

ESTABLISH A SENATE SELECT COMMITTEE ON INTELLIGENCE

HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
SECOND SESSION
ON
S. 400
ESTABLISHING A NEW COMMITTEE ON INTELLIGENCE

MAY 13, 1976



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ESTABLISHING A NEW SENATE COMMITTEE ON INTELLIGENCE

THURSDAY, MAY 13, 1976

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

The committee met, pursuant to notice, at 10:15 a.m., in room 212, Russell Senate Office Building, Senator John C. Stennis (chairman) presiding.

Present: Senators Stennis, Symington, Jackson, Nunn, Culver, Hart, Leahy, Thurmond, Tower, and Taft.

Also present: T. Edward Braswell, Jr., chief counsel and staff director; Phyllis A. Bacon, assistant chief clerk; Marie Fabrizio Dickinson, clerical assistant; Louise R. Hoppe, research assistant; W. Clark McFadden II, general counsel; John T. Ticer, chief clerk; John A. Goldsmith, professional staff member; David Raymond, assistant to Senator Symington; Susan Pitts, assistant to Senator McIntyre; Arthur LaFionatis, assistant to Senator McIntyre; Charles Stevenson, assistant to Senator Culver; Ed Miller, assistant to Senator Hart; Rick Inderfurth, assistant to Senator Hart; Doug Racine, assistant to Senator Leahy; Charles Kirbow, assistant to Senator Tower; and Robert P. Hunter, assistant to Senator Taft.

The CHAIRMAN. Gentlemen, I propose that we put before you now the matter of Senate Resolution 400, to establish a Senate Select Committee on Intelligence.

Just let me state the parliamentary situation.

The matter under debate now is the Select Committee on Intelligence, the proposal that came from Government Operations Committee, and the proposal that came from Rules Committee. Now there is a so-called compromise proposal as referred to by Senator Cannon yesterday which he said he would propose as a substitute. These are all under debate.

We did not know until yesterday the final form that the Rules Committee recommendation would take. I interpret the action of Chairman Cannon to be the view of the majority of the committee, so that is the matter that will first come up.

I have asked Mr. Braswell to be prepared on these matters and I have asked Hon. Robert Ellsworth, the Deputy Secretary of Defense, to come before the committee and he is here.

Dr. Riddick, we are glad to have you here. I have already explained to the members previously why you are here. Can you stay with us for awhile?

Mr. RIDDICK. Until noon.

The CHAIRMAN. Unless there is objection, let's call in Dr. Ellsworth, the former Ambassador, now Deputy Secretary of Defense, and see what he wants to say about it. I do not know what he is going to say. Then we will proceed.

Ask him to come in, please.

Senator TOWER. Mr. Chairman.

The CHAIRMAN. Senator Tower.

Senator TOWER. I just wonder if it would not be a good idea to ask Dr. Riddick to give us a brief resumé of what is in this bill first.

The CHAIRMAN. Mr. Ellsworth, we appreciate your being here and I have already explained why you are here. How long can you stay?

Mr. ELLSWORTH. I am available as long as the committee wants me.

The CHAIRMAN. All right. Let's have, then, a point or two from Mr. Braswell, and a point or two from Dr. Riddick, as a parliamentarian.

Mr. Braswell, I have asked you to bring up the high points of this matter as we discussed it.

Mr. BRASWELL. Mr. Chairman, very briefly, this latest substitute differs very little from the original Senate Resolution 400 as reported from the Government Operations Committee. In effect, it creates a select committee of 17 members with 2 additional members, ex officio, and the majority and minority leaders.

As it affects the Armed Services Committee, I would make two points. First, it places primary jurisdiction in this new committee in the form of exclusive jurisdiction over the Central Intelligence Agency. It places primary jurisdiction over all other intelligence activities, including Defense, State, FBI, and anything else. The interested committees, in other than the CIA jurisdictional matter, can request referral for 30 days of any matter before the new select committee as a matter of right under the resolution. So the substance of this is that whatever jurisdiction the Armed Services Committee has is lost in any primary sense. It is gone entirely for CIA. It is limited to Defense on a 30-day referral basis.

Second, the substitute requires that there be on authorization for any intelligence appropriation, either in the form of a bill passed by the Senate, or a joint resolution. This, aside from the jurisdictional issue, is probably the more important issue in the bill.

Senator SYMINGTON. Would you repeat that?

Mr. BRASWELL. Before you can appropriate for any intelligence activity in the Federal Government, there must be a bill authorizing such an appropriation passed by the Senate, by the House, or by a joint resolution. It is not quite clear how you could have a joint resolution when the House is not involved in this action, but a bill is passed by the Senate. This means, of course, that it raises the question of the disclosure of issues of what will be in the bill, and how you identify the money, and so forth. There would have to be an authorization for intelligence just as we do for military hardware and everything else that is authorized as a condition precedent to an appropriation. This would be a Senate rule from this point on.

Now, the amendment procedural problems here I do not intend to get into. But as they affect the committee, it is a loss of committee jurisdiction over this action, plus the entire exposure problem on an authorization in the form of a bill or resolution on foreign intelligence.

Numerous problems apparently are created by this that Mr. Ellsworth can go into. But the fact that we do not have a separate intelligence budget which is auditable in a General Accounting Office sense poses enormous administrative problems.

The CHAIRMAN. We will call on you again.

MR. BRASWELL. Mr. McFadden has gone into this, too, and has a summary.

The CHAIRMAN. Ask Senator Hart's assistant to let him know that we are discussing the intelligence resolution. He knows we are going to take it up.

Dr. Riddick, you have been in on this with Senator Cannon, as I understand. And you have been with him several days, not just yesterday.

DR. RIDDICK. I have been with the resolution since it has been put forward.

The CHAIRMAN. That is good. You have heard the points that have been enumerated here by Mr. Braswell, the question of authorization, the question of disclosure and how it is disclosed, the question of appropriations, and so forth.

You hit the high points of the resolution generally and then bring it down to the so-called Cannon compromise—that is what he called it, so I call it that.

STATEMENT OF FLOYD M. RIDDICK, RETIRED PARLIAMENTARIAN OF THE U.S. SENATE

MR. RIDDICK. Mr. Chairman, I think we have changed the resolution considerably from what the Government Operations Committee did, as far as protection of information is concerned, and also as far as giving the Appropriations Committee its present status as it had previously. We managed to salvage yesterday a compromise, section 12, which reads as follows:

"Subject to the Standing Rules of the Senate, no funds shall be appropriated for any fiscal year" et cetera, just as Mr. Braswell said. But this clause, "Subject to the Standing Rules of the Senate," retains rule 16 as it exists now. So that the Appropriations Committee can come in with funds not only in a continuing resolution, but in any resolution, or any other committee can make a motion, which after one day's reference to the Appropriations Committee could be brought up on the floor to provide funds for a new item not authorized, or to increase an item above authorization that is in the bill. So you retain to the Appropriations Committee now, if this is retained as is, the existing authority it has now to bring in funds for any purpose not authorized, not subject to a point of order.

I think that is a very significant point. For example, if you wanted to hire a group to do some spy work in Cuba and there was no legislative authorization for it, and you wanted them to go in on a submarine, you could just put an item for an intelligence activity in South America, for \$500 million, or whatever you wanted, and no authorization would be necessary under this proviso.

Senator SYMINGTON. But then you bypass the supervisory committee, the regulatory committee.

MR. RIDDICK. Senator, that is not the intent of this appropriation.

Senator SYMINGTON. I know it is not the intent, but it is what has been going on for 25 years, and it is one of the chief reasons we are in this mess.

Mr. RIDDICK. What the Authorization Committee can do is to come in with legislation that would say, no funds shall be spent, which would give them authority that we now have under this legislative authorization authority. The only thing is, as the conference was agreed upon, if this committee acted to take negative action against a certain activity, it certainly would not be expected that the Appropriations Committee would come in unless there was an extreme crisis, and define what the legislative authorization committee had done.

The CHAIRMAN. Let me ask a question right there.

If you had this proposal for this activity in South America, you would have to disclose it right there if you have the authorization, you might say, from the floor in the method that you describe?

Mr. RIDDICK. That is true. But there are other aspects in there, Senator, that are going to be more exposing than this. For example, the proviso which reads here:

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.

So the select committee has to submit its information to the Budget Committee just like any other committee, which, if they want to, can expose the details of what they are proposing.

The CHAIRMAN. Yes. But that increases rather than takes care of the problem as some of us see it at least about unnecessary or undue disclosure.

Mr. RIDDICK. The way this substitute tightens up on the flow of information is that it prohibits any member of the select committee from exposing any of the information submitted to the select committee until the committee votes.

Now, if it is lawfully classified information, then they must, before the information can be released, submit a report to the Senate in closed session, which the Senate will debate in closed session, as opposed to the way this committee decides whether information of that nature is to be exposed. And if the Senate says yes, it will be exposed, and if the Senate says no, it will not be exposed.

The CHAIRMAN. We especially appreciate your being here.

I will now call on Mr. Ellsworth to discuss further some matters already touched on.

Now, the general situation. Mr. Ellsworth, is that we want to know your analysis. You represent the executive branch that is going to have to deal with whatever is done.

I am glad you arrived Senator Hart. We are just having a round-robin table discussion on this whole matter.

STATEMENT OF HON. ROBERT ELLSWORTH, DEPUTY SECRETARY OF DEFENSE

Mr. ELLSWORTH. Thank you, Mr. Chairman. And I do speak for the Secretary on this matter.

First of all, he understands, and so do I, and fully respect the responsibilities and prerogatives of the Senate to organize its various committees and their jurisdictions in whatever way the Senate sees fit.

But this proposal to create authorization for appropriations jurisdiction in a new Senate committee does give the Secretary and me some concern as far as our ability to discharge our responsibilities in the Defense Department is concerned. And principally those concerns are two as far as we are concerned.

We operate our intelligence responsibility in a somewhat different world from the CIA or the FBI. We operate in an extremely, highly technological world, which with our facilities, is very sensitive and very delicate. And that is the basis for our first concern from the standpoint of maintaining the overall confidentiality of our sensitive and expensive military and defense intelligence sources and methods—and you know what I mean, particularly our most modern collection systems—the visibility that is created by a separate budget formulation process would entail, as we see it, grave risks. That is our first concern about the creation of a committee with the authorization for appropriations jurisdiction over these matters.

And then in addition, our Department would still be required, should the Senate create this new committee, to maintain a budget formulation process for the House of Representatives which would continue to conform to an appropriation account. And those two separate processes would require double accounting, and would require additional expense, and additional staff, and additional automation equipment. So that we would hope that the Senate in its wisdom would not create this additional committee having additional authorization for appropriations jurisdiction over these intelligence matters.

Senator HART. Mr. Chairman, is the Secretary going to come back and tell us what these grave risks are? He just leaves the phrase hanging there and I wonder if he is prepared to tell us what these risks are?

The CHAIRMAN. I do not know. We can take it up with him a little later. I invited him to come here just to put before the committee whatever he saw in this matter and what problems would be created.

Senator HART. I think the committee ought to know what the grave risks are, instead of just floating a phrase like that.

The CHAIRMAN. You will certainly have a chance to question him on it.

Senator TOWER. I might say that this is extremely sensitive, Mr. Chairman. I know what the risks are. It is extremely sensitive.

The CHAIRMAN. For the time being, as I understand it, we will pass it over and give you a right to examine him.

All right, Mr. Ambassador, go ahead.

Mr. ELLSWORTH. Those are my two points, Mr. Chairman, the points of the Secretary of Defense and myself.

The CHAIRMAN. When you refer to the budget of the Defense Intelligence Agency—you are talking about military intelligence?

Mr. ELLSWORTH. That is right.

The CHAIRMAN. That is the DIA?

Mr. ELLSWORTH. The DIA and the NSA and those are the principal subject matters.

The CHAIRMAN. And those are the concerns that you carry primarily?

Mr. ELLSWORTH. That is correct.

The CHAIRMAN. And you are not thinking in terms of the CIA as such?

Mr. ELLSWORTH. No.

Senator SYMINGTON. If the Chair will yield.

The CHAIRMAN. I will yield to you, Senator.

Senator SYMINGTON. I would like you to explain to us, if you will, Mr. Secretary—you say exclusively CIA. As I understand, there is now an effort to put the CIA in as a part of the military intelligence setup, or as an equal member of it, perhaps a senior member of it. I have always been very suspicious after General Graham's speech as to just what the military thought about the position of the CIA. And you have talked a little at length about this with Director Bush. Now, Director Bush has a political base, and he has tremendous popularity among the people and the Congress, and he is a strong man. But the way he explained the new plans that he had for an overall committee on intelligence, it seems to me that a normal man in that position could be drowned by military intelligence people. The whole idea of setting up the CIA was to have a brake against the estimate of the threat by the military. He assured me that he did not have that apprehension. But I cannot get it out of my mind. I would like to ask you, what is the revised plan that you plan to have from the executive aspect as against what we are discussing here from a legislative aspect?

Mr. ELLSWORTH. Well, I have not heard about any plan to swallow the CIA up into military intelligence. Of course, for a number of years, as I understand it, the CIA program has been presented to the Congress as a part of what is called the consolidated defense intelligence program.

Senator SYMINGTON. I am talking about the new structure you plan.

Mr. ELLSWORTH. The new structure which the President established in his Executive order of February 18, 1976, simply creates a national Committee on Foreign Intelligence, of which Mr. Bush as the DCI is the Chairman. And I, as Deputy Secretary of Defense, am one of the members. The other member is Mr. William Hyland, who is Deputy Assistant to the President for National Security Affairs. And our charge is to see that a national perspective is imposed on the development of the planning, the programing, and the budgeting of all of the intelligence activities of the various branches of the Federal Government, so that there is a resource allocation process that insures that the President's perspective is brought to bear in connection with it. But there is certainly nothing in that about the military intelligence swallowing up the CIA, or dominating the CIA, or even getting involved in the CIA estimating.

Senator SYMINGTON. One more question. Listening to it—and I did it with complete sympathy—in fact, it seemed to me that there was a meshing of the CIA into the military intelligence apparatus. If that is going to be the executive branch, then I would lean toward something of the Church recommendation, because if you are going to have an overall setup, including all intelligence, then you might as well have an overall setup from a regulatory standpoint that includes all

intelligence. For example, under the Kennedy letter, the Ambassador in a foreign country had complete supervision of the Central Intelligence Agency man. But when it got back to Washington, the Foreign Relations Committee was cut out of it entirely, and the Armed Services Committee took it over. There never could have been any original chart that explained that absurd situation. And it cost us a lot of money, and it cost us a lot of lives, in my opinion. And I was on both sides of the fence. So what I am saying is that before we adopt any committee, whether it be Rules, Government Operations, the Church committee, or this committee, we ought to know what the plan is in the executive branch that you have for reorganizing intelligence in the executive branch. And I think we ought to base a lot of our committee decision on that decision.

The CHAIRMAN. Thank you, Senator.

Senator Tower, I call you on for questions and comment. You are a member of the Intelligence Committee.

Senator TOWER. Mr. Chairman, for the reasons stated by Mr. Ellsworth and for others, I oppose the creation of this committee. My approach would be that we should bring appropriate resolution, a permanent subcommittee of the Armed Services Committee to perform the jurisdictional responsibility that it already at this moment has, and try that system for a while. I believe that this oversight committee is going to result in a proliferation of disclosures of sensitive information. And I think the potential is very much there. I think that we have typically overreacted in the Congress to things that have been said in the press.

Now, the press may have often reflected public sentiment. In this particular instance, I don't believe that the press does. The overriding concern of the constituents that I have heard from on this matter is that we disclose too much, not too little. Most Americans, I think, want an effective intelligence-gathering capability, and do not insist on the disclosure of smoking tidbits of classified information to get their kicks. I think, too, that these kinds of disclosures taken out of context very often create distortion in the popular mind of what our foreign policy is or should be, and where the national interest lies. I see the potential for all kinds of mischief for this committee. And therefore I oppose its creation.

Those are my sentiments.

The CHAIRMAN. All right, do you have any questions for Secretary Ellsworth?

Senator TOWER. I have no particular questions for him, Mr. Chairman.

The CHAIRMAN. We will continue. Senator Jackson.

Senator JACKSON. I will defer for now.

The CHAIRMAN. Senator Thurmond.

Senator THURMOND. I am very strongly opposed to this Select Intelligence Committee. In the first place, I think it will lead to the disclosure to our enemies of vital information relative to our intelligence activities. I think it will do that in these ways. The size of the committee, with 19 members, plus a staff of 25 to 30, presents problems in protecting information. I don't believe you can keep information confidential when you have 19 Senators and 25 to 30 staff members dealing with it. I have been around here for 22 years. And I have seen informa-

tion released when the Senate was cautioned that it would be improper and illegal to disclose information, but it got out. The newspapers, specifically the New York Times and the Washington Post, managed to get it some way.

A separate committee means a separate budget for intelligence, and thus public disclosure. If you are going to have a separate budget, people are going to inquire as to where this money goes and how it is authorized.

Next, the proposal requires the President to advise the committee in advance of any covert operations. I think that is ridiculous. The President of the United States has got to have some flexibility in when to move. This information is highly confidential, and the lives of those carrying out such operations could be subject, I think, to undue hazards.

I will give you an example. For instance, future Presidents will have to notify the Senate of operations such as the mining of Haiphong Harbor, the Son Tay Prison raid, and the *Mayaguez* rescue effort prior to execution. Any leak, however inadvertent, would endanger the lives of the personnel carrying out these orders.

In addition to the fact that it will lead to the disclosure to our enemies of classified information, separation of intelligence oversight from the Defense committees will weaken the intelligence agencies, as well as the Defense committees. Defense and intelligence are inseparable. Actions taken on the part of Defense depends upon intelligence. Defense decisions are predicated on foreign intelligence.

The level of our intelligence activities can be known to Members of Congress, but funding levels should be hidden within defense programs, as is now the custom in the Defense committees. That is, the two Armed Services and the Appropriations Defense Subcommittees. The House has decided not to add another layer of supervision, but undoubtedly will strengthen present oversight.

In conclusion, I would merely say this. The new committee may lead to placing the United States in the No. 2 or No. 3 position in the world when it comes to the effectiveness of our intelligence activities. I want to repeat that. This new committee may lead to placing the United States in the No. 2 or No. 3 position in the world when it comes to the effectiveness of our intelligence activities.

Next, the Mansfield substitute does not offer any means of improving our system of capabilities. It merely changes present oversight and increases the numbers of managers in the Congress of intelligence activities.

And for those reasons, Mr. Chairman, I am very strongly opposed to the establishment of this Select Committee.

The CHAIRMAN. All right, Senator, thank you very much.

Senator Hart, that brings us to you. Right now we are questioning Secretary Ellsworth.

Senator HART. It sounds more like stating our position, so I will state mine. Much of what we have heard here this morning is what we heard when we established the Senate Select Committee on Intelligence 15 months ago. The committee was going to be a big sieve, 11 Senators and 100 staff members could not keep secrets, and Members of Congress did not have a right to know what was going on in this

country, and on and on. And some of us have been directly the victims of administration leaks. I do not know why it is we have that double standard. Members of Congress and their staffs cannot keep secrets, but the administration is leakproof. Well, the administration under all Presidents and both parties have leaked like sieves when they want to. And, as I said, I have been a victim of that, so I know how it works.

Senator Tower knows as well as I that we have operated for 15 months with 11 Senators and over 100 staff members and have had no leaks. So this business about you can't have a congressional committee temporary or permanent without leaks is just preposterous. The record shows otherwise. And who is to say that because you wear an armed services hat that you are more leakproof than if you wear some other hat?

I don't like the size of the proposed committee. I would prefer that it be nine. But it is 17 members because of the compromise to accommodate those who oppose this to begin with. The people who proposed this committee and support it don't want 17 members. I would not have 17 if it were my choice. Every living CIA Director has, on the record, supported this committee. The administration indicates that a single oversight committee is much better than the present confused situation.

I would, as I said before, be extremely interested in hearing from the Secretary rather than all of us just rehashing what our positions are on this, as we have been all along, particularly in the area where he talks about serious threats. If we have to empty the room to do it, I think we ought to hear it. Because that is what he is here for.

The CHAIRMAN. I do not try to control any Senator. I think we can have either comments or questions during this first round.

Senator Taft.

Senator TAFT. I must say I share some of the serious doubts about this already expressed by my colleagues, Senator Tower and Senator Thurmond. There are some practical things I would like to ask. Maybe Dr. Riddick or Mr. Ellsworth can comment on them.

But the question I have is that under the procedures involved, as I read them, the Armed Services Committee would be entitled to ask for a referral of a particular matter to the Armed Services Committee for a period of time, is that correct?

Mr. RIDDICK. For 30 days. It goes two ways, it is sequential concurrent referral, except for CIA. Now, the CIA project does not come to any committee except to the Select Committee.

Senator TAFT. There is also in the bill a ban on the disclosure of information by any member of the committee to any other Senator outside of the committee of the classified information.

Mr. RIDDICK. There are two aspects in there. One is, until the committee has acted, you may not. After the committee has acted to divulge under certain circumstances, after this has been submitted to the Senate, they can pass it onto a committee or to a Senator. But the staffs are pretty well—

Senator TAFT. Only after the committee has acted and there has been an appeal to the President and so forth.

Mr. RIDDICK. That is correct.

Senator TAFT. The question that comes up to me, substantively, then is, how is the Armed Services Committee going to have enough jurisdiction?

Mr. RIDDICK. The Armed Services Committee also has a right to make investigations. The resolution specifically states that nothing given to the select committee shall prohibit any standing committee from making investigations within their respective jurisdictions that they already have.

Senator TAFT. But in order to find this out they are going to have to call in the various intelligence agencies, they can't go to the select committee and ask for it?

Mr. RIDDICK. This is a part of that compromise that Senator Hart was talking about there.

Senator TAFT. How are they going to know, unless they have an independent investigation? I do not know how they are going to know that they are going to get jurisdiction?

Mr. RIDDICK. That is what I was going to explain. Part of the reason that the committee got so large is the fact that they wanted two representatives from each of these committees.

Senator TAFT. But the ban on disclosure of information that is presently in the bill as I read it would apply even to a disclosure of information by the ex officio Armed Services Committee member to the chairman of the Armed Services Committee, if he is not a member.

Senator HART. If the Senator will yield, I think a portion of the bill may touch on that. Section 4 (a) states:

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 deemed by the select committee to require the immediate attention of the Senate or such other committee or committees.

Senator TAFT. Would that apply to classified information?

Senator HART. That is what it does apply to.

Senator TAFT. But the same question would remain, I think, because the judgment would then be made by the Armed Services Committee unless the select committee decided to turn the matter over to the Armed Services Committee; the Armed Services Committee would have no way to know whether or not there would be a referral.

Senator HART. I think it is mandatory language. They don't have a choice.

Senator TAFT. It says deem, and deem to me confers a choice. They have to make a judgment, the legislative committee make a judgment as to whether they think the Armed Services Committee ought to have this. If they decide that, then they have to defer it.

Senator HART. It is not an arbitrary kind of power that they have to decide whether to turn something over to the Armed Services Committee or not. If it is a defense-related matter, they have to. That is the way I read this language.

Senator TAFT. I don't read it that way, Senator. I think that is something that ought to be cleared up. I am thinking about an amendment, is why I am asking these questions along this line.

Senator HART. And you do have two members of the Armed Services Committee on this 17-member committee.

Senator TAFT. I understand that. I might comment that the 8 and 9 setup that you are advocating is that the 8 members involved are representing 61 Senators and with 9 Senators representing 39 Senators who aren't on the committee. It doesn't seem to me it be a very equalized situation. It seems to me that there ought to be an amendment saying that not more than two, because I don't ban the other members of the committee from serving on the Intelligence Committee.

Mr. RIDDICK. Here is another point on that :

The select committee under such regulations as the committee may 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.

Senator TAFT. Again, this is a judgment of the select committee, not of the various other respective committees involved?

Mr. RIDDICK. That is correct.

Senator HART. Would the Senator yield again?

One other section is 3(c) on page 4:

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.

Senator TAFT. This is a separate investigation such as we mentioned earlier?

Senator HART. That is right.

Senator TAFT. I would like to ask Secretary Ellsworth, in section 4(b) is a provision that:

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 for public dissemination. 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 shall be made available to the public by the select committee. Nothing herein shall be construed as requiring the disclosure in such reports of the names of individuals engaged in intelligence activities for the United States—

And so forth.

What in your opinion would be the effects on foreign intelligence sources to us of it being known that there will annually be such a report made public?

Mr. ELLSWORTH. I think that the effect of that report would be to apprise foreign nations of the extent of our familiarity with their operations against us, and would assist them in perfecting and strengthening their operations against us.

Senator TAFT. Thank you. That is all the questions I have.

Mr. RIDDICK. The purpose of that compromise, Senator, was to not prevent the select committee from collecting sensitive information, but then the next paragraph, an unclassified report is, after they sift it out they should make that public. But it was to get all such information they wanted, and then make unclassified reports pursuant to the information they obtained.

Senator TAFT. Mr. Riddick, you are our Parliamentarian, and I always thought a very good one, for many years. Doesn't the substitute amendment really involve a change in the Senate rules?

Mr. RIDDICK. Not directly. It is sort of like the concept that you may not put legislation in an appropriations bill. But by the use of a limitation you can prohibit the operation of existing law which does not amend that law, and therefore is not subject to a point of order.

There was one thing in here, the reason for—and I wish Senator Symington was still here, because he was disturbed about this particular point—on section 12, getting back again to the phrase “subject to the Standing Rules of the Senate,” when you begin to adopt this as proposed to a provision in the law, you are beginning to adopt orders for the Senate. And when you adopt an order for the Senate, you are subjecting anything to the contrary of this resolution to a point of order, whereas if you write, as you did in your law or procurement, that no appropriation should be made unless they are authorized, that presents a different problem, because the Chair is not called upon to interpret the law. And it would not subject that to a point of order. If you put this in one single man, not the Senate, can make a point of order and knock the thing out. Whereas if you leave this language in there, “Subject to the Standing Rules of the Senate,” you do not throw everything subject to a point of order and let one man kill it, it becomes a vote of the majority of the Senate. That is the main purpose of this proviso here as designed.

Senator STENNIS. Yes, let me say a few words here, with as much emphasis as I can. Of course the membership is not as numerous as it was a minute ago.

Based on my experience as a Member of the Congress, the legislative body, any legislation or activity as broad and as far-reaching as this that is not done in conjunction with the House of Representatives is going to fame; it doesn't make any difference what kind of a rule we adopt. It encircles the globe; it goes to the innermost operations of the Government, it goes to every diplomatic post that we have around the world, the subject matter of this legislation. And also, to the very heart of the operations of our Government, far beyond the military, to the operation of any major enterprise in the United States and foreign countries that is involved in all the matters that come into these appropriation bills and the other legislation.

I am not talking about surveillance now, I am talking about legislation. And to try to have anything that is as involved as that controlled by the Senate that is also not binding on the House of Representatives is just not going to go in my opinion.

Imagine the Appropriations Committee of the House sitting around their table and being bound by a Senate rule. They would look upon it as being ridiculous. And I say that with all respect to the author of this measure. They are trying to meet a problem, that is what they are doing, the Senators on the Church committee, the Rules Committee and the others, they are trying to meet a problem. But to those of us who have been here for years, and have been in these conferences meeting with the very fine Members of the House, we know that they will snort at these limitations that you put on the Senate.

I said way back there that I would favor, if it is worked out very carefully, a joint committee on intelligence. I think the problem has grown, and everything, and I think perhaps that is the best way to handle it. But anything that concerns major legislation is just not going to make a go of it with the House Armed Services Committee

and the House Appropriations Committee if they are not included in the guidelines, the legislation, or whatever you may call it.

So, I emphasize with all deference to everyone that a plan that doesn't include them is going to prove unworthy.

Now, we have to remember too that this matter of getting up an authorization bill as required by this resolution, a real authorization bill now that goes into the matters here that are necessary—you can figure out something on paper, but an authorization bill or a budget, or whatever you may call this intelligence operation that will be passed on and adopted at some point by the entire Senate, and then be the controlling guideline for the appropriation bill of the Senate and not the House that is something. The undertaking itself, dealing with those annual authorizations, and then the other phases of legislation, is just a monumental undertaking. And I don't think it can be done as well and as thoroughly as required by this resolution, and it is impractical to start with. But I felt like Senator Hart wanted to go further in cross-examining the Deputy Secretary here that he is entitled to.

But, it is sensitive that we would have to largely clear the room, because I don't want to take all that responsibility.

But I can illustrate here something that has come out. Now, there has been a project that went on for years which was finally discovered, this Russian submarine that we undertook to surface.

That went through many appropriation bills, and so forth.

Finally, the cable broke, we actually had it fastened, and almost to the surface.

I know what all they went through. It was just impossible for all that to have gone through all those processes that we discussed this morning without that having been disclosed. And of course, first, it didn't have to be disclosed to become worthless, once it was suspected that we were trying to do something with that submarine we were out of business, and everything was lost.

And other illustrations could be given that haven't become known yet.

So, I don't see how any President of the United States can be held accountable for the security of this Nation, or the Congress either, unless we can work out some system that is simpler than this. It may have its defects and it will. Our present system has its defect, and plenty of them.

So, I have to oppose that general concept.

Now, Mr. Secretary, are there any other points that you can think of? And I want you to answer questions here by our Chief of Staff, too. But make your points further.

Mr. ELLSWORTH. The only other point, Mr. Chairman, is a personal point that comes out of what some of my friends, for example, in the academic community have been saying for a couple of years, before I came into the Defense Department, to the effect that it is logical, if we are going to spend that amount of money on intelligence, to have a coherent, unitary budget for that, and logical therefore to give the jurisdiction for authorizing that budget and for overseeing its performance, and so forth and so on, in to a separate committee in the Congress. They use words like logical and coherent. But I want to stress again that notwithstanding the appeal of logic and coherence,

the fact of the matter is that in real life this is going to give us tremendous problems in our responsibilities as far as the Defense Department is concerned, first of all, because naturally when you get things into a coherent, unitary picture in the intelligence field, foreign intelligence specialists and analysis—the analysts who work for foreign powers—are not so dumb that they can't figure out on the basis of a year-to-year comparison basis what is going on in our intelligence collection effort on more effective and efficient basis than they are today.

The CHAIRMAN. You mean intelligence from foreign nations?

Mr. ELLSWORTH. That is right. A foreign analyst analyzing our program is going to have a tremendous edge when he can look at our unitary defense overall intelligence budget and compare it from year to year and put it together with other bits of information that he has assembled on the worldwide basis. It is going to be a tremendous help to him with his problem, figuring out what we are doing and how he can counter it.

That is one problem.

Another problem is a reflection of the point you yourself made, Mr. Chairman, and that is if the Senate has this process, it is just going to mean double accounting, it is going to mean double automation, and double staffing as far as we are concerned in presenting our budget to the two bodies.

So those are our points.

The CHAIRMAN. Senator Thurmond.

Senator THURMOND. I might ask you this. Have you any thoughts or recommendations on the way you think intelligence might be handled by the Congress to provide the greatest protection to the Government?

Mr. ELLSWORTH. Well, I would think—and speaking again for Secretary Rumsfeld—that it would be desirable as well as—it certainly would be desirable from the standpoint of the public confidence and support in intelligence operations, and completely acceptable to us, there could be either in the one body, or in the other, or both, or on a joint basis, an oversight committee which would have an exercise a rigorous oversight function over the various intelligence activities of the Government, which would not imply involving itself in these other problems which I have mentioned; that is to say, the administrative problems and the unitary budget presentation problem which I have mentioned.

And it seems to me that that would be something that could be and would be beneficial to everybody in the Government and to everybody in the intelligence community, because of the fact that it would improve and increase, presumably, the public's confidence, and therefore support, for necessary information-gathering functions.

Senator THURMOND. I believe Mr. Colby said he would welcome a small joint committee on the matter of surveillance. There would be no objection to that, as I see it. As the chairman mentioned, a joint committee would save intelligence officials from making so many appearances. They have to appear before the Armed Services and Appropriations Committees of the Senate, and the Armed Services and Appropriations Committees of the House. If you had a joint committee of both Houses, they could make one appearance instead of four.

I often thought that if we could save the time of these officials in the executive branch that have to come up here before the Congress, it would mean a great deal.

So, a joint committee would appear to be all right if it is not too large; wouldn't it? A joint committee of both Houses, possibly? Would that be your thinking?

Mr. ELLSWORTH. That would certainly be in the right direction.

Senator THURMOND. These are all the questions I have.

The CHAIRMAN. Now, Senator Taft, do you have any questions?

Senator TAFT. Yes, Mr. Chairman.

Mr. RIDDICK, going back to the rules question, isn't it true that this resolution involves a changes on the provisions relating to disciplining of members?

Mr. RIDDICK. Well, I don't know of any rule in the standing rules except rules 35 and 36 and 37 if the executive operations of the Senate that in any way penalizes. Of course, we have got in the constitution the power to expel them, and we have got the practice of censuring them. And I would assume that the Senate could cite another Senator for contempt. Certainly they could apply—

Senator TAFT. Not under this rule they couldn't. They can cite employees for contempt, but they can't cite Members for contempt.

Mr. RIDDICK. I don't think changing the constitutional power—that is the only place that the rules provide as the basis on which we have censured anyhow, under the power of the Senate to censure its Members.

Senator TAFT. Let's go to another point on the same question. Isn't it true that the rules currently set the jurisdiction of the various committees?

Mr. RIDDICK. Yes. And this is a question that I raised, Senator. When they are talking about giving the exclusive jurisdiction to this committee. And I don't know how you are going to get a ruling to that extent, unless somebody later on makes a ruling, I mean, focuses a point of order to the question. And that is it. If you go back to rule 25 and look at the jurisdiction set forth to the various committees there, you won't find anywhere that it specifically says that the Armed Services Committee shall have jurisdiction over CIA.

Now, this proviso here merely says that there shall be referred to this committee these following suggestions, and there it stops.

Senator TAFT. The rules set up what the committees are; doesn't it?

Mr. RIDDICK. Yes.

Senator TAFT. Isn't that a permanent change in the rules to set up a new committee?

Mr. RIDDICK. That doesn't block the Senate—just like we did in the Small Business Committee, if my opinion—that doesn't block the Senate from giving limited jurisdiction to the Select Committee on Small Business.

However, if there was something, say, for example—and I am not sure, I have not investigated all aspects of it—as I said to the committee when they were talking about this, if you try to take something away from a committee that was specifically set forth in rule 25, giving that committee specific jurisdiction over it—say, for example, it did say in rule 25 that the CIA shall go to the Armed Services Committee—then to do this—

Senator TAFT. The CIA is a part of the Armed Services and the Rules; the committee should have jurisdiction over the Armed Services.

Now, it has taken that way.

Mr. RIDDICK. I know what you are saying. But the point is, you have got to get a ruling from the Chair on it. And I would say that if the proviso in rule 25 gave the Armed Services Committee specifically the CIA, and somebody should introduce a bill, and you could ask the Chair where he was going to refer it, and he said to the Select Committee on Intelligence, why you could make a point of order, Mr. Chairman, that rule 25 provides for the reference of the CIA to the Armed Services Committee. And then the Chair would have to rule, and you could take an appeal, and the Chair would submit the ruling to the Senate for division. But where it is silent and it doesn't specify in the rules that some of these things go—

Senator TAFT. It does specify the Armed Services as to the DIA. The DIA is part of the Armed Services.

The CHAIRMAN. Will you yield to me?

The term "common defense" is what is in the rule, isn't it?

Mr. RIDDICK. I think that is it exactly, common defense, generally.

The CHAIRMAN. Yes; common defense.

Senator TAFT. I won't belabor this point, Mr. Chairman. It is obviously one that is going to be brought up.

For my own information, however, I would like to ask Dr. Riddick to describe as he understands it the current situation with regard to the finance backing, whatever the procedure might be, of the CIA.

In other words, I understand there is a code section which permits transfer of funds to the CIA from other areas, it does nothing through authorization committees today, it goes through the Appropriations Committee. And there is some kind of an information procedure. Is that information procedure to various committee chairmen, and so forth, in writing? What is its history, and where do we stand today? What is the current procedure? I don't really understand that. I tried to find out about it at the time of Angola, and I couldn't get any help; I couldn't find anything in writing as to the current procedure.

Mr. RIDDICK. I am in your predicament, too. I know in the appropriations bill they did provide for the transaction not to exceed a certain amount for certain purposes.

Senator TAFT. There is a code authorization for the transfer, I understand that. But as to what checking is done and why the checking is done, is there anything in writing at all?

Mr. RIDDICK. That is kind of a legal question that gets a little out of my field.

Senator TAFT. I don't think it is legal. There isn't anything in the Senate rules that you know of that relates to this consultation process, is there?

Mr. RIDDICK. I don't know of anything that would prohibit it in the rules.

Senator TAFT. Can you tell us what the practice has been? This goes directly to this subcommittee question.

Mr. RIDDICK. The practice has been that when the budget comes up for estimate on the various purposes, even though they might be

silent and give it in a lump sum, we refer the whole thing to the Appropriations Committee.

Senator TAFT. If there is a desire to get an appropriation after the bill is passed, and a desire to transfer for a new project of the CIA, some money from another department, what happens?

Mr. RIDDICK. I don't think it is spelled out any more, Senator.

Senator TAFT. Do you know as a matter of practice what happens? Because I got the same kind of answers from where I asked. And I think it does show the need for some institutionalization here.

Mr. RIDDICK. I would assume that it is administrative action pursuant to that transfer of power.

Senator TAFT. Purely the matter of CIA coming to various Members of Congress of their choice or understanding and telling them about it, is that right?

Mr. RIDDICK. After consultation, I assume, with certain Senators who have been doing some oversight in that area.

Senator TAFT. There is nothing in writing that requires in any way that they consult with the chairman of the Armed Services Committee or the chairman of the Foreign Relations Committee or the chairman of the Appropriations Committee, or the ranking membership.

Mr. RIDDICK. Not that I know of.

Senator TAFT. Thank you. That is my understanding, but I am amazed by it. Everything I understood was to the contrary until this came up. Everybody thinks that there is a definite procedure, but there isn't any.

The CHAIRMAN. We will come back to that.

I would like to give these gentlemen a chance to ask questions. This is a general discussion and inquiry about the pending resolution being debated on the floor now. We went into the version known as the Cannon amendment, that was filed yesterday; it goes back to the resolution by the Rules Committee, and also Government Operations Committee. Dr. Riddick has been with them during the course of the proposals so I invited him to be here.

I asked Senator Cannon to come, but he could not. He suggested Dr. Riddick, and I was glad to invite him.

The Deputy Secretary of Defense for intelligence, Mr. Ellsworth, was invited to come here to give us what he saw in this matter. I called on Mr. Braswell to state what he saw in it.

All who have been here have not only impressed the Members, but have also asked questions of Mr. Ellsworth and Dr. Riddick.

So, I call on you gentlemen now.

Senator NUNN, I call on you.

Senator NUNN. I am taking up where Senator Taft left off. I don't know what has been talked out before he started because I wasn't here.

The thing that bothers me, that I have the most questions about, is how the budgetary part of this is going to work. I am like Senator Taft, I am not sure what the status quo is now. I don't know how it is working now. I am not on the Committee that deals with it. So let me start there.

Is there an authorization process for the CIA budget? Is there an authorization process at the present time?

I will call on Mr. Braswell.

Mr. BRASWELL. Senator Nunn, in the basic law there is a provision that gives CIA authorization, but I do not have the annual process required by law.

Moving to the appropriation process, they obviously get annual money every year, and then that becomes a question of in what accounts the money will be placed. Part of that intelligence money, in order to spread it around, and to require the least amount of disclosure, is in the authorization bill. All the CIA money is in defense appropriations.

So then, the question is, what portion do you want authorized which covers procurement, R. & D., but not O. & M. in support?

Now, for the CIA alone, that is not carried in the authorization. So, technically it is not authorized in the sense that it is covered in the military authorization bill on the floor, it is covered in other elements of the DOD appropriation. There are other large elements of the intelligence activities of defense that are authorized, and some of them are split, some in one side and some in the other. But then that is a division of how you are going to cover it.

Senator NUNN. I am not sure I understand now. You are saying that none of the CIA budget is authorized in our military bill now?

Mr. BRASWELL. It could be, as a cover.

Senator NUNN. If it has got a permanent authorization anyway, why would you need to reauthorize it?

Mr. BRASWELL. It is not a question that you do not have to, but it is a question of when you want to hide the money, put it in two places. It does not have to be locally.

Senator NUNN. You are saying that part of of the intelligence budget now is authorized?

Mr. BRASWELL. Yes.

The CHAIRMAN. And the DIA budget?

Mr. BRASWELL. Some.

Senator NUNN. I can't judge this proposal until I know what the situation is. I don't know how much you want to go into. It is impossible for me to judge a new proposal I know where we are now. And I don't have any idea.

Mr. BRASWELL. The big distinction as to this proposal and the way it is done now is that you do not have to have a separate bill to authorize any intelligence activity, it is hidden entirely in the appropriations without authorization, or it is hidden under missiles or something else in the defense, but it is never surfaced as an intelligence function.

Senator NUNN. Let's put it this way. If you do have part of the DIA budget authorized, that still requires an appropriation in addition?

Mr. BRASWELL. Everything requires an appropriation.

Senator NUNN. So, everything right now for intelligence has to be appropriated every year?

Mr. BRASWELL. Yes, sir.

Senator NUNN. And it is all in the appropriations bill in the DOD budget?

Mr. BRASWELL. Yes, sir. And so has been authorized—

Senator NUNN. It could be in the DOD under authorization, in procurement, in manpower or O. & M.

Mr. BRASWELL. Half and half. But this is totally different here, in having by rule a bill coming out saying, so much for intelligence.

Senator NUNN. That is the point I want to get to. In the Cannon substitute, as I understand it, would say that all the authorization for all the intelligence community would come in this one bill?

Mr. BRASWELL. It says you shall not appropriate after September 30, 1977, unless such funds have been previously authorized by a bill or joint resolution passed by the Senate during the same or preceding year. That raises the whole issue of disclosure, and these are for designating the activities of CIA, DIA, NSA, and so forth.

Senator NUNN. My next question is, how do you have an authorizing bill that comes out of the Senate if you don't have the same thing coming out of the House?

Mr. BRASWELL. That is the issue, it will be controlling on the Senate appropriation, which the House does not control.

The CHAIRMAN. That is the point I made; there is no such legislative channels that I ever heard of, an authorization bill or a joint resolution passed only by the Senate.

Senator NUNN. We are going to get up on the floor and have an authorization bill on the intelligence budget, and are we going to debate that authorization bill separately from everything, is that right?

The CHAIRMAN. That is correct. Dr. Riddick.

Dr. RIDDICK. That is what the rules provide.

Senator NUNN. I don't see how that is possible.

The CHAIRMAN. That is what the argument is about, Senator.

Mr. RIDDICK. If we should pass the bill and send it over to the House, they would do something with it.

The CHAIRMAN. I know what they would do with it. They would laugh at it.

Mr. BRASWELL. They cannot do anything in the House, because there is no requirement for authorization within the House under the House rules.

The CHAIRMAN. I made the point, Senator Nunn, if you will yield to me, with all deference to every Senator, and every committee, and the author of every bill, a plan cannot be successful if it does not include the House in a legislative plan.

Senator NUNN. I recommended before the Rules Committee—maybe they considered it and rejected it—I recommended that the oversight committee—maybe Senator Culver and Senator Taft could listen to it—that the oversight committee, if there is going to be an oversight committee, be given the responsibility of reviewing the intelligence budget. And then making a recommendation on that intelligence budget to the authorizing committee, which would be Armed Services Committee, and then have it built into the same authorization that we have now, so that we would not be on the floor debating the individual items. I don't think that is practical, and I don't think it can possibly work.

Senator TAFT. I agree with you totally. And if that committee had the recommendation authority to us, then it could be built into our budget.

Mr. BRASWELL. But that is not what this provides.

Senator NUNN. I know it. I don't see—maybe Dr. Riddick can explain to me how this is going to work as a practical matter. Wouldn't we be involved in a detailed debate on the intelligence budget on the floor of the Senate every year?

Mr. RIDDICK. That is if the Select Committee on Intelligence reported such a bill.

Senator NUNN. You meant, no, they don't have?

Mr. RIDDICK. It says matters coming up here for reference. If we have got a permanent authorization for the CIA, we could go ahead and appropriate without providing the legislation if the select committee did not report the legislation.

Senator NUNN. They don't have to do it, then under this.

Mr. RIDDICK. If any requests for it come up, it would be referred under this resolution to the Select Committee on Intelligence.

Senator NUNN. Where is this permanent authorization in the law? Is it in the law there?

Mr. RIDDICK. I am starting from what Mr. Braswell just gave us.

Senator NUNN. You are saying that that permanent authorization is continuing on the books in law now?

Mr. RIDDICK. Yes. We have got—as I understand it, I am citing from experience—we have got a few legislative authorization provisions that dates back clear to 1789, we still appropriate every year. Where there is no annual appropriation required, or where a legislative authorization bill does not put a limitation on the years, it becomes a permanent authorization.

Senator NUNN. Where is that provision of law? Have you cited that, on the CIA?

Mr. RIDDICK. Mr. Braswell has it.

Senator NUNN. I think Ed Braswell doesn't agree completely with this.

The CHAIRMAN. Would you like to ask him the same question now? This is purely an informal meeting. It is a key question, and there is some dispute about it.

Senator NUNN. Yes.

Mr. BRASWELL. I would be the last one to argue with Mr. Riddick on parliamentary law. This is a new Senate rule which says that no funds shall be appropriated for any fiscal year. I realize this is subject to the old standing rule. But this amends it unless such funds have been previously authorized by a bill of joint resolution by the Senate during the same preceding year to carry out such activity for such fiscal year.

The CHAIRMAN. What are you reading from?

Mr. BRASWELL. This is the Cannon substitute.

Mr. RIDDICK. But you didn't read the opening phrase, "Subject to the Standing Rules of the Senate."

Mr. BRASWELL. You are reading to get in a point of order issue there. The question is, what does this really mean then if you adopt this as a rule, then you do not have an annual appropriation or authorization. Are you saying that you do not really have to do it?

Mr. RIDDICK. My point is, under this as it is written, if there were no additional authorization, and the appropriations committee recommended funds for said purposes, it would not be subject to a point

of order on the Senate floor. And therefore the Senate could go ahead and pass that appropriation bill, including those funds.

Mr. BRASWELL. I guess the issue that Mr. Riddick is making is that if the new select committee chose not to carry out this mandate under the rule in the form of an annual authorization, the action of the Appropriations Committee, the funds would not be subject to a point of order.

Mr. RIDDICK. That is right.

The CHAIRMAN. I think that clears it up.

Senator NUNN. This is such an important point that it seems to me that it is a very bad situation we are in. I am sure that most of the people that are for this substitute, probably part of their premise of being for it would be that they think there is going to be an annual authorization bill. And most of the people who are opposed to it are worried about that particular point for the same reason as those with opposite opinions. And what we are really finding out with it is that it is strictly up to the committee as to whether there is going to be an annual authorization bill or not.

Mr. RIDDICK. The presumption is that the committee would report something premature to their assignment under this resolution.

Senator NUNN. And if they do, we are going to be in the business of reporting on the floor of the Senate at the authorization debate containing the whole intelligence budget. And there would be no way to get into a breakdown, would there?

Mr. BRASWELL. Let me interject that the CIA is only one of five activities which must be authorized for appropriation, and the DIA as such has no permanent language.

Senator NUNN. You mean if the committee did want to authorize that—

Mr. BRASWELL. They have got to authorize for the rest.

Senator NUNN. This was the main question I had. I really think there ought to be at least an effort to amend that part of this bill by this committee. And my suggestion is that we consider and let counsel consider having a committee with the duty to review the overall intelligence budget, or whatever they have under that jurisdiction, and make a recommendation to the authorizing committees as to what that budget should be, and then let the authorizing committees make the final decision.

The CHAIRMAN. All right.

May I ask one question gentlemen? Following Senator Nunn's questions, directing your attention to what you said this morning about the perceptiveness of foreign intelligence analysts and how they watch our expenditure. Let me re-ask that question now, with reference to the budget that he brought up.

Mr. ELLSWORTH. The point was that even if the Senate didn't get into the details of what was in a national intelligence budget, the fact of the matter is that by watching changes in the size of the budget from year to year, if a coherent, unitary intelligence budget was offered publicly and discussed publicly, putting that together with other pieces of intelligence information gathered over a period of years and all around the world, foreign intelligence analysts, that is to say the intelligence analysts in foreign capitals could very quickly flesh out the intimate details of all of our intelligence programs and

their capabilities and it would be quite a revelation to them, and quite an addition to their overall capability.

The CHAIRMAN. Let me say here, gentlemen, in the time I have been into this work, I have been tempted many times to make more disclosures as to the money part. It has always been embarrassing to me—I mean, disclosures to my colleagues about the money part. If it comes up, we can debate it on the floor many times. But I am always restrained from disclosing matters indiscriminately or even moderately because of the point that the Secretary has made. Foreign Intelligence analysts have the capacity to interpret, directly and indirectly, and put things together as they watch you from year to year. The more I got into it, the more I am convinced that it just has to be kept under the hat to a large degree.

Senator THURMOND, do you have any questions?

Senator THURMOND. I don't have any other questions.

The CHAIRMAN. Senator Taft.

Senator TAFT. I would like to ask Mr. Ellsworth one thing. Do you have any comment on what the effects would be of the proposed change insofar as the commitments in time of the executive branch versus concern with intelligence might turn out to be?

Mr. ELLSWORTH. Yes. If this were to be adopted by the Senate, then it would mean, as far as our time is concerned in the Pentagon, in the preparation of our budget, and the justification of it in detail, that we would have to have, because of the necessity to go ahead and follow the regular procedures, or the existing procedures, I should say, that would continue in the House, that we would have to have double accounting, probably not double staffing, but we would have to have a considerable increase in our staff, and a considerable increase in our automatic data processing machinery equipment and capability, and it would be a very considerable add-on.

Senator TAFT. I was thinking about the time of the Secretary and various others under the Secretary testifying on the Hill as well.

Mr. ELLSWORTH. Of course, there would be that addition also.

Senator TAFT. I would like to raise a point at this time, Mr. Chairman.

The CHAIRMAN. All right, Senator.

Senator TAFT. I think the Secretary's testimony has been extremely interesting, and I think very relevant, and should be available to Members of the Senate during the debate on this measure. And I wonder what would be the disposition of the chairman or the committee with regard to making the testimony of the Secretary public after this meeting and making it available, and the debate. And I would particularly like to ask the Secretary if there is anything that he has gone into here that is so sensitive that it should not be discussed or included in any such disclosure of information?

Mr. ELLSWORTH. Not that I can think of. But if the committee wants to do that I would like to have an opportunity to review it, if I could get it quickly, I will review it immediately. I don't think I have anything, but I would like to have that opportunity.

The CHAIRMAN. Subject to review, the chairman would be glad to release it.

Senator THURMOND. I think it would be a good idea to have his testimony available to show just how the burden is going to be increased on

the Defense Department, their time, and their efforts, and additional personnel, and so forth. And if this could be made available, I think that would be helpful.

Senator NUNN. If the Senator will yield just a moment for one point here, I had conversations with Bill Tobey, and he gave me a concrete example. Sometimes I think they are necessary when you are talking about debate.

For instance, the *Glomar Explorer*—is that the name of the ship that they sent out? The funding on that, if it has been disclosed, the total budget, there would have been a bulk in the intelligence budget for certain years while that was being built, and then inevitably the foreign agent would have been able to tell there was something up, and they would have sent it in and probably found out about that.

Now, is there any way without breaching confidence that you can be more specific and give us, at least for the record, to be used in debate, some examples that occurred in the years past that would have led to disclosure? We have to talk in the abstract so much about this thing so that nobody can appreciate the reality of it.

Mr. ELLSWORTH. Let me do the best I can. I will draw on that example, and see if I can find some others, Senator. I will be glad to try.

Senator THURMOND. That would be helpful.

Mr. ELLSWORTH. I will have to go back into history.

Senator NUNN. How about the U-2 incident? I think if you could show us what would have happened under this procedure, if it had existed at certain points in our history about certain intelligence information, it would be very useful. But if we have to just talk in abstractions about what we fear may happen, I don't think it is going to convince many people.

The CHAIRMAN. Mr. Secretary, is there something else you want to say?

Mr. ELLSWORTH. No.

The CHAIRMAN. Mr. Riddick?

Mr. RIDDICK. No, sir.

The CHAIRMAN. We thank both of you very much for coming.

Senator NUNN. May I ask Dr. Riddick one question. What would be wrong with having the Select Committee on Intelligence making a budget recommendation that would then be built into the authorizing legislation of existing committees?

Mr. RIDDICK. We have got a proviso in the resolution that requires the committee to, "the select committee on or before March 15th of each year, the select committee can submit to the committee on the budget"—they have to make a report to that committee on all the details. But as to how this can be handled in the authorization, if you amend that section that spells out the details of how the authorizations are to be made and so forth, you could accomplish whatever you wanted to accomplish if you wanted to change the present rules.

Senator NUNN. What would be the main arguments against this? That it would diminish the authority of the committee?

Mr. RIDDICK. Senator, I will tell you, I have been into about 20 conferences with these people trying to reach compromises. And this is what they came up with actually. I didn't do anything to go along with them to try to get language that would be acceptable.

Senator NUNN. I understand that. But that would probably be the objection, that it would dilute the authority of the new committee.

Mr. RIDDICK. I think that is true, I think that what they want to do is to make it more public, make the information more public, and at the same time try to protect security.

Senator THURMOND. How can they do that?

Mr. RIDDICK. It is a difficult problem, Senator. I don't know how you can do it. As the Secretary has indicated, if you go a certain way, like if you publish information to whom you are giving contracts for defense purposes, that sets up a picture for the intelligence of foreign countries to plant spies in that plant and locate what they can. If you give them an indication that you are doing so and so, it gives them an idea where they can plant spies. I don't know how you can do it.

Senator THURMOND. As I see it the more information disclosed the more our security is subject to being jeopardized. I can't see it any other way.

Mr. RIDDICK. I don't feel that I am entitled to express an opinion. I just say what the problem is.

Senator THURMOND. Sure. We understand your position.

Mr. BRASWELL. Mr. Secretary, just to wrap this up, you say that there are certain elements of this bill, the proposed resolution, that would be damaging to U.S. intelligence efforts.

Mr. ELLSWORTH. We feel that the authorizing for appropriation provisions in sections—I don't remember what the numbers are, 3 and 12 if my memory serves me correctly—would be damaging in that they would force the presentation in public of a unitary, coherent budget for intelligence operations and organizations.

Mr. BRASWELL. And that damaging effect results from the fact that more information would have to be disclosed?

Mr. ELLSWORTH. That is correct.

Mr. BRASWELL. Dr. Riddick, would you be able to shed any light on what was intended under this 11(b) when it says, "It is the sense of the Senate that the head of any department or agency involved in any intelligence activity should furnish any information or document in the possession, custody, or control of the following agencies," et cetera. Now, that has no limitations on it in terms of words. Was it intended that this would be no limitation? Could the committee put a demand on all our agents in foreign nations to furnish this to that committee?

Mr. RIDDICK. That sense of the Senate doesn't give the committee any additional power, in my opinion.

Mr. BRASWELL. What was the sense of those words as far as furnishing documents?

Mr. RIDDICK. My humble opinion is, the purpose at the time the Government Operations reported this resolution, the feeling was that they couldn't do, get a law passed, by joint resolution, what they could do by Senate resolution. Because it came to me that the House was not going to consider such, and that they were just putting in the sense of the Senate as provided by that law, knowing full well that you can't legislate by simple resolution, emphasizing that these were the things that they wanted the departments to know that the select committee would be concerned about.

Mr. BRASWELL. Do you think they intended that they furnish everything that the committee might ask for, anything?

Mr. RIDDICK. I would hate to interpret their motives.

Senator THURMOND. This is a Senate resolution, isn't it?

Mr. RIDDICK. That is correct, a simple resolution.

Senator THURMOND. Is the effect of that a concurrent resolution?

Mr. RIDDICK. No sir. This has no relation with the House, nor can it concur in the legality.

Senator THURMOND. It is not legislation, and it is not law. Would the Defense Department be bound by it?

Mr. RIDDICK. No more so than they would under any situation in the case of investigating committee that had subpoena power.

Senator THURMOND. I imagine they would contest this, if they are not bound by it. Because if the national security of the country is jeopardized by some resolution of either body of the Congress, I presume the executive branch would make a test of that in court, if necessary.

Mr. RIDDICK. I would say this, Senator, as a procedure to be binding on the Senate, it endeavors to set up a procedure for the Senate to follow. It does not give any select committee any legal authority to get information that it doesn't have already.

Senator THURMOND. It would be a resolution that would be a guide and to the Senate to get what information they could, but it is not law, another branch of Government would not necessarily have to be bound by it, would they?

Mr. RIDDICK. The extent of the committee is its subpoena power to get information.

The CHAIRMAN. Gentlemen, do we have further questions? If not, Mr. Ellsworth and Mr. Riddick, thank you very much.

We will take a recess, gentlemen, subject to the call of the Chair.

[The attached letter from Secretary Ellsworth has been submitted for inclusion in the record at this point.]

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., May 14, 1976.

HON. JOHN C. STENNIS,
Chairman, Armed Services Committee, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I have reviewed my testimony of yesterday and would have no problem with its being released.

You will recall that Senator Hart indicated he would like to know "what the grave risks are" which I had mentioned in setting forth Department of Defense concerns with regard to the visibility that would be created by a separate budget information process. Inasmuch as the Committee did not have the opportunity at yesterday's meeting to return to that question, I thought it might be helpful if I were to spell out in a little bit more detail what I had in mind.

As you know, the Department of Defense plans, programs, budgets and operates several very expensive high technology collection systems, which collect foreign intelligence information not only for the Department of Defense but also for the Department of State, for the Central Intelligence Agency, for the NSC Staff, and for the President. The very fact of the existence of the specific systems I am referring to is never officially acknowledged. First, because the fact of the existence of a given system could, when combined with other facts, expose United States foreign intelligence collection sources and methods—thereby enabling foreign powers to deny that information to us.

I fully recognize the difficulty of proving the validity of the foregoing proposition in public debate. It is not a matter which can be debated in public without

at the same time doing the very damage which the policy of nondisclosure is designed to prevent. Therefore, in order to sustain the validity of the above point, it is absolutely necessary to rely on the informed judgment of the President and those to whom full knowledge of these extremely expensive and sensitive systems and programs has been entrusted.

Second, public discussion of a comprehensive intelligence budget, as would be required by the separate budget formulation process now being considered, would inevitably bring these matters into much wider knowledge, in two ways:

a. Such a budget could hardly be debated without debating the particular parts thereof; and

b. The exposure of changes in the overall size of a comprehensive intelligence budget, over a period of years, would give to the intelligence analysts of foreign powers a substantially increased capability, when they combined information of those changes with other intelligence information available to them, to begin to get at the programs and systems I have in mind, and the capabilities thereof. The intelligence analysts of foreign powers are not so dull and inattentive as to overlook the shifting patterns of expenditure and programming which would be revealed.

I think it is important to keep in mind that the very openness of our society already gives to the intelligence analysts of foreign powers a considerable advantage as they work to collect and understand information on our capabilities and intentions, as well as our vulnerabilities. To give them the added advantage of details of programs and systems which heretofore have been fully protected from their scrutiny would be quite undesirable.

In reviewing some recent history, for example, it is interesting to note that overall national intelligence funding showed a bulge from fiscal year 1969 to fiscal year 1972, then a slight decrease to fiscal year 1976, then a more marked decline. The initial bulge reflected initial funding of the Glomar Explorer; the slight decrease represented the conclusion of the initial production phase and the more marked decline coincided with the public disclosure of that operation and its abandonment. If that pattern had been available to the intelligence analysts of foreign powers at the time, they might well have been able, when combining that pattern with other bits and pieces of information available to them, to have been relatively fully informed on the Glomar Explorer program.

A separate point, Mr. Chairman: the Department of Defense would still be required to maintain a budget formulation process for the House of Representatives which would continue to conform to an appropriation account. The two separate processes which would be required would in themselves impose upon us the necessity to maintain double accounting for our intelligence programming and budgeting. It would also require additional expenses, additional staff, and additional automation equipment.

I hope that this is helpful, Mr. Chairman, to yourself and to the Committee and to the Senate.

Respectfully,

ROBERT ELLSWORTH.

[Whereupon, at 11:45 a.m., the committee was adjourned, subject to the call of the Chair.]