate abuses and questionable activities on the part of the foreign intelligence agencies while at the same time permitting them to get on with their vital work of gathering and assessing information."

The President, while blessing the principle of "successful and effective congressional oversight," stole the march on Congress by appointing his own Board of Overseers for foreign intelligence. He named as its chairman Robert D. Murphy, 81, who was a presidential intelligence adviser at the time of the Bay of Pigs and four of the five assassination attempts against foreign leaders in which the Senate intelligence committee found the CIA to be implicated.

In private, not-for-attribution conversations, intelligence advisers close to the President look upon the year of congressional investigations with amused disparagement.

They say, for example, that the abuses Congress and the press claim to have uncovered actually surfaced in an internal CIA review ordered by then CIA Director James R. Schlesinger in 1973—the so-called "family jewels" report of more than 600 pages which leaked, in part, to the press. Schlesinger ordered the inquiry to find out the extent of CIA involvement in the Watergate scandal.

The backroom view in the White House is that there should be a single oversight committee on Capitol Hill to answer the clamor for corrective action—but one which is fully subject to presidential determination of what can be disclosed to it and by it.

There is a strong sympathy for this view among the congressional elders who have looked with suspicion upon the prospect of an upstart intelligence oversight committee with genuine investigative powers since it was first proposed 20 years ago by Senate Majority Leader Mike Mansfield (D-Mont.).

Sen. John C. Stennis is reportedly advocating a plan which would vest all intelligence oversight in his own Armed Servics Committee, as it has been since the creation of CIA in 1947. It envisions a tripling of the staff—from one to three—of his subcommittee on intelligence and an expansion of its charter to provide what the Mississippi Democrat inimitably described as a "look-see-surveillance-overlook-kind of coordination group."

The White House was reported to be looking with keen interest at such an approach.

WASHINGTON POST

9 APR 1975

Showdown on Intelligence Oversight

THE SENATE is about to decide whether to let the results of its year-long intelligence inquiry go down the drain, as the House already has. It would be a disgrace for the Congress to do so, and it would also represent a genuine misfortune for the public. But it yet could happen if the barons of the Armed Services and Judiciary Committees succeed in blocking creation of an effective intelligence oversight committee. The barons believe the new panel would reflect unfavorably on their past stewardship of the intelligence community and cut into their future jurisdiction. But these are not very substantial objections. The old oversight mechanisms were considered suitable to their time. Those who managed them are entitled to feel they were serving the national interest as it was then perceived. Partly on the basis of what has been learned in the last year or two, the general perception of the national interest has changed. Intelligence oversight must change, too.

The specific need is to centralize oversight of the intelligence community, just as management of the community has been centralized—the more so, by the recent Ford executive order—in the executive branch. Only in this way can the Senate see that the community is run efficiently and legally and that intelligence is properly fitted to military and diplomatic policy. These are more amibitious goals than those held by past intelligence overseers, who in the main insisted merely that they not be surprised. Future overseers, however, ought to represent the full political spectrum, not just the military-conservative end of it. The revelations of the past 18 months, not to speak of the whole post-Vietnam consensus favoring more open government, provide compelling reason for the change.

A resolution pending before the Senate Rules Committee would create a permanent Committee on Intelligence Activities with these new and necessary powers: budget authority, authority to shape the charters or missions of all foreign-intelligence agencies, and regular access to intelligence information. The obvious answer to Armed Services' and Judiciary's jurisdictional anxieties is to provide for overlapping jurisdiction. The old committees would lose only their exclusivity, and many other committees manage to live with such a pattern. The case for exclusive Armed Services jurisdiction over CIA is especially weak in view of the civilian nature of most of the work of CIA, which was never meant to be a military intelligence agency anyway.

The handling of classified material is no doubt the most ticklish matter before the Rules Committee. In theory, national security and the public's "right to know" pose irreconcilable demands. It is important to note, however, that the actual operation of the Senate intelligence committee has tended to soften these tensions, and that it has done so not by finding some magical formula to balance off interests in conflict, but rather by setting a procedural example of back-and-forth consultation to work out disagreements. The result is that there have been neither leaks nor impasses, an achievement for which chairman Frank Church and all of the members deserve major credit. The committee's final report is going through the committee-executive mill now. Parts of it will remain classified—the parts reporting on activities kept secret by executive-congressional agreement. Such a procedure does not satisfy the all-or-nothing partisans of either left or right but it does offer the basis for a solid Senate consensus on the resolution creating a new committee, which is due to emerge from the Rules Committee by the end of the month.