

STAT

Page Denied

95TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 95-217

ANNUAL REPORT
TO THE
SENATE
OF THE
SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE
together with
ADDITIONAL VIEWS



MAY 18 (legislative day MAY 16), 1977.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

89-010 O

WASHINGTON : 1977

SENATE SELECT COMMITTEE ON INTELLIGENCE

(Established by S. Res. 400, 94th Cong., 2d sess.)

DANIEL K. INOUE, Hawaii, *Chairman*
BARRY GOLDWATER, Arizona, *Vice Chairman*

BIRCH BAYH , Indiana	CLIFFORD P. CASE , New Jersey
ADLAI E. STEVENSON , Illinois	JAKE GARN , Utah
WILLIAM D. HATHAWAY , Maine	CHARLES McC. MATHIAS, Jr. , Maryland
WALTER D. HUDDLESTON , Kentucky	JAMES B. PEARSON , Kansas
JOSEPH R. BIDEN, Jr. , Delaware	JOHN H. CHAFEE , Rhode Island
ROBERT MORGAN , North Carolina	RICHARD G. LUGAR , Indiana
GARY HART , Colorado	MALCOLM WALLOP , Wyoming
DANIEL PATRICK MOYNIHAN , New York	

ROBERT C. BYRD, West Virginia, *Ex Officio Member*
HOWARD H. BAKER, Jr., Tennessee, *Ex Officio Member*

WILLIAM G. MILLER, *Staff Director*
EARL D. EISENHOWER, *Minority Staff Director*
AUDREY H. HATBY, *Clerk*

(II)

PREFACE

The Senate Select Committee presents to the Senate this first annual report of its work. The Committee has been charged with the responsibility to carry out oversight over the intelligence activities of the United States. While most of the work of the Committee is, of necessity, conducted in secrecy, we believe that even secret activities must be as accountable to the public as possible. This public report to the Senate is intended to meet this requirement.

DANIEL K. INOUE,
Chairman.
BARRY GOLDWATER,
Vice Chairman.

(III)

CONTENTS

	Page
Preface	III
I. Introduction	1
II. Intelligence and the Rights of Americans	5
III. The Collection, Production and Quality of Intelligence	11
IV. Investigations	13
V. Covert Action	17
VI. Secrecy, Disclosure and Classification	21
VII. Budget Authorization	23
VIII. Charters and Guidelines	27
IX. The Desirability of Establishing a Joint Committee for Intelligence Versus Separate Oversight Committee for the House and Senate	37
X. Summary of Committee Activities	39
XI. Additional Views :	
Senator Joseph R. Biden	41
Senator Daniel P. Moynihan	43

(v)

I. INTRODUCTION

The first duty assigned by the Senate to the Senate Select Committee on Intelligence, when it was created on May 19, 1976, was to develop effective processes of oversight and accountability for the intelligence activities of the United States. The most difficult task facing the committee was to balance the right of the public and the Senate to be informed of the government's activities with the counter-vailing necessity to protect valid national secrets. The Constitution's design of interaction among the three separate branches of government is based on the conviction that the responsibilities for all that government does, even secret activities, must be shared by the three branches of government in their appropriate ways. This is the best protection that the public has that secret activities will not erode our freedoms.

Intelligence activities, until the past few years, were the sole domain of the executive branch. The legislative and judicial branches played little role in assuring that intelligence activities were functioning under the Constitution and the laws. The abuses of intelligence agencies of the United States, subject of great concern in recent years, were in part caused by the failure of the legislative branch to carry out its constitutional responsibilities. In light of recent history, this failure to oversee vital activities, utilizing instruments of considerable power, weakened confidence in our constitutional system.

S. Res. 400 assigned to the Select Committee on Intelligence general duties in order to make legislative oversight of the intelligence agencies of the United States an effective reality. Those main duties are:

- (1) 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 and report to the Senate concerning such intelligence activities and programs;

- (2) To 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;

- (3) 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;

- (4) To make a study of all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence.

(1)

In addition, S. Res. 400 assigned a number of specific areas for study:

(1) The quality of the analytical capabilities of U.S. 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; 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; 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;

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

(4) 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;

(5) 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;

(6) 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.

This first annual report by the committee is an accounting to the Senate and the public of the performance to date of legislative oversight. We have tried in this report to describe fully the processes developed for effective oversight and accountability. The details of much that the committee has been involved in remains classified. While valid national security concerns prevent the committee from placing these details in the public record, the full record is available to the Senate in accordance with the provisions of S. Res. 400.

In the eleven months since the creation of the Select Committee on Intelligence, the committee has been working to meet the obligations and responsibilities set forth in S. Res. 400. To carry out these responsibilities, it has created six subcommittees:

SUBCOMMITTEE ON INTELLIGENCE AND THE RIGHTS OF AMERICANS

Senator Bayh, *Chairman*
Senator Morgan
Senator Moynihan

Senator Garn, *Vice Chairman*
Senator Case
Senator Chafee

SUBCOMMITTEE ON BUDGET AUTHORIZATION

Senator Hathaway, *Chairman* Senator Wallop, *Vice Chairman*
Senator Hart Senator Mathias

SUBCOMMITTEE ON COLLECTION, PRODUCTION AND QUALITY

Senator Stevenson, *Chairman* Senator Case, *Vice Chairman*
Senator Hart Senator Lugar
Senator Moynihan Senator Wallop

SUBCOMMITTEE ON SPECIAL INVESTIGATIONS

Senator Morgan, *Chairman* Senator Goldwater
Senator Inouye

SUBCOMMITTEE ON CHARTERS AND GUIDELINES

Senator Huddleston, *Chairman* Senator Mathias, *Vice Chairman*
Senator Bayh Senator Garn
Senator Stevenson Senator Lugar
Senator Biden

SUBCOMMITTEE ON SECRECY AND DISCLOSURE

Senator Biden, *Chairman* Senator Pearson, *Vice Chairman*
Senator Hathaway Senator Chafee
Senator Huddleston

The committee has gradually built up a staff to carry out the work of the committee and the six subcommittees. There are presently 45 staff members, including 23 professionals and 22 support staff. The staff is composed of men and women of unusually high quality. They represent a mix of disciplines: history, political science, law, as well as a number of members with considerable experience in intelligence.

In addition to having received briefings at the agencies and to having worked at the intelligence agencies on committee projects and investigations, both committee and staff members have traveled within the United States and abroad to familiarize themselves with field operations and to obtain an awareness of the direction of research and development efforts and contract performance.

The committee has not yet encountered any serious obstacles to its work. In general, all of the agencies have been forthcoming in providing information. There have been some procedural difficulties, however, in obtaining material related to some areas of intelligence activity. Examples of this kind of problem are sensitive clandestine collection activities and the activities of foreign intelligence agents in the United States. However, in recent weeks the committee has begun to receive the information it needs to deal with activities of these agencies.

The committee has been developing close relationships with other Senate and House committees whose work bears on intelligence. On the staff level, the committee has been working closely with the Armed Services and Appropriations Committees of both Houses. The need for cooperation is particularly crucial for the ultimate success of the new authorization process. There has never before been a specific authorization bill for intelligence activities. It is obvious that the cooperation

of the Armed Services and Appropriations Committees of both Houses, and the creation of a counterpart committee for intelligence oversight in the House, is required for an annual authorization bill for intelligence activities to become a reality.

The committee and staff have been at work for the past 11 months on major problem areas such as counterintelligence and the quality of the analytic process. They are studying the major forms of intelligence collection which involve sophisticated technology, so that the committee can authoritatively support necessary improvements and research and development efforts and make judgments about expensive and potentially redundant systems. The committee is now equipped to carry out its duties to monitor covert action programs. It is now able, through its highly qualified and experienced budget staff, to do the necessary analysis and to understand in detail the funding for operation of all the intelligence agencies.

II. INTELLIGENCE AND THE RIGHTS OF AMERICANS

The Subcommittee on Intelligence and the Rights of Americans has particular responsibility for carrying out the duty of the committee under S. Res. 400

“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.”

The subcommittee has concentrated its attention upon intelligence activities which may be directed against Americans or which occur within the United States. In addition to oversight, the committee has considered legislation regarding such activities. As mandated by Senate Resolution 400, the subcommittee is participating in the committee's study of

“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.” [Sec. 13(a) (2)]

A. LEGISLATION

1. S. 3197 (94th Congress)

The subcommittee held hearings on S. 3197, the Foreign Intelligence Surveillance Act of 1976, on June 29, 30 and July 1, 1976. The hearings included testimony from the Attorney General, Members of Congress, representatives of the academic community and various interest groups, and, in executive session, representatives of the intelligence community.

The subcommittee adopted a number of amendments to the version of S. 3197 which had been reported by the Judiciary Committee. These amendments were both in response to testimony received in the course of the subcommittee's hearings and the result of analysis by the subcommittee itself. A favorable report was ordered on August 6, 1976. The subcommittee amendments and some additional amendments were adopted by the full committee, which on August 10, 1976, ordered S. 3197, as amended, favorably reported. On August 24, 1976, the report prepared by the committee staff was filed and ordered printed. The Judiciary Committee accepted the amendments adopted by the Select Committee on Intelligence, but the bill did not reach the Senate floor during the 94th Congress. S. 3197 was supported by President Ford and Attorney General Edward H. Levi. Working closely with the committee, Attorney General Levi contributed significantly to the development of legislation in this area.

As originally introduced, S. 3197 would have required a prior judicial warrant for all electronic surveillance within the United States conducted for foreign intelligence purposes. As amended by the committee, the bill strengthened the requirement that in each case the

judge was to make a finding of probable cause that the target of the surveillance is a foreign agent before the surveillance could be instituted or continued beyond ninety days. In the case of a target who is a permanent resident, alien or citizen of the United States, the judge was required to find probable cause that the person is engaged in activities which involve or will involve violation of criminal statutes or engage in the transmission of information to a foreign intelligence service under circumstances which would harm the security of the United States. The bill as amended also required the executive branch to certify that each surveillance is necessary to obtain specific foreign intelligence information that such information cannot feasibly be obtained by normal investigative techniques.

The committee also amended S. 3197 to provide further safeguards to protect the rights of Americans. "Minimization procedures" were strengthened to assure that information which is not foreign intelligence information not be maintained in a "dossier," and restrictions were placed on the use and disclosure of any information retained in files. The judge was required to find that these minimization procedures are reasonable in each case.

2. Foreign Intelligence Surveillance Act of 1977

S. 3197 included a provision urged by the executive branch, stating that the act did not affect the exercise of any constitutional power the President may have, subject to determination by the courts, to acquire foreign intelligence information by means of other forms of surveillance or where the circumstances are so unprecedented and potentially harmful to the Nation that they could not be reasonably said to have been within the contemplation of Congress in enacting this bill. The provision was a point of controversy, opposed by many groups as either irrelevant or unconstitutional. Forms of surveillance not covered by S. 3197 were electronic surveillance targeted against Americans abroad, the signals intelligence activities of the United States, physical searches and seizures, and mail opening.

Subsequently the committee gave further detailed study to S. 3197 with the aim of extending the scope of the bill, refining certain definitions, and removing the need for any reference to the question of inherent Presidential power. Extensive consultations took place with the Department of Justice and Attorney General Griffin Bell. Following these consultations, the administration submitted a new draft bill for study by the committee on April 28, 1977.

The administration draft incorporated three significant improvements from S. 3197 which had been proposed in these discussions. The most important change is the broadening of the coverage of the bill, and the judicial warrant protection, to intentional targeting of the international communications of U.S. persons who are in the United States. The effect would be to prevent, by law, such past abuses as the National Security Agency's use of a "watch list" to target the international communications of Americans who were engaged in lawful protest activities posing no serious threat to national security.

Another major improvement is judicial review of the Executive "certification" that surveillance of a U.S. person is necessary for specific

foreign intelligence purposes and that normal techniques are inadequate. In addition, the new bill eliminates the "inherent Executive power" concept by stating that the bill is the "exclusive means" by which electronic surveillance, as defined, may be conducted.

The original administration draft raised certain other issues. However, after further consultations, many of these issues were resolved. Other questions about the new bill will be taken up by the committee in the course of its hearings.

The most important omission in both S. 3197 and the new bill is protection for the rights of Americans who are outside the United States. Until there is legislation regulating surveillance of Americans abroad, the executive branch can still attempt to claim "inherent Presidential power" to authorize such surveillance. The committee intends to develop measures, in close consultation with the executive branch, to close this last gap in the legal protections against unjustified surveillance of Americans.

The committee also intends to add to the bill more detailed reporting requirements for the purpose of ensuring effective congressional oversight. In the interim before such requirements may be established by law, the committee expects the affected agencies to continue to cooperate with it in developing effective reporting procedures as required by the provisions of Senate Resolution 400.

The electronic surveillance bill is designed and is being drafted to fit into the committee's overall intelligence charter legislation.

3. Intelligence Charter Legislation

The subcommittee is currently engaged in drafting those aspects of intelligence charter legislation which will set standards for techniques which are directed at Americans or used within the United States. A bill is intended for introduction in this session. The subcommittee will then, in conjunction with the Subcommittee on Charters and Guidelines, conduct a series of hearings on such legislation. Among the issues to be addressed are: the proper scope and purpose of authorized foreign intelligence, counterintelligence, and domestic security activities within the United States; the jurisdiction of intelligence agencies within the United States, including the CIA, the FBI and military agencies; standards and procedures for the use of investigative techniques affecting the rights of Americans; and standards and procedures for the use of Americans for clandestine intelligence purposes.

On the basis of its study of these issues thus far, the subcommittee has found that there are serious weaknesses in the current framework of authority for intelligence activities directed against Americans and conducted within the United States. Existing statutes are incomplete or fail to provide sufficient legal safeguards against improper conduct. Executive Order 11905, issued in 1976 by President Ford to regulate U.S. foreign intelligence activities was a significant step forward but still has major gaps and inconsistencies. The committee is of the view that it is not possible to resolve these problems solely by Executive regulation, rather it sees a need for the enactment of clear legislative authorization with appropriate standards and procedures to insure that the rights of Americans are not directly or indirectly impaired.

The main problems in developing such legislation involve the proper mix between statutory provisions and executive branch regulations. The need for secrecy and for administrative discretion must be weighed against the desire for clear legal standards which the American people can rely upon to protect their rights. These difficulties are particularly apparent with respect to foreign counterintelligence operations designed to protect the security of the United States against hostile foreign intelligence services and their agents (who may be Americans); the collection of foreign economic intelligence, where there are connections between American and foreign economic activities; and the enlistment of the voluntary services of Americans in clandestine foreign intelligence activities of the United States where such activities may erode open institutions of our society.

B. OVERSIGHT

1. Improper Intelligence Activities Affecting the Rights of Americans S. Res. 400 expresses

“the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the select committee 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(c)]

The committee has advised the Attorney General that it expects to be so notified, particularly where such violations affect the rights of Americans.

During the summer of 1976 the Committee established contact with the Department of Justice regarding the investigation of alleged illegal break-ins and related activities by agents of the FBI. In September 1976, the committee received testimony from the Assistant Attorney General of the Civil Rights Division, Stanley Pottinger and the Counsel for Professional Responsibility, Michael E. Shaheen. Among the matters discussed with the Justice Department were alternative procedures for reporting the results of its investigation where such results might not be disclosed in the course of a criminal trial. These matters have since been raised with Attorney General Bell.

The committee staff prepared an analysis of the report of the Department of Justice on its investigation and prosecutorial decisions regarding CIA mail opening activities, which were issued by Attorney General Levi in January 1977. Although the Justice Department chose not to prosecute, its report included a strong warning that any similar activities in the future would result in criminal prosecution. The report's emphasis on the need for explicit delegations of Presidential authority raised questions about the adequacy of Executive Order 11905 as a delegation of Presidential authority for certain foreign intelligence techniques.

2. Study of Current Intelligence Activities Affecting the Rights of Americans

S. Res. 400 expresses

“the sense of the Senate that the head of each department and agency of the United States should keep the select committee 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.”
[Sec. 11(a)]

The subcommittee is continuing its study of intelligence activities as they affect the rights of Americans.

In September 1976, the full committee heard testimony at a public hearing from FBI Director Clarence M. Kelley regarding his reorganization of domestic security functions. In addition to this public hearing, the staff received briefings from FBI officials regarding the reorganization and examined materials relating to FBI policies for domestic security investigations.

Thereafter the subcommittee continued its study of intelligence activities as they affect the rights of Americans. The subcommittee received a series of briefings from representatives of the FBI, the CIA, DIA, and NSA. As part of this study, the staff has analyzed the guidelines issued by the Attorney General for certain foreign intelligence collection and counterintelligence investigations.

A proposal has been made to the Attorney General for regular oversight reporting procedures, and agreement has been reached on the reporting of policy and guidelines material. Further consultation is taking place with the Attorney General and the Director of Central Intelligence on the reporting of case-related materials.

With respect to current executive branch procedures for the supervision of intelligence activities affecting the rights of Americans, the subcommittee has conducted interviews with members of the Attorney General's FBI Investigation Review Unit and the Justice Department's Office of Professional Responsibility. A study has been made of the annual report of this office and the report of its task force inquiry regarding the FBI and Dr. Martin Luther King, Jr. The recommendations contained in these reports have received careful attention.

The subcommittee is also studying current CIA foreign intelligence activities within the United States. While such activities are not directed against Americans, they may have indirect effects upon the rights of Americans. In this area the subcommittee has received briefings, conducted interviews, and compiled Executive branch materials regarding policies and procedures. These oversight activities contribute to the ability of the subcommittee to develop appropriate legislative charter provisions and to recommend more effective legal safeguards.

III. THE COLLECTION, PRODUCTION AND QUALITY OF INTELLIGENCE

The Subcommittee on Collection, Production and Quality of Intelligence is the first congressional effort to both oversee and evaluate the process of intelligence production and analysis—the primary mission of the U.S. intelligence community. Increasingly, the Congress has begun to utilize substantive analysis produced by the intelligence agencies in formulating its position on policy issues, ranging from agriculture to energy to foreign economics. The mandate of the Select Committee on Intelligence, contained in Senate Resolution 400, directly reflects this expanded congressional role. The Intelligence Committee has a key role in insuring that Congress is provided with the intelligence it requires, in insuring that the intelligence community produces the best quality analysis, and that the American intelligence effort is being managed wisely and effectively.

The work of the Subcommittee on Collection, Production and Quality has focused on the preparation of a series of case studies. These studies are intended to provide the Congress, the intelligence community, and the public with an understanding of the analytic process and to illuminate the problems related to intelligence production.

The following case studies which represent a variety of issues have been chosen from a series of studies:

(1) *The Quality and Utility of Intelligence*. This study, based in large measure on the individual case studies mentioned below, draws certain principal conclusions concerning the present and probable future capabilities of U.S. intelligence to produce accurate, timely, relevant, and objective intelligence in support of policymaking; and to be actually and actively used by policymakers, rather than virtually ignored as has sometimes been the case. This study will include specific committee recommendations for improving the quality of intelligence.

(2) *The "A Team-B Team" Exercise*. This study will evaluate the recent competitive exercise between the intelligence community experts and an outside group of experts on Soviet strategic weapons that was commissioned by the President's Foreign Intelligence Advisory Board. The subcommittee's classified report will examine the origins of the exercise, its contribution to the estimative process, and its significance for future estimates.

(3) *Soviet Strategic Weapons Developments*. This study will be a broad examination of Soviet strategic weapons estimates. It will evaluate the estimates' performance regarding numbers of strategic weapons, qualitative weapons developments, and Soviet strategic intentions. The study will also examine the extent to which these estimates have contributed to policy formulation and the ways in which the estimative process might be improved.

(4) *Oil and the Arab Price Hikes, 1973-1974*. This case study will evaluate the intelligence community's capabilities in dealing with a major political and economic policy issue. The study will address three specific questions: How well did the intelligence community alert policymakers to the leading role Saudi Arabia assumed in 1973 in using oil as a political weapon against the United States? How well, similarly, did intelligence perform in gauging the ability of the Organization of Petroleum Exporting Countries (OPEC) cartel to cut production and sustain oil prices at unprecedented high levels? How well has the intelligence community performed in identifying the disruptive effects of the oil price increases on the world economy?

(5) *New "Strategic Problems" for the Future*. This case study is a broad examination of present intelligence capabilities in the areas of food, natural resources, and population pressures. These are subjects which are not traditional national security issues but which will require considerable attention from senior policymakers in the immediate future.

(6) *Portugal, 1973-1975*. This case study examines the intelligence community's effort in anticipating rapid political change and in analyzing its consequences for U.S. policy. The study will compare the community's coverage of Portugal before and after the *coup d'etat* of April 1974. It will assess the sources of information which contributed to finished intelligence analysis on the subject, the quality of that analysis, and the interaction between intelligence producers and consumers.

(7) *China*. This case study is a broad examination of the intelligence record with respect to China. It emphasizes the process of anticipating events in China and the principal weaknesses and strengths in the intelligence record. The study includes examples of policymakers' disregard of accurate intelligence and recommendations for improving the interaction between intelligence users and producers.

In carrying out this work, committee staff members have reviewed extensive written materials and have conducted over 250 interviews with members of the intelligence community and with senior policymakers in the White House, the National Security Council and the Departments of State and Defense.

It is clear that in the coming months the question of the ability of the United States to verify arms control agreements such as those contemplated in the SALT negotiations will be of central concern to the Senate. The Select Committee on Intelligence is in a unique position to address the issue of the capabilities of our national intelligence system to verify possible agreements. The committee is engaged in an ongoing study of the capabilities of our national means of verification, which will encompass collection and analytic capabilities, and the mechanism by which intelligence on verification is written and disseminated.

It is also now clear that one of the most important questions facing the United States is the quality of U.S. intelligence on world energy supply, production and use. In this connection, the committee is undertaking a study of the capabilities of the U.S. intelligence community to collect, analyze and produce intelligence on these vital aspects of national energy policy.

IV. INVESTIGATIONS

In the past year, the committee has received close to one hundred allegations of improprieties by intelligence agencies. It has followed up on all of these allegations. In addition to its own investigative efforts, the committee has required the intelligence community to submit formal reports concerning the charges which have been made. The intensity of the committee's efforts has varied from case to case depending, of course, upon the validity, gravity and scope of the situation alleged.

The permanent Intelligence Oversight Committee was created in large measure as the result of intelligence abuses which were discovered and revealed by its predecessor committee. At the conclusion of its work (in April of 1976), that committee issued a series of reports about its findings from investigations into improper intelligence activities which had occurred from the end of World War II to 1976. It was that committee's view that abuses occurred partially because of a lack of accountability and poor executive control over the intelligence community, and partially because of a failure of congressional oversight.

The necessary focus on the widespread abuses of the intelligence agencies should not diminish the debt that this country owes to the vast majority of men and women who have served their country with dedication and complete integrity. It was clear, however, that a vigorous new system of oversight was required. One of the chief recommendations of the predecessor committee was to create a permanent oversight committee in order to restore confidence in the necessary and proper activities of intelligence.

One year later, it is this committee's judgment that the intelligence agencies are now functioning under the control of the President, the Director of Central Intelligence, and the heads of the various intelligence entities, and that they are now fully and properly accountable to the Congress. We are confident that under the procedures for oversight that have been developed over the past year, and with the enactment of effective legislative charters which set forth clear and unambiguous standards for what the intelligence agencies may and may not be permitted to do, we will not see a repetition of the widespread abuses of the past.

The committee recognizes that mistakes of judgment, misguided zeal, and isolated instances of overreach of power will from time to time occur, and that investigations of alleged or actual abuse will be a continuing requirement.

Over the past year committee practice has established general guidelines to govern its investigations. We believe that these guidelines will assist the committee in making the choices which must continually be made to investigate or not to investigate particular allegations. The committee, no less than the agencies we oversee, must be publicly

accountable and such decisions must of course be based upon standards which reflect our Nation's sense of law, moral principle, and common sense. The committee's basic guidelines are as follows:

(1) In allocating its limited time and investigative resources, the committee will give preference to matters which are alleged to have occurred since the establishment of this committee or to those matters which, although alleged to have occurred prior to the establishment of the committee, have some implications for the present-day conduct of intelligence activities.

(2) The committee will endeavor not to duplicate any investigation already being conducted by the Department of Justice. The committee will, however, take appropriate steps to oversee the adequacy and completeness of the Justice Department's investigation. The committee may institute its own investigation if the Justice Department's investigation is manifestly inadequate or if the committee feels that the policy implications of the allegations are significantly broader than the scope of the Justice Department's investigation.

(3) Except in extraordinary circumstances, the agency which is the subject of an allegation will always immediately be asked to submit a formal detailed report to the committee, in writing, concerning the situation alleged. Each report will be reviewed by the committee to determine whether its report is reasonably complete and responsive. If not, an additional report will be sought, relevant documentation requested, and/or interviews conducted of knowledgeable agency personnel. All this will be done as a part of the committee's own preliminary investigations. If unresolved issues still remain, a full investigation may be authorized by the committee.

The guidelines described above were developed from the committee's experiences of the past year, during which time each allegation has been handled on a case-by-case basis. As a general rule, the committee has not investigated improprieties alleged to have occurred in the past. For example, a number of complaints have been received from persons who have claimed to have been victims of previously revealed intelligence abuses, such as the FBI's COINTEL program. These matters have been referred to the Department of Justice for action in accordance with the Department's stated policy of notifying all COINTELPRO victims. Some allegations have also been received about FBI "break-ins," said to have occurred in the late 1960's or early 1970's. Those cases were also forwarded to the Department of Justice to be made a part of the Department's overall "surreptitious entry" investigation.

Allegations about military drug experiments in the 1950's have not been investigated, because experimentation programs were fully investigated and reported on by the predecessor committee, and indeed have been admitted by the agencies concerned; because remedial actions to aggrieved parties are being undertaken; and because this committee is satisfied, through the present oversight and budgetary review process, that no such program is being carried out today.

Similarly, the committee is not independently investigating the activities of the Korean Central Intelligence Agency within the United States, inasmuch as that case is now the subject of inquiry by the Department of Justice and several committees of the House of Representatives. The committee is, however, investigating the question of when, and to what extent, the intelligence agencies of the United States knew, or should have known, about the KCIA's activities, and whether our own agencies adequately performed their responsibilities in that regard. This investigation is still underway. The committee has received reports from the agencies concerned, examined relevant documentation, interviewed witnesses, and asked for additional reports and materials which bear upon the issues involved. Upon completion of our inquiry, a committee report will be released.

Numerous allegations have also been received about the activities of foreign intelligence services of other countries besides South Korea, such as Chile, Iran, Republic of China, and the Philippines. With respect to these matters, the committee has sought detailed reports from the Attorney General and other witnesses to ascertain: (1) the truth of the allegations, (2) whether, if true, appropriate prosecutive or other action is being taken by the United States as a result, and (3) whether legislative remedies should be proposed to insure that the United States accords adequate protection to all people in this country from the activities of foreign intelligence services.

The committee is also seeking to determine whether there has been any relationship, any *quid pro quo*, express or implied, between any alleged activities of such services in this country and the activities of U.S. intelligence agencies in foreign countries. Several liaison agreements with foreign governments and foreign counterpart intelligence services have been examined, and the issue has been explored with intelligence community officials in executive session. The committee's inquiry into this subject is not yet complete.

In view of the extensive public speculation that the intelligence service of Chile may have been responsible for the September 21, 1976, murder of former Chilean official Orlando Letelier, the committee has closely monitored the investigations which are being conducted by the FBI and has sought to insure the cooperation of other agencies such as the CIA. Because those investigations are continuing, the committee believes that it would be inappropriate to comment on their progress.

The committee has also continued its examination of the performance of the intelligence agencies in the investigation of the assassination of President Kennedy. We are acting upon the recommendations of the predecessor committee, that the inquiry which was initiated by that committee be completed. That inquiry is still being pursued.

The Select Committee on Intelligence initiated its investigation of Central Intelligence Agency activity in Micronesia after December 1976 press reports of alleged intelligence activity caused a local political crisis. Micronesian representatives met with Chairman Inouye in Hawaii in January 1977 and voiced their fears that electronic sur-

veillance and other techniques had tainted the agreement which had been reached with the United States. To resolve the many doubts that were clouding the United States' relationship with Micronesia, and as a case study of intelligence operations, the committee conducted a five-month investigation that included extensive testimony, over forty interviews and review of hundreds of pages of reports and other documents. The committee's findings were published in its statement, issued recently.

Among the more important recommendations made by the committee in its statement are:

- More effective guidelines should be established to define those situations which are appropriate for various clandestine collection techniques.
- Better procedures should be implemented to ensure that information collected is of greater use to policymakers and other consumers.
- Those who have a role in the collection of the intelligence product should not be the ones to conduct or write up user evaluation.
- Sensitive collection proposals should receive wider and more detailed scrutiny within the executive branch before they are approved.
- Greater effort should be made to exhaust available and open sources of information before intelligence operations are authorized.
- The NSC should develop guidelines to assist policymakers in judging not only the legality, but also the wisdom and propriety of employing various methods of overt and covert gathering of information.

V. COVERT ACTION

Within a few weeks of the establishment of the committee, a procedure for covert action oversight was implemented. It was developed in consultation with the agencies of the executive branch, particularly the CIA. The procedure is based on the authority contained in S. Res. 400, particularly Section 11(a):

It is the sense of the Senate that the head of each department and agency of the United States should keep the Select Committee 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: *Provided*, That this does not constitute a condition precedent to the implementation of any such anticipated intelligence activity.

and the Hughes-Ryan amendment to the 1974 Foreign Assistance Act:

“Sec. 662. 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.

“(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.

Thus far, the executive branch has informed the committee of every covert action which has required a new Presidential Finding prior to its implementation.

A. OUTLINE OF PROCEDURE FOR COVERT ACTION OVERSIGHT

1. *Notification*

When the CIA is informed of a Presidential Finding, the committee is notified prior to implementation per S. Res. 400. The Select Committee receives a full report shortly after Presidential approval. CIA reports on covert action projects have included such information as:

- A summary of the proposal and what it is expected to accomplish;
- The origin of the proposal: whether CIA, U.S. Ambassador, host country, etc.;

- Policy considerations, citing applicable policy documents;
- Justification for a covert effort and how it will supplement overt U.S. action;
- Timing and duration of the operation;
- The relationship of the project to decisions of any previous NSC Committee;
- The risks involved and the possible consequences of disclosure of the operation;
- A plan of action which appropriate U.S. Government elements would take in the event of a disclosure; and
- The estimated cost level, the availability of CIA funds and the need, if any, for new money allocations.

Briefings are given to the committee by CIA, State and any other relevant agency. Additional documentation, if required, is provided by relevant agencies or the committee staff. Action by the committee, if any, can include the following:

- Comment to the executive branch;
- Referral of information to other committees, if appropriate;
- Disclosure under provisions of S. Res. 400, Sec. 8; and
- Funding restrictions.

2. Follow-up

Submission by CIA of a termination/evaluation report is encouraged by the committee. This can lead to briefings and requests for additional documentation. Action by the committee, if any, can include:

- Comment to executive branch; and
- Referral of information to other committees, if appropriate.

3. Semiannual Status Reports on all Covert Action Programs and Projects

In addition to notification and termination/evaluation reports, the committee receives, on a semiannual basis, status reports on *all* current covert action projects.

The semiannual status reports can provide a description of each project, its purpose and intent, its cost, its proposed duration and the risks involved. In addition, the status reports include an evaluation of progress in implementing the project and an assessment of its effectiveness to date. Finally, the status reports indicate the source of funding for continuing approved covert action programs and projects. Briefings by CIA, State and any other relevant agency may be held, and additional documentation, if required, is obtained from agencies or the committee staff. Action by the committee, if any, can include:

- Comment to executive branch; and
- Referral of information to other Committees, if appropriate.

4. Contingency Reserve Fund Release Notifications

The CIA's Contingency Reserve Fund is an Agency-wide account that serves as a substitute for supplemental appropriations made to other agencies. Covert actions not anticipated at the time of budget

submission are funded through this account. Since 1967, the House and Senate CIA Appropriations Subcommittees have received notification of withdrawals from the Fund within 48 hours of the release. In 1975, the two Armed Services Subcommittees began receiving the same notification. The select committee now receives this Contingency Reserve Fund release notification.

5. Continual Consultation Between Agencies and the Committee Concerning Covert Action Projects and Programs, Including Review of Project Files, Directives and Regulations

The committee is able to conduct thorough studies of covert action projects and programs, with complete access to relevant Agency files and personnel. Members of the committee also receive individual briefings on matters of interest to them.

6. Annual Authorization Bill Review of Covert Action Projects

In the process of the preparation by the committee for mark-up and reporting of the first authorization bill for all intelligence activities of the United States, the committee reviewed all covert action projects, project-by-project, and has formally voted on every project. Thus it is clear that the Senate, through its delegated committee, has been able to review, consider and act on the record in conformity with Constitutional processes even in so difficult and secret an area as covert action. If the procedures established during the past year are continued, there is every reason to believe that whatever covert action is undertaken by the United States will reflect the national will as expressed by both the Legislative and executive branches and not by just the executive branch alone.

Thus far, the committee has been informed of each Presidential covert action finding prior to implementation. The committee has been briefed by the CIA on both new and ongoing covert action projects. The committee is satisfied that it has been able to obtain the information it has sought on covert action.

B. DISCLOSURE PROCEDURES

Senate Resolution 400 sets forth the means for constitutional accountability and constitutional decisionmaking with regard to secret activities. The procedures that we have developed under the guidelines of Senate Resolution 400 can be summarized as follows: When the executive branch decides that a covert action is required in the national interest, the President makes such a finding in writing. The Director of Central Intelligence immediately informs the Senate Intelligence Committee prior to implementation. The committee then considers the President's intended action.

The committee can remain silent and do nothing, which in itself is an action, or it can approve or disapprove. If it disapproves, several courses of action are open to the committee, as noted earlier; one is to move toward public disclosure. In that event, assuming that the executive branch requests that the information be kept secret, the committee is required to convey to the President in confidence its desire to disclose the information. If the President refuses to take

the advice of the committee and gives the committee written notice that he objects to the disclosure of such information, the committee may then take the issue to a closed session of the Senate. The decision to preserve secrecy or to make a public disclosure is by a vote of the full body.

C. REVIEW OF EXECUTIVE PROCEDURES

The committee has had the opportunity to review the Executive's approval procedures for covert action. It is clear that these guidelines are tighter today than ever before. The NSC Special Coordinating Committee meets in regular formal sessions; at times in the past, some covert action projects were approved over the phone. The Secretaries of State and Defense now sit on the committee; in the past, their designated representatives attended. The Attorney General and the Director of OMB are observers at NSC meetings. The Attorney General's presence at these meetings has been particularly important and effective.

There have been other improvements in the review of clandestine activities by the Executive. For example, certain sensitive intelligence collection activities are now reviewed by the NSC. In the past, this was not done. The full NSC now conducts, twice a year, a review of the "continued appropriateness of ongoing covert operations." Never before has the full NSC done this.

The review and approval procedures of the Executive are, in the view of the committee, sound. Increased internal review and thorough congressional oversight have placed major covert action projects under constitutionally appropriate control.

VI. SECRECY, DISCLOSURE AND CLASSIFICATION

In early February, the select committee created a Subcommittee on Secrecy, Disclosure and Classification. The charge of the subcommittee is to undertake a study of present secrecy laws and regulations, with a special focus on the espionage statutes and the classification rules of the executive branch. It has been asked to develop recommendations for the committee to consider what new legislation or executive action, if any, is necessary to strike a more workable balance between necessary secrecy and the right of the people to be informed of the activities of governmental agencies.

It is the view of the committee that the questions of what constitutes a valid national secret and to what extent new laws are necessary to govern the limits of secrecy, disclosure, and classification are among the most difficult and fundamental issues facing the committee and the Congress. They are threshold questions for public debate over congressional oversight and control of secret operations of the intelligence community. The committee will seek to determine the public consensus on what can and should be kept secret in the name of national security.

When the last Congress enacted Senate Resolution 400, it took the initial steps towards establishing the congressional branch's first formal declassification system. It recognized that oversight protection of secrets and declassification of information were inextricably related.

The experience of the Watergate Committee, the Pentagon Papers case, the Marks-Marchetti case, and recent press disclosures create a compelling record for congressional study of the present security classifications, executive orders, and criminal statutes. Existing laws are inadequate, and serve neither the national security nor the people's right to know. The ambiguities of the law frequently force congressional committees and executive branch officials to act in doubt on matters relating to national security. In the past, both Congress and the press have been denied information and accused of irresponsible "leaks" if they disclose what they learn, and accused of "cover-ups" if they fail to do so. Clearly, this is a dangerous situation that requires remedy.

The committee's purpose is to go beyond the debate on "leaks" or "cover-ups." The subcommittee will begin hearings in the early summer on the present statutes and proposed remedies. Through this hearing process and its own analysis, the subcommittee will examine the nature and substance of the information the intelligence community and its critics believe should or should not be withheld from the public. The committee will make its own assessment of the benefits or damage, if any, that the disclosure of such information might have upon the national security. It will also conduct an in-depth study of the classification system, examining various departmental procedures in use in the executive branch. To the extent feasible, the subcom-

mittee will conduct its inquiry in public. At the conclusion of the sessions, the subcommittee will make recommendations to the full committee for revision of the relevant statutes and regulations based on that record.

Congress has not undertaken such an effort since 1917, when it wrote the existing espionage laws. Those statutes were written in the heightened political atmosphere of World War I, while the bulk of current executive branch orders and regulations were conceived in the post-World War II cold war era.

The committee begins with the premise that there are legitimate national secrets deserving of protection. The goal of the committee is to frame statutes and to encourage the development of executive branch regulations that define with precision what is and what is not a legitimate national secret. No set of statutes should permit the use of ambiguous language to stifle freedom of speech or inhibit dissent within the executive branch, as many contend is the case with present law. Nor should such statutes permit the disclosure of the names of clandestine agents, as intelligence community officials claim is the case with the present espionage statute. Nor would such laws permit the excessive secrecy which now exists within the executive branch and which jeopardizes both national security and the right of the people to know. As Justice Potter Stewart pointed out in his opinion in the Pentagon Papers case, "When everything is secret, nothing is secret."

VII. BUDGET AUTHORIZATION

One of the key powers provided by Senate Resolution 400 for effective committee oversight of U.S. intelligence activities is annual budget authorization. The authority to review, evaluate, and set limits for the annual budgets of the intelligence agencies and to monitor agency expenditures during the year is perhaps the greatest power the legislature has been given by the Constitution. For the first time in the history of the Congress, legislation specifically authorizing appropriations for all aspects of intelligence, including a project-by-project review of covert action has been prepared.

A. SCOPE OF SUBCOMMITTEE ACTIVITY

In order to gain an overall perspective, the Budget Subcommittee reviewed in-depth the full range of U.S. intelligence activities, including not only what is called by the executive branch as national foreign intelligence, but also other intelligence areas importantly related to national foreign intelligence. The subcommittee reviewed the annual budgets of the separate intelligence agencies, as well as their long lead-time programs. The review of future programs was necessary because considerable portions of intelligence are technology oriented and major systems developments involve multiple-year investments.

Beginning in June 1976, the full committee held a series of formal meetings with the Director of Central Intelligence, the Deputy Secretary of Defense, and other senior intelligence community principals. These included detailed background briefings on all major intelligence programs and activities. The Budget Subcommittee and its staff also undertook a series of follow-up briefings and interviews to gain an understanding of the substantive nature, capabilities and interrelationships among the various intelligence programs. Several Members and staff made field inspection trips, both in the United States and abroad, to acquire first-hand knowledge of intelligence operations. Concurrently, briefing papers were prepared addressing the broad structure of the intelligence agencies, their budgets, and their principal future programs.

The subcommittee reviewed a number of the executive branch's legislative proposals and new initiatives proposed for funding during fiscal year 1977. For example, amendments to the CIA Retirement Act of 1964 were considered to improve the administration and financial strength of the fund. These amendments were favorably considered by the full Senate on September 30, 1976, and incorporated into law on October 1 (Public Law 94-448).

During February-April 1977, the subcommittee conducted review and analysis of the intelligence community's fiscal year 1978 budget request. The subcommittee held more than forty hours of hearings,

involving more than one thousand pages of testimony on the budgets of the agencies. Because of the highly sensitive nature of intelligence operations, these hearings, justification material, and questions must remain classified.

B. SUBCOMMITTEE APPROACH TO BUDGET REVIEW

While the budget for intelligence activities is small compared to the overall Federal budget, and indeed compared to the budgets of some Departments, it is unusually complex and difficult to evaluate. It is difficult first, because the scope of intelligence collection and analysis extends from the more routine and easily understood functions of maintaining a research library to advanced scientific research in certain fields of knowledge in which the intelligence agencies are unmatched in their capabilities. Attempting to weigh and measure the comparative value of such diverse activities poses a unique challenge in analyzing the scope and direction of intelligence.

Second, because of the necessary security which surrounds intelligence, available knowledge from outside the executive branch, which could provide additional objective insights into intelligence operations is very limited. The subcommittee, therefore, could not draw upon a large pool of outside experts.

Third, relating particular intelligence programs or projects to their impact on decisionmaking is difficult, particularly since major programs often involve substantial commitments of funds over many years before benefits will result.

The subcommittee focused its efforts in this first year on obtaining a broad perspective. To do this, it adopted a four-fold approach.

(1) The subcommittee sought to question in detail the key managers in the intelligence community. The committee is of the view that the effectiveness of the agencies is highly dependent upon the knowledge and managerial competence of these individuals.

(2) The subcommittee examined in detail the process used by the executive branch to develop agency budgets. In particular, the subcommittee was interested in the degree to which competition for resources among programs led to real tradeoffs between different techniques to meet intelligence needs.

(3) The subcommittee identified and examined specific projects whose funding or management required further question. The areas of detailed attention ranged a full spectrum from the processing and analysis of data through the use of highly sophisticated collection techniques.

(4) The subcommittee divided its efforts between an evaluation of this year's budget and a broader responsibility to examine areas requiring support for the long-range requirements in our national intelligence.

C. PUBLIC DISCLOSURE OF AUTHORIZATION FIGURES

Pursuant to Section 13 (a) (8) of Senate Resolution 400, which reads:

The select committee shall make a study with respect to the following matters, taking into consideration with respect to each

25

such matter, all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence:

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; . . .

the committee held 2 days of hearings on April 27 and 28, 1977, on the question of public disclosure of authorization figures for the intelligence activities of the United States. The following witnesses testified: Director of Central Intelligence Stansfield Turner; former DCIs William Colby and Richard Helms; Senator William Proxmire; Congressman Michael Harrington; Prof. Gerhard Casper, University of Chicago; Prof. Ralph Spritzer, University of Pennsylvania; Prof. Thomas Emerson, Yale University; Morton Halperin, Center for National Security Studies; John Shattuck, American Civil Liberties Union; Robin Schwartzman, Attorney at Law; Ray Cline, Center for Strategic Studies; David A. Phillips and John Warner, Association of Former Intelligence Officers; and General Daniel O. Graham, former Director of the Defense Intelligence Agency.

The committee's hearings on budget disclosure focused on disclosure of the aggregate amount authorized for the intelligence activities of the United States.

D. ACCESS BY THE SENATE TO CLASSIFIED BUDGET AUTHORIZATION REPORT

The committee met on May 12, 1977 and voted to notify every Member of the Senate about access to the classified Budget Authorization Report. It is the view of the committee that the provisions of Senate Resolution 400 place an obligation upon the committee to inform Members of the Senate of the information required to fulfill their duties. Because the authorization bill for intelligence activities is of necessity based upon classified information and its details must remain classified, the committee was of the opinion that any Member who wishes to review the details of the classified report may do so under the provisions of Senate Resolution 400.

Accordingly, the committee has made available to any Member of the Senate its classified report on the annual authorization for intelligence activities in committee offices, G-308 Dirksen Office Building. Under the provisions of Senate Resolution 400 Members are required to maintain confidentiality of its contents. The committee decided upon this procedure as a proper balance between the need of the Senate to know what it is voting for as an authorization for intelligence activities and the need to keep the details in confidence.

10

VIII. CHARTERS AND GUIDELINES

The need for new statutory charters for the intelligence activities of the United States has been evident for several years. The CIA charter, contained in part in the National Security Act of 1947, has been described by several of its authors as outmoded and in need of recasting. The National Security Agency has no statutory basis for its worldwide activities. Neither the FBI's counterintelligence mission nor the goals of the Defense Intelligence Agency are set forth in statute.

Since the committee was created, the Subcommittee on Charters and Guidelines has been drafting statutory charters setting forth missions, guidelines, procedures and prohibitions for each of the intelligence agencies. Working closely with the executive branch and with former senior officials of the intelligence agencies and the Departments of State, Defense, and Justice, as well as with noted legal scholars, the committee is drafting an "umbrella" charter setting out the structure for, and the authorities of each of the entities of the national intelligence community; the CIA, the NSA, the DIA, the counterintelligence division of the FBI, and the other departments and agencies that provide intelligence to our national policymakers.

In preparation for drafting, the members of the committee and the staff have spent considerable time at each of the agencies of the intelligence community in order to understand the nature of their activities, their contribution to national intelligence requirements, and the way in which their activities may affect the rights of Americans. Members of the committee and staff have also traveled abroad to observe the operations of these agencies.

The basic assumption of the committee's charter work is that intelligence activities are necessary for the security and well-being of the country. Clear statutory guidelines are needed, however, to confer legitimacy on them, and to assure their accountability and conformance with the Constitution and the laws of the United States. To provide a legitimate base for the intelligence activities of the U.S. legislation must explicitly provide, unlike the National Security Act of 1947 with its ambiguous provisions, for the collection of intelligence and covert action under strict guidelines and review procedures.

In the course of the committee's inquiry and during the committee's review of at least eight major studies of the intelligence community, it has also become clear that the organization of the national intelligence community requires revision. Statutory charters could do much to rectify the organizational problems that have not been resolved because of bureaucratic battles within the executive branch.

The committee's studies have included a study of the authority of the present Director of Central Intelligence. The committee is examining his central role in national intelligence activities and analyzing what additional powers and authorities he requires to insure that na-

tional policymakers can receive the best possible information with a minimum of waste and duplication while centralization of authority had been examined. The committee's studies have also considered the need to assure that strong independent competing centers of analysis exist within the intelligence departments and agencies so that the best possible analysis will be provided to our national leaders.

The need to strengthen the Director's authority cannot be separated from the accompanying need to increase accountability within the executive branch. Those in charge of intelligence activities should be accountable to the President, the Congress and the public. They should be responsible for insuring that the various intelligence activities serve the national interest, do not undermine openly stated foreign policy or defense objectives, and are in conformity with the Constitution and laws of the United States. In particular, the role of the head of national intelligence and the role of the Attorney General in the protection of the rights of Americans must be clear. Legislative charters must also set our procedures for oversight within both the legislative and executive branches.

Two elements of the committee's overall charter effort are well advanced: one title of the omnibus charter, which will outline the authority and responsibility of the leadership of the intelligence community and another title, which details provisions to protect the rights of Americans. Entity charters for the CIA, NSA and other agencies are also being drafted.

Through all its studies—of centralized authority, increased accountability, protection of the rights of Americans, definition of what the intelligence community can and cannot do—the committee seeks to draft charters which will insure that intelligence activities are properly and effectively directed, regulated, coordinated, and administered and that they do not infringe upon, directly or indirectly, rights protected by the Constitution and laws of the United States.

A. STRUCTURE OF A NATIONAL INTELLIGENCE ACT

1. *The Director*

The committee is actively considering focusing responsibility for intelligence activities on a Director for national intelligence. The Director would operate under the direction and control of the National Security Council.

The Director's authority would be greatest with respect to the national intelligence activities of the United States. These are the activities which produce information and analysis relating to the national defense, the national security, or foreign policy of the United States which is used primarily by policymakers involved in the formulation and direction of national policy. These include the activities of the CIA, the NSA, the DIA, and the special reconnaissance offices. The Director would also be responsible, due to their potential impact on our country, for sensitive clandestine collection and covert action.

The Director's responsibilities would be detailed in any legislation in order to avoid the ambiguity of the National Security Act of 1947 and more recent Executive orders. He would be given a clear right

and a duty to review all ongoing and proposed intelligence activities including military intelligence activities to insure that they are properly and effectively directed, regulated, coordinated and administered, that they are providing the necessary information and analyses to the executive and legislative branches, and that they safeguard constitutional and legal rights. This would assure an effective overview of all the intelligence activities of the United States.

Among responsibilities which he could be given are:

- Serving as the President's and the Congress' chief intelligence officer;
- Controlling the annual budgets for national intelligence activities thereby increasing his role in resource allocation, replacing the committee-based system of E.O. 11905;
- Producing intelligence estimates for the President and the Congress, making sure, however, that representative views and disagreements are considered and indicated. In order to have "competing centers of analysis," any entity of the intelligence community would be given authority to produce its own analyses of national intelligence but these would have to be supplied to the Director;
- Establishing and implementing review procedures for clandestine intelligence activities based on their potential impact on the national security, national defense, or foreign relations of the United States;
- Coordinating all clandestine collection of intelligence by human sources;
- Maintaining relations between U.S. intelligence agencies and foreign intelligence or security services of foreign governments, and providing any agreements to the appropriate committees of Congress;
- Developing security standards for the management and handling of information relating to intelligence activities.

While the Director's principal responsibility would be to insure that the national policymakers receive the best possible intelligence he could also be charged with providing relevant intelligence to the departments and agencies of the U.S. Government. The departments and agencies would be responsible for furnishing such national intelligence as they obtain to the Director.

If the Director of national intelligence were given principal responsibility for the intelligence community he naturally would be responsible for reporting violations of law or Executive orders to the Attorney General and alerting the Congress of such notifications. In addition, to facilitate executive branch and legislative oversight he could be held responsible for maintaining a full and complete record of intelligence activities and their legal authorities. This would help to avoid difficulties in obtaining the agencies' "secret charters" or in finding the "paper trail" of questionable decisions.

2. Funding of Intelligence Activities

In cooperation with the Subcommittee on Budget Authorization, the Charters and Guidelines Subcommittee has been studying present funding practices. All funds for intelligence activities should be an-

nually authorized. The committee is now studying whether the Director should be charged with preparing a budget for national intelligence activities and controlling the budgets for entities of the intelligence community.

In addition, to facilitate oversight, the committee is considering whether all but specifically appropriated "unvouchered funds" which would be accounted for on the Director's certificate should be open to GAO audit under appropriate security safeguards. Finally, the possibility of statutory controls on the Director's Contingency Reserve and on receipts from CIA proprietaries is under study.

3. Review of Clandestine Activities

Of great concern to the committee has been the procedures for the review of sensitive intelligence activities including clandestine collection and covert action. The committee believes Presidential approval should be required by statute for certain forms of sensitive clandestine activities. The committee is attempting to define such activities and the standards to be required for Presidential approval. In addition, the committee is studying the factors, such as the justification for the proposed activity, its nature, scope, legality, probability of success, and estimated cost, which should be considered in any review by the executive branch. The committee is reviewing the role, if any, to be played in executive branch review procedures by U.S. Ambassadors to countries which would be affected by such activities.

The committee is also concerned with statutory provisions regarding congressional oversight of clandestine activities. For oversight to be effective and for Congress to play its constitutional role, appropriate committees of Congress must be notified prior to the implementation of any clandestine activity. In addition, the Congress should have available, at least annually, written reports on clandestine activities.

4. Restrictions on Clandestine Collection and Covert Action

The committee is reviewing possible restrictions and prohibitions on the clandestine activities of the United States. Among such possible prohibitions are forbidding entities of the intelligence community from paying or providing other valuable consideration for information or operational assistance to:

- any individual following a full-time religious vocation,
- any U.S. grantee abroad, and
- anyone accredited or regularly contributing material to, regularly involved in the editing of material for, or in the setting of policy of, a U.S. media organization.

Also under consideration is a prohibition on intelligence community support for public distribution within the United States of any materials unless such support is publicly announced. This would prevent the government using the intelligence community to propagandize our citizens.

Covert paramilitary activities such as those conducted in Laos are also under study. One possible reform under consideration is bringing

such activities under procedures similar to those of the War Powers Act.

Possible prohibitions on covert action have also been brought to the committee's attention. Among covert actions which might be prohibited are those whose objective is assassination of foreign leaders, terrorism, the creation of epidemics and the overthrow of democratic governments. The committee appreciates the difficulty in defining these activities. It also recognizes the need to strike a balance between statutory provisions and executive branch, Executive orders or regulations which can be more detailed but which are still subject to congressional scrutiny.

5. Counterintelligence

The committee believes that the counterintelligence activities of the U.S. must be carefully reviewed and coordinated. The committee is considering the establishment of a counterintelligence committee which would assist the President in the formulation of counterintelligence policy and objectives, assure unified direction of such activities, and assure that they do not violate the law. Such a committee might also establish uniform standards and doctrines for counterintelligence activities and assess the foreign intelligence threat posed to the United States and the success of the U.S. responses. Also under consideration is whether counterintelligence activities which may have a significant impact on the national security, national defense, or foreign relations of the United States or rights guaranteed or protected by the Constitution or laws of the United States should be subject to executive branch and congressional review procedures similar to those employed for other clandestine activities.

6. Oversight and Accountability

In order to assure that intelligence activities are carried out in conformity with the Constitution and laws of the United States and safeguard, and do not abridge, the rights of Americans, there must be effective mechanisms for oversight. Effective accountability must also be achieved. The committee is therefore examining existing and proposed oversight mechanisms. One such group, the Intelligence Oversight Board (established by E.O. 11905), has been reviewed and renewed by the President; the committee is considering whether to provide the IOB with a statutory charter.

Centralizing responsibility for intelligence activities in one individual would also dramatically increase accountability. The accountability to the Congress and the public of congressional committees charged with oversight of intelligence activities is also under scrutiny by the subcommittee. Such committees should make periodic reports on the nature and extent of the national intelligence activities of the United States to their respective bodies and should promptly call attention to their respective houses or the appropriate committees on any relevant matter. At the same time consideration should be given to having the head of the intelligence community report annually to the appropriate committees of the Senate and the House; he might also be charged, by statute, with making annual reports to the public.

B. INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS
CHARTER

When the committee introduces a charter authorizing intelligence activities and establishing the structure of the intelligence community, it will also include as an integral part of the legislation, procedures and restrictions upon foreign intelligence and counterintelligence activities which may affect the rights of Americans. In addition, the committee will include charter provisions both to authorize and to restrict FBI domestic security activities, which are covered by the committee's mandate under Senate Resolution 400. In this same area, the committee will consider prohibitions limiting military intelligence or law enforcement activities directed at civilians unconnected with the Defense Department, except where troops are ordered to a civil disorder or where an activity is otherwise authorized by the national intelligence charter for foreign intelligence or counterintelligence purposes.

The following fundamental principles will govern charter provisions written to protect the rights of Americans.

(1) Intelligence activities should *not be directed against* Americans solely because they are advocating political ideas, engaging in lawful political activities, or associating with other persons for the purpose of petitioning the Government for redress of grievances.

(2) All authorized intelligence activities should be conducted in such a way as to *minimize any adverse effects* on the privacy and freedom of Americans.

(3) U.S. intelligence agencies must not *gather and maintain information* on the political beliefs, associations, or the private lives of Americans unless the information is clearly necessary for an authorized intelligence activity.

(4) U.S. intelligence agencies must not *disseminate information* about Americans for unauthorized or improper purposes, including the discrediting of any person critical of the President or of an intelligence agency.

(5) U.S. intelligence agencies must not use against Americans the so-called "*COINTELPRO*" techniques, such as harassment, intimidation, holding persons up to ridicule or disgrace, incitement of violence, instigating criminal acts, or any other techniques contrary to fundamental standards of due process under the Constitution and laws of the United States.

These principles will apply to the consideration of the following questions regarding foreign counterintelligence, foreign intelligence and FBI domestic security activities.

1. *Foreign Counterintelligence Activities*

The committee believes that the circumstances under which an American may be targeted for a foreign counterintelligence investigation should be prescribed. Among the considerations involved are whether there is a credible allegation, or reasonable suspicion, that the American may be engaged in clandestine intelligence activities, sabo-

tage, or terrorism on behalf of a foreign power or foreign-based group. In addition, standards and procedures should be considered for the duration of investigations, for the use of particular investigative techniques, for the maintenance and dissemination of information about Americans acquired in foreign counterintelligence investigations. With respect to certain more intrusive techniques, the Attorney General's written approval or a judicial warrant may be required. Such techniques may include the use of targeted covert human sources, review of confidential records and tax information, electronic surveillance, mail opening, and unconsented physical or visual searches.

Foreign counterintelligence activities may also include limited inquiries regarding Americans who are targets of a foreign intelligence service or may be able to assist in the conduct of a counterintelligence investigation.

A principal question, which has also arisen in the context of proposed electronic surveillance legislation, is whether an American who is not suspected of violating Federal criminal law may be investigated by the Federal Government in certain circumstances.

2. Foreign Intelligence Activities

The Committee believes that restrictions to protect the rights of Americans must address the following questions: Should intelligence agencies target an American for the clandestine collection of information about his or her activities, if the American is acting on behalf of a foreign power and the information is needed for the conduct of foreign affairs? What standards should govern the maintenance and dissemination of information about an American acquired, purposefully or incidentally, from clandestine collection activity? Should covert action ever be targeted against an American who is acting on behalf of a foreign power? Should intelligence activities involve the use of false identification or pretext "cover" to conceal from an American the government affiliation of an employee of an intelligence agency? Should covert human sources ever be recruited within an organization in the United States which is not acting on behalf of a foreign power?

Standards may also be required to regulate the relationships between private citizens or organizations and the intelligence community. What procedures are needed to ensure that private citizens who are used to assist in the conduct of intelligence activities do so voluntarily and with knowledge of the risks involved? What procedures are needed to ensure that an organization which is used to assist in the conduct of intelligence activities does so with the approval of its principal executive officer and in conformity with its own rules?

Should there be a statutory prohibition against direct or indirect covert financial support of an American educational or private voluntary organization which assists in the conduct of intelligence activities? Should there be a prohibition against the Government giving a private citizen or organization who assists in the conduct of intelligence activities any preferential treatment, exemption, or benefit, except as may be authorized by law? What should be the standards for the use of an American religious, educational, artistic, humanitarian, philanthropic, cultural, or media organization (or person affiliated therewith) to assist in the conduct of intelligence activities?

The committee's charter legislation may also set standards for background and security investigations of employees or prospective employees of the intelligence community. With respect to the physical security of intelligence community facilities or personnel, appropriate investigative procedures will be considered. Although entities of the intelligence community may be permitted to perform law enforcement functions to police their installations and grounds, other law enforcement functions may be prohibited or, in the case of certain assistance to Federal law enforcement agencies, regulated closely by the Attorney General.

3. FBI Domestic Security Activities

The committee is of the opinion that the charter for FBI domestic security activities should address questions similar to those raised by foreign counterintelligence investigations, the use of particular investigative techniques, and the maintenance and dissemination of information. The issue of whether FBI domestic security activities should involve measures going beyond conventional criminal investigations is particularly significant. Should the FBI conduct domestic security *intelligence* investigations of an American where there is only an allegation, or reasonable suspicion, that the person will soon engage in terrorist activities, and where such activities would violate state or foreign law rather than U.S. Federal law? Under what circumstances should the FBI investigate civil disorders or demonstrations? Should the FBI be authorized with prior approval of the Attorney General, to take certain lawful protective measures to prevent specific acts of terrorism, such as by providing physical protection or preventing access to explosives?

In light of past abuses in this area, requirements for the closest possible supervision of investigations and other activities by the Attorney General may be necessary. Specific safeguards may also need to be imposed with respect to the activities of covert human sources, or informants, and to prohibit so-called COINTELPRO-type harassment and disruption.

4. Oversight and Accountability

To enforce the provisions of any proposed legislation, special duties may be imposed upon the Inspectors General and General Counsels of the entities of the intelligence community. Reporting requirements to the Attorney General and to the committees of Congress having jurisdiction over intelligence activities may be prescribed. Consideration will be given to charging the Attorney General with the duty of overseeing foreign intelligence and counterintelligence activities directly affecting Americans to ensure that they are in compliance with the Constitution and laws of the United States. Among the questions which arise here are whether an official of the Justice Department, such as an Assistant Attorney General, might be delegated authority to make certain decisions on behalf of the Attorney General, and what the relationships should be between the Attorney General and the Intelligence Oversight Board.

With respect to domestic security activities, the Office of Professional Responsibility in the Justice Department might be authorized to inquire into allegations of improper conduct and to evaluate the work of the internal inspection unit of the FBI.

The criminal penalties for violation of the restrictions and legal remedies for aggrieved individuals are also under review. But here too there are questions which must be answered. What criminal sanctions should be imposed upon Government officials or employees who willfully and knowingly violate the charter provisions? What civil remedies should an aggrieved person have against such officials or employees or against the Government itself? Should Government employees have a legal defense if they reasonably relied in good faith upon orders of their superiors? Should the Government indemnify the reasonable legal expenses of employees who are found not to be liable?

In answering these and other questions relating to the protection of the rights of Americans, the committee is drawing upon its own inquiries, upon the recommendations of the Church Committee and, in some instances, upon the administrative "guidelines" developed by the Attorney General. The committee is also considering recent proposals by various citizen groups.

IX. THE DESIRABILITY OF ESTABLISHING A JOINT COMMITTEE FOR INTELLIGENCE VERSUS SEPARATE OVERSIGHT COMMITTEES FOR THE HOUSE AND SENATE

The committee has considered the question of the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities. The committee is of the view that for the foreseeable future a joint committee does not seem desirable or possible. The committee understands that efforts are now underway through the House Leadership to establish a companion committee in that body with the Senate Select Committee on Intelligence.

(87)

X. SUMMARY OF COMMITTEE ACTIVITIES MAY 19, 1976 TO MAY 15, 1977

A. MEETINGS

Full committee meetings: Total 39

Closed meetings: 29 total, 16 of these were business meetings with no witnesses.

Open meetings: 10 total.

Witnesses and briefers heard: 92 total. Of these 67 in closed session and 25 in open hearings.

Subcommittee on Intelligence and the Rights of Americans: Total 5

Closed meetings: 2 total

Open meetings: 3 total

Witnesses and briefers heard: 21 total. Of these 10 in closed session and 11 in open hearings. All in regard to S. 3197.

Staff interviews conducted: 125

Subcommittee on Budget Authorizations: Total 19

Closed meetings: 19 total

Open meetings: none

Witnesses and briefers heard: 44 total. All regarding authorizations for intelligence activities for FY 1978.

Staff interviews conducted: 250

Subcommittee on Collection, Production and Quality: Total 4

Closed meetings: 4 total

Open meetings: none

Meetings for organizational purposes and consideration of a staff study. No witnesses or briefers heard.

Staff interviews conducted: 250

Subcommittee on Charters and Guidelines: Total 4

Closed meetings: 4 total. All for organizational and related matters.

Open meetings: None

Witnesses and briefers: None

Staff interviews conducted: 110

Subcommittee on Secrecy and Disclosure: Total 1

Closed meeting: 1 for organizational business.

Open meetings: None

Witnesses and briefers: None

Staff interviews conducted: 12

Subcommittee on Special Investigations: None, to date

Executive branch meetings or briefings: Over 70 meetings or briefings with one or more officials of the executive branch have been scheduled for one or more members.

B. PUBLICATIONS: Total completed 7

1. Committee Rules of Procedure

2. Hearings on the Nomination of E. Henry Knoche

3. Hearings before Subcommittee on Rights of Americans, regarding S. 3197, Foreign Intelligence Surveillance Act.
4. Senate Report 94-1161 on S. 3197
5. Legislative Calendar (Cumulative Record) 94th Congress
6. Hearing on the Nomination of Theodore C. Sorensen.
7. Executive Report 95-5 on the Nomination of Admiral Stansfield Turner to be Director, Central Intelligence.
In addition Hearings on the Nomination of Admiral Turner is in page proofs.

C. BILLS REFERRED TO THE COMMITTEE: Total 2

1. S. 3197 Foreign Intelligence Surveillance Act of 1976.
Action: Reported favorably as amended.
2. H.R. 13615 to amend the Central Intelligence Agency Retirement Act of 1964.
Action: Reported favorably. Approved by Senate. Public Law 94-448.

D. BILLS/RESOLUTIONS ORIGINATED BY THE COMMITTEE: Total 1

Senate Resolution 148 authorizing additional expenditures for the Select Committee on Intelligence.
In addition a bill authorizing expenditure of funds for intelligence activities of the Government in fiscal year 1978 has been prepared and reported to the Senate.

E. NOMINATIONS REFERRED TO THE COMMITTEE: Total 3

1. E. Henry Knoche to be Deputy Director of Central Intelligence.
Action: Public hearing. Nomination approved. Knoche confirmed July 1, 1976.
2. Theodore C. Sorensen to be Director, Central Intelligence.
Action: Public hearing. Nomination withdrawn by candidate January 17, 1977.
3. Stansfield Turner to be Director, Central Intelligence.
Action: Public hearing. Nomination approved. Turner confirmed February 24, 1977.

ADDITIONAL VIEWS OF SENATOR JOSEPH BIDEN, JR.

I had not intended to file separate or additional views to the annual report of the Senate Intelligence Committee. However, I have reviewed the statement of my colleague, Senator Moynihan, and feel an obligation to respond to the concerns he expresses.

The heart of the Senator's concern is that the members of the Intelligence Committee are not adequately aware of the reality of the Soviet threat. He points out that nowhere does the committee speak of the KGB, but it seems more concerned about the rights of Americans than the power of the intelligence community in the face of an implacable foe.

I cannot speak for the whole committee. I can only speak for one member who has spent hundreds of hours, since I joined this committee last summer, in committee meetings, staff and intelligence agency briefings on these matters, especially the activities of the KGB. I must admit that when I first began, I had some of the concerns expressed by my colleague. Have we spent too much time on what is wrong with the intelligence community and not enough on what it is doing right to counter the real threats to our security?

I am convinced that the answer to that question is a resounding no. This committee is probably more aware of the details of Soviet intelligence activities than any other group in the Congress. Both as a result of my work on this committee and on the Foreign Relations Committee, I for one have no illusions about Soviet intentions and capabilities in the world. I share the premise upon which Senator Moynihan bases his critique—*isolationism* is indeed a dangerous and naive foundation upon which to rest our foreign policy or the intelligence community which must serve that policy. However, I vigorously reject the argument that this document has anything to do with *isolationism*, mutant or otherwise. I am sure that every member of this committee believes that we need a world-wide secret intelligence collection capability. That is the antithesis of *isolationism*.

In summary I believe that my colleague misses the point. At the heart of what is wrong with the intelligence community and what indeed has caused many of the abuses we have seen is the fact that most officials of the intelligence community do not know what they should and should not be doing. The watch-word of intelligence officials is that they are not and do not want to be policymakers. And most of all, they resent being castigated for activities which are now labeled abusive but in which they engaged in good faith upon orders of some policymaker.

I soon learned that a serious threat to our national security today is the intelligence official, faced with a real threat, for example, a real case of espionage, who is traumatized by the exposure of recent years and in the absence of precise orders from his superiors is afraid to act.

We will not solve that problem by restating the obvious, that the Soviets operate a very effective intelligence service, unfettered by the restrictions of a vibrant constitution. We solve that problem by putting our time and energy to seeking a workable balance between a strong and effective intelligence community, and the countervailing values of our country that make us the light of the world, our civil liberties and a foreign policy based on honor and a fundamental respect for humanity and peace.

In the end that means that the ultimate policymakers in a democracy, the people, must through their elected representatives tell the intelligence community what they can do and what they cannot do. That means precise legislative charters which incorporate the concept of streamlined management accountability in a strengthened Director of Central Intelligence. In essence, that is the agenda of our committee. In pursuing this strategy, we as a people build our defense upon the most powerful weapon against totalitarianism and repression, our creative genius which can only flourish in a strong and robust democracy.

JOSEPH BIDEN, JR.

ADDITIONAL VIEWS OF SENATOR DANIEL P. MOYNIHAN

There is nothing in the committee's annual report to the Senate to which I would take any specific, or even any very general objection. To the contrary, it seems to me an admirable statement which sets forth the work of the committee over the past year, and I wholly endorse that work. The abuses of our intelligence system have been documented. The violations of the rights of Americans associated with these abuses have been documented. Clearly the first task of this committee has been to set our own house in order. Just as clearly, this task is well advanced, and should be pursued—almost—regardless of the consequences. (*Fiat iusticia et ruant coeli* ought to be more an abstract than an applied principle of government.)

I am nonetheless concerned that the committee has unintentionally produced a profoundly biased political document. It is not political in the party sense. But it is utterly political with respect to differing perceptions of the American position in the world today, and by extension the position of the remaining political democracies.

I would characterize the central proposition of the committee's report in terms of Walt Kelly's now classical aphorism in his comic strip "Pogo": "We have met the enemy and he is us."

The committee reports on a world in which very simply, the values which the United States hopefully stands for do not seem to be threatened by any activity save the activities of the U.S. Government, and those of a handful of erstwhile allied or friendly governments. We learn that the intelligence services of the Republic of Korea, the Republic of China, the Philippines, and Iran are possibly threatening the rights of Americans. In fairness, Cuban intelligence services are also mentioned. But nowhere is the Committee for State Security of the Soviet Union (the KGB) even alluded to.

There is a pattern of avoidance of the reality of totalitarian threat throughout this document. This seeming obliviousness to the international context in which our intelligence activities take place seems less an aberration than a mutant of classical isolationism. In my opinion, this may be a comforting world view, but it is a profoundly unrealistic one.

DANIEL P. MOYNIHAN.

(43)

○