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Vol. 2 OF 3

NATIONAL SECURITY INFORMATION
Unauthorized Disclosure Subject
to Criminal Sanctions

The United States Senate

R 2831

Report of Proceedings

Hearing held before

Senate Select Committee to Study Governmental
Operations With Respect to Intelligence Activities

Friday, March 12, 1976

Washington, D. C.

(Stenotype Tape and Waste turned over
to the Committee for destruction)

WARD & PAUL

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FOREIGN AND MILITARY SUBCOMMITTEE MEETING

Friday, March 12, 1976

United States Senate,

Select Committee to Study Governmental

Operations with Respect to

Intelligence Activities,

Washington, D. C.

The Committee met, pursuant to recess, at 2:25 o'clock
p.m., in Room S-407, the Capitol, Senator Walter D. Huddleston
(Chairman of the Subcommittee) presiding.

Present: Senators Huddleston (presiding), Hart of
Colorado and Mathias.

Staff: William G. Miller, Staff Director; and David
Aaron, Elliot Maxwell, Ric, Inderfurth, Joseph diGenova,
Charles Kirbow, Al Quanbeck, Elizabeth Culbreath and Bob Kelley,
Professional Staff Members.

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P R O C E E D I N G S

1 Senator Huddleston. The Committee will come to order.

2 Shall we go to 41(c) directly?

3 Mr. Aaron. I don't see why not. I think the rest of it
4 is pretty much accepted.

5 Senator Huddleston. Why is this in brackets? Is there
6 a question of whether or not this is a conclusion or whether
7 it will be included in here?

8 Mr. Aaron. It's whether it ought to be included as an
9 example of these two things.

10 I guess I will state my view.

11 Mr. Miller. 41(c)?

12 Mr. Aaron. 41(c).

13 Mr. Kirbow. About half way down, where it starts, "The
14 Intelligence Committee staff" --

15 Mr. Aaron. My only point for including it is to try to
16 make vivid the problem which is described, you know, in just
17 plain general language in the few sentences preceding, and
18 to add to that, this is the problem of a lot of raw intelli-
19 gence suddenly impact on analysts, as well as the other
20 problem, which is that there is this difficulty of trying to
21 predict, essentially, acts which from the standpoint of Washington
22 D. C. and Langley, Virginia, just don't seem rational, and
23 it is in the hope that people will be rational and so forth.

24 I think there is some exception to that, because the term,
25

1 which is not mine but which is in the quote from the post
2 mortem, uses the term "bias," and that may have a perjorative
3 quality to it. But the reason it is included is to simply point
4 out that it is just an awfully hard problem to, you know, use
5 a rational system and to be rational men trying to deal with
6 a situation which, from our standpoints, are not rational.

7 Senator Huddleston. Both of these instances have been
8 listed in the press, have they not, as intelligence failures?

9 Mr. Miller. By Pike.

10 Mr. Aaron. The Pike committee has charged they were. The
11 community's own post mortem staff has viewed them from that
12 standpoint.

13 I am not trying to put the Committee on record as agreeing
14 that they are failures, particularly, although I don't think
15 there is much difference of opinion in the Community as to
16 whether failure to foresee the Cyprus coup as opposed to some
17 of the things that happened after it, was a kind of failure,
18 because the situation there was that they had in fact
19 predicted that if certain things took place, you know, Ionides
20 became head of the Greek junta; if Makarios moved against the
21 Greek officers in the National Guard, that really there was
22 a very good chance that there would be a coup.

23 Mr. Kirbow. Wasn't all of that furnished by the
24 analysts in the community to the highest policy levels of the
25 government?

1 Mr. Aaron. That's correct.

2 Mr. Kirbow. Several weeks in advance.

3 Mr. Aaron. That is correct, and then what happened,
4 apparently, was that -- two things happened. One, the Greek
5 press, our intelligence officers, embassy people with the
6 exception of the embassy in Cyprus, all became preoccupied
7 with what was going on with the Aegian Sea, and there was a
8 struggle between the Greeks and the Turks over the oil there,
9 and that became a hot item. And there was also concern about
10 conflict, and there was a big intelligence collection on that
11 subject. And so Cyprus became kind of a sidelight. That's one
12 thing.

13 The second thing that happened was we got some raw
14 intelligence which said Ionides has decided to cool it, don't
15 worry, and so forth. And the Agency analysts accepted that,
16 and in effect said temperatures are dropping, things are cooling
17 off and so forth, so that even though what they predicted would
18 precipitate a coup began to take place, they didn't stick
19 with their own original estimates. So they were kind of led
20 astray with both this innundation of foreign information and
21 the fact that -- that's how the post mortem put is, onto saying
22 if you want to see or if you want an example of when this
23 general point took place, the IC staff says that's at least
24 one of them.

25 Senator Huddleston. I want to make sure it was the

1 intelligence community staff that made that judgment.

2 Mr. Aaron. That is correct. In fact, that really ought
3 to be capitalized.

4 Senator Huddleston. I think it ought to be left in there
5 to give a little more flavor to the report.

6 Mr. Bader. Senator, may I speak to the other side
7 before you make that decision?

8 And Mr. Kirbow can speak for himself.

9 Senator Huddleston. I hate to be thoroughly confused
10 by the facts though.

11 Mr. Bader. I think in the beginning it is bracketed
12 because there is some disagreement among the staff as to the
13 appropriateness and usefulness of putting this in, this
14 information into this particular report. Let me separate the
15 two elements of this footnote or suggested addition to it.
16 The one goes to the question of the analytical bias. This is
17 a very difficult and complicated point to make, and as David
18 has suggested, there is the perjorative weight to the word
19 "bias." It is a complicated point to understand and analysts
20 worry about this a great deal as they approach the estimative
21 and other intelligence business because they are constantly
22 faced with the problem of how to anticipate the -- in some
23 cases how to anticipate the rational behavior.

24 The word "bias" here is used in the sense that the
25 analyst is biased in the direction of thinking that individuals

1 act rationally when they make decisions.

2 My objection to including the second half of this conclusion
3 is that it isn't really importantly related, or related at all
4 to the paragraph that it is part of. I think the first part
5 of it that has to do with Cyprus is an illustration of the
6 problems that raw intelligence in great quantity give the
7 analyst, who is working a crisis situation, is perfectly
8 appropriate, as far as the substance of it is concerned, to
9 the paragraph, the second part of which, of this analytical
10 bias I think flows from that paragraph. As a start, I think
11 you would need a great deal more explanation in the text to
12 talk about this.

13 It seems to me it is a throwaway point that comes at the
14 end of it, though I accept it as an issue.

15 As far as the intelligence community tasks, seeing this
16 as one of the reasons for failing to foresee the coup in
17 Cyprus in 1974, it is perfectly correct. That is what the
18 intelligence community staff post mortem does in fact say the
19 hesitations that some of us had, or I had about the conclusions
20 of this is that we had not done Cyprus as a case study. We
21 haven't taken testimony on it. We have the one statement
22 that comes from a credible source, which is the IC staff in
23 its post mortem.

24 Senator Huddleston. Which we are quoting.

25 Mr. Bader. Which we are quoting. So I think the

1 IC staff reference takes away most of the problems that I have.

2 My recommendation would really be here that we keep the
3 first part and drop the second part, that is, the analytical
4 bias.

5 I think the first footnote or part of the text is an
6 illustration, is an example of just what we're talking about,
7 and the rest of the part of it. I think on the second part
8 we are talking about analytical bias. There is not enough
9 text to really give the reader a sense of quite what we mean
10 about it.

11 So that would be my recommendation.

12 I think Mr. Kirbow has another view.

13 Mr. Kirbow. Mr. Chairman, this was, I think, four or more
14 times, I know specifically considered by the staff with all
15 of the people that appeared to have an interest in it being
16 present, and it had been decided as a policy type matter that
17 since all of the original information had been furnished both
18 to the policy makers at the highest level, and that they
19 themselves had a requirement and were levying on the intelli-
20 gence community, on this new Aegean Sea problem, that they too
21 were being furnished great amounts of raw intelligence at their
22 request, along with the analysts fumbling this, and even
23 this last bit of raw intelligence which came from a source in
24 Athens, and by the way, a new source, not one that we had
25 relied on before or had great trust in being absolutely good, sou

1 raw evidence, was made available. The decision had been made
2 that -- the final concluding words in the paragraph discussing
3 this sort of thing would read something like the failure to take
4 effective action to prevent such invasion was a policy failure
5 and not an intelligence failure, and I think that basically
6 we don't ever hold post mortems in the intelligence community
7 on the failure of the Secretary of State or the President or
8 the Secretary of Defense to act in accordance with a policy
9 procedure. We always hold post mortems on, kind of down at
10 the level of the analyst, and what did he get and did he fail
11 to properly advise.

12 The record before this Committee, except for the post
13 mortem -- and we have no great weight given to the post mortem --
14 that I can see from any evidence in the record, or anything
15 cited by the intelligence community, I just think it unfair
16 for this Committee to decide, without almost a preponderance
17 of evidence, to kind of indict those analysts that were working
18 this problem at that time, placing no blame whatever on the
19 policy makers who had exactly the same information plus all
20 of the other information that the analyst never has as to what
21 the policies of the governments really are in this case.

22 Secondly, I agree perfectly with Mr. Bader on this analyst
23 bias. Americans are the product of our background, and we
24 always weigh other people as best we can, if you are in the
25 analytical business, based upon your own experiences and

1 whatnot, and I just don't think that to rub these two together
2 here, also, it makes a good point for the Committee, if you are
3 going to use them at all, it should be put in another section.

4 And thirdly, there really hasn't been a Cyprus study or
5 even a comment from the State Department or anyone else as to
6 whether or not the information they had was adequate to meet
7 whatever decision they wanted.

8 And I just don't think it well serves the Committee that
9 we don't have a better picture, that this kind of recommendation
10 is kind of a conclusion drawn, I think, from among the staff
11 and not totally supported by investigation.

12 Mr. Aaron. Well, just let me say, I think you have heard
13 the arguments, so I want to clarify one point, and that is the
14 point about intelligence failures versus policy failures is
15 made on the paper on page 41b. I think we all agree on that
16 statement. It simply says there is a difference between the
17 two. The U.S. had intelligence on the possibility of a
18 Turkish invasion of Cyprus in '74. The problem of taking
19 effective action to prevent such an invasion was a policy
20 question on intelligence failure.

21 I think we capture that point, and on the other point,
22 this is simply drawing on documentary evidence available to
23 the staff to illustrate a point.

24 Senator Huddleston. We also have something of a disclaimer
25 toward the effort on the reflection of the intelligence analysts,

1 it seems to me.

2 It seems to me we are talking about improving the analytic
3 operation, and it just seems appropriate to point to some
4 specific instances, especially when we are quoting some other
5 group that has a certain amount of stature. I don't know that
6 we can make that any stronger there. We could say this
7 possibility was indicated by the Committee or the intelligence
8 community staff report, or emphasize that it is the community
9 staff, the intelligence community staff itself indicated this
10 possibility.

11 Mr. Aaron. Just say "saw this as part of the problem."

12 Senator Huddleston. Yeah.

13 Mr. diGenova. The word itself also emphasizing the self-
14 analytical aspect.

15 Mr. Maxwell. The latter part of that quote, I'm not sure
16 whether it doesn't detract from the impact, saying the
17 intelligence community saw this as one of the reasons for
18 failing to foresee the coup in Cyprus, because it seems to
19 imply that analysts will make predictions based on what they
20 believe rational people will do seems a fairly straightforward
21 point, but it breaks up the impact of the earlier statement.

22 Mr. Aaron. Well, as far as the latter statement is concerned
23 I would agree with Bill's point here that it doesn't necessarily
24 flow from the thing we are talking about before, which is the
25 abundance of --

1 Senator Huddleston. You are relating two problems, aren't
2 you? You say "in this connection".

3 Mr. Aaron. It turns out that there is another problem that
4 is involved in that case. There is not really. The thing is,
5 and I agree that it is a very complicated problem. It just
6 strikes me as one which, because it is a problem, and I think
7 as Charlie says, it is a big thing that we all have to live
8 with. It is the kind of points that people need to understand
9 that this is a problem, you know. We don't make any recommen-
10 dations about how people ought to be irrational. I mean, there
11 is no way to do that. But it is just an effort to try to
12 give a different side to the problem.

13 Mr. Bader. Mr. Chairman, one possibility is that we could
14 separate these two, the intelligence community staff and its
15 reflection on the Cyprus problem, which flows directly, as an
16 example, from the text that goes before it, from the general
17 to the specific; and then perhaps include this analytical bias
18 point which goes to another country and makes it a separate
19 point, as part of the body of the larger paper that supports
20 this, the backup paper.

21 Mr. Aaron. See, I have the feeling is the quote read:
22 An old and familiar analytical problem," we'd all feel more
23 comfortable with the quote because it would not have the
24 perjorative little twist to it, and maybe we should -- one
25 of the things that we could do, we'd simply say, is to take

1 the quote off of "and" and just say "An old and familiar
2 analytical problem" that perhaps, I mean, we wouldn't be doing
3 much violation to the statement of the IC staff, and we would
4 not be removing the perjorative.

5 Senator Huddleston. Would it be any better to paraphrase
6 that rather than taking it in full?

7 Mr. Aaron. Yeah, we could do that, too.

8 Maybe we could do that -- why don't we take that and
9 do a paraphrase, and maybe you can put that paraphrase in
10 such a way that it would help meet the complexity of the
11 problem.

12 Senator Huddleston. You're talking about improving the
13 professionalism or effectiveness of analysis. It seems to me
14 one of the things we have to do is to find some way to overcome
15 the natural tendency of people to do what it says here, expect
16 that rationality will prevail, or expect that people won't
17 do obvious and very rational things.

18 I would like to see the reference in there somewhere, just
19 to give a little extra impetus and emphasis to this one section,
20 and I believe this whole question of analysis is one that is
21 very important.

22 Do you have any thoughts on that?

23 Mr. Inderfurth. I agree.

24 Senator Huddleston. All right, would you agree with an
25 attempt to do a little paraphrasing there instead of a quote?

1 Senator Hart of Colorado. Well, if I had my 'druthers,
2 I'd leave the direct quote.

3 Senator Huddleston. Well, I think the direct quote has
4 one thing going for it, and that is, it is a direct quote, and
5 it is taken from a group that is identified.

6 Mr. Aaron. I think if we just take the quote of "the
7 old and familiar analytical bias" section.

8 Senator Huddleston. The word "bias" has a connotation
9 I think that might make it hard to understand.

10 Mr. Aaron. We might have to move that little paragraph
11 to a little later, where it would fall in better.

12 Mr. Maxwell. Just for those people, for the late reader,
13 perhaps in the top paragraph on 41, the carryover, 41c, the
14 carryover paragraph, it may make sense to try to illuminate
15 what is the kind of policy maker's lust for the latest fact,
16 because it is not on its face, I think, so clear that the
17 policy maker would be or would want that raw fact, and yet it
18 is the latest cable or the latest SIGINT or whatever.

19 Mr. Aaron. I think we need a little introduction here
20 about policy makers want the latest news.

21 Mr. Maxwell. That's the point.

22 Mr. Aaron. And producers of finished intelligence have
23 to compete.

24 Mr. Maxwell. That's my point.

25 And the bottom paragraph, is there a need for an

1 example, or does it speak for itself, that the analysts aren't
2 in part sufficiently informed about national policies and
3 programs. I mean, one example traditionally has been covert
4 action, but I wonder if there are other examples that would make
5 that point as well.

6 Mr. Aaron. Oh, yes, there are other examples. I think
7 a lot of the -- or one of the major ones, for example, analysts
8 trying to predict or foresee or suggest the trend of our
9 relationships with Japan, were unaware of the trip to China,
10 and they never knew it was going to happen, and the Nixon
11 shocks had a major impact on a lot of other things we were
12 concerned about.

13 Mr. Maxwell. That may be a good example to capture the
14 point here, if people think it is not as clear.

15 Mr. Aaron. Well, that is my example.

16 Mr. Kirbow. But that's also the thing we take up in
17 Recommendation No. 29, that policy decisions don't feed down
18 fully or rapidly enough to keep the analysts in the main stream
19 sometimes.

20 Mr. Maxwell. Perhaps if it is going to be our first
21 recommendation, we might just add a factual example at the
22 bottom of 41c to make it clear how important that is.

23 Mr. Kirbow. The China trip may well be an example, because
24 it too is recent, it's well known, and there's nothing inflamma-
25 tory, I mean, nothing serious happened before or after. So I

1 think you can use that as an example.

2 Mr. Aaron. And of course, the China trip had impacts
3 quite beyond Japan. That's one you could look at very carefully
4 because it had a big impact on the Soviet Union and a couple of
5 other areas.

6 Now, turning -- and beyond that I don't think there are
7 any other --

8 Senator Huddleston. Well, let me suggest on 41c, the
9 first paragraph after the section we were just dealing with,
10 it seems to me we have made an unnecessarily long sentence
11 there in that one paragraph that might really have more impact
12 if we just eliminated that middle section of it.

13 Mr. Kirbow. Mr. Chairman, I think that is just an over-
14 sight on our part. I believe we had discussed that very thing.

15 Senator Huddleston. I was wondering if (a) ought to be
16 (d).

17 Mr. Kirbow. Intelligence is the principal purpose of all of our
18 intelligence activities, and the Committee finds that such
19 collection is unacceptable --

20 Mr. Maxwell. I think, Charlie, it has to be (a). Covert
21 action.

22 Mr. diGenova. There is a point I think the Committee is
23 de-emphasizing in one of its reports that covert action is
24 that important, that it is an extreme tool to be used, and it
25 would follow therefrom that really the principal purpose would

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1 be the production.

2 Mr. Maxwell. But the principal purpose of all intelligence
3 activities.

4 Mr. diGenova. Well, maybe.

5 Mr. Kirbow. Unless the Chairman feels strongly.

6 Senator Huddleston. Well, I think we can leave it (a)..

7 Mr. Kirbow. When you really think about it, that is the
8 whole crux of intelligence, though, is the finished part of it.

9 Senator Huddleston. I think it could very well be the
10 thing.

11 Mr. Aaron. The principle is lucid.

12 Senator Huddleston. Well, the principle of the system is
13 to provide our leaders with the guidance they need.

14 Mr. Kirbow. In fact, a lot of finished intelligence, both
15 ahead and during, you wouldn't have any successful covert
16 operations at all, large or small.

17 Senator Huddleston. The word "finished" I guess implies
18 useable.

19 Mr. Kirbow. Put it to a report form or summary type
20 form, Mr. Chairman, instead of the bits and pieces like a
21 photograph or a cable and whatnot being supplied without it
22 being correlated into an overall picture.

23 Senator Huddleston. All right, we are in agreement there.
24 That ought to finish 4lc.

25 Mr. Aaron. All right, I think we can go on to the

1 recommendations.

2 The first one follows on after your point that you just
3 made, which is that the Committee recommends a system be devised
4 to assure that intelligence analysts are better, more promptly
5 informed on U.S. policies, programs, particularly in the area
6 of their responsibility, and secondly, there is a change in
7 the second sentence of Recommendation No. 30. This is not
8 a Freudian slip. Analysts should be able to advance to super-
9 grade positions without having to assume major managerial
10 responsibilities.

11 Senator Huddleston. I saw that when I came through.

12 Mr. Maxwell. David, could I suggest a further amendment?
13 Major managerial responsibilities and with analytical capabilities
14 being the principal criteria. Unless you do that, the last
15 sentence eliminates the possibility that an analysts with
16 managerial capabilities would be able to advance.

17 Ms. Culbreath. No, he says analyst advancement, so if he
18 starts advancing -- in the last sentence.

19 Ms. Davis. I'm sorry, I don't understand.

20 Mr. Maxwell. For analyst advancement, the person is an
21 analyst until he becomes a manager, perhaps, so what I'm saying
22 is, if you say analysts should be able to advance to supergrade
23 positions without having to assume major managerial responsi-
24 bilities and with analytic capability being the principal
25 criteria, that ties in both thoughts I think.

1 Mr. Culbreath. With analytical capability as the principal
2 criteria?

3 Mr. Kirbow. Would the word "able" bother you there instead
4 of "being allowed to advance?"

5 Ms. Culbreath. "Should be advanced."

6 Mr. Kirbow. If you agree here in principle with what we
7 are trying to say, then we can rewrite this, Senator.

8 Senator Huddleston. Suppose you approach it from this
9 angle, that supergrade positions should be available to personnel
10 on the basis of their analytic capabilities, period.

11 Mr. Aaron. The flavor of managerial was we made it quite
12 clear in the text that the route up is through the management.

13 Okay, the third recommendation is that the Director of
14 Intelligence seek to bring in more analysts from the outside,
15 particularly at the middle and upper grade level for both
16 career and temporary positions.

17 The next recommendation, that greater emphasis be placed
18 on the stimulating and development of analytical methodologies
19 at all levels of management. We might just say that this can
20 be an effective exercise sometimes. I mean, there are a
21 great deal of people interested in methodology, and on the
22 other hand, it is one of those things that requires constant
23 attention, and which the Agency itself needs some encouragement
24 to continue doing. It has some activities under way now. It may
25 be the beginning, but now that they are in a transition, I think

1 the staff felt it would be important to give them some additional
2 encouragement.

3 Senator Hart of Colorado. What is that? I don't understand
4 what that means.

5 Mr. Aaron. Well, it means, for example, trying to come up
6 with a new technique for assessing -- well, we have an example
7 of a new one that they just put in, and that is a new technique
8 for assessing crop yields, and they use a combination of
9 photography and a number of other things to make assessments
10 long before even the Soviets knew what they were going to be
11 getting, and that would be an analytical methodology in that
12 particular area.

13 Senator Huddleston. They apparently changed their method
14 on the Soviet Union's defense spending.

15 Mr. Aaron. That's great. Maybe we should encourage them
16 to do that every year.

17 Senator Hart of Colorado. Will everybody who reads this
18 know what it means?

19 Senator Huddleston. I think the people who wrote it
20 don't know what it means.

21 (General laughter.)

22 Mr. Maxwell. Would it be clearer if you don't have the last
23 five words?

24 Mr. diGenova. Which five?

25 Mr. Maxwell. "At all levels of management."

1 Mr. Aaron. How about just saying, on stimulating the
2 development of new tools of analysis?

3 Senator Huddleston. Yeah, I think that probably would be
4 better, tools and methods.

5 I don't see any reason for not having them both because
6 they do refer to two different things.

7 Mr. Aaron. The final paragraph in the recommendations
8 suggests that they encourage tours of duty outside the CIA,
9 both outside the Government and other agencies of the Govern-
10 ment, and it goes back to your recommendation about the rational
11 behavior, in a sense. This is not to suggest that if they go
12 to the State Department they will learn what being irrational
13 is all about, but --

14 Mr. diGenova. May I make a suggestion, that we say that
15 if they do go to academic institutions, that they do so overtly?

16 Mr. Aaron. I think that is a good point.

17 Senator Hart of Colorado. I think you have got some
18 problems there.

19 Mr. diGenova. I think that really jumps out at me, after
20 that whole schtick we went through. I'm serious. I'm not
21 kidding at all.

22 Mr. Kirbow. Every agency of the government has their own
23 major postgraduate program.

24 Mr. diGenova. But not the CIA.

25 Mr. Kirbow. Do you want nothing but dummies in the CIA?

1 Mr. diGenova. No, Charlie, I'm not saying they shouldn't
2 go. I am just wondering if that is an issue. We can spend a lot
3 of time worrying about people being who they are.

4 Ms. Culbreath. Analysts aren't under cover.

5 Mr. Quanbeck. Generally they are under DOD cover.

6 Mr. Miller. No, as a whole, they're generally known as
7 CIA people.

8 Mr. diGenova. No problem.

9 Mr. Aaron. We can just say we encourage analysts to
10 assume general duties on an open basis with other agencies.

11 Mr. Miller. Yeah, that's good.

12 Mr. Aaron. Well, we are through that one.

13 Now we come to Section D on the reorganization of the
14 CIA. That is page number written 52, Section D.

15 Ms. Culbreath. Can I ask a managerial question here?

16 These handouts that we have been getting, like the one
17 on proprietaries and covers, is this the one with our changes
18 in it, following the Subcommittee consideration?

19 Mr. Aaron. I hope not, but I can't assure you.

20 Ms. Culbreath. It's dated March 12th.

21 Mr. Aaron. If it's dated March 12, it must be the new
22 version.

23 My instructions to the staff were not to redistribute
24 the things we have been through but to hold them and put them
25 together in a new book because we are creating a new book.

1 Now, you may have gotten one anyway, but please treat it
2 accordingly.

3 Ms. Culbreath. I guess I did.

4 Senator Huddleston. Where is what you just referred to?

5 Mr. Aaron. Page 52.

6 (Pause)

7 Mr. Aaron. Mr. Chairman, at the risk of opening a chapter
8 which we have already gone through, and of not taking a good
9 suggestion from Mr. Kirbow, not that they all aren't good, but
10 instead of using the China example on not being informed, we
11 have a record before the Committee on Chile.

12 Mr. Maxwell. Fine. I think that is important.

13 Mr. Aaron. In which the activities, the TRACK II and
14 TRACK I, for that matter, were not available to the Chile
15 analysts, so that their analysis didn't reflect what U.S.
16 policy was in the area.

17 Mr. Kirbow. I'll go along with you if you will go along
18 with the fact that Mr. Kissinger withheld it from the Secretary
19 of State and from everybody in the world that we beat the
20 Chile thing to death. It's no longer chili, it's all has.

21 Mr. Bader. Mr. Chairman, a point here is whether the
22 analyst is deprived or is lacking information about national
23 policies and programs at the time he is doing his analytical
24 thing, and we do have a good record on Chile and most recently
25 on Cambodia, and I think that if we could fit this to that point

1 on the production of finished intelligence, I think we could
2 stand behind it.

3 Mr. Kirbow. I thought we were just trying to come up with
4 an example to demonstrate the fact that very high policy
5 decisions such as the President's impending trip there and
6 Mr. Kissinger's negotiations in the Middle East had been a
7 constant daily thing which no one at the analytical level has
8 been told anywhere where they stand until it is finally published
9 in the New York Times, and they have no way to weigh what is
10 coming out of the Middle East on a day to day basis in the
11 light of his negotiations because as he is shuttling back and
12 forth, none of that stuff, to my knowledge, is fed down at that
13 level. In fact, I don't know that anybody but he and the
14 President know what is going on at all, and the President
15 probably kind of at the convenience of the negotiator.

16 Ms. Davis. That's precisely why Colby sweet up the
17 National Intelligence Officer, and that person has on occasional
18 bases been privy to this so that he would get it from the
19 policy maker, and filtering it back to the analyst. But however
20 well it is working is open to question.

21 Mr. Kirbow. I don't have any objection to using Chile,
22 Mr. Chairma, but the only point I am making is if you are trying
23 to draw a person's attention to a real problem, it doesn't do
24 much good to dredge up yesterday's mashed potatoes, because
25 people don't pay much attention because Chile has been overdone

1 on the dealings of this Committee. If you want to draw a few
2 new examples, I think it might be meaningful, and if you want
3 to use Chile also, I don't have any objection, by the way. The
4 record is clear on the position this committee has taken on
5 Chile.

6 Mr. Maxwell. Well, Cambodia does add some fresh meat
7 to the dinner table.

8 Ms. Davis. We could use Cambodia after Mr. Helms response
9 to our cable.

10 Mr. Kirbow. We may have difficulty in getting it back in
11 time, and also in getting the Cambodia thing cleared, but
12 use any tough example that you like. You might as well pick
13 one that you don't have any idea that you won't get cleared at
14 all, and then you'll pick another one if it doesn't clear at
15 the last minute.

16 Ms. Davis. Well, I have it cleared, Charlie.

17 Mr. Aaron. We will do something with an example.

18 On the reorganization, the next thing take up more or less
19 in order is the issue of reorganization of the CIA, and if --
20 I would suggest, it is only two pages long, and I would
21 suggest you might want to take a look at it.

22 Mr. Inderfurth. I have his comments, and I might just
23 mention these to you now, something I think I might have
24 mentioned earlier.

25 In the latest draft that I have, you don't state where

1 covert operations would be. The end of the first paragraph you
2 simply say another for clandestine collection of foreign
3 intelligence from human and technical sources and covert
4 operations.

5 (Pause)

6 Mr. Aaron. I'm sorry. The question went to the question
7 of where is covert action?

8 Mr. Inderfurth. Yes, and right at the end of the first
9 paragraph, if I've got an old draft you could just say "and
10 covert operations, one for analysis under the DCI, and another
11 for clandestine collection and covert operations.

12 Mr. Aaron. Yes, that is the thought, nothing more compli-
13 cated than that.

14 Mr. Inderfurth. And the other is that Senator Hart thought
15 that it might be appropriate to put in a little bit, just a
16 couple of sentences on the executive order and how that relates
17 to this, just saying that there are two deputies, and the fact
18 that the Deputy DCI will be running a CIA, and it's a step
19 sort of in this direction.

20 Mr. Aaron. Well, this raises a little broader question which
21 we might want to consider, that is, you make the recommendation
22 concerning consideration of dividing up the functions of the
23 DCI, and we also make some recommendations here about consider-
24 ing the possibility of dividing up the Agency itself. They
25 don't have to go together, but they can. In particular, if

1 you separate the functions of the DCI from the head of the Agency
2 yet wish him to retain a strong analytical capability, you
3 could still retain line authority over the analytical portion
4 of this now-divided Agency, and while having a different command
5 arrangement for the clandestine services. We could consolidate
6 those two recommendations in the same place, if you wish, and
7 that might make for a somewhat clearer discussion of the
8 problem.

9 In other words, it would start out by saying something along
10 the lines of that final paragraph. If all the recommendations
11 made by this committee are implemented and the proposals of the
12 President are implemented, we could take a close look at
13 dividing them up, and in addition, we also think there are
14 other issues which would fit in with that. It is worth taking
15 a look at whether the functions of the Agency shouldn't be
16 further subdivided..

17 Charles?

18 Mr. Kirbow. Mr. Chairman, so that you don't think that
19 by silence either Ms. Culbreath or myself indicate any kind of
20 agreement with this, Senator Tower has personally asked that
21 he would be reserved on this entire section on the reorganization
22 of the CIA.

23 Senator Huddleston. All right.

24 With that notation we will accept the proposed alteration
25 that Dave mentioned.

1 Mr. Maxwell. May I just ask, would both of those go
2 here rather than earlier, and the reason I raise the question
3 is that although they are closely tied, the DCI recommendation
4 flows directly from that analysis that has been done on the
5 DCI section, and the reason for placing this here in the first
6 instance is that it flowed from the question of collection,
7 covert action and production.

8 I am not sure whether we might not lose something for the
9 reader by amalgamating them.

10 Mr. Aaron. Well, I think you clearly, you just have a
11 choice. You can either lose the reader because you have now
12 got to refer to a set of other similar and if not integral,
13 congruent proposals which are, you know, some 40 pages earlier,
14 or you are going to lose something by virtue of having that
15 thing here, in which case the reader is going to have to remember
16 sort of what transpired, and in either case --

17 Mr. Maxwell. And another suggestion, that is, that the
18 first paragraph of this, that it be left here, the first
19 paragraph be the Committee has "see Section X, proposed
20 strengthening the DCI in the following ways," and then intro-
21 duce it, introduce that idea here and tie it to this, rather
22 than trying to force them together.

23 Mr. Aaron. I think that's a good idea. I think you have
24 to recapitulate what you have said in a brief compass.

25 Mr. Inderfurth. May I ask, just so I know what we are

1 referring to, what is the basis for the reservation? I mean, I
2 am not challenging it.

3 Mr. Kirbow. I want to make it absolutely clear for the
4 record that the Senator, by letter to the Chairman, asked that
5 he be allowed to just note his reservations, and his reservations
6 would not be stated by the staff but would be stated by him at
7 the appropriate time before the Full Committee, and the Chairman
8 had agreed that the Staff Member would be allowed to do that, and
9 I don't think it is proper at this time for me to try to
10 decide what the Senator's position is on it since he has not
11 explained it to me in detail.

12 Mr. Inderfurth. Well, the only reason I ask is that we
13 are recommending the oversight committee look at this, not that
14 they exclude it.

15 Mr. Kirbow. I don't think Senator Tower can be compelled
16 at this point to debate with the staff, and I didn't debate it
17 with him.

18 Mr. Maxwell. May I just make two further comments? One
19 is the first bullet on 52, is the problem seen by some people
20 in the intelligence community; and secondly, on 53, I think
21 under the proposal that there be two agencies, one for analysis
22 under the DCI and another for clandestine collection, that would
23 raise the question of the DCI's -- a strain being put on the
24 DCI's time as well in regard to managing another not inconsiderable
25 agency of 2000 people and a fairly substantial budget, and that

1 I'm not sure whether that shouldn't be noted as well.

2 Ms. Davis. The point is that he wouldn't lose the strain
3 on his time because he would take with him some part of the
4 agency.

5 Mr. Maxwell. That's right.

6 Mr. Aaron. Well, would you like to propose a fix? I
7 might just say that he is supposedly doing that now, so the
8 net effect would be a reduction, that the implication that
9 it would be a total reduction was not correct. So how would
10 you like to put that?

11 Mr. Maxwell. Simply that if the DCI, the present
12 proposal -- the other proposal was to split the DCI from
13 any responsibility for a particular agency because that was the
14 thrust of the consideration, and that here, too, there would
15 be a problem for those people who believe that the DCI
16 should be split from any managerial function, direct Agency
17 managerial function, that there still would be a managerial
18 responsibility.

19 I can try to draw a sentence.

20 Mr. Aaron. Well, wait a minute. If you're trying to
21 make a case, I do not know of any recommendation that the
22 DCI should have no managerial authority. The point is that
23 he manages an operating agency operating in the sense of
24 collection. Nobody has challenged that there is some conflict
25 of interest inherent in both managing resources and producing

1 finished intelligence, nobody. So far as I am aware of, there
2 hasn't been any problem adduced in that direction. The problem
3 is adduced in the direction of allocating resources and
4 running a large collection operation and a research and
5 development activity. That is where the conflict would be
6 seen.

7 Mr. Maxwell. I thought it at least implied, and Mr.
8 Graham's comments about the DCI's, there was a question of
9 whether when military people produced finished intelligence,
10 the DCI was not as well in a possible conflict of interest
11 position with the finished intelligence produced by his agency.

12 Mr. Aaron. Well, that is a point of view.

13 Mr. Maxwell. That was my understanding of at least one
14 thrust of Mr. Graham's testimony.

15 Ms. Davis. Well, they had considered him, just put
16 him in with just a very small staff and leaving the analysts
17 over there.

18 Mr. Maxwell. It's not an important point, but that I thought
19 it might be important.

20 I'll try to make a fix on it.

21 Mr. Aaron. Well, if it's not an important point, let's
22 not make a big --

23 Senator Huddleston. Make it a small fix, will you?

24 All right, where are we now?

25 Mr. Aaron. We are now at the Section G, Intelligence

1 Liaison, which picks up with page No. 73.

2 All right, the next section, Intelligence Liaison, on page
3 73, it is also extremely brief, but I think important. We have
4 run into the question of liaison from time to time, but we have
5 not made a careful examination of it. My own view is that that
6 was a sensible thing to do, given the sensitivity and importance
7 of these activities, and the fact that we were not particularly
8 looking into the propriety of those activities, that an
9 investigatory approach would not have served us well across the
10 board. But it is an extremely important dimension to our
11 intelligence, and if one does not understand it, one does
12 not get involved in knowing something about it, you miss an
13 awful lot of what the intelligence community, particularly the
14 CIA, is all about.

15 We ran into quite a bit of it, or I ran into quite a
16 bit of it in my travels, particularly in Europe, where our
17 principal liaison arrangements take place. It is, I think,
18 something certainly worth preserving and protecting.

19 On the other hand, because of its importance, it seems to
20 me that we really also ought to simply point for the oversight
21 committee in the direction of making clear that this is an
22 extremely important element.

23 Now, the recommendations go to the suggestion that, in
24 the point that treaties are approved by the Senate, executive
25 agreements are reported, and we believe the Director of

1 Central Intelligence should report to the oversight committee
2 on the nature and content of all liaison relationships with
3 other intelligence services.

4 Now, that phrase "nature and content of all" is in
5 brackets, I think out of concern for the sensitivity of these
6 activities. The question is where does one draw the line.
7 My own view is that "nature and content of all" captures the
8 kind of authority that one would like to see the oversight
9 committee exercise. The discretion that they exercise would
10 really be up to them. The notion of simply reporting on the
11 relationships is a much vaguer one, perhaps it is broader, but
12 in any event, that is the alternative.

13 Mr. Quanbeck. I have one comment. This may be a little
14 misleading because it is my understanding, although we have
15 never received official information, that elements of the
16 DOD, including the individual services, also enter into
17 agreements with foreign intelligence groups, and I don't know
18 how well these are coordinated with the DCI or CIA. Certainly
19 NSA does, and I know of a couple of cases where the Navy does
20 too.

21 Mr. Aaron. Well, it might be well to add here the
22 Director of Central Intelligence and any other intelligence
23 agencies should report.

24 Mr. Kirbow. Mr. Chairman, the brackets on that were to
25 highlight in this recommendation the problem that I think we

1 are going to have. Our recommendations are not necessarily at
2 this time planned to be exposed to the agency for clearances
3 or to see if they do not have, or if they are classified, rather.
4 I just believe that the nature and content of these liaison
5 relationships probably is the most serious sources and methods
6 information available in which they engage, and I just point
7 out that to require that this should be reported goes to a
8 thing that I think the oversight committees and these committees
9 have very carefully avoided over these investigations.

10 Senator Huddleston. Well, I don't think it does any great
11 abuse to the paragraph to leave that out, if your case is
12 strong enough.

13 Mr. Kirbow. It is obvious that a good oversight committee,
14 or an oversight committee should be aware that you would
15 have a rather close working relationship of some sort with the
16 XYZ country and the agencies, or even more important is in
17 certain of these countries, even where they are not friendly
18 to us openly, we have very close working relationships with
19 their intelligence groups. It would be very -- this is very
20 tenuous.

21 Mr. Miller. You want to know what obligations the United
22 States enters into as a result of this relationship.

23 Mr. Kirbow. What do we owe them type thing, and
24 not necessarily the day to day working relationships between
25 how you are going about doing your collecting and trading-offs

1 and things like that.

2 Senator Huddleston. You have got to know something.

3 You couldn't enforce No. 2 if you didn't have some
4 information.

5 Mr. Aaron. That is correct. Let me give you an example
6 of one which I have some extensive and very fascinating
7 discussion during my travels, and I think we should go off
8 the record here.

9 Senator Huddleston. Off the record.

10 (Discussion off the record.)

11 Senator Huddleston. I think in this case we ought to
12 take the brackets out and --

13 Mr. Kirbow. And leave the words in.

14 Senator Mathias. Well, let me give you an example of
15 why that might be desirable. I made a visit to a friendly
16 country not too long ago, and the other day when we requested
17 our FBI files, one of the items that I discovered was a complete
18 memoranda of my conversations in this friendly country.

19 Senator Huddleston. That was in the FBI file?

20 Senator Mathias. It was in my FBI files at the --

21 Mr. Kirbow. What that really means is that it was picked
22 up under our CI feedback, counterespionage or counterintelligence
23 feedback, through the CIA.

24 Senator Mathias. I know who did the recording. I can
25 put a name on him and everything, but I was not aware at the

end 2b
begin 3a

1 time that the conversations were taking place.

2 Senator Huddleston. That Senators would be under surveil-
3 lance, you mean?

4 Mr. Kirbow. I will say something that Senator Mathias
5 didn't hear earlier. My earlier comments, and the reasons the
6 brackets were put there by Mr. Aaron initially was that I
7 felt that when you use the words "nature and content of all
8 liaison relationships," that we might be speaking to sources
9 and methods, but you know, the oversight committee is going to
10 avoid sources and methods like a plague anyway, so I don't
11 see anything wrong with leaving the words in.

12 Mr. Aaron. Well, I think just to echo that, and to argue
13 the other side of the case for just a moment, the only real
14 reason to be less explicit about this is that it might deter
15 other countries from wanting to enter into such agreements
16 because they would think that this is going to be open
17 sesame with the Congress.

18 Now that, I think, is the most telling reason to be purpose-
19 vague. The oversight Committee will do whatever it wants, you
20 know.

21 Senator Huddleston. That's true. The thought occurred
22 to me a moment ago, just announcing that might cause some of
23 them to be a little reluctant. But at any rate, I don't
24 see how we can carry out the responsibility.

25 Senator Mathias. Well, but that's in writing, and these

1 friendlies are nervous as hell about this. Embassies just
2 twitch around town hearing mention of the subject.

3 Mr. Miller. You have to give in order to get.

4 Mr. Kirbow. In that respect, Mr. Chairman, and since
5 the minority member is present, too, one of the other minority
6 members of this Committee, specifically Senator Baker, had
7 asked me to make mention to you as the Chairman and any of
8 the other members his concern that the recommendations were
9 not -- the findings and recommendations were not in some way
10 going to be carefully considered by the Agency to prevent
11 just what you discussed, that mere publication of this being
12 made available to the oversight committee may cause some
13 serious effects on the relationships, and that we could ask the
14 agency not to change this, necessarily, but to state a position
15 on what effect would this have if it were made public, or that
16 type of thing, that he was going to make a formal request to
17 the Subcommittee, and wanted to kind of have your feelings
18 on that.

19 I felt at this time it was appropriate to make his request
20 known here.

21 I think the problem arose on the Domestic Task Force
22 where the General Counsel had advocated against any contact
23 between the executive branch and the findings and recommen-
24 dations part of the task force.

25 Senator Huddleston. I thought Chairman Church had indicated

1 that they would look over the whole report.

2 Mr. Kirbow. I thought that also, and he had, and that
3 is why he asked me to broach it to the Subcommittee. Specifically
4 you recall a couple of days ago we were talking about, with a
5 group of witnesses from the CIA, what would be the effect of
6 a public announcement that the CIA had relationships with
7 480 something academic institutions, and so many individuals
8 there, and they said it would cause serious harm to their
9 activities in that. That is the sort of thing that I think
10 he was specifically wanting the agencies to be able to go on the
11 record, so they fully understood what the committee was doing,
12 not necessarily that they were going to change their position.

13 Mr. Inderfurth. The appropriate time, I think, would be
14 after the full Committee has completed its review and approval
15 of the recommendations.

16 Mr. Kirbow. He did not move to an exact procedure, but
17 just that the desire should come out.

18 Senator Huddleston. Well, I can see that this kind of
19 recommendation here on the staff would cause some nervousness
20 on the part of --

21 Mr. Kirbow. And you could find out, you know, well, it
22 bothers us and we can live with it, is one level, or it
23 creates harm or serious harm, or it is a disastrous escalation
24 or whatever the positions are.

25 Mr. diGenova. Mr. Chairman, in that regard, and I was

1 thinking about this the other day, I think -- and the Committee
2 has looked into an area and done a study on it, and certainly
3 wants to make a recommendation. It could still decide, for
4 example, after consultation with the Executive Branch that this
5 did pose a sources and methods problem, but there is nothing to
6 stop the Committee from having a classified version of its
7 recommendations which would be transferred to the President
8 of the United States, which would eventually set out for the
9 Agency, so there would be no misunderstanding, that it was in
10 fact, going to look into liaison services. You wouldn't neces-
11 sarily have to say that in public. That's just an example of
12 the kind of thing that the Committee could do. The Chairman
13 could transmit a letter to the President of the United States
14 testifying to the fact that he was making an effort to protect
15 some valuable information, but the Committee was not giving
16 up any authority by not mentioning it in the public document.

17 I think that is something the Committee may want to
18 consider.

19 Mr. Kirbow. Mr. Chairman, I don't want to call for any
20 kind of decision. Obviously I don't have the authority. But
21 he just wanted me at some appropriate time to make that known
22 to you, and I had elected to do it today because these are
23 to go to the Full Committee next week, and I waited until
24 Senator Mathias has arrived.

25 Senator Huddleston. Do you have any further thoughts,

1 Mac, on this?

2 Senator Mathias. I think maybe Joe's idea of a classified
3 section may be the answer, either that or Senator Baker's.

4 Senator Huddleston. I don't think we need to be too nervous
5 about No. 2, the fact that we are going to require them to not
6 get involved in things through liaison that we're not permitted
7 to do otherwise.

8 Mr. Aaron. I think Joe's recommendation is a good one.
9 If you read Recommendation 3 against 1, if you deleted the materi
10 in the brackets, it would tend to imply that you got much less
11 in 1 than you would get in 3, and liaison people could not be
12 too unhappy about 3 because they're really talking about non-
13 intelligence matters being used, just using secure intelligence
14 channels to do it.

15 However, if that were the case, I think you really would
16 want the content of 1 as it is now.

17 Mr. diGenova. Absolutely.

18 Mr. Aaron. And we might put a footnote on it to the
19 Committee here in that this would be supported to a classified
20 letter to the President, the Director, the Agency and the
21 oversight Committee whenever it came about, stating that
22 our recommendation was in fact fuller than this, and was, you
23 know, made mor ambiguous in the public text in order to protect
24 sensitive channels, or something to that effect.

25 Senator Huddleston. I think that I would approve of that

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1 approach. I think that we can work that out.

2 Mr. diGenova. The Committee may wish to do it in other
3 instances, or they may say no, they don't want to do this.

4 Mr. Aaron. I take it the second one doesn't cause any
5 problem.

6 Ms. Culbreath. Elliot had a suggestion on that one which
7 I'm going to try to interpret here, on the second one, on the
8 second sentence.

9 Mr. Aaron. Well, let me say, the second line says, "encoura
10 with action," and the "with" is a typo that comes out.

11 Senator Huddleston. "Should be prohibited from engaging,"
12 shouldn't it be?

13 Mr. Aaron. From engaging and causing, funding or
14 encouraging.

15 Senator Huddleston. The way it is is prohibited to
16 engage.

17 Mr. Maxwell. I wanted to try to make the second sentence
18 a little bit clearer, and I can read it and see if it does.

19 Furthermore, the fact that a particular project, action
20 or activity of the CIA is carried out through or by a liaison
21 service does not relieve the CIA of its responsibilities for
22 clearance within the Executive Branch or with Congress.

23 We may be making it a little bit clearer.

24 Mr. Aaron. Well, let me just say one thing here, then.
25 We really in the first sentence have to say, liaison

1 relationships with other foreign intelligence services, first of
2 all, and then down here, through a foreign liaison service.

3 Mr. Maxwell. Okay, through or by.

4 Mr. Aaron. Through or by.

5 Okay, I think that's a good fix.

6 The third recommendation, let me explain that, there
7 occasionally, a negotiation or agreement will be struck through
8 an intelligence channel, in order to give it a sort of super-
9 secure quality, and I think that because it has been done in
10 liaison, that has been a way of protecting it, not only from
11 unintended public disclosure, but also from disclosure to
12 Congress which had little or no access to these kinds of
13 information. Once it was labeled intelligence information, you
14 had a number of barriers to its dissemination, appropriate or
15 inappropriate. This simply requires that if this takes place,
16 and there are real agreements that occur as a result of it,
17 that these have to be brought to the attention of the
18 Committee.

19 Ms. Culbreath. How is this related to the existing require-
20 ments regarding treaties and agreements with other countries, or
21 any other kind that you might have?

22 Mr. Aaron. Treaties, as you know, have to require advise
23 and consent. Executive agreements must be reported to the
24 Senate.

25 Ms. Culbreath. Even secret executive agreements?

1 Mr. Aaron. That is my understanding.

2 Mr. diGenova. They have a specific definition, however,
3 and I don't know if a liaison type service --

4 Mr. Aaron. This doesn't fit into that. It is kind of a
5 further refinement.

6 Ms. Culbreath. This is just intended to get at contracts
7 with liaison services to do things for us?

8 Mr. Aaron. No, it is not for intelligence or intelligence-
9 related like covert action. It doesn't deal with that. It
10 deals with really other matters. For example, I think certain
11 nuclear agreements are worked out in intelligence channels
12 because they provide a supersecure way of doing it.

13 Ms. Culbreath. But those would also have to be reported
14 under existing requirements to --

15 Mr. Aaron. They have not been, or I'm not aware of it.

16 Ms. Davis. Well, that's something -- I don't know.

17 Ms. Culbreath. Well, that's what I don't understand. I'm
18 trying to figure out if this is already required somehow or
19 another to go to Congress.

20 Mr. Aaron. I don't believe so.

21 Mr. Miller. Well you see, Elizabeth, this is the whole
22 problem. There is a whole range of activities that range
23 from the kind of thing that David describes, which may be
24 simply a technical means of obtaining an agreement, to exchange
25 of equipment, money, people in some cases.

1 Senator Huddleston. Is this within the agency of government
2 now?

3 Ms. Culbreath. I mean the Agriculture -- for instance,
4 if the Agriculture Department has a secret agreement with India,
5 would that have to come through this channel or go to our
6 oversight committee?

7 Mr. Aaron. Well, let's take a hypothetical but I think
8 a real kind of example.

9 If there were a special agreement made with Iran concerning
10 breaking the oil embargo, and how money was going to be spent
11 and how much oil they were going to try and get out and what
12 have you, and this was negotiated through an intelligence
13 channel because that's how the Shah or the United States
14 wished to negotiate this, if you will, cartel type agreement,
15 that agreement would not ordinarily come to the Congress in
16 any other way. Congress would have no knowledge of it.

17 Ms. Davis. And it probably wouldn't, even if it came through
18 intelligence channels.

19 Senator Huddleston. What we are asking is any time the
20 intelligence community is used as a negotiating instrument for
21 the government, that we ought to know about it.

22 Mr. Aaron. That's right, and the fact that it is being
23 used is not an excuse or justification for not following
24 through with these other reports.

25 Ms. Culbreath. Well, that helps me to understand it. I

1 don't know about anybody else.

2 Senator Huddleston. All right.

3 Let's move on.

4 Mr. Maxwell. The budget paper is on its way over, and
5 here it comes now.

6 (Pause)

7 Mr. Aaron. Turning to Section VIII, let me explain a
8 little bit of the history of it.

9 The Defense Task Force did the primary work on the
10 budget along with a consultant that we had, formerly associated
11 with the Bureau of the Budget, but I think it is safe to say
12 that in essence this distills the analysis and judgment of
13 the Defense Task Force concerning the intelligence budget
14 questions. It cannot do justice to it because it is an
15 extremely rich and useful and interesting analysis that they
16 put together, and I think we are a long ways toward getting a
17 good portion of that declassified and available for the overall
18 report.

19 Now, it doesn't appear under the Defense Department
20 section because in terms of findings and conclusions and
21 recommendations, or findings and conclusions in regard to the
22 budget, it doesn't go to so-called budget issues, in other
23 words, are we spending too much or too little or so forth, but
24 they go to the question of how does the budget fit into the
25 Congressional oversight problem.

1 And we went over this paper a couple of times, and most
2 recently, even after we last went over it, it contained both a
3 section on the numbers relating to the budget and its structure
4 as well as the arguments for Congressional oversight and the
5 constitutional requirements, and what we have just done --
6 Elliot made the point that it really made more sense to start
7 out with the basic charge of the Committee, which was what
8 about the Constitutional questions, what about the Congressional
9 part. So it starts out now with something of the introduction
10 to the Constitutional and Congressional issue, and then goes
11 on to the issues of the numbers.

12 Now, there is apparently a sentence missing.

13 Mr. Maxwell. Yes. On page 107, the first full paragraph
14 ends with the sentence, "While this represents 1 percent of
15 the Federal budget, it constitutes 10 percent of the control-
16 lable Federal spending." A sentence was dropped in the typing
17 that should go before that sentence, and the sentence is
18 "The Committee found that the foreign and military intelligence
19 community spends roughly \$10 billion a year on intelligence
20 activities." Then the next sentence, "While this represents
21 1 percent of the Federal budget, it constitutes 10 percent
22 of controllable Federal spending."

23 Mr. diGenova. Elliot, the word "both" after the "U.S.
24 Constitution" should be in brackets, also, because that is
25 a debatable question.

1 Mr. Maxwell. That is correct.

2 Mr. diGenova. The word "both."

3 Mr. Maxwell. In the third full paragraph.

4 Mr. Aaron. I just wonder if it wouldn't be useful to add
5 just to the very first sentence that the Committee finds that
6 a full understanding of the budget is required for effective
7 oversight. I think that is the first of our findings here.

8 Mr. Quanbeck. In the second sentence, I would recommend
9 the budget procedures, that should be the secrecy procedures
10 presently employed. The budget procedures are straightforward,
11 are the same used for the rest of the Department of Defense,
12 but the secrecy.

13 Mr. diGenova. How about the secret budget procedures?

14 Mr. Quanbeck. The data is what is kept secret, the
15 procedures are not.

16 Mr. Aaron. Can you say the present secrecy surrounding
17 the budget makes it --

18 Mr. Kirbow. I don't want to necessarily dwell on that
19 because obviously it is the cause and effect of everything that
20 goes on in this area, but procedures adopted by the Congress
21 is not made more fully aware.

22 I don't want to make it appear that just because of the big
23 secrecy surrounding this, it is totally secret, and as long as
24 we adopt a procedure, that we are going to recommend that it
25 stay secret. Really, it is the Congressional procedures that

1 are preventing the Congress from full exposure.

2 Mr. diGenova. How about "employed by the Congress itself"?

3 Mr. Kirbow. Budget review.

4 Mr. Aaron. Well, it isn't entirely fair to put the
5 entire burden on the Congress. There is no question that the
6 executive has gone to great lengths to insist that this be
7 secret, and the Congress have complied, the appropriate
8 committees have complied.

9 Now, whether in the absence of that they would still want
10 to do that --

11 Mr. Kirbow. I think secrecy surrounding the budget
12 procedures --

13 Senator Huddleston. Is it necessary to put "public" in
14 there also?

15 Mr. Aaron. I refer to you.

16 Mr. Maxwell. It may not be appropriate in that sentence,
17 but the problem is that the thrust of the Constitutional require-
18 ment goes to the public rather than to Congress alone, and
19 because the public was to serve as a check on Congressional
20 procedures, the public is unable as well.

21 Senator Huddleston. I understand.

22 Mr. Kirbow. We could -- it certainly doesn't exercise
23 oversight.

24 Senator Huddleston. We could use the words "full
25 understanding," which would seem to imply to me that the

1 public ought to have all of the details.

2 Mr. Maxwell. That could be dropped there because I think
3 it is clear later on.

4 Ms. Culbreath. Well, Mr. Chairman, that gets to some of
5 the discussion about how much revealing of the budget is
6 necessary in order to meet the requirements of the Constitution,
7 and that is not something I'm sure we're going to fully step
8 up to.

9 Senator Huddleston. I've got a feeling that we're not going
10 to suggest that the full Constitutional requirement be adopted,
11 it would be my guess, is that right?

12 Mr. Maxwell. I certainly would not recommend full disclo-
13 sure of the budget.

14 Senator Huddleston. But here we seem to be implying that
15 they have to have a full understanding, even down to the
16 general public.

17 Mr. Maxwell. Well, why don't we strike public there,
18 because I think the -- we do make the point clear in other
19 places.

20 Senator Huddleston. Well, we mentioned Congress. Make it
21 "even Congress."

22 Mr. Maxwell. Well, let's focus initially on Congress.
23 I think it goes to the public after.

24 Senator Huddleston. All right there, Dave?

25 Mr. Aaron. All right.

1 Let me see if I understand it.

2 You want the "even Congress"?

3 Senator Huddleston. Well, what about that? That seems
4 to me to emphasize it.

5 Mr. Aaron. That's fine. It's "even Congress as a
6 whole, to make use of this valuable oversight tool."

7 Senator Huddleston. That makes it possible for Congress
8 to exercise its appropriate oversight responsibilities.

9 Senator Mathias. Generally that whole section looks
10 all right to me. The Recommendation 94 is the only question
11 I would have.

12 Mr. Kirbow. Mr. Chairman, since I asked that it be bracketed
13 the discussion I had with the staff, and I suggested that the
14 current statutory law of the nation, and the rule that you
15 have adopted in the Senate, require any Committee oversight
16 on intelligence or otherwise, to do whatever it has to do
17 with the Budget Committee, and you don't want to recommend
18 against it. It is already a rule.

19 Mr. Miller. We have had inquiries, for example, from the
20 Budget Committee to this Committee.

21 Mr. Kirbow. As to how you would do it, or whether or not?

22 Mr. Miller. Whether you would and how you would do it.

23 Would an oversight committee --

24 Mr. Aaron. Be the people to do it?

25 Senator Mathias. I just think that they are going to work

1 those out.

2 Mr. Kirbow. Obviously if there were inadequate security
3 arrangements, two chairmen could decide that the Committee
4 itself is able to get more information than would be made public
5 I think you can spell out more here, and it becomes kind of a
6 recommendation that later becomes a law that you can make it
7 more rigid, then flexible.

8 Senator Mathias. Well, you also have a problem, if you
9 talk about the Budget Committee, you're also going to have to
10 talk about the Appropriations Committee, so I would say strike
11 this.

12 Senator Huddleston. Strike 94.

13 Senator Mathias. Otherwise I have no problems.

14 Mr. Aaron. Now, 93 has two brackets on it, and they are
15 somewhat different. There is a recommendation that it -- it
16 has three recommendations in it, if you will. The first is
17 to authorize the release, both authorize and release an
18 annual figure. To be more precise, it is to authorize a
19 national intelligence budget and release a total figure. The
20 second recommendation is that it release the figure for each
21 major agency.

22 Now, I think the authorization point is picked up in the
23 previous sentence, because if you're authorizing the budget as
24 a whole, you're really going to have to authorize things, not
25 only the agencies, but maybe even categories within agencies.

1 So the real issue here is whether these agency budgets
2 would be made public. That would include NSA, CIA, DIA, the
3 Joint Reconnaissance programs and so forth, the total for
4 each one of these.

5 Now, back in the text of the findings we make some
6 comments about those organizations, and some of their costs, such
7 as the Agency itself. If we do not want to release those sub-
8 findings, we may not want to include those costs, particularly
9 those of the CIA.

10 On the other hand, we had some discussion at the staff
11 level about the possibility of recommending that on an annual
12 basis there be released a global figure, if you will, for the
13 entire intelligence community, and not a more detailed breakdown,
14 but that this one time for the purposes of our investigation
15 and so as to give a relative -- an appreciation for the
16 relative allocation of effort within the intelligence community,
17 we might give a detailed breakdown, yet recommend that this
18 is the last time, in effect, that we are only going to do this
19 once.

20 You can see how it works now. This is evidence of what
21 it is that goes on in the intelligence community, but that for
22 security reasons we don't think this ought to be a common prac-
23 tice.

24 The further recommendation in that paragraph, in the
25 last bracketed sentence really urges the oversight committee

1 to do more in the way of releasing information in this area.
2 It should be contrasted to a finding on the top of page 107, which
3 is in brackets, which has the opposite thrust, and it says that
4 the Committee opposes a more detailed public itemization than
5 whatever it decides to release.

6 So the last sentence in Recommendation 93, the Committee
7 really has two choices. It can either urge the oversight
8 committee to try to expose this problem more within the bounds
9 of national security, or it can try to go on record as saying,
10 really, it shouldn't go any further than this. The argument
11 on behalf of the last alternative, which is to go on record as
12 saying this is as far as we ought to go, is that I think it
13 will help assuage the fear that exists in the executive
14 branch that once you reveal any numbers, even if the numbers
15 themselves are probably not going to be detrimental in any way
16 to the national security, this will only feed pressure for
17 more detailed exposure, and that if we agree with the point
18 that there should not be more detailed exposure, this will be
19 most reassuring to the executive branch and help keep from
20 happening a process which both they and the Committee would
21 find undesirable.

22 Mr. Quanbeck. By way of explanation, the analysis we
23 did would be that we can release the aggregate figure every
24 year, and it would be virtually impossible to pick out changes,
25 significant changes in programs. It's so aggregated and there

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begin 3b

1 are so many variables that you couldn't do it. But I believe
2 if you went on an agency by agency basis, especially the NSA
3 and National Reconnaissance programs, that it would be possible
4 to detect the addition of new programs or major cryptological
5 effort or something like that.

6 So I don't think -- our analysis would lead us to believe
7 that the aggregate number is what we should work toward.

8 Mr. Maxwell. There is some conflicting testimony about
9 that. I think Charlie has gone over the record, and I have.
10 The past Directors of the CIA have come down at varying positions
11 with regard to component disclosures and their effect on
12 national security. They all agree that there is a substantial
13 danger of people nickel and diming on figures, so that sooner
14 or later an enormous amount of detail gets out. But Mr.
15 Schlesinger did not take a position that component surveys
16 posed -- the component figure, the aggregate figure for CIA
17 posed a real danger, while Mr. Colby did. Mr. Helms again
18 took a position that he was not generally opposed to it, and
19 when the former Comptroller of the Agency, Mr. Clark, was
20 asked precisely the point about revealing new programs in
21 regard to CIA, he took the position when he was Mr. Colby's
22 Comptroller, Mr. Colby asked him whether in fact it would
23 reveal new programs, he said he couldn't find the evidence that
24 it did.

25 Mr. Quanbeck. But that's the CIA, but I'm addressing NSA

1 and the National Reconnaissance Programs. I think it is a
2 different problem there. The NRO is much more system oriented
3 and doesn't have that vast overhead that remains constant.

4 Mr. Kirbow. It is almost solely constituted in major
5 hardware expenditures, and if we can go off the record just
6 a moment.

7 Senator Huddleston. Off the record.

8 (Discussion off the record.)

9 Senator Huddleston. My personal feeling all along is that
10 if we showed an aggregate budget, it would be trouble.

11 Mr. Kirbow. I would say in regard to Elliot's position,
12 in regard to the Constitution, that he's not calling it a
13 cure-all.

14 Is an aggregate budget enough to satisfy the Constitution
15 in light of the National Security matters in the eyes of the
16 Congress.

17 It seems that if we tried that the first time and got
18 beat, either on the floor or from the oversight committee or
19 wherever, that you'd have to live with it, but if you sold it
20 a couple of times and no real harm accrued to either the
21 American public or the Congress, you might find that as times
22 change you could do something different. But clearly you could
23 very much harm yourself. Now, not a single witness has said
24 they couldn't live with the total aggregate.

25 Mr. Quanbeck. There are other programs going on in the

1 Department of Defense not related to intelligence that are done
2 in complete secrecy.

3 Mr. Kirbow. And indeed they are and are approved by the
4 Armed Services Committee as classified projects, and not even
5 revealed in detail there.

6 Mr. Maxwell. I think Charlie sums up accurately my own
7 feeling about the need to protect the national security, and
8 the fact that total disclosure or even disclosure in significant
9 detail would not be appropriate at this point. I think, how-
10 ever, that the point should be made that the purpose of the
11 Constitutional requirement should be facilitated as much as
12 possible, given the limits that National Security would place
13 upon it.

14 If one took the aggregate budget, I think Congress would
15 be in a better position to make some judgments as to whether
16 they would like this amount of money spent. At the same time,
17 the public would be able to see that \$10 billion or roughly
18 \$10 billion was being spent, but there, my own feeling, based
19 on the record that I have taken a look at, is that to say that
20 the CIA, for instance, was receiving \$750 million, would not
21 pose that threat. It is already clear from Mr. Marks and Mr.
22 Marchetti, for whatever fortunate reasons exist, that the budget
23 is pretty widely known, and I think it is pretty unlikely
24 that we could maintain as a serious matter that the
25 enemies of the country don't know what the rough figure is.

1 if, in fact, there was a new program either in NSA or CIA.

2 You also have to understand that Mr. Schlesinger took the
3 position that that could be done, if one did it, in regard to
4 outlays rather than obligational authority. For instance, the
5 KENNAN program was funded over a period of time, so it wasn't
6 as if the total cost of the program showed up, and I think the
7 same would be true with the situation in regard to other
8 intelligence agencies. I mean, that is one possibility.

9 The second possibility is, if there was a bump, according
10 to Mr. White and other people in the DOD task force, even
11 in regard to CIA's budget, from my discussion with them, CIA
12 was unable to explain bumps in their budget process, that there
13 were a number of explanations, internal cuts in personnel
14 efficiency or whatever. The only point that I am trying to
15 make is that insofar as we can provide information to the
16 public which helps them exercise their function in deciding
17 whether Congress is allocating their funds properly, and inso-
18 far as we can facilitate Congressional oversight by saying
19 that funds are appropriately addressed to particular agencies,
20 we increase the likelihood of better oversight, and that each
21 time that we have to look and see what the effect would be on
22 national security.

23 My own sense, and that's a personal judgment, that it
24 could be done in terms of aggregate program, or the total in
25 CIA, if this were in fact seen as a particularly, as a figure

1 The national objectives of an intelligence community are
2 determined in probably 10 percent of the -- excuse me, for
3 10 percent of the amount of money that we know we are going
4 to continue to monitor the Soviet Union with our Spies in the
5 Sky, and you can pretty well estimate what that kind of budget
6 is going to be.

7 If the Congress or the executive had any way of truly
8 determining what the national objectives would be in the
9 intelligence community over a five year period, I think then
10 you should require the Agency to come forth and put its plans
11 against those, but I just don't see how in this case here,
12 having the oversight of the intelligence community, that you
13 could compel them, because that's what you're really going
14 to try to do, to determine what the national objectives are
15 out to the fifth year, against which they are going to match
16 each and every one of their requests for funds.

17 The second part on the hardware system, I don't see any
18 serious objection to it. Someone has to authorize those things
19 so you can get the handle on proper costs and whether you're
20 getting other systems out of the sky, when you are putting
21 up new ones, and I think it should stay in there, but I think
22 that as it is worded, it is an unworkable situation.

23 Mr. Inderfurth. The first part.

24 Mr. Kirbow. Principally, yes.

25 Mr. Aaron. Well, I might say that my understanding -- and

end 3b
begin 4a

1 believe me, this is strictly personal; this is not Committee --
2 my understanding is that the efforts to get the Department of
3 Defense in particular to provide five year force budget
4 projections which they do for themselves, to get them to
5 provide it for Congress has not been successful.

6 Mr. Kirbow. Excuse me, I think that is wrong, because
7 at its initial inception of five year planning, when Mr. McNamara
8 was Secretary, it has been furnished to the Senate Armed
9 Services Committee, at least for the six years that I was
10 in the Senate. I don't know if they were in the detail that
11 everyone thinks they should be, but they have the five year
12 forecasts.

13 Senator Huddleston. Well, I don't see requiring anything
14 there the Committee would ask for. You know, when they come
15 up before the Committee they are going to ask for it, but I'd
16 let it go.

17 Mr. Kirbow. You just want to delete that, Mr. Chairman?

18 Senator Huddleston. Yes.

19 Mr. Aaron. The next recommendation deals with a point
20 which I think is quite important to keep in mind, and that is
21 that we have talked about the National Intelligence budget and
22 control over it and what it should do and authorizing it, but
23 much as we give the Director of Central Intelligence earlier
24 in the paper the authority to keep an eye on the tactical
25 budget, we sort of have to give that or recommend that the

1 oversight committee also keep an eye on the tactical budget,
2 simply to insure, for its own sake, that the tactical budget is
3 really, contains just tactical things.

4 Mr. Kirbow. Not used to hide national programs.

5 Mr. Aaron. That's right, and also there are some simple
6 questions which are going to have to be resolved, for example,
7 like the Kennan, and what is tactical, and they are going to
8 have to define that, and you really can't define it without
9 looking at what is tactical.

10 And so this is by way of making that point.

11 Ms. Culbreath. An editorial point.

12 Do you want to delete the first four words and put "The
13 Committee"?

14 Mr. Aaron. "The oversight committee should"? All right.
15 I don't think "carefully" adds that much.

16 Our next recommendation goes to the recommendation that
17 the GAO be empowered to conduct full audits. We took out
18 something of this character from the proprietary section you
19 will recall, on the theory that we were going to be providing for
20 it here.

21 Mr. Kirbow. Excuse me, David, didn't we take it out
22 because we already had it in the oversight bill?

23 Mr. Inderfurth. No. In fact, it was also taken out of
24 the oversight bill.

25 Mr. Kirbow. It was taken out because we have the authority

1 to do so at any time.

2 Mr. Inderfurth. But some of us were concerned about that
3 because although GAO does have the authority --

4 Mr. Kirbow. No, they don't have any authority by
5 themselves.

6 Mr. Inderfurth. They have the authority by the Committee,
7 if asked by Congress. However, despite the fact that GAO has
8 been asked by Congress on occasions to look at various components
9 of the intelligence community, it has had a great deal of
10 resistance from the CIA, from NSA to do that, and so I've
11 got a number of comments on this one that at the appropriate
12 time I want to raise.

13 Mr. Kirbow. Well, I think the latter part where it says
14 "should be authorized to have access to all files and records
15 of the intelligence community for the purposes of conducting a
16 full audit as requested by the Committee" is something we
17 should be sure that the executive understands that that's what
18 we want done, that they don't cut them off at the door like
19 they did at the FBI. That first part of it, the business by
20 statute, they should be empowered to conduct. They are
21 empowered to conduct by statute now.

22 Mr. Inderfurth. It's ESP or something. The comments
23 Senator Hart wanted me to make about this, Elliot, you wrote
24 this and maybe you can explain why.

25 Mr. Maxwell. I didn't. Bill White wrote this. I am

1 willing to defend Mr. White.

2 Mr. Inderfurth. By statute is inappropriate, and GAO
3 would be opposed to that.

4 Mr. Maxwell. I would be opposed to it also.

5 Mr. Inderfurth. In the last sentence, the results of this
6 audit should be made available to any oversight -- well, since
7 the Senate is doing it --

8 Mr. diGenova. That's the issue that the intelligence
9 community is going to make, and that is that there should be
10 GAO type people on the intelligence community. That is going
11 to be their thrust against this, and the answer has to be that
12 Congress picks who it hires to do its jobs and makes sure that
13 they have security clearances, and it should be clear in here
14 that we are talking about the oversight committee probably
15 literally doing that, bringing these people into the committee
16 quarters and having them do this operation out of the committee
17 quarters, and whether or not we want to say that is another
18 question.

19 Mr. Maxwell. We might want to change this to read --

20 Mr. Kirbow. Excuse me, let me ask, do you mean that you
21 would think that the oversight committee would have the audit
22 conducted within its spaces?

23 Mr. diGenova. No. The people are going to be operating
24 probably out of committee, will be consulting the committee
25 during this audit process, and they will be operating from out

1 of its quarters. They will be conducting an audit within the
2 confines of the agency which they are investigating.

3 Mr. Kirbow. Well, normally they conduct it from downtown.
4 They don't conduct it from the committee spaces.

5 Mr. diGenova. I'm just talking about the problems which
6 are going to come up, which is what the FBI said before.

7 Mr. Maxwell. CIA, for instance, has raised objection for
8 having GAO do certain audits for the oversight committee, that
9 that material would go into the data base that would be
10 available for the GAO, and I have suggested that in order to
11 prevent that, that the Committee have staff who would be able
12 to perform similar functions to those conducted by GAO. That
13 is the objection that Joe was trying to raise.

14 Mr. Kirbow. Mr. Chairman, I think the problem with this --
15 and we tried it out for several years in the Armed Services
16 Committee, was to have two permanent people, staff members,
17 seconded there from the GAO, to do only investigative. It
18 never worked, and we finally had to send them back because
19 they've got to have the same support from downtown anyway.
20 Two people cannot do this kind of audit, or more.

21 Mr. Maxwell. I think that's right, and I'll just say,
22 "at the request of the oversight committee, the GAO should
23 conduct audits both for compliance and for management of every
24 components of the intelligence community." Second sentence as
25 is. And the third, we can amend simply, "In order to conduct

1 these audits, the GAO should be authorized to have full
2 access to all necessary files and records of the intelligence
3 community.

4 Mr. Inderfurth. Leave off the last, about the idea of
5 sending the GAO auditor over to the executive.

6 Mr. Kirbow. Yeah, let the Committee send it if they
7 want. Let the GAO furnish the audit to the Committee is what
8 you are saying.

9 Mr. Inderfurth. Yes.

10 Mr. Kirbow. I would agree with that, Mr. Chairman.

11 Mr. Maxwell. Is the other way it was read to you acceptable?

12 Mr. Kirbow. Yes.

13 Senator Huddleston. I think we've got that one pretty
14 well whipped then.

15 Mr. Aaron. Okay. I'm not too well sure I understand the
16 language fixes that go with all this. Can I get your fixes?

17 Mr. Kirbow. Yes. We are clear on this.

18 Mr. Aaron. All right.

19 Now, you may think we are done, but we are not.

20 We can now turn to Chapter X, General Recommendations.

21 (Discussion off the record.)

22 Senator Huddleston. Let's go back on the record.

23 Mr. Aaron. I would recommend that we probably cannot
24 clean up the different language points in here. What I would
25 suggest is we sort of focus on the principle involved.

1 Senator Huddleston. Let's take the first paragraph.

2 Mr. Aaron. The first one essentially says, or is explained
3 by the very first sentence, and the rest of it is a finding.

4 Senator Huddleston. Does anybody have any serious problem
5 with that?

6 Mr. Aaron. I have some problems, even though I am here
7 to defend all of this.

8 Senator Huddleston. As it is done now?

9 Mr. Aaron. As it is done now, you have every agency
10 essentially conducts its own security clearances, and the FBI
11 does a lot of leg work, but doesn't necessarily serve as the
12 sole organ for establishing security clearances. The Agency
13 does some of this, the State Department has its own security
14 office, Arms Control in my experience uses the FBI. The White
15 House uses a variety. Over time it has used a variety of
16 instruments.

17 Senator Huddleston. What are we suggesting here?

18 Mr. Aaron. That there just be one place that does the
19 security clearance and consolidate it.

20 Now, the problem is your military services. You have
21 2 million men under arms in this country, and they give
22 clearances up to the level -- I think there are 2 million con-
23 fidential clearances somebody quoted to me, and that really
24 isn't something you want to ask the FBI to do.

25 So I would just say that with the exception of the military

1 services, security clearances on access to sensitive information
2 should be conducted by one Agency, the FBI, and just let it
3 go.

4 Mr. Kirbow. Well, that would be a conflict with our
5 Domestic Task Force, both because I think they are recommending
6 that the FBI not conduct these investigations.

7 Senator Huddleston. Really? Where do they want to put
8 them?

9 Mr. Kirbow. I'm not sure.

10 Mr. Maxwell. I don't -- maybe that's not -- I think they
11 have not centralized it in one agency. They have said that
12 in certain instances the CIA would be conducting its investi-
13 gations.

14 Senator Huddleston. Essentially they are leaving it like
15 it is.

16 Mr. Maxwell. Except putting firm limits on what can be
17 done in the course of a background investigation, the kinds of
18 methods that can be used, the techniques that can be employed.

19 Ms. Culbreath. All I'm saying -- have we really
20 developed any record on this? I don't know what the agencies
21 think, I don't know what their reasons are to hold onto their
22 own clearance processes. I haven't seen any discussion of
23 it.

24 Mr. Kirbow. The Commission on Atomic Energy downtown has
25 had such serious restrictions that they would not take me

1 today without doing another full field background, Mr. Chairman,
2 if I had just been cleared by this Committee.

3 Senator Huddleston. They don't accept anybody else's.

4 Mr. Kirbow. No, sir, they don't.

5 Mr. Aaron. That's kind of the problem here, and I think
6 that most of the people, I would agree, I don't think we have
7 any testimony on it. Almost everybody has had an experience
8 with it, or has had the same experience. The real question,
9 there are some practical difficulties. I think Joe might
10 attest to some in regard to the Glomar Explorer, when, in order
11 to get some security clearances for operational purposes, to
12 clear people who on the one hand may be witting and maybe even
13 people who are unwitting of the true purposes of the program,
14 building this huge ship, for example, the Agency, if I am
15 correct on this, Joe, or incorrect -- please comment one way
16 or the other -- the Agency used a proprietary investigative
17 agency in order to do the security clearances.

18 Now, this kind of recommendation would presumably set that
19 aside. That isn't the problem we are trying to get at, and
20 I think that's the kind of thing you want to get around; the
21 general point that security investigations for intelligence
22 purposes -- there are others -- ought to be consolidated in
23 one place, that one agency should do the investigation, that
24 this would eliminate a lot of duplication.

25 Senator Huddleston. Well, there's a lot of others. They

1 check prospective judges. That's a clearance, isn't it?

2 Mr. Aaron. And the whole notion of a top secret clearance
3 doesn't necessarily relate to intelligence information at
4 all.

5 Senator Huddleston. We want to be concerned with the
6 intelligence operation.

7 Mr. Kirbow. Mr. Chairman, the biggest single area is
8 not even the military area. It is the Defense contractors,
9 each employee of whom must have this type of clearance. It is
10 done through an industrial clearance. It is a massive problem
11 on which we should receive --

12 Mr. Maxwell. Perhaps we should recommend to the oversight
13 committee --

14 Mr. Kirbow. Why do we recommend in this area? It really
15 doesn't fit our intelligence manual.

16 Senator Huddleston. Are we thinking of the necessity to
17 centralize or to standardize?

18 Mr. Aaron. I think both problems exist. Centralization
19 is important in only one. It is important, A, because it makes
20 it possible to standardize, but also I think that in
21 connection with the notion of counterintelligence, counter-
22 espionage, being sure that you are not giving an intelligence
23 clearance to somebody who shouldn't have it, one of the
24 concerns is in the counterintelligence function. This is one
25 of the arguments for the FBI doing it. They presumably have

1 files and all that kind of business.

2 I would tend to support Charles' suggestion that this is
3 a kind of an idea to which we would like to give a little
4 greater push, but we probably shouldn't try to be too specific
5 about how you really solve the point.

6 Mr. Kirbow. Just point it to the oversight committee
7 without mandating.

8 Senator Huddleston. If Dave and Charlie are on the same
9 track, I think we ought to move that one real quick.

10 Mr. diGenova. This is an area that is going to be of
11 considerable importance because the CIA has used its
12 investigative proprietaries, which are literally security
13 agencies, to do, as we know before, penetrations and probes
14 not only of contractors, but to do sensitive background investi-
15 gations of employees of contractors as well.

16 They did it once, they went out and set up a proprietary
17 in St. Louis and in six months had investigated very efficiently
18 an incredible number of people who worked on highly sensitive
19 Defense contracts, and then closed up shop and left, and there
20 is something to be said for that, but there is also something
21 to be said for whether or not they ought to do it at all.

22 Mr. Kirbow. Let's go off the record.

23 Senator Huddleston. Off the record.

24 (Discussion off the record.)

25 Senator Huddleston. Well, we point out some of the

1 things that happened, and let's just suggest the whole system
2 should be studied to see whether or not it should be eliminated.

3 Mr. Aaron. The second recommendation goes to the point
4 that intelligence operations can have, and they are not alone
5 in this in the government, but they can have important impli-
6 cations for the rights of citizens of America and for the
7 obligations under the Constitution, and that in this area it
8 would be advisable to make an extra effort to have the
9 personnel involved in this fully aware of what the Constitution
10 says and means, and they take an oath to uphold and defend
11 most of them and they don't read the fine print.

12 So we suggest that maybe they take a look at the fine
13 print.

14 Senator Huddleston. I see nothing wrong with that.

15 Ms. Culbreath. Mr. Chairman, if I could just comment on
16 this for a minute as somebody who worked in an agency
17 on the General Counsel's staff, and one of the things you run
18 into when you get other people in the agency being concerned
19 about what the law is, is folks trying to make decisions about
20 things that need to be referred to the General Counsel's office
21 and one of the strong recommendations that we have made, and
22 I think we have all agreed to, is that any important matters
23 that the Agency is involved with should go to the General
24 Counsel's office for review for the very thing as to whether it
25 is a legal thing to do or whether it is being handled

1 appropriately. I certainly wouldn't object to something that
2 emphasized this for employees, but I think we have to be careful
3 in this area not to assume that because we do that that we are
4 not going to raise questions and we are not going to have
5 people deciding that they can look at it and because they have
6 had this course they know that this is okay.

7 Mr. Miller. The other side of this is -- and I speak from
8 personally experience, for example, in the Foreign Service in
9 the initial training courses for the junior officers going
10 in, and I believe it is the same in the Agency, that there is
11 tradecraft training to some extent. There are courses in
12 international law as it is useful to Foreign Service Officers.
13 There is a course in consular practices, which involves legal
14 situations and various matters, but nothing on the laws of
15 the United States with regard to their own activities, just
16 laying out where it can be found, what the nature of it is,
17 just a straight, simple -- it doesn't have to be terribly
18 detailed, but an exposition of the ramifications of the work
19 that they do, how it impinges on citizens and on government,
20 that is all.

21 And at all levels, it seems to me a very sensible thing
22 to do for it tells them about their own country, how the
23 activities of their agencies impinge upon others.

24 Mr. Kirbow. But, Mr. Miller, this would apply to the
25 Department of Housing and Urban Development. This would --

1 where they have got 10,000 people down there that can barely
2 read.

3 Mr. Miller. Well, I have got no objection to that.

4 Mr. Kirbow. And what you are saying is institute programs
5 to teach them how the Congress acts and the practices of the
6 legislative, executive, and judicial? This is about a three
7 year course in government.

8 Mr. Miller. Not really.

9 Mr. Kirbow. You want to teach them, it should also
10 describe the practices of the legislative, executive and
11 judicial branches of the government, and the obligations
12 that all of the intelligence agencies have to each of the
13 branches of the government.

14 Senator Huddleston. Personally, I think we can eliminate
15 that part. I think we ought to have an awareness of how
16 their specific type of operation, which is perhaps clandestine
17 activities.

18 Mr. Kirbow. You're saying in the intelligence agencies,
19 oh, those people, I agree, but I think if we go outside of our
20 intelligence mandate --

21 Mr. Miller. Well, there's no intention to go outside
22 the intelligence agencies.

23 Mr. Kirbow. It says to institute in all agencies.

24 Mr. Miller. All intelligence agencies.

25 Mr. Kirbow. It doesn't say that, Mr. Miller. I'm reading

1 it.

2 Mr. Inderfurth. The second sentence, "all intelligence
3 agencies."

4 Senator Huddleston. We say that in the first sentence.
5 We should also say it in the second sentence because that is
6 where our obligation is in this particular inquiry, and the
7 objective of our committee relates to intelligence agencies.

8 I further would suggest that we restrict that training
9 program or informational program to types of activities that
10 intelligence agencies are involved in such as clandestine
11 activities, and how this can adversely affect the rights of
12 citizens.

13 I would leave out on 114 there, starting with the first
14 sentence, leave that full sentence out, as far as legislative,
15 executive and judicial.

16 Mr. Aaron. So that entire sentence can come out.

17 Senator Huddleston. Right, and I think they ought to be
18 aware, just as a policeman is given to be sure he is aware, he
19 is given a little card to read the rights of any person he
20 arrests. This is not totally analogous, but he ought to be
21 aware that the kinds of activities that he is likely to
22 participate in may have some adverse effect on his rights; and
23 secondly, we have already put in here, "We recommend strongly
24 that any person who sees something he believes to be wrong has
25 an obligation to report it." So let's give him something to

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1 hang his hat on there.

2 Mr. Kirbow. Mr. Chairman, in view of that last sentence,
3 I find this an appropriate time to ask the Subcommittee to
4 consider whether or not in adopting many of the other things
5 that have been recommended by the President, be codified into
6 law, as he expressed them in his executive order.

7 Does this Subcommittee intend to consider that provision
8 that he has put forth in his messages to Congress on having a
9 statute that would prohibit the Agee problems and those other
10 former employees?

11 Senator Huddleston. It is in here someplace..

12 Mr. Miller. If you read D, Charlie.

13 Senator Huddleston. Which makes me wonder why this
14 particular sentence is in this particular place, the last
15 sentence on 114.

16 Mr. Aaron. It might well go down to D.

17 Senator Huddleston. It seems that when we are talking
18 about protecting secrets, it all ought to be down here.

19 Mr. Kirbow. It all ought to be in that one section if
20 we are going to deal with the employees' obligations to do so.

21 Mr. Inderfurth. I have a hunch, although Elliot can
22 confirm it, that Recommendation C on security functions would
23 be a major finding and recommendation of the Domestic Task
24 Force or the Domestic Subcommittee. Elliot can tell us if
25 that is a fact. That goes to quite a few of the CIA domestic

1 practices about infiltration and the rest.

2 Ms. Culbreath. Did you mean to restrict this C to
3 domestic functions?

4 Mr. diGenova. No, no.

5 Ms. Culbreath. Well, you don't want the FBI looking into
6 what CIA is doing in Rome, do you?

7 Mr. Miller. No, of course not.

8 Mr. diGenova. It says the CIA's particular intelligence
9 agency's personnel, which means personnel overseas.

10 Ms. Culbreath. And facilities overseas.

11 Mr. diGenova. Yes, exactly.

12 Mr. Quanbeck. This poses a problem for the military. You
13 know, they have groups that do both law enforcement and
14 security.

15 Mr. Kirbow. Mr. Chairman, here we talk about security of
16 the people and installations. A great part of the Office of
17 Security is involved with the security that prevents their
18 people from revealing secrets and other things like that.

19 Don't we wish them to continue that operation?

20 Senator Huddleston. The Office of Security where?

21 Mr. diGenova. At the CIA.

22 Mr. Kirbow. And in the NSA. That's one of their major
23 functions.

24 Mr. diGenova. It says: "and security related to the
25 particular intelligence agency's personnel." That covers it.

1 Mr. Kirbow. Well, the security of the personnel is the
2 physical security. That is the way it is written. If you are
3 talking about the security of the government that are in their
4 possession, that is where the bulk of their investigative and
5 security work is done.

6 Senator Huddleston. What is the abuse we are shooting at
7 here?

8 Mr. diGenova. CHAOS and the Office of Security proprietarie
9 were used to infiltrate antiwar groups. First it grew that
10 there was a perceived threat to the physical facilities of the
11 DOD and the CIA during demonstrations. As a result of that,
12 they penetrated domestic groups to gain information concerning
13 attempts on the Agency, and it grew into a counterintelligence
14 operation of disrupting their speeches and marches.

15 Mr. Quanbeck. This is gone into extensively in the
16 Domestic group.

17 Mr. Maxwell. They are going into CHAOS, domestic
18 security and investigations.

19 Senator Huddleston. The White House used that as an
20 excuse.

21 Mr. Maxwell. I think in essence it comes out this way,
22 but it is in much greater detail with the fact statements
23 behind it on the other side.

24 Mr. Kirbow. Why don't we just verify that that
25 which you wish to have accomplished, Mr. Chairman, is taken

1 care of in that other recommendation, and that is that it be
2 both physical and department security, so to speak, secrets
3 type protection, if it is in the other one. If it is not,
4 we will work with them.

5 Senator Huddleston. What do we do about this law
6 enforcement activity?

7 Mr. Kirbow. That's clearly over in their bailiwick.

8 Mr. Maxwell. They have made statements.

9 Senator Huddleston. It has been pointed out that some
10 of these activities are abroad where the FBI would not be.

11 Mr. Kirbow. That is correct.

12 Mr. Maxwell. The recommendation will be that the CIA
13 would be barred from law enforcement activities abroad except
14 where they were specifically requested to, let's say, get
15 information by the FBI.

16 There is an approval mechanism set up there so that in the
17 normal course of events CIA would not be providing law enforce-
18 ment information.

19 Mr. Inderfurth. So this Committee should recommend to the
20 other Subcommittee that they look into their recommendation,
21 the ultimate part.

22 Mr. Kirbow. What I am saying, if you want to prevent the
23 law enforcement activities of agencies overseas, you immediately
24 get into the drug business and the business of the terrorism
25 and whatnot, and I would sure hate to see us adopt that sort of

1 procedure. I hope it is not intended to be included in our
2 part of the recommendation.

3 Mr. Maxwell. Even on the domestic side, the focus is
4 on the rights of Americans, so that insofar as the CIA might
5 intercept a conversation between two foreigners overseas
6 relating to drug trafficking, they would be able to supply that
7 to the FBI. The focus has been on how to be sure that the
8 rights of Americans --

9 Mr. Kirbow. That the American drug trafficker can't
10 get caught by the CIA.

11 Senator Huddleston. Well, I think we understand that.

12 Mr. diGenova. There is going to be a fight on that one
13 anyway.

14 Senator Huddleston. It seems to me what we are trying to
15 do here is avoid using the security function of the Agency as
16 an excuse for doing other things.

17 Mr. Kirbow. And we should proscribe against instead of
18 describing what they should do.

19 Senator Huddleston. That is what most of the first
20 sentence here does.

21 Mr. Inderfurth. Are we just going to leave this one
22 out?

23 Mr. Maxwell. Perhaps what we could say to make sure that
24 people understand we are concerned about that, leave the heading
25 and say "See Domestic Report," and that way they can understand

1 that we want to coordinate and make sure that is covered.

2 Mr. diGenova. Maybe we should bracket the whole recommen-
3 dation.

4 Mr. Miller. No, just say see the other report .

5 Mr. Kirbow. Mr. Chairman, there is a major effort under
6 way by the other staff on this one now to see whether we have
7 either compatible or differing recommendations, and we should
8 reconcile those and point them out to this committee as well as
9 to the other subcommittee.

10 Mr. Aaron. So is it suggested we just set this aside for
11 now?

12 Mr. Miller. No. Just say "See the Domestic Report."

13 Senator Huddleston. See the Domestic Report and determine
14 what is the best way here to refer to that report. We might
15 want to make some statement.

end 4a
begin 4b

16 Mr. Aaron. I'll leave in the subhead, but I'll take out
17 the other. I'll just take out the text and say "See Domestic
18 Report."

19 Senator Huddleston. That is where we stand right now, and
20 I'm not sure whether it's good or bad or whatever.

21 Yes, and we ought to say whether a general sentence ought
22 to be there.

23 All right, Secrecy and Unauthorized Disclosure we get into.

24 Mr. Miller. Yeah, this addresses Charlie's point.

25 Ms. Culbreath. Could we have the executive branch proposal

1 to look at while we are talking about it?

2 Mr. diGenova. This is the one that was included in the
3 President's message.

4 Ms. Culbreath. I don't have one.

5 Mr. diGenova. I don't think it's here.

6 Mr. Kirbow. We have a copy of it in the Committee spaces,
7 Mr. Chairman.

8 Senator Huddleston. Are we going to add a penalty for
9 unlawful classification?

10 Mr. Aaron. I think I can say that Senator Mondale would
11 support that.

12 Senator Huddleston. I would agree if we can figure out
13 how to do it.

14 Mr. Kirbow. What "unlawful classification" means.

15 Senator Huddleston. I think we should make a clear, valid
16 definition of national secrets, including a precise definition
17 of sources and methods. I hope I am not on the committee that
18 has to draft it.

19 Mr. Maxwell. I think we may mean here that there should
20 be a penalty for overclassification rather than unlawful
21 classification.

22 Mr. Kirbow. Not overclassification. You don't want to
23 punish inadvertent classification. "Unlawful" is the key
24 word, and unless you want to describe the parameters of that,
25 you can't pass a statute.

1 Mr. Miller. Well the point is, where there have been
2 instances where things have been classified not because of their
3 value to national security, because they are protecting the
4 hides of those who are involved in some particular activity.

5 Mr. Kirbow. Well, that's classification to cover wrong-
6 doing is exactly what that is, but there is classification, Mr.
7 Miller, which does not go to national security. It is in the
8 national interest, and they go with a recommendation to that
9 extent.

10 Mr. Maxwell. There is also very little lawful classi-
11 fication that is done pursuant to an executive order rather than
12 by statute.

13 Mr. Miller. All right, de novo classification is what you
14 are saying.

15 Senator Huddleston. You are saying "over" and Charlie
16 says "unlawful," and I think if we are going to write the
17 definition and put it into law, I think "unlawful" is the
18 correct word.

19 Mr. Kirbow. Mr. Chairman, I just don't think I have ever
20 seen a time that you could draft a legally technical section
21 like this. The CIA and the executive branch spent over six
22 weeks just trying to draw up a two page recommendation on
23 amending the 1947 Act, and unless we look in some considerable
24 depth here with the lawyers as to the terms and phrases, we can
25 get you in over your head on a recommendation, and I suggest

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1 we do that with this particular --

2 Mr. Miller. I respectfully disagree. It seems to me that
3 sources and methods is an area that requires definition, and
4 it jumped out of the proposal of the President. The question
5 of disclosure is addressed by the President's recommendation
6 but not the idea of allowing for proper disclosure.

7 Mr. diGenova. I tell you, the President is going to have
8 to define it because if they try to prosecute anybody they
9 are going to ask for a definition of sources and methods, and
10 they are going to find the statute unconstitutionally vague
11 and not be able to prosecute anybody. They are going to have
12 to come up with a definition if they ever intend to prosecute
13 anybody.

14 Mr. Kirbow. Mr. Miller, I don't disagree with you that
15 there should be a balance between classification, overclassi-
16 fication and underclassification. What I'm saying is I've
17 never known the time that I could off the top of my head,
18 and I'm only a fair country lawyer, can draft a legal document
19 that will stand the ravages of court cases and tests sitting
20 at a table like this, viewing it for the first time.

21 Mr. diGenova. Nobody is suggesting that it be done here.

22 Mr. Miller. We're not drafting it.

23 Mr. Kirbow. We say there should also be a penalty for
24 unlawful classification. What do you mean by unlawful
25 classification?

1 Senator Huddleston. Well, we will let somebody else
2 figure that out.

3 You won't know it, Charlie, until you write a law.

4 Mr. Miller. We are just saying that it is a problem, an
5 issue to be faced, that's all.

6 Senator Huddleston. I'm wondering whether or not we can
7 take out the line referring to "seriously deficient."

8 Ms. Culbreath. We can make our recommendation because
9 we are not criticizing theirs.

10 Mr. Aaron. Well, perhaps the thought is.

11 Mr. Kirbow. The oversight committee does not consider
12 that legislation. That was an amendment to the 1947 Act. Unless
13 we do something here in a recommendation, it is going to be
14 considered by the Committee on Armed Services.

15 Senator Huddleston. You are talking about --

16 Mr. Kirbow. The one the President sent up.

17 Mr. Miller. The oversight committee which would have
18 legislative authority would draft an omnibus bill. We have
19 recommended that all the way through, which includes recasting
20 the 1947 Act.

21 Mr. Aaron. I might just suggest that for the --

22 Mr. Miller. Only the portion that deals with intelligence
23 agencies.

24 Mr. Aaron. For the portion that deals with seriously
25 deficient, perhaps the best way to put this would simply be

1 to say it should be amended. Their proposal should be accom-
2 panied. This is, I think, the thrust of the thought here, that
3 if you are going to increase the penalties for the disclosure of
4 information, the concern is that there might well be some
5 penalty or provision for dealing with the retention of infor-
6 mation that really ought to be disclosed, and to try to come to
7 some way to balance that. I don't know that it is any harder
8 to define one than the other, probably, but --

9 Senator Huddleston. What does he essentially do in here
10 by amending Section 102? Is he adding penalties for dis-
11 closure?

12 Mr. diGenova. It is an official secrets act, isn't it?

13 Mr. Aaron. For people who have clearances.

14 Mr. Kirbow. It doesn't go to the newsman who gets the
15 leak, it doesn't punish him.

16 Mr. Aaron. But it does deal with the people that have
17 the information, and the concern that has been reflected -- and
18 I will simply try to reflect what I know to be Senator Mondale's
19 concern which he holds very strongly, and that is that a lot
20 of what we have come to find out about this problem in the
21 field of intelligence community has been because of disclosures
22 and one of our greatest safeguards is the ability of people
23 to speak out. The country has lasted 200 years without
24 provisions like this, and it has done reasonably well, and he
25 feels very strongly that we must be very careful about any

1 further steps that we take.

2 Now, I think the real problem with this paragraph, if I
3 can say so, lies more, and I am speaking for myself, the real
4 problem lies less in the question of whether one should try
5 to frame some additional legislation that would try to
6 protect us from our secrets as well as from their disclosure,
7 but whether or not we want to endorse the President's proposal,
8 because this is kind of a backdoor endorsement of those
9 particular proposals.

10 I think the Committee may want to consider that step
11 extremely carefully.

12 Mr. Miller. And the issue of whether there should be
13 legislation to protect national secrets.

14 Mr. Aaron. Whether there should be additional legislation
15 to protect, of the character the President has proposed, and
16 I don't know where the Committee comes out on it, but the
17 thrust of this, while it talks about this additional area,
18 is to assume that yes, that is good, now let's do something
19 more, and I'm not so sure --

20 Senator Huddleston. Well, it seems to me you come down
21 right here, and I don't know how this fits in, but we come
22 down on the fact that yes, there ought to be laws and penalties
23 for unlawful disclosure of classified information. Secondly,
24 there ought to be laws and penalties against unlawful classi-
25 fication. Third, in order to accomplish either one of these,

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1 we have got to have definitions for valid secrets and I guess
2 precise definitions of sources and methods.

3 Mr.Aaron. Valid secrets including sources and methods.

4 Senator Huddleston. We need those terms clear.

5 Ms. Culbreath. And also for the terms themselves, the
6 terms "lawful secrecy," "lawful disclosure," and "unlawful
7 classification," you've got to have definition for that, too.

8 Mr.Miller. And that's something that has to be worked
9 out.

10 Senator Huddleston. The legislation should include the
11 precise definitions for these.

12 Now, can we do that?

13 Charlie, we are not trying on our own effort here to define
14 these things.

15 Mr. Kirbow. We can take a shot at trying to draft those
16 definitions.

17 Mr. Miller. Well, I don't think we can or want to,
18 Charlie.

19 Senator Huddleston. You'll have to get your oar in there
20 some other place.

21 Mr. Kirbow. I just hate to recommend terms and phrases
22 where you don't know yet what you mean.

23 Mr. Miller. Because we use them every day, because we
24 right now as a committee, you know, we are going to the agency
25 and saying, because we are declassifying our documents according

1 to some understood thing about sources and methods --

2 Mr. Kirbow. Mr. Miller, sources and methods is no
3 concern about you and I. You and I are in agreement on the
4 subject. The only other thing, Mr. Chairman, because we
5 certainly don't want to go away from here thinking you want
6 all of this in, "In addition, the Committee believes that
7 Federal employees who have some reason to suspect that unlawful
8 or improper acts are being conducted or are about to be conducted
9 under the guise of secrecy should have access to authorized
10 institutional groups independent of the organization that they
11 serve. The new Intelligence Oversight Board is one such
12 group."

13 Are we intending to cover all federal employees?

14 Senator Huddleston. We argued this out the other day,
15 didn't we?

16 Mr. Miller. Yeah, we endorsed it.

17 Senator Huddleston. I don't like the way this is written.

18 Mr. Kirbow. Now, do you intend that all Federal employees
19 go to that group, Mr. Miller? You say, "In addition, the
20 Committee believes that all Federal employees."

21 Mr. Aaron. There's no "all" in there.

22 Mr. Kirbow. Well, that includes all of them, doesn't
23 it?

24 Mr. Aaron. It's hard to say.

25 Mr. Kirbow. Mr. Chairman, I don't think you want the people

1 down in the Department of Housing and Urban Development who
2 felt there was something unlawful going on to report to the
3 Oversight Board.

4 Senator Huddleston. I think we ought to attempt to confine
5 as much as possible our suggestions to the Intelligence
6 Community, whether that ought to be -- in that way, it probably
7 should.

8 Mr. Kirbow. And directed. Here again, encouraging the
9 Federal --

10 Senator Huddleston. Well, what we were trying to say the
11 other day was that it could come to the Select Committee or
12 to the oversight committee.

13 Mr. Kirbow. Direct.

14 Senator Huddleston. Now, we went through that, how to
15 go through the Counsel, the IG, and the Intelligence Board, and
16 finally I guess to us.

17 Mr. Kirbow. What you are really saying is the door here
18 is open, as the court of last resort.

19 Senator Huddleston. Well, what I want to do, and what I
20 think is appropriate is that any Federal employee, really, al-
21 though we are not addressing ourselves to the whole Federal
22 bureaucracy, but any person in the CIA or the FBI who feels in
23 his own mind that there is wrongdoing going on, whether it is
24 unlawful classification or whether it is some other, ought to
25 be able, with impunity, with impunity, ought to be able to go

1 to some source and reveal that.

2 Now, that doesn't mean that that automatically is going to
3 mean that somebody is doing something wrong, but if it is a
4 group such as the oversight committee, then there is a method
5 of checking it out.

6 Mr. Kirbow. Fortunately, the majority of the Federal
7 employees are covered, because all of the Department of Defense
8 civilians and all of the military employees are authorized in
9 the regulations of those agencies that they can contact their
10 Congressman directly and have been, I guess, since the very
11 beginning.

12 Senator Huddleston. But just a Congressman. If they had
13 a specific place like the oversight committee, I think most
14 of them would be inclined to go there, and I think that would
15 be a great plus for the Agency.

16 Mr. Kirbow. That's what happens with the Armed Services
17 Committee, Mr. Chairman, not all agencies, but frequently those
18 complaints.

19 Senator Huddleston. They might go to the press if they
20 don't have someplace to go.

21 Mr. Miller. Which is what they have done.

22 Senator Huddleston. Which is what they have done.

23 Ms. Culbreath. Is it the sense, then, that if we revise
24 the first paragraph to include the revisions with regard to the
25 definitions and the injunctions to the follow-on committee to

1 make these definitions and get them into law, that by what we
2 did yesterday afternoon on establishing the procedures for people
3 to go directly to the oversight board or up through channels as
4 may be appropriate, that we really don't need the second
5 paragraph, but because that gets taken care of by getting
6 these definitions.

7 Senator Huddleston. It does, except this would be a
8 logical place to put this when you are dealing with secrets.
9 It would be a logical place to lay out the fact that a person
10 who is charged with keeping secrets would not be deemed to
11 have violated that charge if he comes to the proper committee,
12 is not going to be indicted for unauthorized disclosure if he
13 comes before the Senate oversight committee and tells what he
14 thinks.

15 Mr. Maxwell. A particular fact on that is Mr. Cotter, who
16 was a devoted Federal employee, worked for the CIA and later
17 for the Post Office, felt the burden of the Secrecy Oath that
18 he had taken in regard to disclosure to his superiors in the
19 Post Office about the CIA mail opening.

20 Senator Huddleston. And frankly, I think it would be
21 more reasonable to restrict it to this type of group.

22 Mr. Maxwell. I think if it should go anywhere, it should
23 go to the oversight Committee.

24 Mr. Kirbow. You mean the military man in Paris should
25 go to this Committee instead of to the Armed Services

1 Committee, or do you mean just the intelligence community?

2 We should stick to the intelligence community as an
3 oversight committee.

4 Senator Huddleston. That's my judgment, and if the court
5 wants to expand it to everybody --

6 Mr. Kirbow. Let them do it. I agree with that concept.

7 Mr. diGenova. The intelligence community employees.

8 Senator Huddleston. If it was the FBI, the FBI, he
9 could have a choice.

10 Mr. Kirbow. He could go anywhere he wants to, but you
11 could open the door is what you are trying to do.

12 Senator Huddleston. Do you see anything wrong with that,
13 David?

14 Mr. Aaron. The only thing I would like is if the author
15 of the original text would help me out in redrafting it.

16 Senator Huddleston. Did you write the original?

17 Mr. Inderfurth. The last sentence of that paragraph ought
18 to be made a new paragraph. The question is, should these
19 principles instead of provisions, perhaps, in consultation
20 with the Judiciary Committee, should that be a part of this
21 as well?

22 Mr. Aaron. Should join with another committee to draft
23 this.

24 Mr. Miller. That is a question that has been raised.

25 Now, Judiciary has been working with this in several committees;

1 it's been working in the area of secrecy legislation for
2 quite a number of years. There is a big body of experience
3 there, and it would be a sensible thing.

4 Ms. Culbreath. All right, would this, this last sentence
5 would maybe fit better at the end of the previous paragraph?

6 Mr. Aaron. I'll leave to you the fix on this.

7 Senator Huddleston. I think the Committee should
8 instigate with the proper or appropriate other committee. The
9 main thing is somebody has got to give the impetus to do it,
10 and if we are setting up a committee for that purpose, it will
11 have to go through the normal legislative processes anyway.

12 So the Judiciary Committee is -- the committee is going
13 to wind up there anyway.

14 Next is a Federal Register for Classified Executive
15 Orders be established by statute.

16 Ms. Culbreath. This would mean you couldn't have an
17 executive order that could be immediately effective.

18 Mr. Aaron. Sure. It means all you've got to do is
19 go downtown.

20 Senator Huddleston. Well, suppose he has to move right
21 now?

22 Mr. Miller. Constitutional authority.

23 Mr. Aaron. Yeah, but the Constitution has no suicide
24 pact.

25 Mr. Kirbow. Bill, would you explain on the record what you

1 mean by the sentence "No official of the United States could
2 undertake a secret intelligence activity except under a lawful
3 executive order pursuant to statutory or Constitutional
4 authority."

5 Mr. Miller. Statutory authority.

6 Mr. Kirbow. Do you mean executive order or statute or
7 constitutional authority?

8 You mean three different things.

9 Mr. Miller. No, an executive order is only lawful if it
10 is a result of constitutional authority or statute.

11 Ms. Culbreath. You mean everybody has got to go out
12 and find out if it is lawful before they do it?

13 Mr. diGenova. Well, you know, Congress passes statutes
14 and that is no difference than anything else.

15 Ms. Culbreath. Well, my question is, do you need
16 lawful?

17 Mr. Miller. Well, all that is contemplated here is a
18 place for depositing all of the implementing regulations,
19 executive orders or whatever names they are called. They have
20 been called various things throughout history.

21 Mr. Kirbow. Why don't we stop after the word "lawful"
22 then. It goes very nicely and succinctly in that first two
23 sentences, your requirement to put it in the Classified
24 Federal Register under appropriate security procedures, by
25 whatever name called, before they are lawful, and once you have

1 done that --

2 Mr. Miller. All right, period.

3 Mr. Inderfurth. All right, but let's have the sentence
4 that provision should be made for regular access to classified
5 executive orders by appropriate Congressional Committees.
6 Let's put that in.

7 Mr. Kirbow. I don't object to that.

8 Mr. Maxwell. I would be a little hesitant about that
9 because it implies that they couldn't have access at any time.

10 Mr. Kirbow. But we have said we have access without
11 limit only of agencies and whatnot.

12 Mr. Miller. But in the executive field, all orders are
13 deposited in the Federal Register. There is an actual,
14 physical place where it exists.

15 Mr. Kirbow. Yeah, they're all down there.

16 Mr. Miller. At one period there were a few
17 classified executive orders. Roosevelt dumped a few in there
18 during the war, and what has happened is, as a way of getting
19 around the requirements of the people, they invented
20 other terms and so on and so forth. This is just a place where
21 you can deposit them. It is a recordkeeping center.

22 Mr. diGenova. What about the rest of the paragraph? Are
23 you saying it comes out?

24 Mr. Miller. It is not necessary.

25 Mr. diGenova. All national security, NSCIDS and all that?

1 Mr. Aaron. Well, I would presume if you are doing this,
2 you had better be clear what you are talking about. We now
3 have executive orders. They exist, a classified executive
4 order registry exists. What is different about this provision
5 is that it would say that things like NSCIDs are executive
6 orders and must be so treated, and need to be deposited there.

7 Mr. Miller. They have that effect on the bureaucracy,
8 and NSCID is an order.

9 Mr. diGenova. It is an executive order, but we have got
10 to say it, we've got to explain what we mean by an executive
11 order includes or is or is not limited to.

12 Senator Huddleston. The only other question I think ought
13 to be cleared in this is the emergency question, to be able
14 to act immediately, if necessary, before you file in the
15 Registry.

16 Mr. Kirbow. This is the other one, Mr. Chairman, that
17 just bothers me. We haven't even talked to anybody about this
18 thing. We haven't heard one word of what the problems are
19 for them or anything else. We really are kind of recommending
20 off the top of our head here. I see a need for something.

21 Senator Huddleston. Didn't we incur a lot of difficulty
22 in giving any kind of files?

23 Mr. Miller. We had a year's experience.

24 Mr. Kirbow. You mean, you had access to them.

25 Mr. Miller. And where they were, where they lay, third

1 agencies. You go to one agency and they say no, it is not
2 there --

3 Mr. Aaron. And physically we have problems of even finding
4 some of this stuff because it was out on a rock somewhere.

5 Senator Huddleston. Where are you saying this is going to
6 be kept?

7 Mr. Miller. Just probably at the Federal Registry. They
8 can just put a vault.

9 Senator Huddleston. Well, work on that one a little bit.
10 We'll find a location for it.

11 Mr. Kirbow. Well, I think we need to look at the whole
12 problem. This is a serious problem and a whole new procedure
13 for the government, not just for this one agency.

14 Senator Huddleston. I think there is a lot of justification
15 and I think the Committee is going to want to insist on this.

16 Mr. Kirbow. I'm not insisting we do something right. I just
17 think we should do a little better staff job.

18 Senator Huddleston. I think we ought to clean it up a
19 little bit, the concept.

20 Mr. Aaron. All right. I will look to the author, once
21 again for guidance and direction.

22 Ms. Culbreath. So we are going to bring this one back
23 to the Subcommittee.

24 Senator Huddleston. Well, if we meet again and have time
25 we will bring it back.

1 Mr. Kirbow. Because here we are saying that the directives
2 of the Central Intelligence Agency are executive orders.

3 Senator Huddleston. Well, haven't we addressed in our
4 recommendations so far the requirement that the recommendations
5 of the Central Intelligence Agency be reduced to writing and
6 be on file someplace?

7 Mr. Kirbow. Yes, but not as executive orders.

8 Senator Huddleston. I realize that, but is that in there
9 someplace?

10 Ms. Culbreath. Is that in there?

11 Mr. Aaron. I'm not clear.

12 Mr. diGenova. Well, this came up the other day, and
13 this is why I wrote that note in the column, to be sure that
14 these things are written down, and somebody said the issue was
15 discussed and it was never clearly set out that we wanted
16 orders of the Director never to be simply oral. We have never
17 made that point anywhere in these papers. We have alluded to
18 it vaguely but never said it directly. I think we have to
19 address the issue of oral orders, talk about them and say
20 we don't want them ever again.

21 Mr. Miller. Well, this is another aspect.

22 Mr. diGenova. Now, we talk about oral orders dealing with
23 actions, dealing with significant actions.

24 Mr. Kirbow. Now, that is going to have to be a very
25 carefully circumscribed thing or you inhibit the day to day

1 workings of the government.

2 Mr. diGenova. I think we have some examples, like when
3 Allen Dulles was smart enough to order, in December of 1959,
4 authorizing thorough consideration of the assassination of
5 Castro, I think that's the kind of thing where we --

6 Senator Huddleston. The question is how do we do it.

7 Mr. Kirbow. How far down the line?

8 Mr. Aaron. I would recommend --

9 Mr. Kirbow. Only that things pertaining to these secret
10 agencies be in writing and be maintained and be available to
11 this Committee. It is a very essential thing. You know, you
12 kind of see a lot of what is going on if you see that manual,
13 so to speak.

14 Mr. diGenova. Well, that's just a paper trick.

15 Mr. Kirbow. Mr. Chairman, are you ready to close the
16 record on this one?

17 Senator Huddleston. I was ready, but Mr. Aaron comes
18 along.

19 (Whereupon, at 6:46 o'clock p.m., the Committee recessed
20 subject to the call of the Chair.)

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