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LEGISLATIVE OVERSIGHT OF INTELLIGENCE ACTIVITIES: THE U.S. EXPERIENCE

REPORT

PREPARED BY

THE SELECT COMMITTEE ON INTELLIGENCE UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

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LEGISLATIVE OVERSIGHT OF INTELLIGENCE ACTIVITIES: THE U.S. EXPERIENCE

PREFACE

We live in a time of astounding change: the Cold War has ended; new democratic states have arisen in Eastern Europe and the former Soviet Union; and autocratic regimes have given way to democratic ones in parts of Africa and much of Latin America. These changes have led to discussions in both new and established democracies with respect to the proper role for intelligence agencies in the post-Cold War era. A substantial number of democratic states are looking, for the first time, at establishing legislative oversight of their intelligence and security services. They see such oversight as an essential element of a democratic state, as a means of preventing a return to repressive practices, or as a means of providing legitimacy and direction to intelligence and security activities in the absence of a clearly defined threat to their national security.

Over the past two years, the Senate Select Committee on Intelligence has received requests from the parliaments of more than a dozen countries for advice as they seek to establish systems of oversight for their intelligence activities. The Committee has provided such assistance on an ad hoc basis by arranging staff briefings and by providing copies of the relevant background materials. In some cases, while travelling abroad, committee members and staff have provided counsel on oversight matters to other governments.

The continuing demand for such assistance suggests that a more comprehensive treatment of intelligence oversight would be of real benefit. Hence, the Committee has decided to publish this booklet providing a concise description of the U.S. system: its structure, operation, functions, and evolution over time. The appendix to this booklet contains the relevant law and Executive branch documents which form the framework for the system, as well as several commentaries from outside observers regarding the oversight process in the United States.

While the primary motivation of the Committee is to provide a convenient, readily usable reference to assist the legislative bodies of other governments, we also commend this booklet to American citizens who are interested in the evolution and operation of the congressional oversight process.

SENATOR DENNIS DECONCINI,
Chairman.
SENATOR JOHN W. WARNER,
Vice Chairman.

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INTRODUCTION

Any framework for the legislative oversight of intelligence necessarily must conform to the governmental framework of which it is a part. Not surprisingly, the form of legislative oversight described in this booklet conforms to the political system established by the U.S. Constitution and statutes of the United States. As such, it may not be readily adaptible by governments whose political systems are different.

The U.S. Constitution provides for a system of government by three independent branches—the executive, legislative, and judicial branches—each with its own powers and prerogatives, and each with powers to "check and balance" the powers of the other branches. Intelligence oversight by the U.S. Congress is carried out within this framework utilizing the powers and prerogatives provided by the U.S. Constitution as the basic source of its authority. Thus, the U.S. Congress is, among other things, vested by the Constitution with the responsibility to appropriate funds for the activities of the Executive branch, including intelligence activities and the Senate is required by the Constitution to provide its advice and consent to the appointment of certain Executive officials by the President, including certain intelligence officials.

In other political systems, such powers may not be lodged in the legislature. In a unitary parliamentary form of government, for example, the legislature often does not wield power independent of the executive function. Appropriation of funds is virtually a foregone conclusion since a failure to approve the government's bill would trigger the fall of the government as a whole. Similarly, the confirmation of government officials may not be meaningful in a parliamentary system where such officials are usually senior members of the majority legislative party and may be elected members of the parliament itself.

While legislative oversight of intelligence in the United States may not be fully compatible with the political systems of other countries, there may be aspects of the U.S. system which are transferable to, or inspire comparable changes in, other types of political systems. This report describes the U.S. oversight framework in some detail in anticipation that even where wholesale adoption of U.S. practice is impractical, aspects of its framework may still have relevance for the efforts of other countries.

While legislative oversight of intelligence necessarily must conform to the political system of which it is a part, it is also inevitably a product of the times in which it is instituted. Part I of this booklet, a brief history of congressional oversight over intelligence activities, explains how world and national events gave rise to the intelligence committees of Congress only after a full generation of the Cold War had passed without such institutions. Part IV, which

describes the evolution of the congressional oversight committees, similarly reflects the influence of outside events.

The Senate Select Committee on Intelligence was founded in 1976, in the aftermath of the Vietnam war and of scandals involving both U.S. intelligence and security agencies and the highest officials in the government. There was a clear crisis of confidence in the country and a need to rebuild the public's trust in governmental institutions.

At the same time, however, there was much continuity in U.S. policies and institutions. The Cold War still continued and the American public still accepted the concept of a world-wide adversary that had to be combatted by all reasonable means. As investigatory committees of the Senate and House of Representatives had discovered in 1975–76, moreover, U.S. intelligence was hardly a peripheral institution; it was an extensive and expensive set of agencies that played a crucial role in foreign and defense policy. While regularized congressional oversight was needed, the objectives of this oversight would be more than protecting the rights of Americans or judging the wisdom of covert action operations; oversight would also include giving positive support and guidance, as appropriate, to a major element in the national security apparatus of the United States.

In regularizing its legislative oversight of intelligence, then, the United States Congress had no intent to abolish either the principle of intelligence activities or the particular institutions that engaged in those efforts. While there was great concern in the mid-1970's to assert the rule of law and to improve both Executive branch and legislative oversight, most Central Intelligence Agency (CIA) and other intelligence operations were expected to continue in much the same way as before.

Thus, congressional oversight was grafted onto an existing and largely accepted intelligence apparatus, rather than being part of a process of radically changing that apparatus or of creating new national security institutions. One of the major lessons of the congressional oversight experience is, moreover, that accountability can be fostered without sacrificing the effectiveness of intelligence institutions.

I. Early Evolution of the U.S. System of Oversight

Oversight Prior to 1975

Intelligence activities have been conducted by the United States Government since the beginning of the republic. Historically, these activities were carried out by the departments and agencies responsible for U.S. military and foreign policy. Oversight by the Congress was minimal and devolved to the congressional committees responsible for authorizing or appropriating the budget for the department or agency concerned.

It was not until 1946, in the wake of the Second World War, that President Harry S. Truman, mindful of the surprise attack carried out by the Japanese on Pearl Harbor in 1941, chose to create an intelligence agency, independent of the departments charged with the conduct of foreign relations or the preservation of national defense, to assemble the intelligence available to the government as

a whole and provide him with an objective assessment of that information. The Central Intelligence Group, as it was first designated by President Truman, retained many of the operational capabilities of the Office of Strategic Services, which had carried out clandestine intelligence activities during the war. In 1947, as part of the legislation enacted by Congress to establish national defense arrangements in the post-war era, the Central Intelligence Agency (CIA) was created by law, and its Director was given the role of pulling together intelligence obtained by the intelligence elements of other departments and agencies.

Congressional oversight over this new agency was the responsibility of the Committees on Armed Services of the House of Representatives and of the Senate, and appropriations for CIA were handled by the defense subcommittees of the respective Appropriations Committees of each house of the Congress. The budget for the agency was classified, and, for security reasons, was "buried" in non-descript line-items of the defense budget. (It remains so today.) The bulk of U.S. intelligence activities were, and continue to be, carried out by the Department of Defense. Thus, defense appropriations laws provided an appropriate mechanism for funding intelligence activities.

Congressional awareness of CIA activities was limited largely to the Chairmen and Ranking Minority Members of the committees concerned with the defense budget. Staff involvement was limited generally to one or two senior members of the staff of each of these committees who made certain the needs of the intelligence agencies were funded. Oversight concerns were typically worked out between the Director of Central Intelligence (DCI) and a few congressional participants, with little appreciation by the Congress as a whole and virtually none by the public at large. While there were occasional proposals during the 1950s and 1960s to create special committees with responsibility for intelligence, none of these proposals was adopted by the Congress.

The responsibilities of the DCI evolved over time. It was not until the early 1950s that CIA's responsibility for the conduct of "covert actions" (i.e., efforts to influence the course of events abroad) crystalized. Similarly, CIA did not come into its own as a provider of independent analysis until the Korean War in the early 1950s. In the meantime, new intelligence agencies, such as the National Security Agency and the Defense Intelligence Agency, were created within the Department of Defense, and existing intelligence elements within the military departments, the State Department, and the Federal Bureau of Investigation gradually expanded. DCIs played a relatively weak coordinating role with respect to these agencies, however, until the early 1970s when, at the direction of President Richard M. Nixon, the DCI began to bring together the funding for intelligence activities into a single budgetary program which became formally known as the National Foreign Intelligence Program.

Congressional involvement in these developments remained minimal until the mid-1970s, when a series of especially troubling revelations appeared in the press concerning U.S. intelligence activities. Covert action programs involving assassination attempts against foreign leaders and covert efforts to effect changes in other

governments were reported for the first time. The efforts of intelligence agencies to collect information concerning the political activities of U.S. citizens during the late 1960s and early 1970s were also documented extensively by the press.

These programs and practices surprised and concerned many Members of the Senate and House of Representatives. Coming on the heels of the Watergate scandal, which had involved efforts to use and manipulate the CIA and FBI for political purposes, these disclosures suggested to many that intelligence activities, long ignored by the Congress and operated without scrutiny outside the Executive branch, had strayed beyond acceptable limits.

The first legislative response to these disclosures was the enactment in 1974 of the Hughes-Ryan amendment to the Foreign Assistance Act of 1961. This amendment addressed the covert action programs of the CIA, prohibiting the use of appropriated funds 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." The amendment also required that the President report "in a timely fashion, a description and scope of such operation" to the "appropriate committees of the Congress," which was interpreted to include the Committees on Armed Services, Foreign Relations (or Foreign Affairs), and Appropriations of each House of Congress, a total of six committees.

The following year, in 1975, Congress passed legislation which, for the fist time, actually terminated funding for a covert operation: the secret support of military and paramilitary activities in Angola.

In the meantime, additional disclosures began to surface in 1975 with regard to the CIA's domestic operations and the efforts of the FBI to undermine the activities of Rev. Martin Luther King and other civil rights leaders during the 1960s. President Gerald Ford reacted to these disclosures by appointing a special commission headed by Vice President Nelson Rockefeller to look into the alleged improprieties, both foreign and domestic. After an investigation of several months, the Rockefeller Commission issued a report in late 1975 that confirmed many of the reported abuses.

Congress was not willing to rely solely upon the findings of the Rockefeller Commission, however, and during 1975 created special investigating committees to investigate the activities of intelligence agencies across the board. The Senate acted first, creating a special committee which became known as the "Church Committee" after the name of its Chairman, Senator Frank Church of Idaho. The House of Representatives followed suit later in the year, creating a similar committee chaired by Congressman Otis Pike of New York.

In the meantime, while the Church and Pike Committee investigations were proceeding, the Ford administration, in February, 1976, issued the first public Executive Order in history to govern intelligence activities—Executive Order 11905. While the new order did not address the obligations of intelligence agencies with respect to the Congress, it did, for the first time, impose restrictions upon intelligence activities, limiting what might be collected by intelligence agencies regarding "U.S. persons" (i.e. citizens, aliens admitted for permanent residence, and organizations pre-

dominantly comprised of such persons) and prohibiting U.S. Government employees from engaging in, or conspiring to engage in, political assassinations.

THE CHURCH AND PIKE COMMITTEES (1975–1976)

The Church Committee began its work in January, 1975, and issued a final report, consisting of five volumes, in April, 1976. As a result of voluminous hearings and a series of concurrent investigations directed at virtually every element of the Intelligence Community, the Committee documented a pattern of misconduct on the part of intelligence agencies which, among other things, strongly suggested the need for more effective congressional oversight. The report showed widespread abuse of the civil rights of American citizens and described activities by intelligence agencies that violated applicable law and executive policy, as well as clandestine undertakings in foreign countries which seemed at odds with U.S. values and foreign policy. At the same time, the report made clear that existing legal and policy constraints on intelligence activities were inadequate and that proper supervision and accountability within the Executive branch and to the Congress were sorely lacking.

While the Church Committee made extensive recommendations for change in its final report, it chose not to develop a legislative proposal to address the problems it had documented. Instead, it recommended the Senate create a new follow-on committee to provide continuing oversight and consider such additional legislation as might be necessary. The Pike Committee made a similar recommendation in its final report.

ESTABLISHMENT OF OVERSIGHT COMMITTEES (1976–1977)

On May 19, 1976, after review by five committees and ten days of floor debate, the Senate by a margin of 72–22 voted to create the Select Committee on Intelligence. The resolution creating the new committee—Senate Resolution 400, 94th Congress—remains unchanged and in effect today. (See Appendix, p. 27.) Although established as a "select" committee appointed by the Majority and Minority Leaders of the Senate—a practice normally reserved for committees that serve for a limited period—the Senate Select Committee on Intelligence has continued to function with the support of the body as a whole.

While Senate Resolution 400 did not establish binding legal obligations on the part of intelligence agencies with respect to the new Committee, it did include a non-binding "sense of the Senate" provision stating that the heads of intelligence agencies should keep the Committee "fully and currently informed" of their agency's activities, including "any significant anticipated activities," and provide such information as may be requested by the Committee relating to matters within its jurisdiction.

On July 14, 1977, the House of Representatives created its own oversight committee, by a vote of 227–171. The resolution creating the House committee—House Resolution 658—differed in several respects from its Senate counterpart. Notably, it established the committee as a "Permanent Select Committee on Intelligence," indicating its status as a permanent body under the rules of the

House. On the other hand, it did not include the "sense of the Senate" provisions pertaining to the responsibilities of intelligence agencies vis-a-vis the new Committee.

Both committees took the position that they were "appropriate committees" for purposes of receiving notice of covert actions pursuant to the Hughes-Ryan amendment (see above), and this position was acquiesced in by the incoming administration of President Jimmy Carter.

II. Structure and Operation of the Oversight Committees

There is no one "right way" to organize legislative oversight of intelligence activities. Indeed, the Senate and House oversight committees are organized differently. The differences reflect both the variation in time—since the Senate committee was the first to be formed and had to overcome more initial resistance—and the difference between the relatively unstructured Senate and the larger House of Representatives, in which rules are followed more rigidly and one political party has had a long period of dominance.

There are, however, some general principles that are worth keeping in mind for any intelligence oversight committee. One is the need to have access to, and to handle properly, very sensitive information on intelligence capabilities and activities. Access to information is the lifeblood of intelligence oversight. Tight security is both an end unto itself and also a means to justify and maintain the committee's access to information. A second need, in many cases, is to limit the role of partisan politics in the operation of the committee. In part, this is one more means of reducing the risk of security lapses that could affect the national security and/or the committee's access to information. It may also serve, however, to moderate the pace of changes wrought by legislative oversight and thereby to give typically conservative intelligence institutions more time to adjust to a world in which they are accountable to elected representatives of the people.

Key to the effectiveness of the U.S. system has also been control over the budgets of intelligence agencies. As explained below, the oversight committees of the U.S. Congress are involved in funding a myriad of intelligence programs and activities, from large to small. While such a system may not be readily adaptible by other legislatures, some form of budgetary control is essential to encouraging cooperation with the committees responsible for oversight, to obtaining access to information held by intelligence agencies, and generally to encourage compliance with law and direction by the oversight committees.

Membership of an Oversight Committee

Most committees of the U.S. Senate and House of Representatives distribute their membership in proportion to each political party's membership in that house of congress. Some House committees have been weighted even more strongly in favor of the majority party, however, and occasionally a committee is organized with nearly equal membership for the minority party in order to foster a more bipartisan ethic.

The House intelligence committee's membership has generally been apportioned in the traditional manner, which has given the majority party in the House a substantial majority on the committee as well. By contrast, Senate Resolution 400 apportions the Senate committee's membership in a more bipartisan manner, with the majority party having only a 1-vote margin. The intended effect of that structure, which has been generally borne out in practice, is to limit the ability of any party to count on a bipartisan committee majority to take legislative actions. The need to seek support from members of more than one party, in order to attain a secure majority for legislative action also tends to lessen the likelihood that the committee will approve proposals for radical change.

Both the 19-member House committee and the Senate committee, which has ranged between 13 and 17 members, are structured to include members (at least one from each party) who also serve on each of several other committees that have a legitimate interest in intelligence matters: the Appropriations Committees, the Armed Services Committees, the Judiciary Committees, and the Committees on Foreign Relations (in the Senate) and Foreign Affairs (in the House of Representatives). This membership requirement has almost always been fully implemented, with the result that those related committees have a direct channel of communication with the Intelligence Committees. This has helped to allay the concerns of those committees that the intelligence oversight committees might take (or approve) secret actions that would seriously affect their areas of interest in adverse ways.

Both intelligence committees have limits on the number of years a member may serve before having to leave the committee. The Senate limit is eight years of consecutive service, and the House limit is six years. These limits are designed to ensure a steady rotation of membership, which brings in members with new ideas and approaches, and, over time, to acquaint more members of Congress with this area of government activity.

The selection of members for the Senate committee is also handled in an unusual manner. Most committee memberships are decided by each party's members of the Senate. For the Intelligence Committee, however, members are named by the Majority Leader and the Minority Leader. The intent of this approach is to remove this committee's membership selection from the normal political process and to permit the leadership of the Senate to select Members whose duties and experience lend themselves to service on the oversight committee.

Each member of the House committee, including members from the minority party, is appointed by the Speaker of the House. Members from the minority party are nominated by the House Minority Leader, and such nominations have heretofore been accepted by the Speaker. The selection process in the House is not specified in the House committee's charter, Rule XLVIII of the Rules of the House, as it is in the resolution creating the Senate Committee.

LEADERSHIP OF AN OVERSIGHT COMMITTEE

As with any legislative committee, there is a premium on strong leadership of an intelligence oversight committee. By and large, the leadership of both the Senate and House committees have been

chosen from the members of each party with the longest service on the committee. This serves to maximize the chairman's and vice chairman's familiarity with intelligence oversight, without requiring a background in those agencies.

On rare occasions, an unusual loss of members (through retirements, electoral losses or deaths) and a limit on terms of service on an intelligence oversight committee can result in one party having no experienced members to serve as chairman. Both the Senate and the House of Representatives can handle these or other rare circumstances by agreeing in a particular case not to observe the normal limit on terms of service.

There is often a premium on leadership that reaches across the boundaries of both party and ideology. One organizational measure used by the Senate to foster bipartisanship has been to have the minority party's leading member on the committee serve as vice chairman—and, in the absence of the chairman, as acting chairman—of the committee. Both the chairman and the vice chairman may be substantially deterred from partisan posturing by the knowledge that on any given day, the absence of the chairman may result in a member from the opposition exercising the chairman's powers. This arrangement generally leads to a close working relationship between the chairman and vice chairman, especially in their handling of the most extremely sensitive matters, which may be withheld from other members of the committee.

The House committee has no such formal procedure for shared leadership and has generally been organized on a more partisan basis.

SECURITY

Security is absolutely vital to the operation of an intelligence oversight committee. Although it is also vital for such a committee to have a means of forcing disclosure of information in extremis, day-to-day security is the means by which the committee assures the intelligence agencies—and by which those agencies can assure their sources and cooperative counterparts overseas—that release of information to the committee will not inevitably lead to public disclosure. The experience of the Senate and House committees is that no law or resolution can substitute for the trust that is built upon years of secure handling of sensitive information.

The resolutions establishing each Intelligence Committee provide that classified information and other information received by the committee in confidence may not be disclosed outside the committee other than in a closed session of the Senate or House of Representatives, respectively, unless the committee votes to release such information and such vote does not prompt an objection from the Executive branch. Failure of members to abide by this restriction subjects them to investigation and, where appropriate, to referral to the Ethics Committee of each House for disciplinary action. In addition, the chairmen of each committee routinely advise their members that anyone who fails to protect such information will be asked to leave the committee. There have, in fact, been instances in which members have left the intelligence committees, either because of an infraction of security rules or because they were unwilling to remain bound by these limits on their actions.

Each committee has the power under its respective charter to release classified information. It must give the President time to object to such disclosure, however, and, if such objection is filed in writing, must vote again on the issue and then take the matter to a closed session of its respective House of Congress, which will make the final determination. In practice, the committees and the Executive branch have reached agreement on disclosures; no President has ever filed a formal objection.

Members of each committee receive access to classified information held by the committee by virtue of their elective office, i.e., they are not subjected to background investigations. Committee staffs, on the other hand, are subjected to background investigations (and reinvestigations) that are carried out by the Federal Bureau of Investigation. (Although a polygraph examination is used as a condition of employment in some intelligence agencies, it is not used with regard to congressional staff appointments.) The results of these investigations are provided to the Committees, who, in turn, seek a "security opinion" from the Director of Central Intelligence (DCI) and Secretary of Defense concerning each potential staff member. While each committee, as a matter of principle, reserves the right to hire its own staff, it is rare that any person is hired for the staff over the objection of the DCI or Secretary of Defense. Indeed, there have been occasional cases in which the committees have declined to hire a potential employee on security grounds despite the absence of objection from the DCI or Secretary of Defense.

Intelligence Committee staff members are required to sign "nondisclosure agreements" pledging not to reveal secret information to which they have access, and they are similarly advised that failure to do so will result in their dismissal. The nondisclosure agreements, by adding a contractual obligation, may open an offending staff member to various civil actions, such as denial of pension rights or recovery of any profits from the improper use of committee information. The agreements also require the pre-publication review (by the committee, which in turn relies upon Executive branch experts) of materials that current or former staff members may wish to publish, unless such materials are clearly unrelated to intelligence matters or the author's service on the committee.

Each committee has established its own security procedures, consistent with (and, in some respects, exceeding) the requirements of the Executive branch. In the Senate committee, the location of each document is controlled every day; all readers of each document are recorded; and there are severe restrictions on the removal of documents from the committee's office spaces or hearing rooms. Thus, if a person attending a closed hearing should take notes, those notes must be surrendered before leaving the room to security staff, who arrange for the secure transportation of the notes to the author's agency. Secure office spaces, including hearing rooms and conference areas, have been constructed for the Intelligence Committees and certified by appropriate security authorities within the Executive branch.

ACCESS TO INFORMATION HELD BY THE INTELLIGENCE COMMUNITY

U.S. intelligence agencies are required by law to furnish to the oversight committees "any information or material concerning intelligence activities . . . which is in their custody or control and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities." The law specifically provides that even information which reveals intelligence sources and methods shall not be denied the committees. In short, the committees, as a matter of law and principle, recognize no limitation on their access to information.

As noted earlier, however, no law can readily compel full access to information if intelligence agencies are convinced that such access will result in catastrophic disclosures of information on their sensitive sources and methods. As a matter of practice, therefore, the committees have been willing to accommodate legitimate concerns for the security of intelligence secrets, either by limiting the scope of their requests or by limiting the manner in which sensitive information is handled, so long as their oversight responsibilities can be fulfilled. Thus, the committees do not ordinarily request the identities of intelligence agents or the details concerning anticipated collection operations where such information is not necessary to the conduct of oversight. Similarly, the committees have refrained from inquiries involving what U.S. intelligence agencies may know about sensitive activities undertaken by their foreign counterparts (other than activities in, or directed at, the United States) where such information is not relevant to the oversight of U.S. agencies. Moreover, the committees have ordinarily been willing to limit access to particularly sensitive information to members and/or a few senior staff, to limit the number of committee members with access to especially sensitive information, or to permit intelligence agencies to retain custody of such information rather than maintaining copies at the committee themselves.

Intelligence agencies typically advise the committees when particularly sensitive information is being requested or provided, and ask that the committees limit the scope of their request or the manner in which such information is to be handled. The committees, for their part, typically satisfy themselves that such requests are legitimate and, once satisfied, negotiate appropriate access or handling arrangements on a case-by-case basis. As a practical matter, instances in which committee access could not be arranged have been extremely rare.

RELATIONS BETWEEN THE CONGRESSIONAL OVERSIGHT COMMITTEES

In general, each of the oversight committees pursues its own agenda during the course of a year in terms of holding hearings, briefings, inquiries, or investigations on subjects of its choosing. Occasionally, events drive both committees to pursue the same objective at the same time and, when this occurs, informal arrangements are often made for both committees to be briefed concurrently, or perhaps for one committee to handle one aspect of an inquiry and for the other to handle a different aspect. Often this will depend upon the level and intensity of member interest in a particular topic.

Generally, it is the practice of intelligence agencies to provide identical information of an oversight nature to the two committees, regardless of which committee actually takes the lead in terms of the inquiry or investigation at issue.

Where the two committees necessarily must come together is over legislation and the annual budget. Because each committee is charged by its respective body with authorizing appropriations for intelligence activities, each year the two committees are responsible for "conferencing" the differences in the annual intelligence authorization bill, as passed by their respective Houses. (The budget process is described in greater detail in the sections that follow.)

While conference on the authorization bill takes place after the bill has cleared each House, typically late in the session, in practice the committees consult quite closely regarding their respective actions on the budget long before conference. Indeed, the committee which reports its bill first may do so based upon its understanding of what the other committee is likely to do when it reports its own version of the bill. The committee which reports its bill last not only has the benefit of seeing what the other committee did, but is able to gauge its own actions in terms of likely trade-offs later in conference.

Both committees must also ultimately agree with respect to any legislation regarding intelligence which may be offered by either committee. Typically, legislative items are included in the public portion of the annual authorization bill (see below), but sometimes they are handled as "freestanding" bills. In either case, since agreement between the two committees will ultimately be required, each committee understands that if it wishes to get legislation enacted, it must ensure not only that the other committee is informed of and appreciates its actions, but also is given an adequate opportunity to examine the legislative initiative in its own process (via hearings or other means) if it chooses to do so. Thus, of necessity, there is close coordination regarding both substance and timing on all legislative initiatives. In practice, this often means that legislation first proposed in one session is not finally enacted until a later session of Congress.

RELATIONS WITH OTHER CONGRESSIONAL COMMITTEES

The resolution establishing the Senate oversight committee provides that the committee will have jurisdiction over the CIA and the "intelligence activities" of other departments and agencies of the Executive branch. The term "intelligence activities" is defined, however, to exclude "tactical foreign military intelligence serving no national policymaking function." The practical effect of these definitions is (1) to leave the CIA and DCI structure within the sole jurisdiction of the intelligence committee; (2) to leave defense intelligence activities other than solely tactical activities to shared jurisdiction between the intelligence and armed services committees; and (3) to leave tactical military intelligence within the sole jurisdiction of the Committee on Armed Services. (Despite this latter limitation, the Senate oversight committee has historically reviewed the annual budget request for tactical military intelligence activities and provided recommendations regarding the request to the Committee on Armed Services.) Standing committees of the

Senate whose jurisdiction encompasses departments or agencies which conduct intelligence activities are given the right to seek referral for a period of 30 days of any legislation reported by the Senate intelligence committee pertaining to any matter within the standing committee's jurisdiction. Conversely, the oversight committee is given the right to seek referral for the same period of any legislation reported by other committees which pertains to "intelligence activities" within the jurisdiction of the oversight committee.

A somewhat different arrangement exists in the House of Representatives, where the oversight committee is given jurisdiction over the CIA and the "intelligence *and intelligence-related* activities" (emphasis added) of other departments and agencies. This term does not exclude "tactical intelligence," and, thus, the House oversight committee retains jurisdiction over this category while the Senate oversight committee does not. Similar provisions apply to the right of other House committees to seek referral of legislation pertaining to matters within their jurisdiction, but the time period for such referral is made a matter of discretion with the Speaker rather than the 30-day period called for by the Senate resolution. The House oversight committee is also authorized to seek referral of legislation covering matters within its jurisdiction which is reported by other committees.

As a practical matter, both oversight committees seek the concurrence of other committees before reporting legislation which contains provisions which might trigger a request for referral. Where concurrence cannot be obtained, the oversight committee has the option of reporting a bill with a provision in dispute (and risking a request for referral or other actions to delay or oppose passage of the bill) or dropping the provision so as to avoid referral.

Both oversight committees also become involved in deliberations concerning legislation in other committees which involve or may affect intelligence agencies. Indeed, intelligence agencies frequently request the assistance of the oversight committees in dealing with legislation in other committees which is believed to adversely affect intelligence operations. The oversight committees typically provide such assistance if they believe a legitimate concern is posed by the legislation under consideration.

Occasionally, the assistance of the oversight committees is sought by other congressional committees. Since other committees often lack staff who are cleared for intelligence matters or otherwise lack the expertise necessary to pursue a particular inquiry, the intelligence committees are asked to conduct investigations or provide their assessments in particular circumstances. For example, an intelligence committee might be asked by its house's Foreign Affairs Committee for an assessment of the behavior of a particular foreign country—based upon information available to intelligence agencies—as part of the Foreign Affairs committee's consideration of legislation to impose sanctions upon the foreign government concerned.

Finally, due to the complex nature of the budget process within the Congress, special coordination occurs between the oversight committees and the respective Armed Services and Appropriations Committees of each House with regard to the annual intelligence

authorization. This coordination is explained below in the discussion of the budget process.

RELATIONSHIPS WITH OVERSIGHT MECHANISMS IN THE EXECUTIVE BRANCH

In addition to the oversight provided by the congressional committees, there is an elaborate system of oversight for intelligence activities within the Executive branch. The President's Foreign Intelligence Advisory Board (PFIAB) conducts oversight investigations on an ad hoc basis, reporting its results directly to the President, and requires periodic reports from the Inspectors General at intelligence agencies. Each of the intelligence agencies, in fact, maintains an internal Inspector General who reports to the agency head concerned. Where there are intelligence elements at departments and agencies which are not intelligence agencies per se, e.g., the Department of State, such elements are covered by the Inspector General of the department or agency concerned. The Inspector General at the CIA is appointed by the President and is subject to Senate confirmation, as are the Inspectors General of departments and agencies which are not intelligence agencies. Inspectors General at other intelligence agencies are typically appointed by the agency head.

The oversight committees have historically had no relationship with the PFIAB, which, as part of the Executive Office of the President, has occupied a privileged status vis-a-vis the Congress under the American system of separation of powers. Nothing prevents elements of the Executive Office of the President and the intelligence committees from cooperating on particular matters, however, where both branches consider it advantageous to do so. For example, the Senate committee contributed to the work of the Vice President's Task Force on Combatting Terrorism in the 1980s.

Moreover, with the exception of the Inspector General at the CIA, there are no formal links between the oversight committees and the Inspectors General at other intelligence agencies. In practice, however, the oversight committees review the activities of the Inspectors General as part of the committees' own oversight responsibilities and occasionally request, via the agency head concerned, that these offices conduct oversight inquiries or investigations in appropriate circumstances and report their results to the oversight committees. The heads of intelligence agencies have historically been responsive to such requests. The CIA Inspector General is required by law to provide reports to the committees on a semi-annual basis and to report "particularly serious or flagrant problems, abuses or deficiencies" within seven days.

In the case of the Inspector General at the CIA, the law creating this office (see Appendix, page 60) also provides that in several unusual circumstances, the Inspector General will report directly to the oversight committees: (1) when the Inspector General is unable to resolve differences with the CIA Director affecting the execution of his or her responsibilities; (2) when the Director or Acting Director is the focus of the Inspector General's activities; and (3) when the Inspector General is unable to obtain significant documentary information in the course of an investigation.

III. Functions and Powers of the Oversight Committees

The following sections set forth the functions of the oversight committees. In some cases—particularly where the budget process is concerned—the explanation, while accurate, is somewhat oversimplified in the interests of preserving clarity for the reader with respect to the key points.

Authorization of Appropriations for Intelligence: The Budget Process

Both Senate and House resolutions creating the oversight committees empower them to authorize appropriations for intelligence activities. (The House resolution provides for authorization of appropriations for "intelligence and intelligence-related activities.") This means that, consistent with the two-step funding process utilized in the U.S. Congress generally, the oversight committees each year must report legislation to their respective bodies which "authorizes" a certain level of funding for all U.S. intelligence activities. This legislation, in theory, becomes the basis upon which the appropriations committees in each House then determine how funds are to be appropriated to the department or agency concerned for the next fiscal year (which runs from October 1st until September 30th of each year). Appropriations for intelligence and intelligence-related activities are contained largely in the Department of Defense appropriations bill.

In addition, title V of the National Security Act of 1947 (see Appendix, page 42) provides that intelligence agencies may not spend funds available to them unless they have been both authorized and appropriated. This provision was adopted by Congress in 1985 to ensure that the oversight committees would have a voice in all resource decisions affecting intelligence activities.

Both oversight committees begin with the level of funds requested in the President's budget for intelligence and intelligence-related activities, which typically arrives in February or March of each year. The budget for intelligence activities is contained in the President's National Foreign Intelligence Program (NFIP) budget, which is submitted and justified to the Congress by the Director of Central Intelligence. The budget for "intelligence-related activities" is contained in a budget aggregation known as the Tactical Intelligence and Related Activities (TIARA) budget which is justified by the Secretary of Defense. (Although the Senate committee does not have authorizing authority over TIARA, it receives and analyzes the TIARA budget request and recommends actions on the Administration request to the Committee on Armed Services, which retains authorizing jurisdiction.)

The budget requests for NFIP and TIARA are very detailed funding plans, broken down first into major program categories (e.g., the General Defense Intelligence Program, the National Reconnaissance Program, the Consolidated Cryptologic Program, the FBI Foreign Counterintelligence Program, etc.), and then into specific elements under each major grouping. Specific allocations for both funding and personnel are made for each element. Both budget requests are highly classified.

Once the Administration request has been received, each committee engages in its own elaborate review of the request. These reviews typically are accomplished between February and May of each year and consist of formal hearings, staff visits or briefings, the submission of questions for written response by the agencies, and occasionally in-depth audits or investigations with respect to areas of particular concern to the committee.

On the basis of these reviews, the staffs of each committee formulate recommended positions on the Administration's request which are presented to their respective committees for review, modification, and approval. This takes place in a business meeting of each committee, referred to as the "mark-up" of the annual authorization bill. Typically, the views of the Administration on the proposal are made available to each committee prior to their taking action. Once the committee has "marked up," the bill is formally reported to the parent body, i.e., the House or Senate.

While the authorization bill reported to each parent body is public, the funding and personnel levels being recommended are classified by the Executive branch. The committees deal with this problem by giving legal effect, in the public bill, to a classified "schedule of authorizations" which is incorporated by reference in the public bill and is made available to the Executive branch. Members of the House and Senate are invited to review the schedule at the offices of each committee, but are not provided copies.

The public bill not only authorizes the intelligence budget for the next fiscal year, but also contains numerous legislative measures dealing with such intelligence matters as pension rights, health plans, authority to engage in business activities to provide cover for intelligence operations, etc. These legislative provisions are further explained in a committee report that, while not carrying the force of law, is still treated both by judges and by the Executive branch as a significant indicator of congressional intent.

There is no secret legislation in the intelligence authorization bill, but the classified "schedule of authorizations" is amplified by a classified report. This report gives the reasons for particular changes that the committee proposes to make in the budget submitted by the President. It also contains direction to the intelligence agencies, ranging from requests for particular studies to direction that particular programs or operations be undertaken, revised, or ended. These provisions are viewed by each committee and understood by the Executive branch to be the basis for the committee's willingness to authorize the intelligence budget. Although as report language they do not carry the force of law, they are generally obeyed by intelligence agencies in order to avoid antagonizing the oversight committees and risking a hostile reaction in the next year's budget cycle.

Once the committees have reported their bills to the floor, they are subject to sequential referral to other committees which have jurisdictional interests in the subject matter of the bill. Historically, in both Houses, the Committee on Armed Services has sought sequential referral of the intelligence authorization bill inasmuch as most of the funding and personnel levels being recommended pertain to elements within the Department of Defense. Other com-

mittees may also seek referral should they desire an opportunity to consider specific provisions.

Once the referrals to other committees have been completed, the bills are reported back to the floor by the committee which sought the referral and placed on the calendar for floor action. Historically, this has occurred between June and September of each year. On the floor, the bills are subject to amendment, according to the rules of each House, as is any piece of legislation. Any amendments to the classified "schedule of authorizations" are considered in a closed session of the House concerned, but such amendments have been very rare.

When both Houses have acted on their respective versions of the authorization bill, the body which acted last requests a "conference" with the other body to resolve the differences between the two bills. Typically, all members of the oversight committees in both Houses are appointed as "conferees." Preliminary to a meeting of the conferees, the staffs of both committees develop, where possible, a proposed resolution of the differences in funding between the two bills which is submitted to the conferees for their consideration. Where differences cannot be unresolved in the context of the staff proposal, items of disagreement are placed on the agenda for discussion between conferees. Again, the views of the Administration on the proposed staff resolution and on the issues remaining in dispute are made available to the conferees prior to the conference meeting.

In addition, there is close coordination at this stage with the Appropriations Committees in each House to ensure that the actions of the authorizing committees are generally consistent with those anticipated by the appropriating committees. If the authorizing committees provide authorization where the appropriating committees do not provide appropriations, the authorization is "hollow" or meaningless since funds cannot be spent that have not been appropriated. On the other hand, if the authorizing committees do not provide authorization where the appropriating committees provide appropriated funds, the intelligence agencies are precluded by law from spending the money appropriated. Thus, close coordination with the appropriations committees is essential at this juncture, prior to action by the conferees on the intelligence authorization.

Once agreement has been reached between the conferees, the conference agreement is reported, by a majority vote of the conferees from each House, back to each House for final action. Usually approval of the conference report occurs in September or October of each year, without substantial debate. The conference report contains both the final text of the bill and a "statement of conference managers" that explains the actions taken in conference. The conference report is also accompanied by the final "schedule of authorizations" and a classified explanation, which, like the reports of the individual committees, often contains specific directions to intelligence agencies.

The bill is then enrolled and sent to the President. Once signed, it becomes law. Should the bill be vetoed by the President, a two-thirds vote in each House is required to enact the bill into law.

LEGISLATION

Both oversight committees are legislative committees; that is, they are authorized to have bills within their area of jurisdiction referred to them for disposition and can report legislation to their respective bodies.

Traditionally the oversight committees have used the annual intelligence authorization bill as their primary legislative vehicle, not only for purposes of authorizing appropriations (described above), but also to enact other public law relating to intelligence. The CIA Inspector General Act of 1990, the Intelligence Oversight Act of 1991, and the Intelligence Organization Act of 1992, were each enacted as a separate title to the intelligence authorization bill for the fiscal year concerned. As alluded to above, the committees have also historically used the annual authorization bill to enact administrative authorities needed by intelligence agencies in order to carry out their functions. Indeed, the Administration routinely requests such legislation from the Congress.

Occasionally, the oversight committees have chosen to report "freestanding" bills—outside the context of the annual authorization—where it appears that legislation is needed before the authorization bill can be enacted or where another committee has a significant interest in the legislation, or where the legislation appears so consequential or controversial that the committees believe it preferable to handle such legislation separately. The Foreign Intelligence Surveillance Act of 1978, the Intelligence Identities Protection Act of 1983, and the CIA Voluntary Separation Incentive Act of 1993 were each processed by the committees as separate, "freestanding" bills.

INVESTIGATIONS, AUDITS, AND INQUIRIES

In addition to their legislative functions, the oversight committees are authorized to conduct investigations, audits and inquiries regarding intelligence activities as may be required. These may be prompted by a variety of circumstances: allegations in the news media; confidential communications by employees or former employees of intelligence agencies; or matters that have arisen in the course of the committee's hearings, briefings, or trips.

The committees may also institute investigations or inquiries involving matters that have been reported to the committees through official channels. Such reports come to the committees through a variety of sources. For example, pursuant to various statutes or agreements with Executive agencies, the committees receive periodic reports from the CIA Inspector General describing his activities; from the Attorney General describing the use of court-ordered electronic surveillance for intelligence purposes; and from the Secretary of Defense advising of the deployment of intelligence assets in particularly sensitive circumstances. Frequently these reports lead to follow-on inquiries and perhaps full-fledged investigations.

Often, these inquiries and investigations involve classified matters which the committees cannot discuss publicly. However, both committees attempt, where possible, to issue public reports where the allegations of improprieties have themselves been public. In recent years, for example, the Senate committee has issued public re-

ports of its investigation into allegations of improper domestic surveillance by the FBI; of its investigation of allegations that CIA may have intentionally withheld pertinent information from a federal court; and of its investigation into allegations that the Reagan White House had improperly withheld documents from the congressional Iran-contra committees.

Generally, the oversight committees refrain from involvement in individual cases unless the facts of a particular case appear to indicate systemic problems or policy shortcomings at the department or agency concerned. And, even here, the committees typically decline involvement when the complainant's case is before the courts or is being considered by the department or agency concerned.

ASSESSING WORLD EVENTS

Although not specifically required by their "charters," both oversight committees attempt to monitor and assess world events where U.S. interests are involved. Typically, this occurs in the form of briefings or hearings where representatives of intelligence agencies testify regarding the significance of these events and respond to questions from the members. In some cases, these briefings involve events which may be the subject of legislation pending before the Congress. Both committees, for example, received numerous briefings by intelligence agencies prior to the votes in each body in 1991 to commit U.S. armed forces to the liberation of Kuwait.

In some cases, the committees look back on events that have already taken place to assess the value of the intelligence support to U.S. policymakers or military commanders. Such assessments took place, for example, in both committees after the U.S. actions in Panama in 1989 and in Kuwait in 1991.

By making these assessments, the committees are able to test and evaluate the quality and timeliness of the intelligence analysis performed by elements of the Intelligence Community and come to understand the strengths and shortcomings of U.S. intelligence-gathering capabilities. This, in turn, affects the committees' respective actions on the budget and may suggest legislative initiatives as well.

CONFIRMATION OF PRESIDENTIAL APPOINTEES

Under the U.S. Constitution, certain Government officers are appointed by the President, "by and with the advice and consent of the Senate." Such positions include the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the CIA Inspector General. In the Senate, the Select Committee on Intelligence reviews the nominations of individuals appointed to these positions.

The Senate Committee routinely explores the background of all nominees to assess the fitness of the nominee concerned as well as to identify possible conflicts of interest. It routinely investigates all allegations of improper conduct which might be made regarding the nominee either in the press or to the committee privately. The Chairman and Vice Chairman of the Committee are also provided access to the background investigation performed on the nominee by the FBI.

Public hearings are then conducted on the nomination where the nominee and others who have pertinent information to share regarding the nominee testify before the Committee. Depending upon the circumstances, these hearings have been the occasion for in-depth inquiries into events of the past, as in the Robert Gates confirmation hearings in 1991, and typically provide an opportunity to learn the nominee's vision of the future, as was the case with the R. James Woolsey confirmation hearing in 1993.

In either event, the Senate committee has traditionally used these occasions not only to ascertain the views of the nominee with regard to intelligence, but also to obtain commitments from nominees towards the oversight process itself. Confirmation hearings not only serve to acquaint the Senate committee with the leaders of the Intelligence Community with whom it must closely work, but also to inform the nominee with respect to the views and concerns of the committee itself.

CONSIDERATION OF TREATIES

Under the U.S. Constitution, the President may ratify a treaty only if the Senate has consented to it. While treaties are typically referred to the Senate Committee on Foreign Relations, the Select Committee on Intelligence is routinely asked to evaluate arms control treaties and other similar agreements where the ability of the United States to determine violations by the other signatories is an issue for the Senate as a whole.

Typically, the Senate committee holds extensive hearings on the verification aspects of such treaties, and issues both classified and unclassified reports regarding its findings and recommendations. Such reports were issued with regard to the ability of the United States to verify the SALT II treaty in 1979; the INF treaty in 1988; the Threshold Test Ban Treaty and Treaty on Peaceful Nuclear Explosions in 1990; the CFE treaty in 1991; the START treaty in 1992; and the Open Skies treaty in 1993. The findings and recommendations contained in these reports are, in turn, ordinarily addressed in the reports issued by the Committee on Foreign Relations regarding the treaties themselves.

IV. OVERSIGHT IN PRACTICE: (1977–1995)

OVERSIGHT DURING THE CARTER ADMINISTRATION (1977–1980)

Coming to office on the heels of the Church and Pike Committee investigations, the Carter Administration sought to establish a clear legal framework for U.S. intelligence activities by working at two levels: first, by drafting a new Executive Order on intelligence activities; and second, in consultation with the two newly-formed congressional oversight committees, by developing legislation to establish in law the mission and functions of U.S. intelligence agencies.

Among the most important provisions of the new Executive order—Executive Order 12036 of January 26, 1978—was a requirement that the restrictions on intelligence-gathering contained in the order be implemented in regulations of each intelligence agency that would have to be approved by the Attorney General. This not only ensured consistency in approach throughout the Intelligence

Community but also provided legal review external to intelligence agencies of the rules governing their activities.

Executive Order 12036 also, for the first time, directed the Director of Central Intelligence and the heads of intelligence agencies to keep the two congressional intelligence committees "fully and currently informed" of intelligence activities, including "significant anticipated activities," and to provide pertinent information in their possession to the oversight committees—subject to the constitutional authorities of the President and the statutory duty of the Director of Central Intelligence to protect intelligence sources and methods. This was the first binding direction to intelligence agencies to cooperate with their congressional oversight committees.

The effort to craft "charter legislation" for U.S. intelligence agencies did not fare so well. In 1978, the Senate committee introduced a detailed bill which not only set forth missions and functions for each agency, but also proposed complex restrictions and limitations upon the operations of each agency. After months of consultation and after ever-increasing objections from the intelligence agencies that the proposed restrictions would hamper them in accomplishing their missions, the Carter Administration eventually abandoned its effort to develop a bill agreeable to both itself and Congress, preferring instead to rely upon the new Executive order to provide the fundamentals of control.

Unable to reach agreement with the Administration on the "missions and functions" portion of the legislation, and deeply concerned over the Administration's failure to inform them of intelligence operations relating to the failed attempt to rescue U.S. hostages in Iran, the oversight committees turned their attention to the portion of the bill that would establish the legal obligations of intelligence agencies towards the two oversight committees. Months of negotiation eventually resulted in an agreement between the oversight committees and the Administration, ultimately enacted into law as Title V of the National Security Act of 1947, also known as "the Intelligence Oversight Act of 1980." (See appendix, p. 42.) Significantly, this legislation established as a matter of law (consistent with the constitutional responsibilities of the President) the obligation of intelligence agencies—

To keep the congressional intelligence committees "fully and currently informed";

To report "significant anticipated intelligence activities" to the committees;

To provide prior notice of covert actions to the committees and, where prior notice could not be provided, to provide notice "in a timely fashion"; and

To report violations of law and "significant intelligence failures" to the committees "in a timely fashion."

In return for the Administration's agreement to make the obligations of intelligence agencies to the oversight committees a matter of law, the Hughes-Ryan amendment was changed to require notice of covert actions only to the two intelligence committees (i.e., the legal requirement to notify six other committees was eliminated).

During this period, the committees continued to consolidate their positions within their respective bodies. In 1977, the Senate committee, with the agreement of the Committee on Armed Services,

assumed responsibility for reviewing presidential nominations of the Director and Deputy Director of Central Intelligence. In 1978, the committees produced the first bill authorizing appropriations for intelligence activities ever enacted by the Congress. (Previously, appropriations for intelligence were drawn from defense appropriations without systematic congressional review of intelligence activities.) Both committees held public hearings during this period on the issue of whether the dollar figure for the total intelligence budget should be made public. Investigations and inquiries were conducted by both bodies. While confusion with respect to the obligation of intelligence agencies to provide information to the committees remained considerable—notwithstanding the new 1980 law—it did not prevent either committee from carrying out investigations requiring access to highly sensitive information.

The committees also played a major role during this period in the enactment of legislation related to intelligence. Acting in concert with the Judiciary Committees in each House, the committees developed legislation known as the Foreign Intelligence Surveillance Act of 1978 (see appendix p. 65) which, for the first time, required that a court order be obtained from a special court established under the Act as a condition for undertaking electronic surveillances for intelligence purposes within the United States. Heretofore, such surveillances had been carried out without a search warrant or court order, pursuant to the asserted constitutional authority of the President. The committees were also instrumental in the enactment of the Classified Information Procedures Act of 1980, which established statutory procedures for handling classified information involved in a federal criminal proceeding. The law provided an in camera process for determining the relevance of classified information that a defendant might wish to use at trial and required federal judges to consider a variety of alternatives to protect national security information from being publicly disclosed during a criminal trial, rather than posing an "all or nothing" dilemma for the Government, i.e., reveal a secret or give up a prosecution.

OVERSIGHT DURING THE REAGAN ADMINISTRATION (1981–1988)

The Reagan Administration came to office with the express intent of reducing where appropriate the bureaucratic constraints placed upon intelligence agencies and increasing the level of resources available to these agencies, which had been sharply reduced during the 1970s.

It began by revising the Carter Executive order on intelligence, issuing Executive Order 12333 (see Appendix, p. 87) on December 4, 1981. The specific obligations of intelligence agencies contained in the Carter order pertaining to congressional oversight were replaced simply by a reference to the new oversight statute enacted the year before (see above). The new Administration also requested increased resources for intelligence, and these requests were generally supported by the oversight committees.

The new Administration also brought in a controversial Director of Central Intelligence, William J. Casey, and, for the first time, the oversight committees—particularly the Senate committee—took an aggressive role in investigating allegations concerning a sitting

Director. Although DCI Casey had only recently been confirmed, the Select Committee on Intelligence opened an intensive investigation of allegations of improper conduct on the part of the new Director while he had been in the private sector, concluding that Casey was "not unfit to serve" as head of the CIA.

During the first Reagan Administration, new legislation—favorable to intelligence agencies—was enacted. In 1982, the Intelligence Identities Protection Act became law, making it a crime to reveal the identity of intelligence agents under certain circumstances. In 1984, the Central Intelligence Agency Information Act was passed, exempting certain CIA operational files from being searched in response to requests received by CIA under the Freedom of Information Act. The committees also looked closely at the implementation of the Foreign Intelligence Surveillance Act to assure themselves and the public that it was being administered properly.

During this period, the oversight committees became increasingly concerned with the role of U.S. intelligence agencies in Central America. Investigations were conducted into allegations that CIA may have been involved in political violence in El Salvador and Guatemala. Yet the issue which clearly caused the greatest concern was the CIA's role in the civil war taking place in Nicaragua. In one highly publicized incident which occurred in 1984, the Chairman and Vice-Chairman of the Senate Committee, Senators Goldwater and Moynihan, respectively, severely chastized Director Casey for failing to advise the Committee that CIA had participated in mining a harbor in Nicaragua. This led to renewed discussions with the Administration in terms of keeping the Committees "fully and currently informed" of developments in covert action operations which had previously been briefed to the Committees. Ultimately, an informal agreement, referred to as "the Casey Accords," was agreed to which provided that "memoranda of notification" would be provided the oversight committees to advise them of significant changes or developments in ongoing covert operations.

The committees also became increasingly involved during this period in congressional efforts to limit U.S. assistance to the Nicaraguan rebels. A series of funding restrictions—known collectively as the "Boland Amendments" (after the name of the original sponsor of the first such restriction, Congressman Edward Boland, Chairman of the House Permanent Select Committee on Intelligence)—placed limits on U.S. assistance by both intelligence and military elements of the U.S. Government and were enacted as part of annual authorization or appropriation bills.

Alarmed by a spate of serious espionage cases in 1985 and 1986 (e.g., the Walker-Whitworth case, the Pelton case, and Pollard case), both committees also undertook extensive reviews of U.S. counterintelligence and security policies and practices during this time period.

The second Reagan Administration produced what the committees regarded as the most serious breach of the oversight arrangements since the committees were created: the so-called Iran-contra affair. In November, 1986, the oversight committees learned for the first time that the President had approved a covert action finding

ten months earlier authorizing the sale of arms to Iran in an effort to obtain the release of American hostages being held in Lebanon and had specifically ordered that the oversight committees not be notified. The committees also learned that Administration officials had used the proceeds of these sales to provide assistance to the Nicaraguan rebels at a time when the use of appropriated funds for such purpose was prohibited by law. It also came to light that certain officials in the Administration had entertained the idea of funding covert action programs with funds other than those which had been authorized and appropriated by the Congress, avoiding the congressional oversight process altogether. Both committees undertook intensive investigations of these events during November-December, 1986. These inquiries were followed by the appointment of special investigating committees in each House in January, 1987.

While the Iran-contra investigation was proceeding, both committees sought to shore up the existing oversight arrangements in light of what they had learned. While the Reagan Administration adopted new procedures recommitting itself to the oversight arrangements, bills were introduced in both Houses calling for notice to the committees of all covert actions within 48 hours of their approval without exception, and hearings were held on the bills in the fall of 1987.

In the meantime, with DCI Casey incapacitated by illness, the Administration nominated Deputy DCI Robert M. Gates to be the new Director in February, 1987. After a series of confirmation hearings by the Senate committee which highlighted the role of the nominee in the Iran-contra affair—then under investigation by the special investigating committee and by a special prosecutor—Gates asked that his nomination be withdrawn. The Administration then nominated Judge William H. Webster, who was then serving as Director of the FBI, to be the new Director of Central Intelligence. A second round of confirmation hearings ensued with Webster ultimately being confirmed by the Senate in May, 1987, after pledging to restore the trust and cooperative working relationship shattered by the Iran-contra affair.

Subsequently, the work of the special investigating committees ended and in October, 1987, the final report of the committees was issued, endorsing, among other things, the 48-hour bills then pending.

In the spring of 1988, the Senate passed a bill requiring 48-hour notice of covert actions by a vote of 71–19, but no action was taken in the House. The 48-hour bill thus died without being enacted, at a time when a new Administration was coming into office.

In the summer of 1988, the Senate committee undertook an extensive oversight inquiry into the FBI's investigation of a domestic political group, the Committee in Solidarity with the People of El Salvador (CISPES) during the early 1980s, finding several violations of existing guidelines for such investigations. As a result of this and an internal inquiry conducted by the FBI Inspection Division, six FBI agents were disciplined by the Director of the FBI.

OVERSIGHT DURING THE BUSH ADMINISTRATION (1989–1992)

Met with pledges of commitment to the oversight process from the incoming Administration, the intelligence committees did not immediately press for enactment of the 48-hour bill, but sought instead to obtain a formal, written explanation from the new President with respect to how he intended to implement the statutory requirement to provide notice of covert actions "in a timely fashion." After several months of discussion, President Bush wrote to the oversight committees in October, 1989, saying that he would ordinarily provide prior notice of covert actions to the committees, but where that was not possible, he would provide notice "within a few days." Should notice be withheld for a longer period, the President stated, he would rely upon his authorities under the Constitution. In its version of the intelligence authorization bill for fiscal year 1990, the Senate adopted language which would have incorporated this formulation into the oversight statute itself, but this language was dropped from the bill in conference after the House committee disagreed with this proposal.

The oversight committees were able to agree, however, on one proposal growing out of the Iran-contra affair by including in the fiscal year 1990 intelligence authorization bill a provision calling for the creation of an independent Inspector General at the Central Intelligence Agency appointed by the President rather than the Director with responsibilities to report directly to the oversight committees under certain circumstances. (See Appendix, p. 60.) This legislation marked the first time Congress had created by law an oversight mechanism within an intelligence agency.

During 1990, both committees renewed their efforts to modify the oversight statute to incorporate the understandings they believed had been reached with the President in terms of reporting covert actions to the Congress and to deal with other problems which had surfaced in the course of the Iran-contra affair. Relying upon informal assurances from senior Administration officials that the proposed language on these points was agreeable, the committees adopted language in the intelligence authorization bill for fiscal year 1991 which included a substantial revision of the Intelligence Oversight Act of 1980. The Administration subsequently had second thoughts regarding the proposed legislation and, after Congress had adjourned for the year, the President vetoed the bill.

This action led to further negotiations during the early part of 1991 to resolve the concerns of the Administration, and, after months of negotiation, a compromise was finally achieved, allowing for passage of the fiscal year 1991 intelligence authorization bill in August, 1991. (See Appendix, p. 42.) The bill revised the Intelligence Oversight Act of 1980 in its entirety and, among other things, provided that:

Presidential approvals of covert actions must be in writing and cannot retroactively authorize such actions;

Reports to the Congress must identify all government entities participating in the operation and state whether third parties outside of government control are involved;

Covert actions cannot not be used to influence U.S. politics or domestic opinion;

Covert actions cannot violate the laws of the United States or the U.S. Constitution; and

Significant changes to ongoing operations must be approved by the President and reported to the committees in the same manner as the original operation.

Insofar as the longstanding issue of "timely" notice was concerned, the compromise left intact the existing statutory formulation requiring prior notice ordinarily and, where that is not possible, requiring notice "in a timely fashion." But for the first time, report language was included which said that the committees interpreted the phrase "in a timely fashion" as meaning "within a few days," consistent with the position previously taken by the President. While the report acknowledged that the President may assert authority under the Constitution to withhold for longer periods, the committees expressed the view that the Constitution did not provide such authority to the President. The issue was left at this philosophical impasse.

While the negotiations over the changes to the oversight statute were taking place during the summer of 1991, DCI Webster resigned, and the President nominated Robert M. Gates, whose nomination had been withdrawn four years earlier, to replace him. The Senate Committee held extensive hearings regarding the nomination, focusing particularly on the role of Gates in the Iran-contra affair and on allegations that he had slanted intelligence analysis at the CIA to conform to a particular political viewpoint. Indeed, the Gates hearings constituted the first in-depth exploration of the intelligence analytical process which had ever taken place in a public forum.

Despite the controversial nature of the hearings themselves, the Committee voted 11–4 to report the nomination, and Gates was confirmed by the Senate by a vote of 64–31 in October, 1991.

The new DCI immediately undertook an extensive reexamination of the role of the Intelligence Community in the post-Cold War era. The committees, for their part, followed suit. In January, 1992, the chairmen of both committees introduced far-reaching bills to reorganize the Intelligence Community, and extensive hearings on the legislation were undertaken by both bodies.

In the fall of 1992, after several months of negotiation between the Administration and the oversight committees, agreement was reached on "The Intelligence Organization Act of 1992," which amended the National Security Act of 1947 to provide explicitly for the responsibilities and authorities of the Director of Central Intelligence. (See Appendix, page 48.) Although the new law did not, as a practical matter, represent a radical departure from the status quo, it did represent a substantial change in the legal framework for U.S. intelligence activities. Among other things, the new law:

Recognized the role of the DCI as statutory advisor to the National Security Council;

Recognized the three roles of the DCI as (1) principal intelligence advisor to the President, (2) head of the U.S. Intelligence Community, and (3) head of the CIA;

Established in law the National Intelligence Council as the highest authority for developing and publishing intelligence analysis;

Gave the DCI responsibility for establishing priorities for U.S. Government intelligence-gathering and for coordinating all collection involving human sources, both overt and clandestine;

Gave the DCI authority to approve the budgets of intelligence agencies and provided that once approved, funds could not be reprogrammed to other purposes without the approval of the DCI; and

For the first time in statute, defined the term "Intelligence Community."

Indeed, the new law represented the first successful effort by the Congress to enact organizational legislation for the U.S. Intelligence Community since 1947.

In the fall of 1992, both committees undertook extensive investigations into allegations that CIA had provided false or misleading information to a federal criminal proceeding in Atlanta, Georgia, involving a branch manager of the Banca Nazionale Del Lavoro (BNL), headquartered in Rome, Italy. The Senate committee produced a lengthy report of its inquiry contained numerous recommendations for improving the relationship between intelligence agencies and law enforcement authorities.

OVERSIGHT IN THE CLINTON ADMINISTRATION (1993–)

The Clinton administration has continued the commitment to the congressional oversight process, but has as of this writing (mid-1994) undertaken no significant organizational or structural change within the Intelligence Community.

In 1993, freestanding legislation was enacted permitting the Director of Central Intelligence to offer financial incentives to senior employees to retire at an earlier date, in an effort to assist the CIA in meeting its manpower reduction objectives.

In 1994, in the wake of the arrest of a CIA employee and his wife for espionage, both committees conducted oversight inquiries into CIA security practices and reported legislative proposals to improve the U.S. counterintelligence and security posture. Supported by the Clinton administration, certain of the legislative proposals were enacted as part of the intelligence authorization bill for fiscal year 1995.

In particular, legislation was enacted to expand the Foreign Intelligence Surveillance Act to impose the same court order procedure to authorize physical searches for intelligence purposes as had existed for electronic surveillances since 1978. The legislation also contained provisions requiring improved coordination of counterintelligence matters with the FBI and provisions to enhance the investigative authorities of federal counterintelligence agencies.

The Congress also enacted legislation to create a new commission to review the roles and missions of U.S. intelligence agencies in the post-Cold War era, and charged it with producing a report to the President and the Congress by March 1, 1996. In essence, the commission was asked to reexamine the basic assumptions underlying the intelligence function. It was envisioned that this review, once completed, would provide the basis for subsequent actions by the intelligence committees for years to come.

APPENDIX 1

S. RES. 400 FROM THE 94TH CONGRESS

A RESOLUTION ESTABLISHING A SELECT COMMITTEE ON INTELLIGENCE

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

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolution referred to as the "select committee"). The select committee shall be composed of fifteen members appointed as follows:

(A) two members from the Committee on Appropriations;

(B) two members from the Committee on Armed Services;

(C) two members from the Committee on Foreign Relations;

(D) two members from the Committee on the Judiciary; and

(E) seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (A) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Four of the members appointed under clause (E) of paragraph (1) shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate and three shall be appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(3) The majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

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(b) No Senator may serve on the select committee for more than eight years of continuous service, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent practicable, one-third of the Members of the Senate appointed to the select committee at the beginning of the Ninety-seventh Congress and each Congress thereafter shall be Members of the Senate who did not serve on such committee during the preceding Congress.

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

(d) For the purposes of paragraph 6(a) of rule XXV of the Standing Rules of the Senate, service of a Senator as a member of the select committee shall not be taken into account.

SEC. 3. (a) There shall be referred to the select committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(1) The Central Intelligence Agency and the Director of Central Intelligence.

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

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

(4) Authorization for appropriations, both direct and indirect, for the following:

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

(B) The Defense Intelligence Agency.

(C) The National Security Agency.

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

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

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

(G) Any department, agency, or subdivision which is the successor to any agency named in clause (A), (B), or (C); and the activities of any department, agency, or subdivision which is the successor to any department, agency, bureau, or subdivision named in clause (D), (E), or (F) to

the extent that the activities of such successor department, agency, or subdivision are activities described in clause (D), (E), or (F).

(b) Any proposed legislation reported by the select committee, except any legislation involving matters specified in clause (1) or (4)(A) of subsection (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within thirty days after the day on which such proposed legislation is referred to such standing committee; and any proposed legislation reported by any committee, other than the select committee, which contains any matter within the jurisdiction of the select committee shall, at the request of the chairman of the select committee, be referred to the select committee for its consideration of such matter and be reported to the Senate by the select committee within thirty days after the day on which such proposed legislation is referred to such committee. In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed herein, such committee shall be automatically discharged from further consideration of such proposed legislation on the thirtieth day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise. In computing any thirty-day period under this paragraph there shall be excluded from such computation any days on which the Senate is not in session.

(c) Nothing in this resolution shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.

(d) Nothing in this resolution shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the Senate to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

SEC. 4. (a) The select committee, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters requiring the attention of the Senate or such other committee or committees. In making such reports, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

(b) The select committee shall obtain an annual report from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made

available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the divulging of intelligence methods employed or the sources of information on which such reports are based or the amount of funds authorized to be appropriated for intelligence activities.

(c) On or before March 15 of each year, the select committee shall submit to the Committee on the Budget of the Senate the views and estimates described in section 301(c) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

SEC. 5. (a) For the purposes of this resolution, the select committee is authorized in its discretion (1) to make investigations into any matter within its jurisdiction, (2) to make expenditures from the contingent fund of the Senate, (3) to employ personnel, (4) to hold hearings, (5) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (6) to require, by subpena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (7) to take depositions and other testimony, (8) to procure the service of consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (9) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(c) Subpenas authorized by the select committee may be issued over the signature of the chairman, the vice chairman, or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or any member signing the subpena.

SEC. 6. No employee of the select committee or any person engaged by contract or otherwise to perform service for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing and under oath to be bound by the rules of the Senate (including the jurisdiction of the Select Committee on Standards and Conduct) and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 7. The select committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly in-

fringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 8. (a) The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.

(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, such committee shall notify the President of such vote.

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

(3) If the President, personally in writing, notifies the select committee of his objections to the disclosure of such information as provided in paragraph (2), such committee may, by majority vote, refer the question of the disclosure of such information to the Senate for consideration. The committee shall not publicly disclose such information without leave of the Senate.

(4) Whenever the select committee votes to refer the question of disclosure of any information to the Senate under paragraph (3), the chairman shall, not later than the first day on which the Senate is in session following the day on which the vote occurs, report the matter to the Senate for its consideration.

(5) One hour after the Senate convenes on the fourth day on which the Senate is in session following the day on which any such matter is reported to the Senate, or at such earlier time as the majority leader and the minority leader of the Senate jointly agree upon in accordance with section 133(f) of the Legislative Reorganization Act of 1946, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of all or any portion of the information in question, in which case the committee shall publicly disclose the information ordered to be disclosed,

(B) disapprove the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly dislose the information ordered not to be disclosed, or

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

Upon conclusion of the consideration of such matter in closed session, which may not extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with section 133(f) of the Legislative Reorganization Act of 1946 (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

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

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Standards and Conduct to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If,

at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or explusion from the Senate, in the case of Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SEC. 9. The select committee is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 10. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession, custody, or control of such committee, under appropriate conditions established by it, shall be transferred to the select committee.

SEC. 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.

(b) It is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or documentation in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the select committee with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the 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. 12. Subject to the Standing Rules of the Senate, no funds shall be appropriated for any fiscal year beginning after September 30, 1976, with the exception of a continuing bill or resolution, or amendment thereto, or conference report thereon, to, or for use of, any department or agency of the United States to carry out any of the following activities, unless such funds shall have been previously authorized by a bill or joint resolution passed by the Senate during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

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

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

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

SEC. 13. (a) The select committee shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence:

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

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

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

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

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

(6) the desirability of establishing a standing committee of the Senate on intelligence activities;

(7) 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;

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

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

(b) The select committee may, in its discretion, omit from the special study required by this section any matter it determines has been adequately studied by the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress.

(c) The select committee shall report the results of the study provided for by this section to the Senate, together with any recommendations for legislative or other actions it deems appropriate,

no later than July 1, 1977, and from time to time thereafter as it deems appropriate.

SEC. 14. (a) As used in this resolution, the term "intelligence activities" includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, movement, or other association in such foreign country, and which relates to the defense, foreign policy, national security, or related policies of the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and covert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policymaking function.

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

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

SEC. 15. For the period from the date this resolution is agreed to through February 28, 1977, the expenses of the select committee under this resolution shall not exceed $275,000, of which amount not to exceed $30,000 shall be available for the procurement of the services of individual consultants, or organizations thereof, as authorized by section 202(i) of the Legislative Reorganization Act of 1946. Expenses of the select committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SEC. 16. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.

RULE XLVIII

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

1. (a) There is hereby established a permanent select committee to be known as the Permanent Select Committee on Intelligence (hereinafter in this rule referred to as the "select committee"). The select committee shall be composed of not more than nineteen Members with representation to include at least one Member from:

(1) the Committee on Appropriations;
(2) the Committee on Armed Services;
(3) the Committee on Foreign Affairs; and
(4) the Committee on the Judiciary.

(b) The majority leader of the House and the minority leader of the House shall be ex officio members of the select committee, but shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

(c) No Member of the House may serve on the select committee for more than six years of continuous service. To the greatest extent practicable, at least four of the Members of the House appointed to the select committee at the beginning of each Congress shall be Members of the House who did not serve on such committee during the preceding Congress.

2. (a) There shall be referred to the select committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(1) The Central Intelligence Agency and the Director of Central Intelligence.

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

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

(4) Authorizations for appropriations, both direct and indirect, for the following:

(A) The Central Intelligence Agency and Director of Central Intelligence.
(B) The Defense Intelligence Agency.
(C) The National Security Agency.

(D) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(E) The intelligence and intelligence-related activities of the Department of State.

(F) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(G) Any department, agency, or subdivision which is the successor to any agency named in subdivision (A), (B), or (C); and the activities of any department, agency, or subdivision which is the successor to any department, agency, bureau, or subdivision named in subdivision (D), (E), or (F), to the extent that the activities of such successor department, agency, or subdivision are activities described in subdivision (D), (E), or (F).

(b) Any proposed legislation initially reported by the select committee, except any legislation involving matters specified in subparagraph (1) or (4)(A) of paragraph (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee by the Speaker for its consideration of such matter and be reported to the House by such standing committee within the time prescribed by the Speaker in the referral; and any proposed legislation initially reported by any committee, other than the select committee, which contains any matter within the jurisdiction of the select committee shall, at the request of the chairman of the select committee, be referred by the Speaker to the select committee for its consideration of such matter and be reported to the House within the time prescribed by the Speaker in the referral.

(c) Nothing in this rule shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.

(d) Nothing in this rule shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the House to obtain full and prompt access to the product of the intelligence and intelligence-related activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

3. (a) The select committee, for the purposes of accountability to the House, shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the House or to any other appropriate committee or committees of the House any matters requiring the attention of the House or such other committee or committees. In making such reports, the select committee shall proceed in a manner consistent with clause 7 to protect national security.

(b) The select committee shall obtain an annual report from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interest. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of individuals engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which such reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(c) On or before March 15 of each year, the select committee shall submit to the Committee on the Budget of the House the views and estimates described in section 301(c) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

4. To the extent not inconsistent with the provisions of this rule, the provisions of clauses 1, 2, 3, and 5 (a), (b), (c), and (6) (a), (b), (c) of rule XI shall apply to the select committee, except that, notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, a majority of those present, there being in attendance the requisite number required under the rules of the select committee to be present for the purpose of taking testimony or receiving evidence, may vote to close a hearing whenever the majority determines that such testimony or evidence would endanger the national security.

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

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

interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

7. (a) The select committee may, subject to the provisions of this clause, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this clause, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this clause.

(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, such committee shall notify the President of such vote.

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

(3) If the President, personally, in writing, notifies the select committee of his objections to the disclosure of such information as provided in subparagraph (2), such committee may, by majority vote, refer the question of this disclosure of such information with a recommendation thereon to the House for consideration. The committee shall not publicly disclose such information without leave of the House.

(4) Whenever the select committee votes to refer the question of disclosure of any information to the House under subparagraph (3), the chairman shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(5) If within four calendar days on which the House is in session, after such recommendation is reported, no motion has been made by the chairman of the select committee to consider, in closed session, the matter reported under subparagraph (4), then such a motion will be deemed privileged and may be made by any Member. The motion under this subparagraph shall not be subject to debate or amendment. When made, it shall be decided without intervening motion, except one motion to adjourn.

(6) If the House adopts a motion to resolve into closed session, the Speaker shall then be authorized to declare a recess subject to the call of the Chair. At the expiration of such recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?"

(7) After not more than two hours of debate on the motion, such debate to be equally divided and controlled by the chairman

and ranking minority member of the select committee, or their designees, the previous question shall be considered as ordered and the House, without intervening motion except one motion to adjourn, shall immediately vote on the question, in open session but without divulging the information with respect to which the vote is being taken. If the recommendation of the select committee is not agreed to, the question shall be deemed recommitted to the select committee for further recommendation.

(c)(1) No information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to paragraphs (a) or (b) of this clause, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the House except as provided in subparagraphs (2) and (3).

(2) The select committee shall, under such regulations as the committee shall prescribe, make any information described in subparagraph (1) available to any other committee or any other Member of the House and permit any other Member of the House to attend any hearing of the committee which is closed to the public. Whenever the select committee makes such information available (other than to the Speaker), the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the House received such information. No Member of the House who, and no committee which, receives any information under this subparagraph, shall disclose such information except in a closed session of the House.

(3) The select committee shall permit the Speaker to attend any meeting of the committee and to have access to any information in the possession of the committee.

(d) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, officer, or employee of the House in violation of paragraph (c) and report to the House concerning any allegation which it finds to be substantiated.

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

8. The select committee is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

9. Subject to the rules of the House, no funds shall be appropriated for any fiscal year, with the exception of a continuing bill

or resolution continuing appropriations, or amendment thereto, or conference report thereon, to, or for use of, any department or agency of the United States to carry out any of the following activities, unless such funds shall have been previously authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(a) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(b) The activities of the Defense Intelligence Agency.

(c) The activities of the National Security Agency.

(d) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(e) The intelligence and intelligence-related activities of the Department of State.

(f) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

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

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

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

11. Clause 6(a) of rule XXVIII does not apply to conference committee meetings respecting legislation (or any part thereof) reported from the Permanent Select Committee on Intelligence.

TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES[1]

GENERAL CONGRESSIONAL OVERSIGHT PROVISIONS

SEC. 501. [[50 U.S.C. 413]] (a)(1) The President shall ensure that the intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title.

(2) As used in this title, the term "intelligence committees" means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(3) Nothing in this title shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of any significant anticipated intelligence activity.

(b) The President shall ensure that any illegal intelligence activity is reported promptly to the intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity.

(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of this title.

(d) The House of Representatives and the Senate shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information, and all information relating to intelligence sources and methods, that is furnished to the intelligence committees or to Members of Congress under this title. Such procedures shall be established in consultation with the Director of Central Intelligence. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

(f) As used in this section, the term "intelligence activities" includes covert actions as defined in section 503(e).

REPORTING OF INTELLIGENCE ACTIVITIES OTHER THAN COVERT ACTIONS

SEC. 502. [[50 U.S.C. 413a]] To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other en-

[1] This title is also set out *post* at page 409 along with other materials relating to congressional oversight of intelligence activities.

tities of the United States Government involved in intelligence activities shall—

(1) keep the intelligence committees fully and currently informed of all intelligence activities, other than a covert action (as defined in section 503(e)), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and

(2) furnish the intelligence committees any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

PRESIDENTIAL APPROVAL AND REPORTING OF COVERT ACTIONS

SEC. 503. [[50 U.S.C. 413b]] (a) The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made.

(2) Except as permitted by paragraph (1), a finding may not authorize or sanction a covert action, or any aspect of any such action, which already has occurred.

(3) Each finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action. Any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation.

(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

(5) A finding may not authorize any action that would violate the Constitution or any statute of the United States.

(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

(1) shall keep the intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and

(2) shall furnish to the intelligence committees any information or material concerning covert actions which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

(c)(1) The President shall ensure that any finding approved pursuant to subsection (a) shall be reported to the intelligence committees as soon as possible after such approval and before the initiation of the covert action authorized by the finding, except as otherwise provided in paragraph (2) and paragraph (3).

(2) If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President.

(3) Whenever a finding is not reported pursuant to paragraph (1) or (2) of this section, the President shall fully inform the intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

(4) In a case under paragraph (1), (2), or (3), a copy of the finding, signed by the President, shall be provided to the chairman of each intelligence committee. When access to a finding is limited to the Members of Congress specified in paragraph (2), a statement of the reasons for limiting such access shall also be provided.

(d) The President shall ensure that the intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(2), are notified of any significant change in a previously approved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c).

(e) As used in this title, the term "covert action" means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include—

(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of

United States Government programs, or administrative activities;

(2) traditional diplomatic or military activities or routine support to such activities;

(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(f) No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

FUNDING OF INTELLIGENCE ACTIVITIES

SEC. 504. [50 U.S.C. 414] (a) Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 503 of this Act concerning any significant anticipated intelligence activity, the Director of Central Intelligence has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the need for funds for such activity is based on unforseen requirements; and

(C) the Director of Central Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

(b) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 503(e), unless and until a Presidential finding required by subsection (a) of section 503 has been signed or otherwise issued in accordance with that subsection.

(d)(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to

the appropriate congressional committees pursuant to procedures which identify—

(A) the types of activities for which nonappropriated funds may be expended; and

(B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.

(2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the intelligence committees and, as appropriate, the Director of Central Intelligence or the Secretary of Defense.

(e) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the term "appropriate congressional committees" means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and

(3) the term "specifically authorized by the Congress" means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 505. [50 U.S.C. 415] (a)(1) The transfer of a defense article or defense service, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services, exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of this title.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms "defense articles" and "defense services" mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

(3) the term "transfer" means—

(A) in the case of defense articles, the transfer of possession of those articles; and

(B) in the case of defense services, the provision of those services; and

(4) the term "value" means—

(A) in the case of defense articles, the greater of—

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

APPENDIX 4

NATIONAL SECURITY ACT OF 1947

ACT OF JULY 26, 1947

AN ACT To promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That [50 U.S.C. 401 note] this Act may be cited as the "National Security Act of 1947".

TABLE OF CONTENTS

[1] Item editorially inserted.
[2] This section was redesignated as section 108 by section 705(a)(2) of P.L. 102–496, but this entry in the table of contents was not repealed.
[3] Section repealed without amending table of contents.

DECLARATION OF POLICY

SEC. 2. [50 U.S.C. 401] In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide

[1] Section repealed without amending table of contents.
[2] Item editorially inserted.

more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

DEFINITIONS

SEC. 3. [50 U.S.C. 401a] As used in this Act:

(1) The term "intelligence" includes foreign intelligence and counterintelligence.

(2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons.

(3) The term "counterintelligence" means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(4) The term "intelligence community" includes—

(A) the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence, the National Intelligence Council (as provided for in section 105(b)(3)), and such other offices as the Director may designate;

(B) the Central Intelligence Agency;

(C) the National Security Agency;

(D) the Defense Intelligence Agency;

(E) the central imagery authority within the Department of Defense;

(F) the National Reconnaissance Office;

(G) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(H) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of Energy;

(I) the Bureau of Intelligence and Research of the Department of State; and

(J) such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms "national intelligence" and "intelligence related to the national security"—

(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Inves-

tigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title.

(6) The term "National Foreign Intelligence Program" refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

SEC. 101. [50 U.S.C. 402] (a) There is hereby established a council to be known as the National Security Council (thereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided,* That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of[1]—

(1) the President;

(2) the Vice President;

(3) the Secretary of State;

(4) the Secretary of Defense;

(5) the Director for Mutual Security;

(6) the Chairman of the National Security Resources Board; and

(7) The Secretaries and Under Secretaries of other executive departments and the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

[1] The positions of Director for Mutual Security, Chairman of the National Security Resources Board, Chairman of the Munitions Board, and Chairman of the Research and Development Board have been abolished by various Reorganiztion Plans. The statutory members of the National Security Council are the President, Vice President, Secretary of State, and Secretary of Defense.

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President, and who shall receive compensation at the rate of $10,000 a year.[1] The executive secretary, subject to the direction of the Council, is hereby authorized, subject to the civil-service laws and the Classification Act of 1923, as amended,[2] to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

(e) The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(f) The Director of National Drug Control Policy may, in his role as principal adviser to the National Security Council on national drug control policy, and subject to the direction of the President, attend and participate in meetings of the National Security Council.[3]

(g) The President shall establish with the National Security Council a board to be known as the "Board for Low Intensity Conflict". The principal function of the board shall be to coordinate the policies of the United States for low intensity conflict.

(h) The Director of Central Intelligence (or, in the Director's absence, the Deputy Director of Central Intelligence) may, in the performance of the Director's duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

CENTRAL INTELLIGENCE AGENCY

SEC. 102. [50 U.S.C. 403] (a)(1) There is hereby established a Central Intelligence Agency.

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[1] The specification of the salary of the head of the National Security Council staff is obsolete and has been superseded.

[2] The Classification Act of 1923 was repealed by the Classification Act of 1949. The Classification Act of 1949 was repealed by the law enacting title 5, United States Code (Public Law 89–544, Sept. 6, 1966, 80 Stat. 378), and its provisions were codified as chapter 51 and subchapter 53 of title 5. Section 7(b) of that Act (80 Stat. 631) provided: "A reference to a law replaced by sections 1–6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act."

[3] The amendment made by § 1003(a)(3) of P.L. 100-690 (102 Stat. 4182), redesignating subsection (f) as (g) and adding a new (f) is repealed by section 1009 of P.L. 100–690 (102 Stat. 4188), effective Nov. 18, 1993.

(2) There shall be a Director of Central Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall—

(A) serve as head of the United States intelligence community;

(B) act as the principal adviser to the President for intelligence matters related to the national security; and

(C) serve as head of the Central Intelligence Agency.

(b) To assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act, there shall be a Deputy Director of Central Intelligence, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall act for, and exercise the powers of, the Director during the Director's absence or disability.

(c)(1) The Director or Deputy Director of Central Intelligence may be appointed from among the commissioned officers of the Armed Forces, or from civilian life, but at no time shall both positions be simultaneously occupied by commissioned officers of the Armed Forces, whether in an active or retired status.

(2) It is the sense of the Congress that under ordinary circumstances, it is desirable that either the Director or the Deputy Director be a commissioned officer of the Armed Forces or that either such appointee otherwise have, by training or experience, an appreciation of military intelligence activities and requirements.

(3)(A) A commissioned officer of the Armed Forces appointed pursuant to paragraph (2) or (3), while serving in such position—

(i) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense;

(ii) shall not exercise, by reason of the officer's status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and

(iii) shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of which such officer is a member.

(B) Except as provided in clause (i) or (ii) of paragraph (A), the appointment of a commissioned officer of the Armed Forces pursuant to paragraph (2) or (3) shall in no way affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, position, rank, or grade.

(C) A commissioned officer of the Armed Forces appointed pursuant to subsection (a) or (b), while serving in such position, shall continue to receive military pay and allowances (including retired pay) payable to a commissioned officer of the officer's grade and length of service for which the appropriate military department shall be reimbursed from funds available to the Director of Central Intelligence.

(d) The Office of the Director of Central Intelligence shall, for administrative purposes, be within the Central Intelligence Agency.

RESPONSIBILITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 103. [50 U.S.C. 403–3] (a) PROVISION OF INTELLIGENCE.—(1) Under the direction of the National Security Council, the Director of Central Intelligence shall be responsible for providing national intelligence—

(A) to the President;

(B) to the heads of departments and agencies of the executive branch;

(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders; and

(D) where appropriate, to the Senate and House of Representatives and the committees thereof.

(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

(b) NATIONAL INTELLIGENCE COUNCIL.—(1)(A) There is established within the Office of the Director of Central Intelligence the National Intelligence Council (hereafter in this section referred to as the "Council"). The Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the Director of Central Intelligence.

(B) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

(2) The Council shall—

(A) produce national intelligence estimates for the Government, including, whenever the Council considers appropriate, alternative views held by elements of the intelligence community; and

(B) otherwise assist the Director in carrying out the responsibilities described in subsection (a).

(3) Within their respective areas of expertise and under the direction of the Director, the members of the Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the Government.

(4) The Director shall make available to the Council such staff as may be necessary to permit the Council to carry out its responsibilities under this subsection and shall take appropriate measures to ensure that the Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence.

(5) The heads of elements within the intelligence community shall, as appropriate, furnish such support to the Council, including the preparation of intelligence analyses, as may be required by the Director.

(c) HEAD OF THE INTELLIGENCE COMMUNITY.—In the Director's capacity as head of the intelligence community, the Director shall—

(1) develop and present to the President an annual budget for the National Foreign Intelligence Program of the United States;

(2) establish the requirements and priorities to govern the collection of national intelligence by elements of the intelligence community;

(3) promote and evaluate the utility of national intelligence to consumers within the Government;

(4) eliminate waste and unnecessary duplication within the intelligence community;

(5) protect intelligence sources and methods from unauthorized disclosure; and

(6) perform such other functions as the President or the National Security Council may direct.

(d) HEAD OF THE CENTRAL INTELLIGENCE AGENCY.—In the Director's capacity as head of the Central Intelligence Agency, the Director shall—

(1) collect intelligence through human sources and by other appropriate means, except that the Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

(2) provide overall direction for the collection of national intelligence through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized;

(3) correlate and evaluate intelligence related to the national security and providing appropriate dissemination of such intelligence;

(4) perform such additional services as are of common concern to the elements of the intelligence community, which services the Director of Central Intelligence determines can be more efficiently accomplished centrally; and

(5) perform such other functions and duties related to intelligence affecting the national security as the President or the National Security Council may direct.

AUTHORITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

SEC. 104. [50 U.S.C. 403–4] (a) ACCESS TO INTELLIGENCE.—To the extent recommended by the National Security Council and approved by the President, the Director of Central Intelligence shall have access to all intelligence related to the national security which is collected by any department, agency, or other entity of the United States.

(b) APPROVAL OF BUDGETS.—The Director of Central Intelligence shall provide guidance to elements of the intelligence community for the preparation of their annual budgets and shall approve such budgets before their incorporation in the National Foreign Intelligence Program.

(c) ROLE OF DCI IN REPROGRAMMING.—No funds made available under the National Foreign Intelligence Program may be re-

programmed by any element of the intelligence community without the prior approval of the Director of Central Intelligence except in accordance with procedures issued by the Director.

(d) TRANSFER OF FUNDS OR PERSONNEL WITHIN THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.—(1) In addition to any other authorities available under law for such purposes, the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, may transfer funds appropriated for a program within the National Foreign Intelligence Program to another such program and, in accordance with procedures to be developed by the Director and the heads of affected departments and agencies, may transfer personnel authorized for an element of the intelligence community to another such element for periods up to a year.

(2) A transfer of funds or personnel may be made under this subsection only if—

(A) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

(B) the need for funds or personnel for such activity is based on unforeseen requirements;

(C) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the Central Intelligence Agency;

(D) the transfer does not involve a transfer of funds or personnel from the Federal Bureau of Investigation; and

(E) the Secretary or head of the department which contains the affected element or elements of the intelligence community does not object to such transfer.

(3) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

(4) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this section.

(5) The Director shall promptly submit to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives and, in the case of the transfer of personnel to or from the Department of Defense, the Committees on Armed Services of the Senate and House of Representatives, a report on any transfer of personnel made pursuant to this subsection. The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

(e) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the National Security Council and in a manner consist-

ent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

(f) USE OF PERSONNEL.—The Director shall, in coordination with the heads of departments and agencies with elements in the intelligence community, institute policies and programs within the intelligence community—

(1) to provide for the rotation of personnel between the elements of the intelligence community, where appropriate, and to make such rotated service a factor to be considered for promotion to senior positions; and

(2) to consolidate, wherever possible, personnel, administrative, and security programs to reduce the overall costs of these activities within the intelligence community.

(g) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—Notwithstanding the provisions of any other law, the Director may, in the Director's discretion, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director shall deem such termination necessary or advisable in the interests of the United States. Any such termination shall not affect the right of the officer or employee terminated to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the Office of Personnel Management.

RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL FOREIGN INTELLIGENCE PROGRAM

SEC. 105. [50 U.S.C. 403–5] (a) IN GENERAL.—The Secretary of Defense shall—

(1) ensure that the budgets of the elements of the intelligence community within the Department of Defense are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;

(2) ensure appropriate implementation of the policies and resource decisions of the Director of Central Intelligence by elements of the Department of Defense within the National Foreign Intelligence Program;

(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Foreign Intelligence Program;

(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with respect to satisfying the needs of operational military forces;

(5) eliminate waste and unnecessary duplication among the intelligence activities of the Department of Defense; and

(6) ensure that intelligence activities of the Department of Defense are conducted jointly where appropriate.

(b) RESPONSIBILITY FOR THE PERFORMANCE OF SPECIFIC FUNCTIONS.—Consistent with sections 103 and 104 of this Act, the Secretary of Defense shall ensure—

(1) through the National Security Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the conduct of signals intelligence activities and shall ensure that the product is disseminated in a timely manner to authorized recipients;

(2) through a central imagery authority (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense for carrying out tasking of imagery collection, for the coordination of imagery processing and exploitation activities, and for ensuring the dissemination of imagery in a timely manner to authorized recipients;

(3) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;

(4) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified system within the Department of Defense for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;

(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence activities, including defense attaches; and

(6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

(A) the requirements of the Director of Central Intelligence;

(B) the requirements of the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;

(C) the requirements of the unified and specified combatant commands and of joint operations; and

(D) the specialized requirements of the military departments for intelligence necessary to support tactical commanders, military planners, the research and development process, the acquisition of military equipment, and training and doctrine.

(c) USE OF ELEMENTS OF DEPARTMENT OF DEFENSE.—The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as

may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.

means an appropriate committee of the Congress as defined by section 5, United States Code.

SEC. 17. [50 U.S.C. 403q] INSPECTOR GENERAL FOR THE AGENCY.

(a) PURPOSE; ESTABLISHMENT.—In order to—

(1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independently inspections, investigations, and audits relating to programs and operations of the Agency;

(2) provide leadership and recommend policies designed to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and detect fraud and abuse in such programs and operations;

(3) provide a means for keeping the Director fully and currently informed about problems and deficiencies relating to the administration of such programs and operations, and the necessity for and the progress of corrective actions; and

(4) in the manner prescribed by this section, ensure that the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (hereafter in this section referred to collectively as the "intelligence committees") are kept similarly informed of significant problems and deficiencies as well as the necessity for and the progress of corrective actions,

there is hereby established in the Agency an Office of Inspector General (hereafter in this section referred to as the "Office").

(b) APPOINTMENT; SUPERVISION; REMOVAL.—(1) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate. This appointment shall be made without regard to political affiliation and shall be solely on the basis of integrity, compliance with the security standards of the Agency, and prior experience in the field of foreign intelligence. Such appointment shall also be made on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, or public administration.

(2) The Inspector General shall report directly to and be under the general supervision of the Director.

(3) The Director may prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.

(4) If the Director exercises any power under paragraph (3), he shall submit an appropriately classified statement of the reasons for the exercise of such power within seven days to the intelligence committees. The Director shall advise the Inspector General at the time such report is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of any such report. In such cases, the Inspector General may submit such comments to the intelligence committees that he considers appropriate.

(5) In accordance with section 535 of title 28, United States Code, the Director shall report to the Attorney General any infor-

mation, allegation, or complaint received from the Inspector General, relating to violations of Federal criminal law involving any officer or employee of the Agency, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of all such reports shall be furnished to the Inspector General.

(6) The Inspector General may be removed from office only by the President. The President shall immediately communicate in writing to the intelligence committees the reasons for any such removal.

(c) DUTIES AND RESPONSIBILITIES.—It shall be the duty and responsibility of the Inspector General appointed under this section—

(1) to provide policy direction for, and to conduct, supervise, and coordinate independently, the inspections, investigations, and audits relating to the programs and operations of the Agency to ensure they are conducted efficiently and in accordance with applicable law and regulations;

(2) to keep the Director fully and currently informed concerning violations of law and regulations, fraud and other serious problems, abuses and deficiencies that may occur in such programs and operations, and to report the progress made in implementing corrective action;

(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Office, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

(4) in the execution of his responsibilities, to comply with generally accepted government auditing standards.

(d) SEMIANNUAL REPORTS; IMMEDIATE REPORTS OF SERIOUS OR FLAGRANT PROBLEMS; REPORTS OF FUNCTIONAL PROBLEMS.—(1) The Inspector General shall, not later than June 30 and December 31 of each year, prepare and submit to the Director of Central Intelligence a classified semiannual report summarizing the activities of the Office during the immediately preceding six-month period. Within thirty days, the Director shall transmit such reports to the intelligence committees with any comments he may deem appropriate. Such reports shall, at a minimum, include a list of the title or subject of each inspection, investigation, or audit conducted during the reporting period and—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Agency identified by the Office during the reporting period;

(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified in subparagraph (A);

(C) a statement of whether corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action;

(D) a certification that the Inspector General has had full and direct access to all information relevant to the performance of his functions;

(E) a description of all cases occurring during the reporting period where the Inspector General could not obtain documentary evidence relevant to any inspection, audit, or investigation due to his lack of authority to subpoena such information; and

(F) such recommendations as the Inspector General may wish to make concerning legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Agency, and to detect and eliminate fraud and abuse in such programs and operations.

(2) The Inspector General shall report immediately to the Director whenever he becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations. The Director shall transmit such report to the intelligence committees within seven calendar days, together with any comments he considers appropriate.

(3) In the event that—

(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the Inspector General's duties or responsibilities;

(B) an investigation, inspection, or audit carried out by the Inspector General should focus upon the Director or Acting Director; or

(C) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, the Inspector General shall immediately report such matter to the intelligence committees.

(4) Pursuant to Title V of the National Security Act of 1947, the Director shall submit to the intelligence committees any report of an inspection, investigation, or audit conducted by the office which has been requested by the Chairman or Ranking Minority Member of either committee.

(e) AUTHORITIES OF THE INSPECTOR GENERAL.—(1) The Inspector General shall have direct and prompt access to the Director when necessary for any purpose pertaining to the performance of his duties.

(2) The Inspector General shall have access to any employee or any employee of a contractor of the Agency whose testimony is needed for the performance of his duties. In addition, he shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to the programs and operations with respect to which the Inspector General has responsibilities under this section. Failure on the part of any employee or contractor to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, to include loss of employment or the termination of an existing contractual relationship.

(3) The Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of au-

thority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the Agency—

(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation; and

(B) no action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee of the Agency in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(4) The Inspector General shall have authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of his duties, which oath affirmation, or affidavit when administered or taken by or before an employee of the Office designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal.

(5) The Inspector General shall be provided with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

(6) Subject to applicable law and the policies of the Director, the Inspector General shall select, appoint and employ such officers and employees as may be necessary to carry out his functions. In making such selections, the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable him to carry out his duties effectively. In this regard, it is the sense of Congress that the Inspector General should create within his organization a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of his duties.

(7) Subject to the concurrence of the Director, the Inspector General may request such information or assistance as may be necessary for carrying out his duties and responsibilities from any Federal agency. Upon request of the Inspector General for such information or assistance, the head of the Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency concerned, furnish to the Inspector General, or to an authorized designee, such information or assistance.

(f) SEPARATE BUDGET ACCOUNT.—Beginning with fiscal year 1991, and in accordance with procedures to be issued by the Director of Central Intelligence in consultation with the intelligence committees, the Director of Central Intelligence shall include in the National Foreign Intelligence Program budget a separate account for the Office of Inspector General established pursuant to this section.

(g) TRANSFER.—There shall be transferred to the Office the office of the Agency referred to as the "Office of Inspector General." The personnel, assets, liabilities, contracts, property, records, and

unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, or available to such "Office of Inspector General" are hereby transferred to the Office established pursuant to this section.

APPENDIX 6

CHAPTER 36. FOREIGN INTELLIGENCE SURVEILLANCE

§ 1801. Definitions

As used in this title [50 USCS §§ 1801 et seq.]:

(a) "Foreign power" means—

(1) a foreign government or any component thereof whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4);

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statues of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve a violation of chapter 105 of title 18, United States Code, [18 USCS §§ 2151 et seq.], or that would involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102(a) [50 USCS § 1802(a)], procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 105 [50 USCS § 1805] is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act [8 USCS § 1101(a)(20)]), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(Oct. 25, 1978, P. L. 95-511, Title I, § 101, 92 Stat. 1783.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Short titles:

Act Oct. 25, 1978, P. L. 95-511, § 1, 92 Stat. 1783, provided: "this Act [50 USCS §§ 1801 et seq., generally; for full classification of this Act,

Consult USCS Tables volumes] may be cited as the 'Foreign Intelligence Surveillance Act of 1978'.".

Other provisions:

Effective date of Act Oct. 25, 1978; exception. Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided: "The provisions of this Act [50 USCS §§ 1801 et seq., generally; for full classification of the Act, consult USCS Tables volumes] and the amendments made hereby shall become effective upon the date of enactment of this Act [enacted Oct. 25, 1978], except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act [50 USCS §§ 1801 et seq.] within ninety days following the designation of the first judge pursuant to section 103 of this Act [50 USCS § 1803].".

RESEARCH GUIDE

Law Review Articles:

Shapiro, Foreign Intelligence Surveillance Act: Legislative Balancing of National Security and the Fourth Amendment. 15 Harvard Journal of Legislation 119, December, 1977.

United States v Butenko (494 F2d 593): Executive Authority to Conduct Warrantless Wiretaps for Foreign Security Purposes. 27 Hastings L J 705, January, 1976.

Nesson, Aspects of the Executive's Power Over National Security Matters: Secrecy Classifications and Foreign Intelligence Wiretaps. 49 Ind L J 399, Spring, 1974.

Wiretapping of an Alien Spy for Foreign Intelligence Purposes Does not Violate Communications Act of 1934 or Fourth Amendment. 8 NYU Journal of International Law and Politics 479, Winter, 1976.

Present and Proposed Standards for Foreign Intelligence Electronic Surveillance. 71 Northwestern L Rev 109, March–April, 1976.

Presidential Power to Conduct Electronic Surveillance for Foreign Affairs Purposes. 20 Villanova L Rev 833, March, 1975.

Fourth Amendment and Executive Authorization of Warrantless Foreign Security Surveillance. 1976 Washington U L Q 397, Spring, 1978.

Fourth Amendment and Judicial Review of Foreign Intelligence Wiretapping: Zweibon v. Mitchell (516 F2d 594). 45 George Washington L Rev 55, November, 1976.

§ 1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court

(a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title [50 USCS §§ 1801 et seq.] to acquire foreign intelligence

information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 101(a) (1), (2), or (3) [50 USCS § 1801(a)(1), (2), or (3)]; or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 101(a) (1), (2), or (3) [50 USCS § 1801(a)(1), (2), or (3)];

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h) [50 USCS § 1801(h)]; and

if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him. The Attorney General shall assess compliance with such procedures and shall report such assessments to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence under the provisions of section 108(a) [50 USCS § 1808(a)].

(3) The Attorney General shall immediately transmit under seal to the court established under section 103(a) [50 USCS § 1803(a)] a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of Central Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the surveillance is made under sections 101(h)(4) and 104 [50 USCS §§ 1801(h)(4) and 1804]; or

(B) the certification is necessary to determine the legality of the surveillance under section 106(f) [50 USCS § 1806(f)].

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this title [50 USCS §§ 1801 et seq.] are authorized if the President has, by written authorization, empowered the Attorny [Attorney] General to approve applications to the court having jurisdiction under section 103 [50 USCS § 1803] and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105 [50 USCS § 1805], approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

(Oct. 25, 1978, P. L. 95-511, Title I, § 102, 92 Stat. 1786.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed word "Attorney" was inserted in subsec. (b) to denote word probably intended by Congress.

Effective date of section:

Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

Other provisions:

Foreign intelligence electronic surveillance. Ex. Or. No. 12139 of May 23, 1979, 44 Fed. Reg. 30311, provided:

"1-101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)) [subsec. (a)(1) of this section], the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence information without a court order, but only if the Attorney General makes the certifications required by that Section.

"1-102. Pursuant to Section 102(b) of the Foreign Intelligence Act of 1978 (50 U.S.C. 1802(b)) [subsec. (b) of this section], the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act [50 USCS § 1803] to obtain

orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

"1-103. Pursuant to Section 104(a)(7) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)) [50 USCS § 1804(a)(7)], the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(7) of the Act in support of applications to conduct electronic surveillance:

"(a) Secretary of State.

"(b) Secretary of Defense.

"(c) Director of Central Intelligence.

"(d) Director of the Federal Bureau of Investigation.

"(e) Deputy Secretary of State.

"(f) Deputy Secretary of Defense.

"(g) Deputy Director of Central Intelligence.

"None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate.

"1-104. Section 2-202 of Executive Order No. 12036 is amended by inserting the following at the end of that section: 'Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.'.

"1-105. Section 2-203 of Executive Order No. 12036 is amended by inserting the following at the end of that section: 'Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.' ".

§ 1803. Designation of judges

(a) Court to hear applications and grant orders; record of denial; transmittal to court of review. The Chief Justice of the United States shall publicly designate seven district court judges from seven of the United States judicial circuits who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this Act, except that no judge designated under this subsection shall hear the same application for electronic surveillance under this Act which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this Act, such judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b).

(b) Court of review; record, transmittal to Supreme Court. The Chief Justice shall publicly designate three judges, one of whom shall be publicly

designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this Act. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(c) Expeditious conduct of proceedings; security measures for maintenance of records. Proceedings under this Act shall be conducted as expeditiously as possible. The record of proceedings under this Act, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of Central Intelligence.

(d) Tenure. Each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) shall be designated for terms of three, five, and seven years.

(Oct. 27, 1978, P. L. 95-511, Title I, § 103, 92 Stat. 1788.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Oct. 25, 1978, P. L. 95-511, 92 Stat. 1783, popularly known as the Foreign Intelligence Surveillance Act of 1978, which is generally classified to 50 USCS §§ 1801 et seq. For full classification of this Act, consult USCS Tables volumes.

Effective date of section:

Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

§ 1804. Applications for court orders

(a) Submission by Federal officer; approval of Attorney General; contents. Each application for an order approving electronic surveillance under this title [50 USCS §§ 1801 et seq.] shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103 [50 USCS § 1803]. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title [50 USCS §§ 1801 et seq.]. It shall include—

(1) the identity of the Federal officer making the application;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity, if known, or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that the purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e) [50 USCS § 1801(e)]; and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this title [50 USCS §§ 1801 et seq.] involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance

under this title [50 USCS §§ 1801 et seq.] should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Exclusion of certain information respecting foreign power targets. Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a)(1), (2), or (3) [50 USCS § 1801(a)(1), (2) or (3)], and each of the facilities or places at which the surveillance is directed is owned, leased, exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a) [50 USCS § 1801(a)(6), (7)(E), (8) and (11)], but shall state whether physical entry is required to effect the surveillance and shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) Additional affidavits or certifications. The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(d) Additional information. The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 105 [50 USCS § 1805].

(Oct. 25, 1978, P. L. 95-511, Title I, § 104, 92 Stat. 1788.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

Other provisions:

Foreign intelligence electronic surveillance. For provisions governing electronic surveillance to acquire foreign intelligence information, see Ex. Or. No. 12139 of May 23, 1979, 44 Fed. Reg. 30311, located at 50 USCS § 1802 note.

§ 1805. Issuance of order

(a) Necessary findings. Upon an application made pursuant to section 104 [50 USCS § 1804], the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or agent of a foreign power: *Provided,* That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) [50 USCS § 1804(h)]; and

(5) the application which has been filed contains all statements and certifications required by section 104 [50 USCS § 1804] and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 104(a)(7)(E) [50 USCS § 1804(a)(7)(E)] and any other information furnished under section 104(d) [50 USCS § 1804(d)].

(b) Specifications and directions of orders. An order approving an electronic surveillance under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance;

(E) the period of time during which the electronic surveillance is approved; and

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified

person furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) Exclusion of certain information respecting foreign power targets. Whenever the target of the electronic surveillance is a foreign power, as defined in section 101(a)(1), (2), or (3) [50 USCS § 1801(a)(1)(2), or (3)], and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1) [50 USCS § 1801(b)(1)(C), (D), and (F)], but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(d) Duration of order; extensions; review of circumstances under which information was acquired, retained or disseminated. (1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a)(1), (2), or (3) [50 USCS § 1801(a)(1), (2) or (3)], for the period specified in the application or for one year, whichever is less.

(2) Extensions of an order issued under this title [50 USCS §§ 1801 et seq.], may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that an extension of an order under this Act for a surveillance targeted against a foreign power, as defined in section 101(a)(5) or (6) [50 USCS § 1801(a)(5) or (6)], or against a foreign power as defined in section 101(a)(4) [50 USCS § 1801(a)(4)] that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Emergency orders. Notwithstanding any other provision of this title [50 USCS §§ 1801 et seq.], when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this title [50 USCS §§ 1801 et seq.] to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 103 [50 USCS § 1803] is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this title [50 USCS §§ 1801 et seq.] is made to that judge as soon as practicable, but no more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title [50 USCS §§ 1801 et seq.] for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103 [50 USCS § 1803].

(f) Testing of electronic equipment; discovering unauthorized electronic surveillance; training of intelligence personnel. Notwithstanding any other provision of this title [50 USCS §§ 1801 et seq.], officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment;

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test; and:

(D) *Provided,* That the test may exceed ninety days only with the prior approval of the Attorney General;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, United States Code [18 USCS §§ 2510 et seq.], or section 605 of the Communications Act of 1934 [47 USCS § 605], or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this title [50 USCS §§ 1801 et seq.]; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Retention of certifications, applications and orders. Certifications made by the Attorney General pursuant to section 102(a) [50 USCS § 1802(a)] and applications made and orders granted under this title [50 USCS §§ 1801 et seq.] shall be retained for a period of at least ten years from the date of the certification or application.

(Oct. 25, 1978, P. L. 95-511, Title I, § 105, 92 Stat. 1790.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This Act", referred to in subsec. (d)(2), is Act Oct. 25, 1978, P. L. 95-511, 92 Stat. 1783, popularly known as the Foreign Intelligence Surveillance Act of 1978, which is generally classified to 50 USCS §§ 1801 et seq. For full classification of this Act, consult USCS Tables volumes.

Effective date of section:
Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

§ 1806. Use of information

(a) Compliance with minimization procedures; privileged communications; lawful purposes. Information acquired from an electronic surveillance conducted pursuant to this title [50 USCS §§ 1801 et seq.] concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title [50 USCS §§ 1801 et seq.]. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this title [50 USCS §§ 1801 et seq.] shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this title [50 USCS §§ 1801 et seq.] may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Statement for disclosure. No information acquired pursuant to this title [50 USCS §§ 1801 et seq.] shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification by United States. Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title [50 USCS §§ 1801 et seq.], the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Notification by States or political subdivisions. Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use

or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this title [50 USCS §§ 1801 et seq.], the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress. Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) In camera and ex parte review by district court. Whenever a court or other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States of any State before any court or other authority of the United States or any state to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this Act, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) Suppression of evidence; denial of motion. If the United States district court pursuant to subsection (f) determines that the surveillance was not

lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Finality of orders. Orders granting motions or requests under subsection (g), decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) Destruction of unintentionally acquired information. In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such condents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination. If an emergency employment of electronic surveillance is authorized under section 105(e) [50 USCS § 1805(e)] and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application;

(2) the period of the surveillance; and

(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(Oct. 25, 1978, P. L. 95-511, Title I, § 106, 92 Stat. 1793.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in subsec. (f), is Act Oct. 25, 1978, P. L. 95-511, 92 Stat. 1783, popularly known as the Foreign Intelligence

Surveillance Act of 1978, which is generally classified to 50 USCS §§ 1801 et seq. For full classification of this Act, consult USCS Tables volumes.

Effective date of section:

Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

§ 1807. Report to Administrative Office of the United States Court and to Congress

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title [50 USCS §§ 1801 et seq.]; and

(b) the total number of such orders and extensions either granted, modified, or denied.

(Oct. 25, 1978, P. L. 95-511, Title I, § 107, 92 Stat. 1795.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

§ 1808. Report of Attorney General to congressional committees; limitation on authority or responsibility of information gathering activities of congressional committees; report of congressional committees to Congress

(a) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this title [50 USCS §§ 1801 et seq.]. Nothing in this title [50 USCS §§ 1801 et seq.] shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties.

(b) On or before one year after the effective date of this Act [50 USCS § 1801 note] and on the same day each year for four years thereafter, the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report respectively to the House of Representatives and the Senate, concerning the implementation of this Act. Said reports shall include but not be limited to an analysis and recommenda-

tions concerning whether this Act should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.
(Oct. 25, 1978, P. L. 95-511, Title I, § 108, 92 Stat. 1795.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This Act", referred to in subsec. (b), is Act Oct. 25, 1978, P. L. 95-511, 92 Stat. 1783, popularly known as the Foreign Intelligence Surveillance Act of 1978, which is generally classified to 50 USCS §§ 1801 et seq. For full classification of this Act, consult USCS Tables volumes.

Effective date of section:
Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

§ 1809. Criminal sanctions

(a) Prohibited activities. A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) discloses or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by statute.

(b) Defense. It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) Penalties. An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) Federal jurisdiction. There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.
(Oct. 25, 1978, P. L. 95-511, Title I, § 109, 92 Stat. 1796.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:
Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For

exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

§ 1810. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101(a) or (b)(1)(A) [50 USCS § 1801(a) or (b)(1)(A)], respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 109 [50 USCS § 1809] shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

(Oct. 25, 1978, P. L. 95-511, Title I, § 110, 92 Stat. 1796.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

§ 1811. Authorization during time of war

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title [50 USCS §§ 1801 et seq.] to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.

(Oct. 25, 1978, P. L. 95-511, Title I, § 111, 92 Stat. 1796.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 25, 1978, P. L. 95-511, Title III, § 301, 92 Stat. 1798, provided that this section is generally effective on Oct. 25, 1978. For exception, see note containing Act Oct. 25, 1978, § 301, located at 50 USCS § 1801.

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EXECUTIVE ORDER NO. 12333 OF UNITED STATES INTELLIGENCE ACTIVITIES

(December 4, 1981, 46 F.R. 59941)

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

Part 1

Goals, Direction, Duties and Responsibilities With Respect to the National Intelligence Effort

1.1 *Goals.* The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1.2 *The National Security Council.*

(a) *Purpose.* The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) *Committees.* The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

1.3 *National Foreign Intelligence Advisory Groups.*

(a) *Establishment and Duties.* The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

(1) Production, review and coordination of national foreign intelligence;

(2) Priorities for the National Foreign Intelligence Program budget;

(3) Interagency exchanges of foreign intelligence information;

(4) Arrangements with foreign governments on intelligence matters;

(5) Protection of intelligence sources and methods;

(6) Activities of common concern; and

(7) Such other matters as may be referred by the Director of Central Intelligence.

(b) *Membership.* Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

1.4 *The Intelligence Community.* The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

(a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;

(b) Production and dissemination of intelligence;

(c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(d) Special activities;

(e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and

(f) Such other intelligence activities as the President may direct from time to time.

1.5 *Director of Central Intelligence.* In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;

(d) Ensure implementation of special activities;

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

(f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

(k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;

(m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;

(n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

(p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;

(q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;

(r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and

(s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

1.6 *Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.*

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1.7 *Senior Officials of the Intelligence Community.* The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

1.8 *The Central Intelligence Agency.* All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) and through (h) above, including procurement and essential cover and proprietary arrangements.

1.9 *The Department of State.* The Secretary of State shall:

(a) Overtly collect information relevant to United States foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1.10 *The Department of the Treasury.* The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1.11 *The Department of Defense.* The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relation-

ships and programs are in accordance with policies formulated by the Director of Central Intelligence;

(j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and

(k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

1.12 *Intelligence Components Utilized by the Secretary of Defense.* In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

(a) *Defense Intelligence Agency*, whose responsibilities shall include;

(1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) *National Security Agency*, whose responsibilities shall include:

(1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

(6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet the needs of the United States for signals intelligence and communications security;

(10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

(11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and

(13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

(c) *Offices for the collection of specialized intelligence through reconnaissance programs*, whose responsibilities shall include:

(1) Carrying out consolidated reconnaissance programs for specialized intelligence;

(2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

(d) *The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps*, whose responsibilities shall include:

(1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) *Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense.* If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 *The Department of Energy.* The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 *The Federal Bureau of Investigation.* Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

Part 2

Conduct of Intelligence Activities

2.1 *Need.* Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 *Purpose.* This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 *Collection of Information.* Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of

the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

2.4 *Collection Techniques.* Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present of former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 *Attorney General Approval.* The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

2.6 *Assistance to Law Enforcement Authorities.* Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

2.7 *Contracting.* Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not

reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 *Consistency With Other Laws.* Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 *Undisclosed Participation in Organizations Within the United States.* No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 *Human Experimentation.* No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 *Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

Part 3

General Provisions

3.1 *Congressional Oversight.* The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.

3.2 *Implementation.* The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in

instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

3.3 *Procedures.* Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No. 12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

3.4 *Definitions.* For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(b) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visably present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) *Employee* means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) *Intelligence activities* means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) *Intelligence Community* and *agencies within the Intelligence Community* refer to the following agencies or organizations:

(1) The Central Intelligence Agency (CIA);

(2) The National Security Agency (NSA);

(3) The Defense Intelligence Agency (DIA);

(4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) The Bureau of Intelligence and Research of the Department of State;

(6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and

(7) The staff elements of the Director of Central Intelligence.

(g) *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President.

(1) The programs of the CIA;

(2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnais-

sance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) *Special activities* means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) *United States person* means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.5 *Purpose and Effect.* This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

3.6 *Revocation.* Executive Order No. 12036[59] of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.

Ronald Reagan

Congress and the Intelligence Community: Taking the Road Less Traveled

FREDERICK M. KAISER

This chapter examines why, when choosing between "two roads [that] diverged in a wood . . . [Congress] took the one less traveled" and whether or not "that has made all the difference" (with apologies to poet Robert Frost). The metaphor has two meanings here. First, the choice Congress made signaled a new direction: from minimal and sporadic oversight of intelligence, Congress moved to a measurably higher and more consistent level, where it is even accused of "micromanagement" by administration officials and supporters (Bush 1987; Crovitz 1990). Second, the choice reflected a new approach: from a fragmented and isolated subcommittee system, involving only a few legislators who met infrequently and had a tiny staff, Congress moved to a more routine, regularized, and institutionalized process featuring committees on intelligence with comprehensive jurisdiction and involving a larger number of legislators and professional staff. (For background, see Crabb and Holt 1989, 163–92; Jeffreys-Jones 1989, 194–247; Johnson 1989, 207–67; Smist 1990; and Treverton 1990).

These newly traveled roads paralleled other broad trends and developments affecting Congress during the postreform era (Davidson, 1988, 351–62). These include: reinvigorated partisanship, particularly in the House; strengthened party and institution-wide leadership; assaults on the jurisdiction and power of established standing committees, sometimes to the benefit of new select or ad hoc panels; and weakened committee leadership. Other changes are evident, such as a concentration of policy-making arenas and shifts in congressional workload and activities, for instance, from lawmaking to oversight and from enacting new programs to modifying and fine-tuning existing ones.

These developments, of course, are only trends; they are neither absolute nor guaranteed indefinitely. This is because the bicameral legislature is far from uniform or monolithic and because other competing forces and pressures, both inside and outside the institution, influence its structure and organization (Oleszek 1983; Davidson and Oleszek 1976).

In 1956 the Senate debated—and defeated—a proposal to create a joint committee on intelligence as a means of increasing oversight of the Central Intelligence Agency (CIA). Senator Leverett Saltonstall (R-Mass.), who

served on the two CIA oversight panels at the time, argued that the agency's twice-a-year briefings to an Armed Services subcommittee and its once-a-year report to an Appropriations subcommittee were sufficient. His remarks reveal the then-fundamental assumption of minimal oversight: "It is not a question of reluctance on the part of CIA officials to speak to us. Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a member of Congress and as a citizen, would rather not have . . ." (*Congressional Record* 1956, 5924).

Thirty-one years later, CIA Deputy Director Robert Gates described a much different scene. Writing in 1987, Gates contended that major developments in congressional oversight of intelligence—particularly "the obtaining, by Congress in the mid-1970s, of access to intelligence information essentially equal to that of the executive branch"—ranked alongside of Watergate and the Vietnam War in shifting the "balance of power between the executive and Congress on national security matters" (1987, 224). While Gates's contention goes too far—the Iran-contra affair demonstrated that Congress can be not only deceived but also closed out of important policy decisions, at least in the short run—it is generally applicable to the postreform Congress.

As a result, important variations remain in the way oversight is conducted, its organizational and structural characteristics, and proposals for change. There is variability between the House and Senate, among different time periods, and among the policies, programs, and agencies. The differences arose in part from changing political conditions, such as the persistence of divided party government, inherent contrasts between the Senate and House, and the turnover of legislators and executive officials. They also developed because of rival views on general policies and particular projects, executive branch officials' actions and reputations, and Congress's role in national security policy-making.

PRECURSORS AND PRECEDENTS

Highly visible political developments in the executive branch indirectly advanced the cause for increased oversight of intelligence in the mid-1970s. Most importantly, the executive branch was in turmoil during this period. Individual officeholders were discredited and the presidency was severely weakened by the abuse of office and other serious wrongdoings. The result was numerous forced resignations and firings, which along with the normal course of events produced an unusually high turnover in positions connected with the presidency and intelligence community.

Even without these wounds, the political executives—the president, vice president, and political appointees—alone could not realistically control the intelligence community. Indeed, they had long been unable or unwilling to do so, as the Watergate and intelligence agency investigations discovered.

The intelligence community, moreover, grew dramatically during the cold war era, expanding its range and scope of activities to include covert operations abroad and sophisticated intelligence gathering. It operated under a degree of secrecy unmatched by any other part of government. Further, because of its capabilities in intelligence collection and assessment as well as in covert action, the intelligence community amassed influence in a wide range of national security matters and grew accustomed to its independence and autonomy. This autonomy and lack of accountability allowed the earlier abuses to occur.

The 1976–77 move toward greater consolidation and concentration for overseeing intelligence emerged, somewhat ironically, from the increasingly fragmented, decentralized, and dispersed system of the early to mid-1970s. Congressional investigations at that time uncovered serious abuses in the intelligence community and attempts to manipulate it. Also disclosed was a defective congressional oversight system—one that led either to neglect or to a protective symbiotic relationship between intelligence agencies and their traditional overseers on Capitol Hill. These inquiries proved to be catalysts for the precedent-setting legislative changes—in law, chamber rules, organization, and structure—of the postreform Congress.

Congressional investigations of the Watergate scandal, conducted in 1973 and 1974, revealed extensive illegalities and abuses by the White House, including attempts to manipulate intelligence agencies—particularly the CIA and Federal Bureau of Investigation (FBI)—for political purposes (Watergate Committee 1973, 1–45; U.S. Congress, House Judiciary Committee 1974, 1–4). At about the same time, a House Judiciary subcommittee launched the first major investigation of the FBI in its history, focusing on the bureau's counterintelligence program. The results of this investigation led to regular annual oversight hearings and new statutory controls, which enhanced Congress's oversight powers by requiring annual authorizations for the FBI and limiting the bureau's director to a single ten-year term.

Also at this time the House made a concerted effort to realign committee jurisdictions, resulting in the Committee Reform Amendments of 1974 (Davidson and Oleszek 1976). The Foreign Affairs Committee acquired special oversight for intelligence activities relating to foreign policy. This was part of a *quid pro quo* with the Armed Services Committee, which previously had exclusive dominion over CIA organization and operations among the authorizing committees (*Congressional Record* 1974, 34409–10; Kaiser 1977, 262). Shortly after this change in House rules came passage of the Hughes-Ryan amendment (P.L. 93-559). It set unprecedented guidelines for CIA covert operations abroad, requiring the president to prove that the operations are essential to national security. For the first time, the president was required to report "in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress," with the Senate Foreign Relations and House Foreign Affairs committees specifically identified in the amendment. The following year, 1975, Congress halted a covert

operation for the first time, cutting off funds for military and paramilitary operations in Angola. The ban was extended in 1976 and remained in force for a decade.

In 1975 congressional oversight of intelligence was consolidated into a single panel in each chamber. The House and Senate each created a select committee—the Pike Committee and the Church Committee, respectively—to investigate charges of intelligence agency illegalities and improper activities (see Freeman 1977; Johnson 1985; and Smist 1990, 25–82, 134–214). The committees found numerous long-standing, widespread, and serious abuses. The FBI, for example, had engaged in a counterintelligence program to "neutralize" civil rights leaders; it included wiretapping Dr. Martin Luther King, Jr., to gain information that could be used to discredit him. The National Security Agency had conducted electronic surveillance of U.S. citizens on "watch lists" supplied by law-enforcement and other intelligence agencies, even when no illegal conduct was charged. The CIA and FBI had covertly and illegally operated mail-opening programs. The CIA had infiltrated domestic dissident groups, despite a statutory ban on domestic security activities, and had tested drugs on unwitting subjects, several of whom later committed suicide. The CIA, relying in part on organized-crime figures, had engaged in bizarre attempts to embarrass foreign leaders and in assassination plots against them, including Fidel Castro of Cuba. (This vital information was kept from the Warren Commission when it investigated the assassination of President John F. Kennedy in 1963.) The CIA also had engaged in various other covert operations abroad; some of these were successfully directed against democratically elected governments (such as the regime of Salvador Allende in Chile) while others proved ineffective (such as the one against Castro).

In some cases the abuses were compounded by White House pressure. Other cases of abuse were marked by negligence—on the part of the intelligence community or the presidency—in insisting on accountability or in providing proper controls over the agencies and activities (U.S. Congress, Church Committee 1976).

Congress, too, was not without blame. Its fragmented, isolated system of overseeing intelligence was at times ineffective, insufficient, or nonexistent (U.S. Congress, Church Committee 1976). As a result, the Church and Pike committees urged the formation of a permanent intelligence committee in each chamber to expand, regularize, and improve congressional oversight (U.S. Congress, Church Committee 1976; U.S. Congress, Pike Committee 1976). Two temporary investigative bodies—the Church and Pike committees—were created and granted nearly identical jurisdictions, mandates, and authority. Such twin creations are extremely rare in the contemporary Congress, occurring only twice—in the 1970s with these two panels, and in the 1980s with the creation of select committees on the Iran-contra affair. The mirror approach of creating parallel, consolidated panels

reflected the seriousness and jurisdictional breadth of the problems. And given the media's coverage of massive abuses, these efforts were classic "fire-alarm" approaches to oversight; that is, reactions to problems that are raised first by the media or by criticisms from adversely affected parties (McCubbins and Schwartz 1984).

Intense controversy and conflict—between Congress and the executive branch, Republicans and Democrats, and factions within the majority Democrats in Congress—followed, especially in the House. The House had to re-create its select committee when the first one failed, after five months, to "get off dead center," as one legislator described its terminal condition (*Congressional Record* 1975, 22623). Both the House and Senate select committees encountered numerous obstacles in securing information from the Ford administration and affected agencies. And an early draft of the Pike Committee report was leaked to the press by an undetermined source, violating both a plea from the White House and a pledge by the full House.

Congress's new efforts challenged the traditional oversight orientation and the hegemony of powerful standing committees. The initial thrust, however, followed the prevailing tendencies of the era of subcommittee government—additional (oversight) units, fragmented authority and jurisdictions, and increasingly dispersed power (Davidson 1988b, 350–51). But by 1975 each chamber consolidated jurisdiction in one panel. This and other legislative changes set the stage for new roles and actors to ascend.

THE ESTABLISHMENT AND EVOLUTION OF SELECT COMMITTEES ON INTELLIGENCE

A number of complementary causes and conditions merged to determine the establishment of a select committee on intelligence in the Senate in 1976 (the Senate Select Committee on Intelligence) and in the House in 1977 (the House Permanent Select Committee on Intelligence). While the committees' essential features remain largely intact and still govern their general orientation, they differ in ways that affect their behavior, activities, and influence.

Developments and Conflicts in Congress

In the 1970s the consensus was that Congress needed to take responsibility for control of the intelligence community, especially if Congress was to gain parity with the president over national security policy. Moreover, earlier developments inside Congress contributed to the creation of the new select committees on intelligence by laying the foundation that they would even-

tually copy, adapt, or rely on. That foundation embraced new structures and orientations, including intense adversarial oversight for intelligence, new organizational options, and new types of authority like the Hughes-Ryan amendment and annual authorizations.

Other trends, many of which would become prominent features of the postreform era, were evident during Congress's restructuring of intelligence oversight. Party leaders, particularly House Democrats, became more active and assertive, and partisanship, especially in the House, was heightened. One by-product of the restructuring was that certain standing committees and their seniority leaders suffered a further loss of exclusive control over their jurisdictions. In addition, a change in congressional priorities—from lawmaking to oversight—was implicit in the establishment of the new panels.

Even though the House and Senate Intelligence committees became the locus of power in Congress over intelligence matters, their establishment and essential features were not guaranteed given the highly charged political atmosphere and conflicts that surrounded them; nor was their stability entirely predictable. Furthermore, over time, each committee grew more distinct from the other in several respects (for overviews, see Johnson 1985, 253–65; Johnson 1989, 207–34; and Smist 1990, 82–133, 214–51).

When the Intelligence committees were established, general agreement existed on the need for Congress to restructure its oversight of intelligence—as an alternative to the fragmented, isolated system—through panels with consolidated jurisdiction. The consensus on this central precept, however, belied differences over other governing principles and pragmatic concerns. Conflicts arose over the panels' jurisdiction, status (as a select or standing committee), power (to report legislation or to conduct oversight), authority (to disclose classified information), membership size, partisan composition, selection criteria, length of term, and leadership structure. The stakes involved in these debates were significant and conflictual. Most obvious were the vested interests of established standing committees, which would lose varying amounts of jurisdiction and authority. The parties' influence would differ, depending on whether a partisan or bipartisan structure was adopted. Congress's operating norms and procedures also would be affected if the new committees were given authority to report legislation and treated like other authorizing committees. And the oversight process and performance would hinge on the jurisdiction, power, and structure of the new panels.

The conflict surrounding these difficult choices was evident in both chambers. The Senate acted first, airing its differences openly and voluminously; House majority party leaders scripted the discussion and action narrowly. However, the House's abbreviated consideration did not reflect overwhelming agreement with the proposal drafted by Democratic leaders; rather, the leaders imposed artificial limitations on the debate and the vote because of deep differences on several major issues.

Establishment of the Senate Intelligence Committee (1976)

On 19 May 1976 the Senate agreed to create the Select Committee on Intelligence by a seventy-two to twenty-two majority. The vote climaxed a long and involved process of committee deliberation and Senate debate on the floor. The resolution—Senate Resolution 400—and companion proposals generated hearings and meetings by five standing committees, reports or recommendations from four standing committees and one select committee, five distinct versions of the basic resolution, and floor debate spanning ten days and thirteen proposed amendments, ten of which were ultimately adopted.

Disputes and Their Resolution The extensive and extended Senate debate occurred for several reasons, including the many issues that needed to be resolved, the controversy surrounding the choices, the high stakes involved, and the uniqueness of the venture. Divided government also played a role, with a Republican president and a Democratic Senate (and House) at odds.

Eventually, though, the disputes were resolved in a final compromise version arranged by Rules Committee Chair Howard Cannon (D-Nev.) and Majority Leader Mike Mansfield (D-Mont.) in consultation with a large number of senators and representatives of the Ford administration. The process itself enlisted support, or reduced some opposition, by incorporating a wide spectrum of viewpoints without arbitrarily excluding any of them. Mansfield, whose attempts to enhance oversight of intelligence began in the 1950s, was strongly committed to creating a potent new committee. Yet he also realized the need for restraint in order to gain Senate GOP and executive branch acceptance in an atmosphere of divided government and executive-legislative conflicts over intelligence matters. Mansfield was not an aggressive partisan; his moderate style was conducive to the development of a compromise. In addition, despite its conflicts with the executive branch, the Church Committee's own organization and recommendations supported several of the basic arrangements adopted for the new panel (such as its bipartisan structure).

The compromise succeeded in lessening the concerns of several important rival camps. One raised the prospect that a new panel would not be strong enough to oversee and control intelligence activities adequately if it lacked independence and important bill-reporting power. Another raised the prospect that a committee granted too much power and independence would handicap intelligence activities and operations. Some administration supporters and opponents of the intelligence panel, particularly senior Republicans on Armed Services, argued that a new panel might jeopardize classified national security informati[illegible] legitimate intelligence activities—an especially glaring charge in t[illegible] the highly visible clashes with

the executive branch over such access and the allegations of leaks involving the Church and Pike committees.

Balancing these competing forces, the compromise version created an improved system for overseeing and controlling intelligence through far-reaching authority, including legislative power, authorizing power, and far-ranging jurisdictions. The executive was directed to keep the new panel "fully and currently informed, with respect to intelligence activities, including any significant anticipated activities," a reference to advance notice for covert operations. Although only a nonbinding directive, this provision carried weight because it was endorsed by a sizeable bipartisan majority.

However, the compromise version also imposed a number of checks on the new committee. Among other things, these set limits on:

- its powers, by circumscribing its ability to disclose classified information through an elaborate set of procedures, which formally involved the president, and through required investigations of suspected leaks by the Ethics Committee;
- its independence as a congressional committee, by specifying that a representative of the president may attend its closed meetings, subject to the panel's agreement;
- its autonomy within the chamber, by designating seats for standing committees with overlapping jurisdiction and sharing jurisdiction over most of the intelligence community;
- its members' independence and power, by limiting their terms (to eight years) and staggering rotation; and
- its potential partisanship, by erecting a bipartisan structure for its membership and leadership.

The success of the compromise is reflected not only in its approval by a wide majority in 1976 but also in the continuation of the Senate Intelligence Committee's basic characteristics since that time.

Evolution of the Senate Intelligence Committee

The essential features of Senate Resolution 400 remain intact today. And although the Senate Intelligence Committee is not a standing committee under the rules of the Senate, it effectively attained permanent status early in its history.

The first jurisdictional test grew out of the nomination for the deputy director of Central Intelligence, which had been submitted to the Armed Services Committee before the Intelligence Committee was created in 1976. Conflict was averted, however, when Armed Services asked to be discharged from further consideration of the nomination and the Intelligence Committee instead reported the nomination (*Congressional Record* 1976, 22017). The chairs of the two panels issued a memorandum of understanding to deal with matters of "joint concern," which "will be promptly made a matter of consultation and resolution" (*Congressional Record* 1976, 22017). Signed by the chair of the Armed Services Committee, which lost the most to the new Senate Intelligence Committee, the memorandum cited Senate Resolution 400 and thus affirmed the committee's legitimacy and institutional integrity.

The Senate Intelligence Committee's institutional integrity and stability were further enhanced when, in early 1977, the Senate realigned its committee jurisdictions but left the Intelligence panel undisturbed (*Congressional Record* 1977, 3692, 3694). The Stevenson Committee, which had initially studied committee realignment, was skeptical about the continuing need for a permanent committee to oversee intelligence activities (U.S. Congress, Stevenson Committee 1976, 96). But the Senate Rules Committee, which reported the committee reorganization proposal to the Senate floor, was headed by Howard Cannon, who had played a key role in the creation of the Intelligence panel. Thus, the Rules Committee urged that the Intelligence Committee "should be able to carry out its important work without any question as to its future" (U.S. Congress, Senate Committee on Rules 1977, 5).

Establishment of the House Intelligence Committee (1977)

More than a year after the Senate had acted to establish its new Intelligence panel, the House created its own version in House Resolution 658: the Permanent Select Committee on Intelligence. *Permanent* confirms the panel's status; unlike its Senate counterpart, the House committee is a permanent body under the rules of the chamber (House Rule XLVII).

On 14 July 1977 by a vote of 227 to 171, the House established the new panel, which is similar but not identical to the Senate Select Intelligence Committee (*Congressional Record* 1977, 22932–34). The two committees were granted almost identical jurisdiction and authority—exclusive control over authorizations and legislation affecting the CIA and Director of Central Intelligence (DCI) and consolidated jurisdiction over the remainder of the intelligence community. The House panel, however, differed from its counterpart in its size, partisan composition, leadership structure, number of seats reserved for other committees, and authority to disclose classified information.

Disputes and Their Resolution The creation of an independent oversight panel occasioned more conflict in the House than in the Senate. This is reflected in the delay in creating a House committee, the restrictions placed on it, the closed process governing the debate and vote, and the narrower margin of victory. Only 57 percent of the voting representatives agreed to the resolution, compared to 75 percent of voting senators. A distinctive set

of conditions—alliances, forces, and strategies—surrounded the House panel's creation.

More than a year had passed since the Senate launched its effort, allowing the controversy and acrimony surrounding the Pike Committee to subside. In part to alleviate concerns raised by the Pike Committee's experience, however, the new House panel was given less authority and less autonomy than its Senate counterpart. Intelligence agencies, for instance, were not directed to keep the committee fully and currently informed. More importantly, the House Intelligence Committee was prohibited from disclosing classified information on its own; this power was reserved for the full House and then only under elaborate procedures, including referral to the president and a vote of the chamber. Suspected leaks of classified information from the House Intelligence Committee were also required to be investigated by the Ethics Committee.

Further, House Resolution 658 qualified the requirement that the Intelligence Committee "shall" make any information available to other members or committees and permit any member to attend its closed hearings. The new committee was ordered to prescribe regulations governing the availability and accessibility of information in its custody and was directed to keep a written record of what information was made available and to whom. Both supporters and opponents of this provision recognized that it could restrict and even prohibit access by other representatives to the committee's information. Such restraints were contrary to House Rule XI: committee "records are the property of the House and all Members of the House shall have access thereto. . . ." However, the procedures were viewed as necessary to prevent unauthorized disclosures and to secure cooperation from the intelligence community. Rules Committee Chair Richard Bolling (D-Mo.), floor manager for the resolution, admitted that members could be denied access: "It is not, in my judgment, sensible for the House of Representatives to say that election to Congress automatically gives any member the right to see the most secret matters in the security establishment" (*Congressional Record* 1977, 22936). Liberal critics of the intelligence community vehemently disagreed. Representative Ted Weiss (D-N.Y.) stated that "when my constituents elected me . . . they did not expect and I did not expect that I would become a second-class member of Congress, subject to thirteen other members telling me what I could say and what I could read and what I could talk about" (*Congressional Record* 1977, 22946). Representative Robert Giaimo (D-Conn.), a member of the Pike Committee, viewed the provision as a step backward because it allowed the new panel to write rules that "are going to limit and infringe on those rights which we now have" (*Congressional Record* 1977, 22946).

Another distinguishing characteristic of the House Intelligence Committee was its partisan composition compared to the more bipartisan Senate panel. This brought intense criticism from the Republican minority. The nine-to-four majority-minority ratio was the same for other House committees with the authority to report authorization bills to the floor in the Ninety-fifth Congress (when House Democrats held a better than two-to-one advantage in the number of seats). Republicans urged a bipartisan composition of the House panel because of the sensitive nature of intelligence activities, the need to gain cooperation and acceptance from a wary executive, and the perceived advantages for consensus building and continuity in national security policy.

Moreover, the House's delay in establishing the new panel worked to its advantage; by 1977 split-party government was no longer an obstacle. In that year Democrat Jimmy Carter, a proponent of reform of the intelligence community, became president, and Thomas P. "Tip" O'Neill (D-Mass.) became Speaker of the House. O'Neill was a more accomplished leader than his predecessor and his accession opened the majority leader position to Jim Wright (D-Tex.) (see Davidson and Oleszek 1990, 163). To some, the new team recalled (in reverse order) the post–World War II "Austin-Boston" connection when Sam Rayburn (D-Tex.) was Speaker and John McCormack (D.-Mass.) was majority leader.

The alliance between the Democratic president and House was made clear during the debate on the Intelligence Committee when Wright stated bluntly that "it [the committee] was requested by the president of the United States" (*Congressional Record* 1977, 22936). Rules Committee Chair Bolling added that "not only is the Democratic leadership in support of the resolution but it also has the approval of the president"; indeed, the Intelligence panel was expected to be "a committee run, in effect, by the leadership" (*Congressional Record* 1977, 22934). To help accomplish this goal, the Rules Committee reported House Resolution 658 under a closed rule, which limited debate and prohibited amendments from the floor.

The proposed House Intelligence Committee thus relied on strong Democratic leadership and partisan appeals to the party's overwhelming majority. This majority proved significant because a number of liberal Democrats defected (they suspected that the new panel would become isolated and co-opted by the intelligence community and that critical overseers like themselves would be closed out of the oversight process).

Evolution of the House Intelligence Committee

Most current features of the House Intelligence Committee have remained in place since its inception in 1977. In part the committee's stability can be credited to its first chair, Edward Boland (D-Mass.), who led it for nearly eight years. A senior member of the Appropriations Committee, Boland was a longtime friend of Speaker O'Neill and a trusted ally of the leadership.

The only significant changes in the committee have been in its size and party ratio, from thirteen seats (9-4) to nineteen seats (12-7). The number of members was increased on four separate occasions, thereby altering interparty ratios. These increases occurred in response to demands for mem-

bership on the Intelligence Committee, reflecting its heightened prestige, and for increased minority party representation.

In addition, a 1989 amendment to the House rules gave the Speaker direct access to any information held by the Intelligence Committee (*Congressional Record* 1989, H8575–80). This change arose in the aftermath of an alleged leak or inadvertent disclosure of classified information from the committee by then-Speaker Jim Wright (Koh 1990, 61). The Speaker was not granted any special status under House Resolution 658 but had access to committee information by custom and practice. Among the leadership positions, only the majority and minority leaders, not the Speaker, are *ex officio* members of the Intelligence Committee. The Speaker, however, has an interest in and a need for direct access. The Speaker appoints committee members and, under the 1980 Intelligence Oversight Act, is one of the so-called "gang of eight"—the bipartisan leaders of the House, Senate, and the two Intelligence committees—who receive reports of covert operations when they are not made to the full Intelligence panels.

THE HOUSE AND SENATE INTELLIGENCE COMMITTEES: A COMPARISON

The Senate and House Select Committees on Intelligence, although named *Select*, are actually hybrids of contemporary select and standing committees. Like other select committees, the Intelligence panels lack exclusive control over much of their jurisdictions, instead sharing it with authorizing committees not dealing with the military, foreign policy, and judiciary. Also like other select committees, the Intelligence committees' membership is temporary, resulting in a high degree of turnover. Membership is also nonexclusive, with positions earmarked for members from standing committees with overlapping jurisdiction.

In other respects, however, the Intelligence committees are identical to standing committees. They have relative permanency, broad and stable jurisdictions, and, most critically, the authority to report authorizing and funding bills directly to the floor of their respective chamber. They hold this exclusively for the CIA and DCI, the key components of the intelligence community.

Despite their similarities, the House and Senate Intelligence committees diverge in important respects. Table 14-1 outlines some of the differences between the two committees' membership size, composition, leadership structure, and other characteristics. In particular, because the Senate is a much smaller body than the House is, a larger proportion of senators serves on the Senate Intelligence committee (15 percent) than do representatives on the House Intelligence panel (4 percent). As a result, a substantially larger number (and percentage) of representatives are on the outside looking in; for this and other reasons, the House Intelligence Committee has adopted

Table 14-1 / Characteristics of the House and Senate Select Committees on Intelligence

Characteristic	*House*	*Senate*
Total number of voting members	Nineteen (an increase over the original thirteen)	Fifteen (same as the original complement)
Number of *ex officio* members	Two (majority and minority leaders)	Two (majority and minority leaders)
Party ratio of voting members	Twelve majority: seven minority (changed)	Eight majority: seven minority (fixed)
Other committees represented	At least one member from each of four committees: Appropriations, Armed Services, Foreign Affairs, and Judiciary	Two members (one majority and one minority party) from each of four committees: Appropriations, Armed Services, Foreign Relations, and Judiciary
Number of at-large members	No provision	Seven selected at large (four majority and three minority party)
Length of term	Six years of continuous service with staggered rotation	Eight years of continuous service with staggered rotation
Leadership structure	Standard (majority party chairman, when absent, is replaced by the next ranking majority party member)	Chairman/vice chairman (majority party chairman, when absent, is replaced by the minority party vice chairman)

Sources: H. Res. 658, 95th Congress, 1st Session (1977), codified as Rule XLVIII; and S. Res. 400, 94th Congress, 2d Session (1976), as amended through the 101st Congress.

more elaborate and exacting rules governing access to its holdings (Kaiser 1988b, 70).

Institutionwide representation on the Intelligence committees is broader in the Senate than in the House. Not only is the Senate a smaller body, but also it guarantees the four committees that share jurisdiction two seats each (a majority and a minority member) on the Senate committee, compared to only one seat apiece on the House panel. In addition, nearly half of the Senate seats are reserved for at-large members, whereas the House has no comparable requirement. Thus the Senate Intelligence Committee, which

operates in a smaller chamber and more collegial atmosphere than does the House panel, enjoys greater deference in the full chamber and among other committees for its policy stands and its internal activities.

In addition, the Senate Intelligence Committee has bipartisanship built into its organization. This has been achieved through several arrangements unique to a single-chamber panel empowered to report substantive legislation and authorizations for executive programs. A nearly even party ratio generally gives disproportionate weight to the minority on the Senate Committee unless, of course, the parties are evenly divided (or nearly so) in the full chamber. Both the majority and minority parties, moreover, are represented equally among the members assigned from the four standing committees with shared jurisdiction. Finally, the Senate Committee vice chair—"who shall act in the place and stead of the chairman in the absence of the chairman"—must be a member of the minority party (S. Res. 400, sec. 2c, Ninety-fourth Congress).

In contrast, the House Intelligence Committee's leadership structure follows the standard practice of the chair being replaced by the next ranking majority party member. And there is no provision for both a majority and minority party member from each of the four represented committees, in part because there are fewer minority seats overall. Changing party strengths in the chamber have improved the minority's proportion of the House Committee membership, from about 31 percent in the Ninety-fifth Congress to about 37 percent in the 101st Congress. But the ratio still gives a slightly disproportionate weight to the majority.

The two committees' degree of partisanship is shaped by other chamber and membership characteristics, including less partisanship, weaker party leadership controls, and greater institutional loyalty (in defense of congressional prerogatives in foreign policy) in the Senate than in the House. The effects of the different structures are manifold and important. For instance, the Senate Committee's reports on proposed legislation or oversight findings are not just bipartisan, they are usually unanimous as well. By contrast, the House Committee's reports are often split along party lines, sometimes signed only by the majority or with dissenting minority views appended.

The Senate's bipartisan structure and resulting internal committee agreement enhance its influence with other committees to which its bills are referred, on the floor, and with the executive. The Senate Committee, for example, had a greater impact than the House Committee did in the development of the executive orders on intelligence issued by presidents Carter and Reagan. The bipartisan structure of the Senate panel also allows it to exert more independence from the executive branch on legislation, especially during divided or split-party government. Bipartisanship and the resulting unanimity give credibility to the Senate panel's views and make it impossible for the executive branch to cast those views in a partisan light. The Senate Committee took the lead, for instance, on Iran-contra reform legislation (to

create a statutory Inspector General for the CIA and to modify covert action notice requirements).

Term limits—six years of continuous service on the House Committee and eight on the Senate—also play a role in committee behavior and influence. Overall, high turnover for chairs has been the rule—each panel has had five chairs since its establishment. But the differences between them—and the disadvantages for the House Intelligence Committee leadership—are evident when we consider that the Senate has changed party control twice, helping to account for the new chairs. Recently, the shorter-term limit has dramatically affected the House Committee. After 1985 there were four new House chairs over four Congresses (99th–102d); one, Anthony C. Beilenson, D-Calif., had to have his term extended to serve for the full two-year Congress. Proposals to lengthen the term of all House committee members to eight years, however, failed at the end of the 101st Congress.

In addition to its impact on continuity in leadership positions, the shorter-term limit affects individual members. Representatives cannot develop as much experience or as many contacts as senators can, and the internal committee coalitions on the House side undergo more frequent alterations than on the Senate side. Thus the advantages that representatives normally have over senators—through their greater ability to build expertise and alliances in a certain field (because they have fewer committee assignments)—are neutralized when the field is shortened by a term limit in general and, especially, by a limit that is shorter than senators'.

Further, term limits benefit the party leadership, which selects the committee members. By comparison with the Senate, House leaders have more selections available to them because vacancies occur more frequently. House leaders also have greater discretion in making those choices for two reasons: there are no requirements for at-large selections and there is only one seat reserved for each of four standing committees.

INTELLIGENCE COMMITTEE ACTIVITIES AND INFLUENCE

The work of the House and Senate Intelligence committees, despite their specialized jurisdiction, runs the gamut of committee functions and responsibilities. Much of their effort, though, is involved directly or indirectly with oversight; that is, the review, monitoring, and supervision of executive agencies and their activities (Ogul 1976, 11; Johnson 1980, 478; and Kaiser 1988a, 80–81). Oversight takes place in special investigations as well as in regular meetings (such as meetings designed to review executive reports on covert operations). Oversight also occurs in other contexts and activities, including work on budget authorizations, legislative initiatives, and, in the case of the Senate, presidential nominations and proposed treaties.

Effective Jurisdiction

The efforts and activities of the House and Senate Intelligence committees reveal changes in their power and effective jurisdiction. Change is not only dependent on the official list of agencies or units in each committee's domain, which remains relatively constant; it is also dependent on the size, scope, and range of intelligence activities, operations, and capabilities as well as their impact on various policy areas. These have grown in the recent past, in part because of a substantial increase in national security spending during the 1980s. This, together with their authorizing power, in turn, added to the prestige and importance of the Intelligence committees. In light of the estimated annual intelligence community budget of about $30 billion, for instance, the Senate Intelligence Committee can no longer be viewed as the poor version of the Foreign Relations Committee, as it was in 1976. The effective range of both committees' influence has also increased as foreign intelligence ventured into new fields like counternarcotics.

The escalation of covert operations during the Reagan years augmented the importance of the committees; they became the focal point for opponents in some cases (for example, Angola and Nicaragua) and for proponents in others (Afghanistan). Yet the heightened significance of covert action has been a two-edged sword for the committees. Public exposure of certain controversies, most notably those involving Angola and Nicaragua, expanded the scope of conflict inside and outside of Congress. These issues thus slipped away from the Intelligence committees and into different arenas—Appropriations, other authorizing committees (especially House Foreign Affairs and Senate Foreign Relations), the full chambers and the floor amendment process, and temporary investigative committees (as in the Iran-contra affair) (see Smist 1990, 252–81; and Koh 1990).

Secrecy

A built-in power base for the Intelligence committees is the extraordinarily high degree of secrecy under which they operate. Both panels control access to classified information in their custody. The control over access by other members and committees, unmatched by any other panel, allows the Intelligence committees to determine the debate over issues in its jurisdiction. Moreover, when information is made available by the committees, the recipients must abide by certain guidelines concerning its use, which clearly infringes on other committees' autonomy (Kaiser 1988b, 49–50, 66–68).

Authority

Authorizing the Intelligence Budget The power to authorize the consolidated intelligence community budget was given to both Intelligence committees. The authority was seen as crucial for Congress to exert controls

over the agencies and their activities. Recently, the Intelligence committees have used the authorization act, the accompanying report, and hearings on it to prod the intelligence agencies away from their primary focus of the past four decades—countering the Soviet threat—into other priorities—economic intelligence and counternarcotics efforts (U.S. Congress, House Intelligence Committee 1990, 2–3). Such a change in direction expands the Intelligence committees' effective jurisdiction into new policy areas.

The authorizing power is also used to affect specific policies and programs, again enlarging the Intelligence committees' range of influence. The Senate Intelligence Committee, for instance, played a role in the 1988 strategic arms reduction talks (START) because of its support for new surveillance satellites to monitor Soviet compliance with treaties that might emerge. President Reagan reportedly endorsed the satellite package when the committee chair and other senators threatened to oppose the United States–Soviet treaty banning intermediate-range nuclear missiles (*Congressional Quarterly Weekly* 1989, 2129). The Bush administration, which sought to reduce spending for the new satellites, initially retained the satellite package because of the same pressure. In the meantime, House Appropriations members questioned the cost benefit of the expensive satellite program, especially in light of the growing deficit when Bush entered office. (Funding was later cut, in 1990, because of changes in the Soviet Union and the reduced threat from it and Warsaw Pact nations.) This episode presents an intriguing example of the sometimes convoluted way bipartisanship and continuity in public policy are put into effect. Here, the Democratic-led Senate Intelligence Committee came to an agreement with one Republican administration, which the successor Republican administration wanted to abort but instead was forced to adopt (at least temporarily). The effort, moreover, put the Democratic-led Senate Intelligence Committee at odds with the Democratic House Appropriations panel, which, in effect, sided with the new Republican administration against the old one.

The Intelligence committees are linked to other panels in their chamber by shared jurisdiction over authorizations and other legislation for most of the intelligence agencies. This means that most of their bills are referred to other panels (Davidson 1989, 383; and Davidson, Oleszek, and Kephart 1988, 10–11). A recent study of House committees found that the Intelligence Committee was "champion" among them, with 77 percent of its bills referred to other panels (Davidson, Oleszek, and Kephart 1988, 10–11, 26). The multiple-referral process, which came into being in 1975, shortly before the House Intelligence Committee was established, provides yet another avenue for influence by the Speaker and Rules Committee.

Generic Legislation in Authorizing Bills In addition to its immediate purpose of funding the intelligence community, the authorization bill is used as a vehicle for generic legislation that sets broad guidelines on intelligence activities, establishes offices, and enhances congressional oversight power.

For instance, the annual authorization act—rather than separate legislation—was used in 1980 to establish new reporting requirements. It was also used in 1989, this time to erect a statutory office of inspector general in the CIA; in fact, this bill was recommitted to the Senate Intelligence panel (the first time this had occurred) so that the inspector general provision could be attached to it. Separate legislation for such broad institutional and procedural changes would have exposed the legislation to the prospect of being amended or defeated on the floor and being vetoed by the president. In contrast, an authorization bill can be an exercise in logrolling, in that it contains a variety of provisions that together help to build a majority coalition in support of the entire package. It also reduces the likelihood of a veto based on objections to a particular section, since this would jeopardize other provisions that the White House and intelligence agencies favor. The strategy did not work in 1990, however, when an intelligence authorization bill was vetoed, for the first time, because of the president's objections to new reporting requirements (Bush 1990).

Leverage through the Authorization Power The Intelligence committees are intended to have leverage over the agencies under their jurisdiction. The agencies and their officials are more prone to comply with requests for information and pay attention to directives or proposals from the committees (in reports and at meetings and hearings) when the committees hold the purse strings. Bobby Inman, former Director of the National Security Agency and former deputy DCI, referred to the tangible incentive to complying with congressional demands and even "onerous constraints" when he recognized that "some measure of oversight is absolutely essential for ongoing public support and flow of dollars" (1987, 2). This leverage was used in 1983 by the Senate Intelligence Committee to force the Reagan administration to scale back and clarify its covert action program in Nicaragua (*Congressional Record* 1983, 30620–21).

Oversight Authority and Reporting Requirements Since their creation, the House and Senate Intelligence committees have received new oversight authority on several occasions and at the expense of other committees. The Intelligence panels were made the exclusive recipients of new or expanded executive reporting in three areas: domestic surveillance for foreign intelligence purposes, intelligence activities including covert operations, and audits and investigations conducted by the inspector general at the CIA.

In 1978 the Foreign Intelligence Surveillance Act (P.L. 95-511) was passed to establish guidelines and controls over domestic electronic surveillance, usually conducted by the FBI, for foreign intelligence purposes. The follow-up reports of the Attorney General are sent exclusively to the House and Senate Intelligence committees. However, had this legislation been enacted before the Intelligence committees were created, the reports would have gone to the Judiciary committees.

In late 1980, at the end of the Carter administration, the Hughes-Ryan amendment was itself amended. The 1980 Intelligence Oversight Act (P.L. 96-450) imposed new reporting obligations on the executive branch, expanding the scope, volume, and timeliness of information about intelligence activities including covert operations. The act directed intelligence agencies to keep both Select Committees on Intelligence "fully and currently informed of all intelligence activities . . . including any significant anticipated intelligence activity" (a reference to advance notice for covert operations). An exception is granted only when "the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting the vital interests of the United States." Even then, notice is to be given to eight leaders in Congress, the so-called "gang of eight"—the Speaker and minority leader in the House, the majority and minority leaders in the Senate, and the chairs and ranking minority members on the House and Senate Intelligence committees. If prior notice is not given to the Intelligence committees, the president should notify them "in a timely fashion" of the reasons for same. The 1980 act also requires the agencies "to furnish any information or material concerning intelligence . . . which is requested by either of the Intelligence committees." These provisions were violated during Iran-contra, when neither the Intelligence committees nor the "gang of eight" were notified.

The advance-notice provision was designed to correct a defect in the Hughes-Ryan amendment, which called for notice about CIA covert operations only "in a timely fashion." This was part of a *quid pro quo* between Congress, which wanted advance notice, and the executive branch, which sought a reduction in the number of committees receiving the reports. The eight committees under the Hughes-Ryan amendment were reduced to the two Intelligence committees. The consolidation benefited the Intelligence panels at the expense of the six other former recipients—the House and Senate standing committees on appropriations, armed services, and foreign policy.

Attempts to clarify and tighten the reporting provisions in law since the Iran-contra affair (through the 101st Congress) have been surrounded by conflict between the branches. A veto was threatened by President Bush against a specific-time notice requirement and delivered against new procedural and informational requirements (Bush 1990).

Reports from the Inspector General (IG) at the CIA were affected in 1988 and again in 1989, when a statutory IG office was created there. In 1988 Congress called for semiannual reports from the administrative IG office (P.L. 100-453). Continuing controversy and conflict over the reports, especially which ones Congress could request, resulted in a more far-reaching change the next year. Based in part on a recommendation from the Iran-contra committees (1987, 425), and over the objections of the agency, Congress in 1989 established a statutory office of Inspector General at the CIA. The IG is required to submit (1) semiannual reports and (2) special reports

about issues particularly serious and flagrant to the DCI, who must transmit them, along with any comments deemed appropriate, to the Intelligence committees within thirty days and seven days, respectively. The IG is also to report directly to the Intelligence committees when encountering any serious problems in carrying out statutory duties or when the director is the subject of an investigation.

Confirmation The Senate's power to confirm presidential nominations has been important to its Intelligence Committee. Two presidents—Carter and Reagan—submitted a total of five DCI nominations to the Senate Select Committee since its establishment in 1976. Three were confirmed, but two were withdrawn because of Senate objections.

Confirmation approval, of course, is no guarantee of continued confidence. The Senate Intelligence Committee, for instance, conducted an investigation of DCI William Casey only six months after he was confirmed. The panel examined his activities as director, his hiring of an inexperienced acquaintance as director of operations, and his financial dealings. Although Casey was not forced to resign, the committee's conclusion—that "no basis has been found for concluding that Mr. Casey is unfit to hold office"—was hardly a ringing endorsement (U.S. Congress, Senate Intelligence Committee 1983, 29).

IRAN-CONTRA AFFAIR

The greatest threat to the House and Senate Intelligence committees' stability and survival was the Iran-contra affair—the secret sale of arms to Iran and the illegal diversion of profits to the contras in Nicaragua in 1985–86 (Iran-Contra Committees 1987, 11–22; Smist 1990, 258–67). The House and Senate Intelligence committees looked into the matter through specialized investigations, confirmation proceedings (for a DCI nomination), and hearings on corrective legislation.

Yet the House and Senate committees' efforts were not enough. As the vice chair of the Senate Intelligence Committee recognized, "when the relationship between [the CIA and] the Oversight Committee breaks down by virtue of the non-notification such as it did here, then it breaks the credibility of this committee. . . . Every other committee now wants to investigate the Central Intelligence Agency and related activities" (U.S. Congress, Senate Intelligence Committee 1987, 101). Indeed, the centerpieces of the Iran-contra investigation did not exist in the Intelligence committees but in specially created investigative panels (though there was a significant overlap of members, including some former and current chairs). Following the 1975 precedent of the Pike and Church committees, each chamber set up a new select committee to look into the Iran-contra charges.

Unlike the earlier episode, though, no permanent change in congressional organization resulted from the Iran-contra investigations. The Intelligence committees remained intact, indicating how institutionalized they had become. In addition, the findings of the Iran-contra panels pointed to a set of underlying problems quite different from the earlier intelligence agency abuses. In the earlier episode, Congress found its own oversight efforts deficient and its oversight structure defective. In the Iran-contra affair, however, Congress was not at fault; rather, the Intelligence committees (along with executive officials) had been deceived by the project operators and the established reporting requirements had been evaded. Consequently, the recommendations from the Iran-contra committees for congressional oversight of intelligence were modest, calling for improved audit capabilities and examination of sole-source contracting for possible abuse. The bipartisan majority also explicitly rejected the minority's recommendation to create a joint committee on intelligence, concluding that it "would inevitably erode Congress' ability to perform its oversight function in connection with intelligence and covert operations" (Iran-Contra Committees 1987, 427).

CONCLUSION

In the mid-1970s Congress took the road less traveled, one that made all the difference for increasing legislative oversight and controls over the intelligence community. Congress changed both its direction and approach. It rejected the minimal and often protective relationship between the agencies and their traditional overseers, and it replaced an isolated, fragmented system with a consolidated approach and a new perspective. These changes led to permanent Senate and House Select Committees on Intelligence. The committees became integral parts of each chamber during the postreform era, surviving the Iran-contra affair, which harmed their credibility, and its aftermath, which included proposals to replace them with a joint committee. The Intelligence committees have prospered since their creation, gaining power at the expense of other authorizing committees (as with the 1980 Intelligence Oversight Act).

Today the Intelligence committees are heirs to long-standing tendencies as well as beneficiaries of more recent developments in the postreform era. Most important among these is executive-legislative conflict, which grew out of the Vietnam War and Watergate scandal and then expanded as a result of the disclosure of intelligence agency abuses in 1975. Congressional investigations laid the groundwork for new organizations, authority, and structures to review, monitor, supervise, and check executive action. And underlying this were increased congressional independence and assertiveness reinforced by developments in the postreform era. Yet these developments occurred not only in intelligence but also in other national defense and foreign affairs matters, including war powers, human rights requirements in foreign assistance programs, use of the military in drug-interdiction ef-

forts, restrictions on foreign arms sales, Defense Department reorganization, and new institutional controls over defense procurement and departmental operations (Crabb and Holt 1989; Franck and Weisband 1979).

The major tendencies of the postreform era were evident in the Intelligence committees at the time they were established (particularly the House panel). The committees' key characteristics, except for the House committee's size and interparty ratio, have remained constant ever since. However, there are important differences between the two panels, particularly in terms of their influence and orientation. Whereas the Senate Intelligence Committee has a bipartisan structure (unusual for a bill-reporting committee in either chamber), restrictive selection criteria (such as required at-large seats), and a comparatively large size, the House Intelligence Committee has a partisan structure similar to other authorizing panels in its chamber, few selection criteria, and a comparatively small size. These committee features were largely determined by the markedly different interbranch, chamber, and leadership characteristics that existed at the time each committee was created, even though only one year apart.

Moreover, the differences between the House and Senate Intelligence committees were reinforced by intervening political developments, especially the truncated party government during the first six years of the Reagan administration (1981–87), when the House was the only democratically controlled institution. And the differences were intensified by partisan and chamber characteristics that separated House Republicans—who represented a seemingly perpetual (and often frustrated) minority—from Senate Republicans—who were less partisan and more institutionally loyal in national security matters.

Strengthened party leadership, especially in the House, continues to exert itself on the Intelligence committees. The Speaker's powers, on the ascendancy in the postreform era, include the appointment of committee members with few constraints on the selections, which are made regularly and frequently because of the six-year term limit. The Speaker is also a member of the "gang of eight" and has direct access to the classified holdings of the Intelligence Committee (initially by practice and later by a change in House rules). Finally, most of the House committee's bills—77 percent, more than any other panel's—are multiple-referred ones, giving added discretionary power to the Speaker and Rules Committee. Implied in the strengthened party and institutionwide leadership is weakened committee leadership. Because of the term limits, for instance, the turnover of the chairs for both committees is high, especially on the House panel.

The House and Senate Intelligence committees illustrate two important shifts in congressional work load and activities—from lawmaking to oversight, a long-term and institutionwide trend (Aberbach 1990, 34–46), and from the passage of new programs to the fine-tuning of existing ones.

PART · VI

Conclusion

APPENDIX 9

A *Consumer's Guide* to INTELLIGENCE

This handbook was prepared by the Office of Public and Agency Information. Comments and queries are welcome and may be directed to the Director of Public and Agency Information on (703) 482-7778. Additional copies may be obtained by calling (703) 351-2053.

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A Consumer's Guide to Intelligence

Introduction

Reduced to its simplest terms, intelligence is knowledge and foreknowledge of the world around us—the prelude to decision and action by US policymakers. Intelligence organizations provide this information in a fashion that helps consumers, either civilian leaders or military commanders, to consider alternative options and outcomes. The intelligence process involves the painstaking—generally tedious—collection of facts, their analysis, quick and clear evaluations, production of intelligence assessments, and their timely dissemination to consumers. Above all, the analytical process must be rigorous, timely, and relevant to policy needs and concerns.

The Intelligence Community (IC) is composed of 13 intelligence agencies, including those in the Departments of Defense, Justice, Treasury, Energy, and State, and the Central Intelligence Agency. A full description of the Community may be found in section V.

The IC deals with both classified and unclassified information on foreign developments. Its analysts take raw data and produce finished intelligence by analyzing, evaluating, interpreting, and integrating the various pieces of information. The IC offers the intelligence consumer a broad range of products through a variety of media:

- Daily publications and bulletins or briefings about current developments.
- Biographic reports and psychological studies.
- Assessments, briefs, and memorandums on specific subjects.
- Technical analyses of weapons and weapon systems.
- Formal estimates that take more in-depth looks at specific international situations.
- Daily video reports.
- Comprehensive research studies.
- Serial publications and situation reports addressing specialized topics, key countries, or important policy issues.

Some of the best information used in various intelligence products comes from sensitive sources. To protect these sources—whether human or technical—and to ensure the continued availability of the information to the United States, most intelligence is classified and carefully controlled on a "need-to-know" basis.

Section I

The Intelligence Process

The process of creating reliable, accurate foreign intelligence is dynamic and never-ending. The intelligence process or cycle begins with questions—the answers to which inevitably lead to more questions. So, essentially, there is no start and no finish.

Through planning and direction by both collection and production managers, the process converts acquired information into intelligence and makes it available to policymakers and consumers. A number of steps are involved:

- ***Needs***. Statements of the intelligence requirements of the policymakers—the President, the National Security Council (NSC), and other officials in major departments and government agencies.

- ***Collection***. The gathering of raw data from which finished intelligence is produced.

- ***Processing and Exploitation***. Conversion of large amounts of data entering the system to a form more suitable for the production of finished intelligence: includes translations, decryption, and interpretation of information stored on film and magnetic media through the use of highly refined photographic and electronic processes.

- ***Analysis and Production***. The integration, evaluation, and analysis of all available data and the preparation of a variety of intelligence products, both timely single-source, event-oriented reports, and longer term finished intelligence studies.

- ***Dissemination***. Getting the products to the consumer whose needs and requests initiated the process. It also involves distribution to other consumers both inside and outside the IC, while keeping in mind the need to reduce the amount of paper that we send to senior policymakers.

- ***Feedback***. An indispensable step if intelligence is to be truly dynamic and effective. It permits consumers of finished intelligence to interact with the producers, thereby helping intelligence managers evaluate the effectiveness of IC support, identify intelligence gaps, and focus more precisely on consumer needs. Feedback can take many forms and channels. It may be direct or through liaison contacts and consumer surveys.

Needs

The intelligence process begins when consumers outside the IC express their needs for intelligence information to accomplish their missions. Both the executive and legislative branches of the Federal Government are fervent consumers of intelligence. Ascertaining their needs is the first step in the needs process.

A new national process that seeks to achieve higher levels of integration and efficiency across the IC is now being implemented. The process is intended to enhance flexibility and responsiveness to changing demands in an era of dynamic shifts in world affairs and in a period of relative budget austerity. In addition to gathering and updating consumer needs, the other phases of the process include translating them into a set of national intelligence needs grouped into broad issue areas (that are in turn expanded into prioritized topics and subtopics), developing all-source strategies against each of the major issues, and implementing the strategies.

The new process is administered and coordinated by the Community Management Staff (CMS), under the auspices of the Executive Director for Intelligence Community Affairs and the Intelligence Community Executive Committee. This central authority draws on all elements of the IC for the implementation and management of the process.

Collection

There are four categories of intelligence sources, also known as collection disciplines:

1. ***Signals intelligence***, also known as SIGINT, includes information derived from intercepted communications, radar, and telemetry. The National Security Agency (NSA) is responsible for collecting, processing, and reporting communications intelligence (COMINT), electronic intelligence (ELINT), and foreign instrumentation signals intelligence (FISINT). The National SIGINT Committee within NSA advises the Director, NSA, and the DCI on SIGINT policy issues and manages the SIGINT requirements system.

2. ***Imagery***, referred to as IMINT, includes both overhead and ground imagery. The Central Imagery Office (CIO) is the focal point of all imagery activities within the government as well as across all aspects of imagery. These aspects include requirements, collection, processing, exploitation, dissemination, archiving, and retrieval. In addition, commercial SPOT/LANDSAT imagery is available to support Community analysis.

3. ***Measurement and signature intelligence (MASINT)*** is technically derived intelligence data other than imagery and SIGINT. The data result in intelligence that locates, identifies, or describes distinctive characteristics of targets.

4. ***Human source intelligence (HUMINT)*** involves clandestine and overt collection techniques used mainly by CIA and the Departments of State and Defense. The National HUMINT Requirements Tasking Center is responsible for providing guidance for HUMINT activities, which are reflected in the National HUMINT Collection Directive (NHCD). The following are some of the principal types of collection associated with HUMINT:

- Acquisition *of open-source data* from foreign media, including radio, TV, films, newspapers, journals, and books.
- *Clandestine source acquisition* of information and other data (including photography, documents, and other material) of intelligence value.
- *Data collection* by civilian and military personnel assigned to US diplomatic and consular posts.
- *Debriefing of foreign nationals* and US citizens who travel abroad or have access to foreign information.
- *Official contacts with foreign governments*, including liaison with their intelligence and security services.

Processing and Exploitation

A substantial portion of US intelligence resources is devoted to processing and exploitation—the synthesis of raw data into a form usable by the intelligence analyst or other consumers—and to the secure telecommunications networks that carry these data. Exploiting imagery; decoding messages and translating broadcasts; reducing telemetry to meaningful numbers; preparing information for computer processing, storage, and retrieval; placing human-source reports into a form and context to make them more comprehensible—these are all "processing," and all collection agencies in the IC engage in it to a significant degree. Two of the major processors of information derived from technical collection are NSA and the National Photographic Interpretation Center (NPIC). NSA is a separate agency within the Department of Defense (DOD); NPIC provides imagery exploitation support for the IC. It is a component within the Directorate of Science and Technology at CIA.

Analysis and Production

Most intelligence organizations have a body of analysts, each assigned to a particular geographic or functional specialty—broad or narrow. The collection, forwarding, and processing systems are designed to bring to the analysts information from all sources pertinent to their respective areas of responsibility.

The analyst's job is to absorb incoming information, evaluate it, and produce an assessment of the current state of affairs within an assigned field or substantive area, and then put that assessment into the context of past trends and forecast future trends or outcomes. Analysts are encouraged to include alternative views in their assessments that will help policymakers reach decisions and to look for opportunities to warn about possible developments abroad that could either threaten or provide opportunities for US security and policy interests. The analyst also develops requirements for collection of new information.

In addressing questions about a country's nuclear program, for example, country analysts and functional experts in nuclear technology in CIA, State's Bureau of Intelligence and Research (INR), the Defense Intelligence Agency (DIA), and the Department of Energy (DOE), among others, would be involved in processing information and producing assessments.

During periods of international crisis, such as the disintegration of the former Yugoslavia, or on occasions when intelligence support is critical to high-level negotiations, an interagency task force might be created to address critical intelligence needs. Frequently, the DCI directs that a particular agency serve as executive agent responsible for task-force support. Such a unit has as one of its major tasks the production of periodic situation reports (SITREPS) to be disseminated to appropriate policymakers. It also disseminates other daily intelligence "updates" and products.

Long-range, intractable intelligence problems are addressed by grouping analytic and operational personnel from concerned agencies into closely knit functional units. The DCI Counterterrorist Center, for example, widely disseminates intelligence assessments on terrorist threats to US personnel and facilities. The DCI Nonproliferation Center serves as the focal point for IC proliferation-related analysis and support for the policy, enforcement, licensing, and operations communities.

A great many single-source, event-oriented reports are immediately sent directly to intelligence consumers, often by electronic means. Such information usually is perishable and needs neither comment nor additional context. It may, nonetheless, be evaluated and, where necessary, correlated with other data. The final product of analysis, including the assessment of validity of information and contextual comment from an all-source perspective, is called finished intelligence.

Categories of Finished Intelligence

Five broad categories of finished intelligence are available to the consumer:

1. ***Current intelligence*** essentially addresses day-to-day events, seeking to apprise consumers of new developments and their background, to assess their significance, to warn of their near-term consequences, and to signal potentially dangerous situations in the near future. Current intelligence addresses such issues as military and diplomatic developments in the Balkan crisis, conflict in the Caucasus, peace prospects in the Middle East, and political and other threats to the new government in Moscow. Current intelligence is presented in daily, weekly, and some monthly publications and frequently in ad hoc written memorandums and oral briefings to senior officials.

2. ***Estimative intelligence***, generally in the form of National Intelligence Estimates (NIEs), projects forward. It deals with the unknown (but knowable) as well as the unknowable: Can the Balkan crisis be managed? What are the prospects for democratization and marketization in Russia over the next four years? What are

the prospects for the proliferation of advanced weapons and associated technology from the post-Soviet states? What will the split in Czechoslovakia mean? Will South Africa weather the storm? Estimates may be given orally, but the normal form of presentation is in a document that registers the consensus, as well as the dissents of the Community and likely alternative scenarios. NIEs and their less formal subsets, the National Intelligence Council Memorandums, are produced under the aegis of the National Intelligence Officers (NIOs). NIEs are reviewed and approved by the National Foreign Intelligence Board (NFIB), chaired by the DCI. An Evaluation Staff of the National Intelligence Council (NIC) helps ensure that uncertainties in Estimates are transformed into new collection requirements. In addition, the staff works with the Community Management Staff and the collection organizations to develop new collection approaches designed to meet the information needs of senior policymakers. DIA also produces a series of Defense estimative products, which are coordinated with DOD intelligence agencies.

3. ***Warning intelligence*** sounds an alarm or gives notice or admonishing advice to policymakers. It connotes urgency and implies the potential need for policy action in response. It is a different intelligence function than simply informing policymakers or enhancing their understanding of an issue or development. Warning includes identifying or forecasting events that could cause the engagement of US military forces, or those that would have a sudden and deleterious effect on US foreign policy concerns, (for example, coups, third-party wars, refugee situations). The NIO for Warning serves as the DCI's and the IC's principal adviser on warning. He chairs the Warning Committee and produces a weekly warning report. The NIO for Warning also produces special warning memorandums when warranted. All agencies and intelligence staffs have designated warning components, and some have specific warning responsibilities:

- NSA maintains the worldwide CRITIC system for the simultaneous alerting of US officials within minutes of situations that may affect US security.
- DIA is responsible for keeping US commands around the world apprised of the latest threat status and prepares and disseminates periodic warning reports and notices of Watch Condition (WATCHCON) changes.

4. ***Research intelligence*** is presented in monographs and in-depth studies from virtually all agencies. Research underpins both current and estimative intelligence and grapples with such questions and issues as: Can Yel'tsin retain effective control? What is the potential for additional conflict in the Middle East? What are the ramifications of instability in the Balkans? There are also two specialized subcategories of research intelligence:

- ***Basic intelligence*** consists primarily of the structured compilation of geographic, demographic, social, military, and political data on foreign countries. This material is presented to the consumer in the form of maps, atlases, force summaries, handbooks, and, on occasion, sandtable models of terrain. The Directorate of Intelligence in CIA and the National Military Intelligence Production Center in DIA are major producers of material of this kind.

- ***Intelligence for operational support*** is another subcategory of research. CIA has established the Office of Military Affairs to ensure that the Agency is regularly informed of military needs for intelligence support to supplement the capabilities of the Department of Defense. Increased national-level policy interest in low-intensity conflict issues (LICs) has resulted in a significantly expanded role for the Community—particularly for DIA and NSA—in terms of intelligence for operational support. The full range of tactical intelligence support to operational forces—including target and terrain analysis and routes of entry and escape—has been provided from national-level and single-source intelligence directly to forces engaged in counterterrorism, counterinsurgency, narcotics interdiction, and other military operations in the Third World. This support involves tailored, focused, and rapidly produced intelligence for planners and operators. The DCI Counternarcotics, Nonproliferation, and Counterterrorist Centers all play leading roles in these efforts.

5. ***Scientific and technical intelligence*** includes information on technical developments and characteristics, performance, and capabilities of foreign systems or subsystems. Such information is frequently derived from analysis of all-source data, such as technical measurements. Generally, technical analysis and reporting is in response to national requirements, such as supporting weapon acquisition, arms control negotiations and monitoring, or military operations. It covers the entire spectrum of sciences, technologies, weapon systems, and integrated operations. This type of intelligence is provided to consumers via in-depth studies, detailed system handbooks, executive summaries, focused assessments and briefs, and automated data bases.

Section II

Collectors

Current methods of intelligence collection generally fall into one of two major categories: they are either manpower- or hardware-intensive. As its name indicates, human-source intelligence or HUMINT requires a considerable investment in people to obtain the desired results. In contrast, the satellites and other sophisticated hardware systems that yield enormous amounts of data are themselves extremely costly to develop and operate. The collection community is described briefly below.

Central Intelligence Agency

Two of the CIA's four directorates engage in collection:

- The ***Directorate of Operations*** (DO), headed by the Deputy Director for Operations (DDO), has primary responsibility for the clandestine collection of foreign intelligence, including HUMINT. Domestically, the DDO is responsible for the overt collection of foreign intelligence volunteered by individuals and organizations in the United States, and in some cases, data on foreign activities collected by other US Government agencies. Since 1992, the DDO has been assisted by an Associate Deputy Director for Military Affairs (ADDO/MA), who facilitates Agency cooperation with the military. The DO is divided administratively into area divisions, as are the State Department and CIA's Directorate of Intelligence, with the addition of a domestic collection division, two topical centers, one tasking center, and one defector resettlement center. Several staffs deal with issues specific to the work of the DO.

- The ***Directorate of Science and Technology*** (DS&T), headed by the Deputy Director for Science and Technology, provides support to CIA and the Intelligence Community (IC) in the collection, processing, and exploitation of intelligence from all sources—imagery, HUMINT, open source, signals intelligence (SIGINT), and other forms of intelligence data collected by clandestine technical means. The support includes research, development, acquisition, and operations of the technical capabilities and systems. For open source and imagery exploitation, the DS&T serves as a service of common concern for the IC through, respectively, its Foreign Broadcast Information Service (FBIS) and National Photographic Interpretation Center. For HUMINT, the DS&T components provide a wide range of technical support, including agent communication.

Department of Defense

The National Security Agency—with the assistance of the military services—collects, processes, and reports SIGINT to the intelligence, policy, and operating elements of the government, Defense Department, and other intelligence producers.

The Defense Intelligence Agency provides intelligence and intelligence support to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the commanders of the combatant Commands, the Director of Central Intelligence, and other non-DOD agencies, as appropriate; coordinates the intelligence-collection activities of the military services and the Commands to satisfy DOD needs; and manages overt collection activities through the worldwide defense attache system.

The National Reconnaissance Office (NRO) ensures that the nation has the technology and capabilities to acquire superior intelligence worldwide. The NRO accomplishes this mission through research and development, acquisition, and operation of spaceborne and airborne data collection systems. Intelligence gathered by the NRO is used to monitor arms control agreements, to provide indications and warning of possible hostilities, and to plan and conduct military operations. The NRO is an agency of the DOD with the Secretary of Defense having responsibility in concert with the Director of Central Intelligence.

Military Services—Each military service collects intelligence information within its specialized fields of competence—including information that would help warn against hostile military action, both strategic and tactical—in response to established national, departmental, and operational command requirements:

- *Army Intelligence* is headed by the Deputy Chief of Staff for Intelligence (DCSINT). The DCSINT has Army General Staff responsibility for the management of collection by Army organizations. This responsibility is exercised through the US Army Intelligence and Security Command (USAINSCOM). Subordinate elements of USAINSCOM collect all-source intelligence information in response to Army, Unified Command, DOD, and national-level collection requirements.

- *Navy Intelligence* is headed by the Director of Naval Intelligence. It engages in HUMINT and MASINT collection as well as some signals intelligence to support fleet operations. Naval SIGINT is performed by the Naval Security Group.

- *Air Force Intelligence* is headed by the Assistant Chief of Staff, Intelligence. He manages the Air Force signals, technical, human, and imagery collection efforts. Signals and human intelligence is collected by the Air Force Intelligence Command (AFIC). Air Force Foreign Aerospace Science and Technology Center (FASTC) collects data on foreign aerospace capabilities that are used to support US military operations and planning and treaty monitoring. Imagery intelligence

is collected by designated units to support national and theater requirements. The Air Force Intelligence Support Agency (AFISA) analyzes the collected intelligence and provides support to Headquarters USAF and Air Force units worldwide.

- *Marine Corps Intelligence* is headed by the Director of Intelligence who is the Marine Corps' Senior Intelligence Officer and the Commandant's principal staff officer and functional manager for all-source intelligence, counterintelligence, and cryptologic matters. The Director also serves as the Director of the Marine Corps Intelligence Center (MCIC). The MCIC supports the development of Marine Corps plans, doctrine, force structure, training and education, wargaming and simulation, and acquisition policy and programming unique to the Corps. It also provides intelligence products to support Marine Corps expeditionary and amphibious operations that are not provided by theater, other service, or national research and analysis capabilities.

Other Departments

The ***Department of State*** is not formally engaged in intelligence collection. However, diplomatic reporting provides a considerable amount of the HUMINT available to the Intelligence Community. The Bureau of Intelligence and Research, headed by an Assistant Secretary of State, serves as a coordinating point for the IC's requirements for diplomatic reporting of information on subjects of intelligence interest.

The ***Department of the Treasury*** is not formally engaged in intelligence collection but is responsible for overt collection abroad of financial and monetary information in countries where a treasury attache is posted. Such attaches are currently posted in some nine foreign missions: Ottawa, London, Paris, Bonn, Brussels, Rome, Tokyo, Brasilia, and Mexico City. (Note: The Secret Service: Customs Service; Internal Revenue Service; and the Bureau of Alcohol, Tobacco and Firearms have no collection missions for the IC.)

The ***Federal Bureau of Investigation*** has primary responsibility for counterintelligence within the United States. As a byproduct of its normal counterintelligence investigations, foreign counterintelligence information may be generated. This information is disseminated, as appropriate, to other elements of the Intelligence Community.

The Office of Intelligence in the ***Department of Energy*** supports US Government policymakers as well as the US Intelligence Community with timely, accurate, and relevant intelligence analyses and national intelligence production on nuclear proliferation, foreign nuclear weapons and materials, science and technology, and international fossil and nuclear energy developments. The DOE provides counterintelligence analyses and awareness briefings to the IC, and assessments of threats to DOE nuclear and energy facilities and personnel. The Office is subordinate to

the Office of Intelligence and National Security that was established in 1993 to coordinate the Department's activities in arms control and nonproliferation policy, intelligence, security affairs, and emergency management.

Several other Executive Branch organizations have representatives serving abroad in US missions who contribute to mission reporting as part of country teams. These organizations include the Departments of Interior, Labor, Commerce, Justice (DEA), Transportation (FAA and Coast Guard), and Agriculture.

Section III

Producers

The vast amounts of data collected by the IC would be of little use without skilled analysts—supported by specialists such as editors, cartographers, and graphics design people—tasked to produce finished intelligence. In many respects, analysis and production represent the ultimate reason for the existence of the IC. The principal producing organizations and their respective products are described in this section.

National Intelligence Council (NIC)

National Intelligence Officers (NIOs), assigned to the NIC, are the primary instruments for coordinating the substantive finished intelligence output of the IC as a whole and are responsible for preparing the coordinated National Intelligence Estimates. (See Section IV for a description.) Each NIO concentrates on substantive matters for a geographic area—for example, Russia and Eurasia, East Asia, Africa, Latin America, Near East/South Asia, or Europe—or functional areas, such as general purpose forces, strategic forces, economics, science and technology, global issues, and warning. Besides National Intelligence Estimates, the NIOs also issue National Intelligence Council Memorandums and other products on specific topics of policy interest that have been brought to the attention of the most senior substantive officers in the Community. These are often prepared with short notice on fast-breaking situations US policymakers are facing.

Attached directly to the Office of the Director of Central Intelligence, the NIC is responsible for determining the IC's views on intelligence issues; as a result, more of its products are subject to interagency review and coordination. NIOs come from both the various intelligence agencies as well as academia and the private sector.

Central Intelligence Agency (CIA)

CIA produces a wide variety of finished intelligence. Its substantive scope is worldwide. It covers functional as well as regional issues, and its products range from quick-reaction, informal oral briefings to complex, long-term research studies that may take months or years to complete. Virtually all of CIA's finished intelligence is designed to support national-level policy deliberations.

The ***Directorate of Intelligence*** (DI), headed by the Deputy Director for Intelligence, produces the bulk of CIA's finished intelligence products and is the executive agent for meeting CIA's responsibility to produce national-level current intelligence.

Since 1981, the Directorate's analysis of regional and country-specific topics has been performed in five regional offices. Each of these offices generates multidisciplinary studies encompassing military, economic, political, and other factors and

produces the full range of finished intelligence. These offices—structured largely to mirror the way their policymaker consumers are organized in the State Department, Defense Department, NSC Staff, and other departments—are:

- *Office of African and Latin American Analysis.*
- *Office of East Asian Analysis.*
- *Office of European Analysis.*
- *Office of Near Eastern and South Asian Analysis.*
- *Office of Slavic and Eurasian Analysis.*

The Directorate also has four offices that are worldwide in responsibility but focus on particular issues or kinds of analysis:

- The *Office of Resources, Trade and Technology* (RTT) has the broadest responsibility, covering such transnational issues as sanctions monitoring, economic negotiations support, foreign efforts to unfairly aid business, questionable foreign financial practices, international arms market trends, defense industry strategies, energy and resource analysis, geographic and demographic issues, and environmental trends and civil technology challenges—from both a technical and policy perspective.

- The *Office of Scientific and Weapons Research* (OSWR) produces assessments of foreign developments in science, technology, and weapons. Major issues currently addressed by OSWR include: the proliferation of weapons of mass destruction, nuclear security and safety, technology surprise, and the proliferation of advanced conventional weaponry.

- The *Office of Leadership Analysis* (LDA) integrates the work of biographic, psychological, and medical specialists to provide comprehensive assessments of the major leaders, groups, and institutions of foreign countries that exercise formal or informal power.

- The *Office of Imagery Analysis* (OIA)—which, effective 1 October 1993, is managed and staffed on behalf of the Directorate by the National Photographic Interpretation Center—provides analyses on the full range of substantive intelligence topics worldwide and develops and applies methodologies used to maximize the utility of current and future imaging systems.

Two offices in the Directorate provide support to Directorate analysis and to other agencies:

- The *Office of Information Resources* (OIR) provides all-source library and reference services within CIA and retrieves CIA documents for the IC. It supports Directorate of Intelligence information systems and is developing an electronic open-source delivery system with connectivity to the IC. OIR also develops methodologies to support quantitative research and analysis.

- The *Office of Current Production and Analytic Support* (CPAS) publishes national-level current intelligence, fulfills the CIA's warning and alert functions via its Operations Center, coordinates foreign intelligence liaison activities, and supports CIA's finished intelligence production with cartographic, design, and editorial expertise.

The Directorate of Intelligence also houses the *DCI Counternarcotics Center*, which has assembled analytic, collection, and operations officers from throughout the IC to monitor, assess, and disseminate information on international trafficking in illicit drugs. The DCI Counternarcotics Center was established on 4 April 1989. The Director of the Center is charged with planning, coordinating, and managing counternarcotics activity within the CIA and within the IC. The Center is staffed from all four Directorates in CIA and includes the direct participation of most IC and counternarcotics law enforcement and policy agencies.

In May 1992, the *DCI Nonproliferation Center* (NPC) was established as the focal point for all IC activities related to nonproliferation. The NPC, structurally located in the Directorate of Intelligence, develops and updates strategic plans, provides assessments, manages operations, and enhances collection efforts in order to provide the policymaker with a coordinated view on nonproliferation issues for decisionmaking.

The ***Directorate of Operations*** produces individual unfinished intelligence reports that are "raw" in the sense that they consist of clandestinely obtained information that has not been finally evaluated or analyzed. However, these reports have been screened and processed both in the field and in CIA headquarters to determine whether the significance and degree of reliability of their information warrant dissemination. The *Counterterrorist Center* produces finished intelligence on selected terrorist groups and countries that support terrorism. This includes a monthly *Terrorism Review* of current developments. The *Counterintelligence Center* produces case studies, notes, and summaries on counterintelligence, as well as a series analyzing foreign intelligence/security agencies for distribution to the IC.

The ***Directorate of Science and Technology*** administers the Foreign Broadcast Information Service. FBIS monitors, selectively translates, and reports on a large and growing volume of information emanating openly from foreign sources. Radio, television, newspapers, magazines and journals, commercial data bases, and other literature are all addressed in FBIS collection efforts. Unclassified FBIS products derived from these materials address a wide variety of subjects and are in demand by a broad array of consumers. Customers range from producers of all-source finished intelligence within the CIA Directorate of Intelligence, to analysts and policy formulators elsewhere in the branches and departments of the US Government, to researchers and scholars working in academia and the private sector. Information and analyses from FBIS flow to consumers electronically, through personal contact, and via an array of periodical publications and issue oriented reports. Popular examples drawn from the extensive FBIS product line include a set of regional *Daily Reports* addressing time-sensitive current developments; a *Joint Publications Research Service* (JPRS) series that provides in-depth reporting on issues of exceptional interest; periodic *S&T Perspectives* covering important foreign releases in the scientific and technical arena; and *Trends* in foreign political, economic, and military policies as discerned by FBIS analysts through intense study of both broadcast and print media.

The ***National Photographic Interpretation Center*** is also managed within the DS&T. NPIC is a joint CIA/Defense Department center, and its product is disseminated to its parent agencies, which, in turn, incorporate it into all-source intelligence reports. NPIC also produces imagery interpretation reports, briefing boards, videotapes for national-level consumers, and provides support for the military.

Department of Defense

Overall intelligence management in the Department of Defense is in the hands of the Deputy Secretary of Defense. He has an Assistant Secretary of Defense (Command, Control, Communications, and Intelligence, ASD/C^{3}I) and an Assistant to the Secretary of Defense for Intelligence Policy.

Defense Intelligence Agency (DIA)
The Director, DIA, reports directly to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff (JCS) in fulfilling his national-level and Command-level intelligence responsibilities. The Defense Intelligence Officers (DIOs) are a part of DIA's Policy Support Directorate and have functions and responsibilities within the Agency paralleling those of the NIOs.

DIA is organized with three major directorates—Intelligence (J2), Policy Support, and Administration—and three centers—the National Military Intelligence Production Center (NMIPC), Collection Center (NMICC), and Support Center (NMISC).

The Directorate for Intelligence (J2) provides intelligence support to the Chairman, JCS; the Office of the Secretary of Defense; and the Director of Central Intelligence. It serves as the DIA focal point for all Joint Staff actions. The Directorate focuses on increasing DOD's war-fighting intelligence capabilities by improving joint interoperability, doctrine, planning, programming, and intelligence methodologies and architectures. It provides all-source indications and warning (I&W) intelligence, supervises DOD's I&W System, interfaces with other agencies on substantive I&W matters, and manages the 24-hour-a-day National Military Joint Intelligence Center.

The Directorate for Policy Support serves as principal adviser to the DIA leadership and the Military Intelligence Board (MIB) on issues of senior-level policy interest. Drawing on IC resources, the Directorate ensures that all intelligence support requirements from the Secretary of Defense and other DOD principals are satisfied. It serves as the DIA focal point and tasking authority for intelligence support to non-DOD Executive Branch policy offices, including the White House, the National Security Council, the State Department, and the Foreign Intelligence Advisory Board.

The National Military Intelligence Production Center produces and manages the production of military intelligence throughout the General Defense Intelligence Program (GDIP) community in response to the needs of DOD and non-DOD agencies. NMIPC directorates provide daily management and direction for critical Center functions; all-source, finished intelligence on transnational threats and other combat support issues; and assessments, basic and current intelligence, force projections, estimates and S&T and imagery-derived intelligence on regional defense issues, the world's missiles, aircraft, aerodynamic vehicles, maritime and ground forces plus associated weapons systems, and all aspects of foreign nuclear, chemical, biological, and medical matters. The NMIPC also serves as the focal point for DOD's management of imagery exploitation.

The National Military Intelligence Collection Center provides centralized management of DOD all-source collection activities and ensures the effective acquisition and application of all-source intelligence collection resources to satisfy both current and future DOD requirements. The Center serves as functional manager for GDIP collection, human resource intelligence (HUMINT), and measurement and signature intelligence (MASINT) programs, and also operates the Defense Attache System. The Central MASINT Office, an adjunct to the NMICC, is the focus for national and DOD MASINT matters.

The National Military Intelligence Support Center provides information services to DIA and the IC. These services include ADP support; systems development and maintenance; communications engineering, operations and maintenance; information systems security; imagery and photo processing; and intelligence reference, publications, and printing.

National Security Agency

SIGINT is not finished intelligence, but NSA provides its specially controlled SIGINT product directly to military commands worldwide and to the governmental consumers listed in Section VII, as well as to producers of all-source intelligence. NSA supports each NIO with a senior topical or regional specialist called a Signals Intelligence NIO (SINIO). SINIOs and other representatives of the Director, NSA, and the NSA Deputy Director for Operations are assigned to facilitate the exchange of information and conduct liaison on operational matters throughout the IC and with the consumers of SIGINT. The SIGINT product is extremely sensitive and is normally handled in special channels available to only specifically designated personnel.

Military Services, Departments, and Commands

The military services, departments, and commands issue a large volume of intelligence in support of their own particular missions and in support of department requirements. The Army, for example, is charged with producing—on

behalf of the Defense Department—scientific and technical and general military intelligence on foreign ground forces. This material does not normally circulate in the national Community, but the analysis performed by the various research centers (for example, the Air Force's FASTC at Wright-Patterson Air Force Base in Ohio) is often used in national-level publications.

Department of State, Bureau of Intelligence and Research (INR)

INR produces a daily intelligence summary, memorandums, and reports intended primarily to support the needs of the Department, but they are also distributed to other elements of the IC. Although the Bureau has three major production elements, most of its analytic and estimative work is done in the Directorates of Regional Analysis and Functional Analysis and Research. These directorates are in turn subdivided into six regional and six functional offices. A Current Intelligence Staff alerts senior officers in the Department, supplies intelligence to crisis management groups, and maintains close contact with watch centers of other intelligence organizations. The Office of Research manages the Department's programs of outside contract and grant research on foreign affairs; arranges for outside experts to work with the Department as consultants, conferees, and seminar leaders; and coordinates with other agencies in supporting research on foreign affairs.

Diplomatic reporting is not considered to be intelligence production, although cables, airgrams, and dispatches from embassies abroad obviously make a major contribution to finished intelligence.

National Warning Staff

The National Warning Staff (NWS) is an interagency body serving under the National Intelligence Officer for Warning. The NWS assists the NIO for Warning in his various functions, including identifying warning issues and advising the IC on warning methodology, training, and research.

Department of the Treasury

The Department of the Treasury provides Embassy economic reporting through State Department channels to members of the IC and to other US Government agencies concerned with international economic policy.

Section V

Managing the Intelligence Community

The National Security Act of 1947 designates the Director of Central Intelligence as the primary adviser on national foreign intelligence to the President and the National Security Council. The DCI is tasked with directing and conducting all national foreign intelligence and counterintelligence activities. To discharge these duties, the DCI serves both as head of the Central Intelligence Agency and of the IC. The CIA supports the DCI through current and long-term intelligence, while the NIC is the DCI's principal arm for Community assessments.

The Act of 1947 also directs the DCI, as head of the IC, to carry out intelligence activities necessary for the conduct of foreign relations and the protection of US national security. These activities include the production and dissemination of finished intelligence. The IC's effectiveness in carrying out these activities largely depends on continuous and effective communication between personnel of the intelligence and policymaking elements of the government.

Various Executive Orders also authorize the DCI to establish any additional advisory groups he deems desirable. At present, he chairs two:

- *The National Foreign Intelligence Board*, whose Vice Chairman is the Deputy Director of Central Intelligence (DDCI) and whose members are the heads or representatives of all the agencies that make up the IC. The NFIB is the oldest of the DCI's Intelligence Community advisory bodies, having existed in one form or another since the founding of the CIA. The NFIB is responsible for:
  — The production, review, and coordination of national foreign intelligence.
  — Interagency exchanges of foreign intelligence information.
  — Arrangements with foreign governments on intelligence matters.
  — The protection of intelligence sources and methods, activities of common concern, and such other matters as referred to it by the DCI.

  The Board's deliberations and decisions are recorded in coordinated minutes. Any principal may propose agenda items. In practice, the bulk of the Board's business has been the review and approval of NIEs.

- The IC Executive Committee (IC/EXCOM) serves as the senior advisory group to the DCI on matters pertaining to national intelligence policy and resource matters. The IC/EXCOM advises the DCI on priorities and objectives for the National Foreign Intelligence Program budget; intelligence policy and planning; and needs management and evaluation. The IC/EXCOM is chaired by the DCI or the DDCI, or, in their absence, by their designated representative. Permanent members include the DCI; DDCI; Vice Chairman, Joint Chiefs of Staff; Director, National Security Agency; Director, DIA; Assistant Secretary of State/INR; Director, NRO; Director, CIO; Chairman, NIC; Office of Secretary of Defense/C^{3}I; and Executive Director, ICA.

The DCI established the Community Management Staff (CMS) on 1 June 1992 to replace the Intelligence Community Staff. CMS is an independent staff element that is headed by an Executive Director for Intelligence Community Affairs (EXDIR/ICA), reporting directly to the DCI.

The EXDIR/ICA is the DCI's principal adviser on IC matters and assists in planning and implementing his Intelligence Community management responsibilities. The CMS is responsible for developing, coordinating, and executing DCI policy in resource management, systems analysis and policy, and requirements and evaluations. To carry out these functions, CMS has three offices:

- The Resource Management Office is responsible for National Foreign Intelligence Program (NFIP) and budget development, evaluation, justification, and monitoring.

- The Systems and Architecture Office is responsible for strategic planning to define long-range objectives and priorities for the IC as well as the means for assessing the IC's progress toward these goals.

- The Requirements and Evaluation Office is responsible for translating the needs of customers of IC products and services into national intelligence needs, for integrating the efforts of the collection disciplines to address these needs, and for evaluating the Community's performance in satisfying them.

In addition, CMS is responsible for coordinating four activities:

- The Intelligence Community Open Source Coordinator is responsible for overseeing the development and implementation of the Community-wide, Open Source Program.

- The Advanced Technology Office is responsible for coordination of science and technology matters pertaining to the NFIP Advanced Research and Development (AR&D) Program. It provides Executive Secretariat and other support to the AR&D Committee, which advises the DCI on the overall National Intelligence Advanced R&D Program and on technologies that will best contribute to the attainment of national intelligence objectives.

- The Community Counterintelligence and Security Countermeasures Office (CCISCMO) supports the DCI in activities involving the development, coordination, and implementation of counterintelligence, security countermeasures, Sensitive Compartmented Information, and intelligence sources and methods protection policies.

- The Foreign Language Coordinator is responsible for coordination of IC foreign language issues, including recruitment and training of linguists, technology exchange, and an annual strategic plan.

There are two other entities that advise and assist the DCI in his Community-wide responsibilities for production and analysis. These are the National Intelligence Council (NIC) and the National Intelligence Production Board (NIPB).

In addition to its production responsibilities (see pages 11 and 24), the NIC:

- Represents the DCI and Intelligence Community as a whole in policy deliberations at various levels within the US Government and suggests IC productions supporting those deliberations.

- Identifies critical information gaps in NIEs as authoritative guidance to collection and producer organizations arising from their NIEs.

- Encourages within and among the Intelligence Community's production organizations high-quality analytical efforts, development of innovative analytical methods, and attention to collection needs on pressing issues.

- Maintains contacts in the policy community and with appropriate specialists outside the government to ensure the relevance of Intelligence Community products.

The Chairman and Vice Chairmen, NIC, who are appointed by the DCI, are responsible for the management of the NIC. The Vice Chairmen of the NIC are responsible for Estimates and Evaluations, respectively.

The Chairman of the NIC is a member of the Intelligence Community Executive Committee and chairs the National Intelligence Production Board, which was established in June 1992. The NIPB is the NIC Chairman's tool for obtaining high-level Community assistance in advising the DCI on IC intelligence production—particularly the relevance, quality, and timeliness of the products going to the policymaking community. The NIPB consists of senior Community production managers, including the chairmen of the DCI production committees.

Central Imagery Office

The Central Imagery Office (CIO) is a joint Department of Defense–Intelligence Community activity within the DOD. The DCI and the Secretary of Defense established the CIO to be a centrally managed agency to serve as a focal point for imagery activities. CIO provides guidance, supervision, and central authority throughout the Community for imagery and imagery-related plans, programs, operations, research and development, requirements management, and performance evaluations. The Director of CIO is an adviser to the DCI on imagery policy and resource matters.

APPENDIX 10

PROPOSED REMARKS BY
ROBERT M. GATES
DIRECTOR OF CENTRAL INTELLIGENCE
BEFORE
THE WORLD AFFAIRS COUNCIL OF BOSTON
FRIDAY, 15 JANUARY 1993, NOON
BOSTON, MASSACHUSETTS

American Intelligence and Congressional Oversight

Today marks the last speech that I will give as Director of Central Intelligence. I have decided to use this opportunity to talk with you about Congressional oversight of intelligence and how it can be strengthened.

The idea of Congressional oversight of intelligence first came up a year after CIA was created by the National Security Act when, in 1948, there was a motion to establish a joint committee to oversee intelligence. This motion, which failed to get out of committee, was the first of nearly 150 proposals concerning intelligence oversight that would follow over the next 25 years. Just two of those proposals made it to the floor for action and both were

defeated by greater than 2 to 1 margins.

Not that CIA was totally without Congressional oversight in the first quarter century of its existence. The Armed Services Committees and Defense Subcommittees of the Appropriations Committees had authorizing and appropriating jurisdiction for the Intelligence Community.

However, there were never more than a few Members of either House that actually participated in this oversight of intelligence. The number of hearings was limited and, according to one expert on Congress and intelligence, there were several years where the Senate oversight bodies met only once or twice.

By the early 1970s, the Director or Deputy Director averaged some 30 to 35 committee appearances annually. There were even briefings for the Congress on covert action. For example, Foreign

Relations Committee Members were briefed as early as 1962 on covert assistance to the Myong in Laos and during the ensuing years Foreign Relations and Armed Services Committees of the Senate were briefed on a total of 28 occasions on this effort alone.

Even so, Chairman of the Intelligence Subcommittee of the House Armed Services Committee Lucien Nedzi accurately described the overall state of Congressional oversight in a talk to the CIA Senior Seminar in November 1973, when he said, "It is a sobering experience for me, as Chairman of the House Intelligence Subcommittee, to find our Subcommittee still in the process of defining ourselves, still exploring (or worse yet, just beginning to explore) what we can do and what we must do."

The pattern of oversight just described was not a product of CIA or Intelligence Community reluctance to appear before the Committees or inform

the Congress. The Subcommittees were regularly informed of the most significant covert programs and routinely briefed on the intelligence budget. As one observer put it, "The mechanism for oversight clearly existed; what was missing was an interest in using it -- or more properly speaking, a consensus that would legitimize its use."

By the mid-1970s, a broad consensus emerged for the creation of a permanent and more effective Congressional oversight capability. Both the Rockefeller Commission and the Church Committee separately recommended creation of committees to oversee intelligence, and those recommendations were enacted into law by the Senate in May 1976 through Senate Resolution 400. The House acted a little over a year later in July 1977 with House Resolution 658.

In the early 1980s, Congress demonstrated its support for good

intelligence and also its interest in stronger oversight both with support for increased funding and with three major pieces of legislation affecting intelligence. First was the Classified Information Procedures Act that provided for the protection of classified information -- especially intelligence information -- in courtrooms. Second was the Intelligence Identities Protection Act. Following the assassination of CIA Station Chief Richard Welch, the Congress moved to make it illegal to publicly identify a CIA officer who was under cover.

Finally, and most significantly, the Intelligence Oversight Act of 1980 reduced the number of Committees overseeing the Intelligence Community from eight to two -- the Select Committees of the House and Senate, but also established certain obligations on the part of CIA and the Intelligence Community: to keep the Committees fully and currently informed of all

intelligence activities, to furnish information deemed necessary by the Oversight Committees, and to report illegal or failed intelligence activities in a timely fashion. The legislation also revised the notification procedures for covert action, again reducing the number of Committees notified from eight to two.

So where do we stand today? Over the past sixteen years, CIA accountability and legislative oversight have grown enormously. With this oversight, CIA and the other intelligence agencies have become the most scrutinized intelligence services in the world. It would be difficult for any secret intelligence organization to be placed under this microscope of intense review. And yet, I believe, under these circumstances we not only remain effective and capable, we enjoy a legitimacy and an acknowledged role in our government not shared by any foreign intelligence service. It is fair to say today that

there is not a single planned or ongoing activity in the Intelligence Community that it is not in some way or another subject to review by at least two Committees of the Congress.

To give you some insight into the breadth of this relationship, let me cite a few statistics. In 1992, representatives of the agencies of the American Intelligence Community met more than 4000 times with Members and staff of the Congress in either briefings or other meetings. We provided over 50,000 documents to the Congress and responded to almost 1200 questions for the record or Congressionally-directed queries.

Now, let me address two areas of special interest to Congress. First, the budget. The Intelligence and Appropriations Committees of the House and Senate take seriously their oversight responsibility to review the Intelligence Community budget and examine planned intelligence

expenditures into the billions of dollars. They scrutinize budget line items in the thousands. In so doing, they pass judgment on virtually every plan and program. And Congressional oversight of the intelligence budget does not end after funds have been appropriated. We must gain the approval of up to six Congressional Committees when we reprogram money beyond a minimal amount and we must notify four Congressional Committees of any withdrawal of money from the CIA's reserve fund for contingencies. Furthermore, both intelligence authorizing committees and the House Appropriations Committee have created their own audit units and these have access both at Headquarters and in the field to our books and our expenditures.

The second area of special interest to Congress is covert action -- actions which support the foreign policy objectives of the United States but cannot be achieved by overt means. The

United States has the most elaborate set of checks and balances on its covert activities of any country on earth.

Few realize that most covert action proposals originate in the National Security Council or the State Department. But before any proposal for covert action moves forward, it is subject to intense scrutiny inside the CIA. The Covert Action Review Group -- which includes the Executive Director of the Agency, the four Deputy Directors, the General Counsel, the Directors of Congressional and Public Affairs and the Comptroller -- examines the critical legal issues of the covert action and also asks an important question: "If this program becomes public, will it make sense to the American people?"

Under the laws governing the oversight of intelligence, covert actions are conducted only after the proposal has been reviewed and approved

by the National Security Council, the Attorney General, and finally, the President. The President's approval is embodied in a written Presidential Finding -- which explicitly acknowledges that this operation is important to the national security of the United States. For the last seven years, every finding has been briefed to the Congress within 48 hours of signature.

The intelligence committees hold hearings to review new covert actions approved by the President, and they regularly examine all on-going actions. These two committees not only know the nature of the covert action that we are undertaking, but they know exactly how we are doing it, and they monitor every dime that is spent on it. This is no pro forma exercise. Congress can -- and has -- exercised control over CIA covert actions by denying us the funds needed to carry them out -- just as it approves funds for all covert action that are undertaken.

Contrary to the image sometimes portrayed, most American intelligence officers welcome Congressional oversight -- and all are subject to it. We see these Congressional mechanisms as surrogates for the American people, ensuring that our intelligence services operate within the law but also in ways consistent with American values. Congressional oversight is a protection against misuse of the Agency by Executive authorities and Congressional review of our intelligence publications helps guard our objectivity. Intelligence professionals believe that effective oversight is vital if intelligence is to have a future in this most radically democratic country in the world.

The vast majority of CIA employees have grown up under Congressional oversight. More than 75% of the Agency's population has entered on duty since the creation of the Oversight Committees. They understand the rules

and appreciate the value of and reasons for oversight.

Having said that, the process by which American intelligence agencies became accustomed to and positive about Congressional oversight was a long, and often difficult, one. Especially in the first half of the 1980s -- and occasionally afterward -- there were periodic crises of confidence brought on by concern on the part of the Oversight Committees that they were not being dealt with candidly, in a full and forthcoming manner. These concerns were too often justified, at least in some measure. However, in recent years the relationship between American intelligence and the Congress has improved steadily to reach its current excellent state.

Yet, just as we have focused in recent years on improving our performance in this relationship, today I would like to reflect from our perspective on several problems on the

Congressional side which, if addressed, could strengthen and enhance oversight while contributing to the further improvement of our intelligence.

My first and most important concern is that very few Members of the Intelligence Oversight Committees (or the Appropriations Committees) appear to devote much effort or time to their intelligence oversight responsibilities. Only a handful of Members in both Houses have taken the time to visit the intelligence agencies and to make the effort required to gain some knowledge and understanding of what is a very complicated and sophisticated undertaking. This places an enormous burden on the Chairmen and Ranking Minority Members. Individual Members from time to time will develop an interest in one or another aspect of our work and acquire some knowledge of that, but the number of those with broad understanding and real knowledge in my judgment can be counted on the fingers of one hand -- and that is

after 15 years of continuous oversight. At the same time, there are too many instances of members of our committees having important misunderstandings, misconceptions or just wrong facts about U.S. intelligence, including their own legislation governing our activities.

Most Members of Congress are among the hardest working people I have ever met. But they have many Committee assignments, must carry out their responsibilities to constituents, and they have a multitude of other obligations. The sad result is that Committee hearings and briefings are usually not well attended and it is my experience that the record is getting worse, not better.

Let me give you one example. We had a single budget hearing for Fiscal Year 1993 in the Senate Intelligence Committee last spring. The heads of all of the intelligence agencies were present. Of the 15 Members of the

Committee, the Chairman and a handful of members, perhaps three or four, showed up. A half-hour or so into the hearing, it was recessed for a vote and when the hearing resumed a short while later, the Chairman and only two or three members returned. All but the Chairman were gone within 20 minutes. The result is that for the single most important hearing of the year -- on the budget of the entire Intelligence Community -- only Chairman Boren was present throughout.

By the same token, the next day there was a hearing on covert action and 12 out of 15 Senators attended and stayed throughout -- and that for a covert program that is but a fraction of one percent of our total budget, and that is just one-tenth the size of the program two years ago, and where there are virtually no controversial activities under way. Budget hearings on the House side were often attended only by the Chairman, the Ranking Minority Member, and a very small

number of others, typically dropping in for a few minutes at a time.

I know that the Members can read the record of the hearing, but how many really do? The result is that enormous responsibility then falls to the staffs of the Committees. They are neither elected nor confirmed by anyone, and yet they acquire enormous influence over the structuring of issues, as well as the attitudes and votes of the members.

My concern, then, is not oversight, but the lack of attention and knowledge and time on the part of too many members of the Intelligence and Appropriations Committees. This, in turn, means that in this most sensitive area of American government, anonymous staff members with little or no experience in intelligence or its use by the Executive acquire enormous power over the programs and directions of American intelligence.

To make matters worse, Congressional rules approved in the mid-1970s established time limits on Members' service on the Intelligence Committees -- eight years in the Senate, six years in the House. As a result, just when an interested or concerned member begins to acquire some knowledge and understanding of our work, he or she is rotated off the Intelligence Committee -- unlike most other Committees of the Congress.

So my major complaint with Congressional oversight of intelligence is that there is not enough of it -- that is, by the Members of Congress themselves. Now, I am not naive. I know how the system in Congress works, and I know that the situation that I describe prevails in nearly all other areas of government as well. But, as we reduce the size of our military and contemplate major changes in the structure and size of American intelligence, I would argue strongly that these decisions are too important

to be left to staff. Those in Congress who are selected for these Committees -- and I am told that there is high interest in joining these Committees in both Houses -- should be expected to invest the time necessary to gain an understanding of the intricate and fragile system that they seek to change. Our national security depends upon it.

The second concern that I have involves the way in which Congress is organized to deal with our budget. Again, we are on the receiving end of a larger problem identified by Congressional reformers. In past years, the Chairmen of our two Intelligence Committees have devoted enormous effort to reviewing our budget in great detail and making recommendations with respect to that budget. Until recently, the Appropriations Committees were willing to defer in considerable measure to the Intelligence Committees -- and would usually see to it that the

Appropriations bills paralleled the recommendations of the Intelligence Authorizing Committees. However, in the last two years or so, the appropriators have shown considerably less willingness to defer to the Intelligence Committees with the result that these two bills -- the intelligence authorization bill and the separate appropriations bill -- are often very different. As a result, when the appropriators tell us to do one thing and the Intelligence Committees have not acted or disagree, we are paralyzed -- caught in the middle.

Let me give you an example. Last year, the Appropriations Committees approved several hundred million dollars more for intelligence than did the authorizing Intelligence Committees. We went back to all of the Committees in the spring and asked that a substantial portion of that money be approved by the Committees so that we could enhance our efforts on

nonproliferation, counternarcotics and certain other high priorities. Everyone agreed with our intended use of the money, but because of minor differences and procedural squabbles among the Appropriations, Intelligence and Armed Services Committees, it took us five months of intense effort to get these transfers approved. I don't know anyone in Congress who believes that is how the system is supposed to work.

We in intelligence also are becoming vulnerable to another common practice but one from which heretofore we have largely been protected -- insistence by individual Members on funding of pet projects before they will approve our budget. At a time of significantly declining resources, this is a dangerous trend that threatens to weaken our intelligence capabilities by forcing us to spend money for programs that we do not seek and that we find wasteful.

Let me conclude by making three recommendations for strengthening Congressional oversight:

-- First, Congress should end the practice of rotating Members on the Intelligence Committees. The fear in 1976 that Members of the Committees would be co-opted by the intelligence services and lose their ability to be critical has proven unfounded. At the same time, the rotation has contributed to a lack of expertise, knowledge and understanding on the part of Members of the Oversight Committees of what U.S. intelligence does, how it does it, and how it can be improved. If it is too hard to end the rotation, at a minimum the period of service should be extended substantially. As Representative Lee Hamilton said in an address at the University of Virginia on 16 December 1986, "The large turnover of Committee Membership every six years produces a loss of institutional memory {that} hinders effective oversight."

-- Second, I urge the returning Members of the Intelligence Committees and the new Members to take especially seriously their responsibilities on the Oversight Committees and give them high priority. For the good of the country, they must make the time available to learn about the intelligence agencies that they oversee -- how they do their work, how well they perform, the quality of the people, how they can be improved, and what intelligence capabilities this country will need in the future.

-- Third, and finally, although I realize that it is a naive request, I hope that the Congressional leadership can do something about the conflict between the authorizing committees and the appropriators because the problems created by the disparity in their respective legislation is imposing a great cost on the Intelligence Community both in terms of effective

management and the ability to deal with high priority issues.

In the first nine months of 1992, I personally had some 120 meetings, briefings and hearings on Capitol Hill. Building on the efforts of my predecessor, Judge Webster, over several years to improve our relationship with Congress, one of the achievements of the past year about which I am the most proud was the absence for the first time of a single major problem, incident or controversy in our dealings with the Intelligence Oversight Committees.

I have just issued guidance to every employee of CIA and the Intelligence Community who may appear before Congress that stresses four principles of testifying first articulated by my predecessor, Judge William Webster: candor, completeness, correctness and consistency. I am confident that my successor will devote the same effort, in collaboration with the other leaders

of the Community, to extending this period of cooperation and confidence-building between the Intelligence Community and the Congress.

I strongly support Congressional oversight of intelligence activities. I believe it is a needed check in our system. But it is also a measure of how far we have come that it is the intelligence professionals who now call for a further strengthening of Congressional oversight -- that is, by the Members of Congress who accept that responsibility.

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