
Agency Information

AGENCY : SSCIA
RECORD NUMBER : 157-10014-10124
RECORD SERIES : MISCELLANEOUS RECORDS OF THE CHURCH COMMITTEE
AGENCY FILE NUMBER : 07-M-30

Document Information

ORIGINATOR : SSCIA
FROM :
TO :
TITLE :
DATE : 03/17/1976
PAGES : 58
SUBJECTS :
SSCSGO, METHODOLOGY
COMMITTEE BUSINESS
DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : Declassified
RESTRICTIONS : 1B; 1C
CURRENT STATUS : Redact
DATE OF LAST REVIEW : 03/22/2000
OPENING CRITERIA :
COMMENTS : CCBOX 324

Released under the John
F. Kennedy
Assassination Records
Collection Act of 1992
(44 USC 2107 Note).
Case#:NW 53244 Date:
06-14-2017

JFK ASSASSINATION SYSTEM
IDENTIFICATION FORM

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DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : TOP SECRET
RESTRICTIONS : REFERRED
CURRENT STATUS : POSTPONED IN FULL
DATE OF LAST REVIEW : 01/05/99
OPENING CRITERIA :
COMMENTS : CCBOX 324

[R] - ITEM IS RESTRICTED

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Vol. 2 OF 3

NATIONAL SECURITY INFORMATION
Unauthorized Disclosure Subject
to Criminal Sanctions

The United States Senate

R2804

Report of Proceedings

Hearing held before

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

324-9

Wednesday, March 17, 1976

Washington, D. C.

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

WARD & PAUL

410 FIRST STREET, S. E.
WASHINGTON, D. C. 20003

(202) 544-6000

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COMMITTEE MEETING

Wednesday, March 17, 1976

United States Senate,
Select Committee to Study Governmental
Operations with Respect to
Intelligence Activities,
Washington, D. C.

The Committee met, pursuant to notice, at 10:30 o'clock
a.m., in Room S-407, the Capitol, the Honorable Frank Church
(Chairman of the Committee) presiding.

Present: Senators Church (presiding), Mondale, Huddleston,
Hart of Colorado, Tower, Baker, Mathias and Schweiker.

Also present: William G. Miller, Staff Director; Frederick
A. O. Schwarz, Jr., Chief Counsel; Curtis R. Smothers, Minority
Counsel; and Joseph diGenova, Pat Shea, Al Quanbeck, William
Bader, Rick Inderfurth, Elizabeth Culbreath, Michael Madican,
Joseph Dennin, Charles Lombard, Margaret Carpenter, Elliot
Maxwell, Walter Ricks, David Aaron, Jan Orloff, Rhett Dawson,
Bob Kelley, Anne Karalekas, Molly Dillon and Burt Wides.

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P R O C E E D I N G S

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The Chairman. The Committee will come to order.

Our purpose this morning is to commence the consideration of the findings and recommendations on the foreign and military intelligence aspects of the investigation.

Knowing that members have read the Subcommittee's report, I suggest that we commence by simply asking if any Senator has any suggestions or amendment to propose to the general findings and conclusions which begin on page 1 and extend through page 5.

Senator Baker. Mr. Chairman, may I make a preliminary remark?

The Chairman. Yes, of course.

Senator Baker. I think that the Subcommittee has done a good job. There are a number of points that I would like to discuss. I think none of my concerns are irreconcilable. I think some of them are even as small as matters of language, but there is one that I have already mentioned to Mr. Miller and I do feel strong about, and that is if we are going to submit the set of recommendations to the agencies, particularly the CIA in this situation, that we do it before we take Committee action.

I am perfectly willing for that to be done as quickly and even as informally as possible, and Bill Miller suggests that he might be able to meet with Rogovin yet today and have some

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sort of reaction to it, if possible. But my concern, frankly, Mr. Chairman, is that if there is going to be an Agency input, that they have it, because I am called on to make any approval.

So with that understanding, I am prepared to go ahead.

The Chairman. All actions of the Committee will be taken tentatively. I have discussed your proposal with Bill Miller and he will take up these recommendations informally. He will make a report back of the Committee's views -- of the Agency's views or objections to any particular recommendations, so the Committee can then consider that at the end of the road before final vote and approval is taken.

Senator Baker. Do you plan to vote on each separate one or just simply try to establish a verbal consensus, because I would be -- I would not like to vote on the particular sections until I hear what the agencies say.

The Chairman. Well, the vote is tentative. I see no problem with it. We can always reconsider it if the Agency offers a strong objection.

Senator Baker. Well, it is not quite the same, but if you are going to go that way, I'm going to withhold my vote until tomorrow, but if we want to discuss it separately and arrive at a general consensus, that's a little different.

Senator Huddleston. I would just like to make this point, Mr. Chairman, that each agency has had a considerable opportunity to make input, and has in fact made some input because

1 the witnesses have been questioned in many cases on specific
2 recommendations that we might make. So there has already been
3 that degree of input from the agencies.

4 The Chairman. I would hope that we could proceed so
5 that the Committee considers and at least comes to a tentative
6 vote. It is always subject to a final revision, and I think that
7 is the only way we really can make progress. But I will see
8 to it, Howard, that any objection the Agency may raise to any
9 of these recommendations, or any strong feelings they express
10 concerning any of them, are reported to the Committee by
11 Mr. Miller, and the Committee will have an opportunity, then,
12 to review its work in the light of any such evaluation.

13 Senator Baker. I thank you for that, Mr. Chairman. That
14 certainly is an improvement. That doesn't quite meet my
15 concerns, which were that we have the input from the CIA, the
16 White House and the Justice Department before we make any
17 Committee action, but I suspect that is as good as I can
18 probably do.

19 But it is understood, I suppose, that I may in fact
20 withhold my vote until we have heard a reaction, at least from
21 the results of Bill Miller's meetings.

22 The Chairman. I would hope that we could move along in
23 most cases by consensus, Howard, anyway. You know, we have
24 been able to do that most of the time, and we will come to
25 votes only in those cases where they are necessary.

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1 Fritz, may I ask before we proceed when you think you
2 will be ready with your final recommendations for consideration
3 by the Full Committee?

4 Senator Mondale. The 25th or 26th Mr. Schwarz tells me.

5 Mr. Schwarz. That is the day we are scheduled for, and
6 we are well on schedule.

7 The Chairman. Well, if they could be distributed to
8 members by the 24th.

9 Mr. Schwarz. Can do.

10 The Chairman. If you could do that, we could take that
11 up and we can work on them on the 25th.

12 Senator Mondale. I think we can just vote them out.

13 The Chairman. All right.

14 Now that Senator Tower has arrived, we will commence these
15 proceedings.

16 Calling the Committee's attention to the first section,
17 general findings and conclusions, running through pages 1 through
18 page 5, does any member of the Committee have any amendment to
19 offer or suggested change to make?

20 Senator Baker. Mr. Chairman, I have one on page 4.

21 The Chairman. On page 4?

22 Senator Baker. In the second paragraph, the third sen-
23 tence: "The recent proposals and executive actions by the
24 President are an important step in this process and a useful
25 point of departure. They are not, however, adequate in

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1 themselves."

2 It is my view that the President did a rather extraordinary
3 thing in making sweeping and comprehensive recommendations, and
4 it deserves probably better treatment from us than that. I
5 think it is likely that we will suggest and urge the enactment
6 of additional legislative steps, but I think this particular one
7 diminishes the importance of the President's recommendations
8 unduly.

9 The Chairman. Well, it says "The recent proposals and
10 executive actions by the President are an important step
11 in this process and a useful point of departure. They are
12 not, however, adequate in themselves." And it seems to me
13 that no executive action can be adequate in itself because it
14 is subject to immediate change, to change without notice, and
15 therefore is not a dependable standard, and I think this
16 Committee, in making recommendations that statutes be enacted,
17 is attempting to establish definite and dependable standards.

18 That is not to criticize the executive orders the President
19 himself has issued, but it is to suggest that they are not
20 adequate in themselves.

21 Senator Baker. I think that is the way it would be read,
22 though. This is what I had in mind when I said part of my
23 objections may in fact go to questions of style. I surely
24 doubt that the Committee tends to diminish the importance of
25 the President's suggestions. I would suggest that this style

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1 be changed simply by saying "These tasks are urgent. They should
2 be undertaken by Congress in consultation with the executive
3 branch in the coming year, and the President's significant
4 recommendations in this respect are most welcome."

5 The Chairman. All right.

6 That's all right.

7 Senator Baker. Thank you, sir.

8 The Chairman. But I think we should add the final
9 sense, "They are not, however, adequate in themselves."

10 Senator Baker. No, I don't want to do that. I think if
11 you want to put that sentence in, then I want to diddle with
12 that one a little bit.

13 I would recommend just leave that out. There is no need
14 to say that.

15 Senator Tower. Say, "However, other steps should be
16 taken."

17 The Chairman. Or we could say, "However, legislative
18 steps are also needed."

19 Senator Baker. Well, why not add "We especially note
20 the suggestion by the President that legislative action will
21 be required as well, and we agree with that."

22 Senator Huddleston. Well, I would just suggest, Mr.
23 Chairman, that if we are going to accept the President's
24 action as adequate, we can end the report right there on
25 page 4 and send it on down.

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1 Senator Baker. Wel, nobody is suggesting that. I don't
2 suggest that.

3 Senator Huddleston. Well, why not say it?

4 Senator Baker. Because. Don't say either one.

5 Senator Huddleston. Because as a matter of fact the
6 steps are woefully inadequate, Senator, if you look at it.

7 Senator Baker. I don't think they are inadequate. I think
8 they are very good, indeed. I think there are a lot of things
9 I would add to it, but I don't like to be doing a thing to
10 aid the legislative process by saying that the President did
11 a good job or a bad job, and that is a question of style that
12 we are addressing.

13 Senator Mondale. Why don't we just agree that the
14 President did a job on this issue.

15 Senator Baker. Why don't we have a vote on it.

16 Why don't we just do that?

17 Senator Huddleston. Okay, but I don't really see any
18 criticism at all, here, of the President.

19 The Chairman. "It shall be undertaken by Congress in
20 consultation with the executive branch in the coming years."
21 And then what would you add to that, Howard?

22 Senator Baker. "The recent proposals and executive
23 actions by the" -- "The recent suggestions and proposals
24 by the President in that respect are most welcome," and I am
25 proposing we stop there.

1 The Chairman. Then I would say we add "They are not,
2 however, sufficient in themselves."

3 Senator Schweiker. How about, "But further action by
4 Congress is necessary." Wouldn't that get us over the hump
5 here?

6 The Chairman. All right.

7 Senator Mondale. Clearly necessary.

8 Senator Baker. How about putting, "And as the President
9 indicated, further action by Congress is also needed."

10 Senator Mondale. Wait a minute.

11 The Chairman. After all, Howard --

12 Senator Mondale. Let's not be political here.

13 The Chairman. You've gotten enough out of that, Howard.

14 Senator Mondale. We'll call the President and say you're
15 working like hell.

16 Senator Baker. The only right I've got is to vote or to
17 note vote, and to make a separate statement.

18 Now, seriously, boys, we need to just decide what we are
19 going to do, and I propose that we just stop it after that
20 statement, that the recent proposals by the President in that
21 respect are most welcome, and then what Schweiker said, whether
22 Congressional initiative is required.

23 The Chairman. What did you say?

24 Senator Schweiker. After his I said, "but further action
25 by Congress is necessary," which I think says that we've got a

1 job to do.

2 The Chairman. All right, we will adopt Howard's first
3 sentence and Schweiker's second sentence on that.

4 Senator Huddleston. The Baker-Schweiker amendment.

5 The Chairman. All right.

6 Are there any other proposals to be made in connection with
7 this section?

8 Senator Tower. Yes, page 5, Mr. Chairman, the last
9 sentence in the first paragraph, "The Committee believes that
10 covert action must be employed only in the most extraordinary
11 circumstances."

12 What are extraordinary circumstances?

13 The Chairman. Well, they are extraordinary. That's a
14 good word.

15 Senator Huddleston. I'm sorry. What page are we?

16 Senator Tower. Page 5.

17 The Chairman. Last sentence on page 5, "The Committee
18 believes that covert action must be employed only in the most
19 extraordinary circumstances."

20 Senator Tower. I think probably on the Committee there
21 are varying degrees of support or opposition to this whole
22 idea of covert action anyway. I happen to believe in it
23 pretty strongly. I respect the views of those who don't think
24 we should use it at all. That is a policy matter.

25 Mr. Miller. I think the idea that was intended there,

1 Senator, was that it is a technique that should be used when
2 overt means have been exhausted and it is the only way to
3 achieve your goals.

4 The Chairman. In other words, extraordinary is the opposite
5 of ordinary. We could say the Committee believes -- you could
6 turn that around and say the Committee does not believe that
7 covert action should be employed in ordinary circumstances, but
8 this is a positive way of saying it.

9 Senator Tower. Well, my view is that extraordinary
10 circumstances is when there is imminent threat of the Soviet
11 invasion of a small country, for example, or a European country.

12 Senator Huddleston. That is a good enough example for
13 me.

14 The Chairman. Well, I think we don't define it, and since
15 we don't attempt to define it more precisely, I don't see
16 any problem with it. You and I might have a different notion
17 of what constituted an extraordinary circumstance.

18 Mr. Miller. That is the Agency's view.

19 Senator Huddleston. Mr. Chairman, we also have further
20 reports and recommendations where we can get into that matter
21 in substance, whether or not the Committee wants to -- we
22 didn't resolve it at the Subcommittee level -- but whether and
23 to what extent the Committee wants to impose some kind of
24 restriction on covert action, I think there is a better place
25 than dealing with it that specifically here. I think we

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1 just want to indicate here that something that is somewhat
2 of a usual and everyday operation --

3 Senator Baker. Excuse me, John. I am not sure I would
4 like to leave it that way. I think we are touching now one of
5 the vitals of this whole thing, and frankly I don't know what
6 I think about it.

7 I do know that my general feeling is that there is a need,
8 certainly a conceivable need for some sort of covert capability
9 action. I know that in my view it has been abused in the
10 past, but I think that abuse is just one of neglect as
11 anything else, and that is in anyone neglecting to watch what
12 was going on.

13 My own personal view is that rather than restrict the
14 scope of action, the scope of covert action, that there ought
15 to be an escalating requirement for accountability reaching
16 to the President himself, in the case of any significant
17 kind of covert action. I know that I would like to have
18 the Agency's comments on this point in particular, and I
19 would withhold my vote until Bill Miller has his meeting.

20 Senator Mondale. To me this is a pretty central point.

21 Senator Baker. It is.

22 Senator Mondale. And it is hard to define a standard
23 that is mechanical, and we all accept that, that what this
24 word means is that in effect we think covert action has been
25 used in too many circumstances and unwisely frequently in the

1 past, and we would like to say that much more caution and
2 restraint should be applied in its exercise in the future, and
3 I know there are some who think there should be no covert
4 action. I am not willing to walk that line.

5 Senator Baker. I think I would take what you just said.

6 The Chairman. Well, why don't we go to the statute by
7 which Congress has already enacted into law the test, which
8 is a hell of a lot stronger than "extraordinary," for
9 Christ's sake.

10 Senator Mondale. Is that the Hughes Act? What does it
11 say?

12 The Chairman. It says when the President determines
13 that the national security is imperiled -- what is the Hughes
14 language?

15 Mr. Aaron. The Hughes language is that unless there --
16 well, no funds be appropriated, et cetera, unless and until
17 the President finds that such operation is important to the
18 national security and the scope of such operation, and so forth
19 and so forth.

20 Senator Mondale. No, I think this "extraordinary" is
21 better.

22 The Chairman. Well, I agree that that's kind of weak. I
23 remembered it differently.

24 Senator Baker. Well, I disagree. I think this is
25 pretty clearly in accord with what I just said. That is, it

1 isn't a question of whether you ought to restrict covert
2 activity or not. We should rather escalate the level of
3 responsibility to the point where if you are going to use
4 significant covert action, it requires direct and express
5 written approval of the President of the United States, and
6 that is, in effect, what Hughes said.

7 The Chairman. Well, we do have that in the recommendations,
8 but even the Agency, even the Agency that we are supposedly
9 investigating has not argued, to my knowledge, that covert
10 actions ought not to be restricted to extraordinary situations.

11 Mr. Miller. That is correct.

12 The Chairman. And why we cannot say what the basic --
13 the Agency itself basically agrees with -- I personally think
14 that these covert operations have been a national catastrophe
15 for the United States, and I think the last 25 years is damned
16 good evidence of just what has happened to us by your notion
17 that we have to imitate the Russians in the treatment of
18 foreign people and adopt their methods and techniques. I am
19 against it, and I will say so in a separate, personal statement.

20 But I should think that at least the Committee would be
21 willing to say that covert operations ought not to be taken
22 in ordinary circumstances, and that is what this sentence
23 says.

24 Senator Tower. May I suggest this, Mr. Chairman, if we
25

1 repair to Dee's original recommendations in that we take
2 up this matter later on, that we reserve the right to return
3 to this after we have taken up the other aspect of it later
4 on..

5 Senator Baker. That is all right with me.

6 The Chairman. All right, we can do that. Tentatively we
7 will pass over it.

8 Senator Baker. So tentatively we are going to pass over
9 it.

10 The Chairman. Yes.

11 And I think we have got to make some -- let's take our
12 decisions, as I indicated to start with, and I would like
13 to hold the roll, let's take our decisions tentatively, but
14 let's make them. It is always open --

15 Senator Tower. With the understanding that we can
16 reconsider it.

17 The Chairman. Yes, that's right.

18 Senator Tower. That's okay.

19 The Chairman. All those in favor of leaving this sentence
20 as it presently stands, raise their right hands.

21 Senator Tower. Why don't we just leave it and not raise
22 the issue of striking it, but with the right to come back to
23 it.

24 Senator Baker. Well, I don't want to quarrel with my leader
25 but I am about to.

1 Senator Tower. Who is your leader?

2 Senator Baker. Well, you are running for it.

3 I was just trying to get your attention.

4 Senator Hart of Colorado. Please, boys, not here.

5 Senator Baker. But I would be prepared to pass this, in
6 my view, until the Agency has a chance to respond through
7 the Miller-Rogovin route. My preference is not to tentatively
8 or otherwise approve it or disapprove it, but if we are going
9 to put the question I am going to vote against it or not
10 vote.

11 Senator Hart of Colorado. There's no motion to strike.
12 Let's adopt the Tower position.

13 Senator Tower. I just want to be able to come back to it-
14 and then revise it if we feel like we want to.

15 The Chairman. It is always open to the Committee to do
16 that.

17 Senator Tower. I see. No vote is required.

18 The Chairman. All right.

19 Then the language stands as it is, subject to the right
20 of the Committee to return to it at a later date.

21 Senator Tower. I have got another one.

22 The Chairman. On page 5?

23 Senator Tower. Yes.

24 "The Committee finds that the Constitution requires public
25 disclosure and public authorization for an annual aggregate

1 for United States national intelligence activities."

2 Would Counsel give me the appropriate Constitutional
3 mandate on that?

4 Mr. Aaron. I would like to turn to Elliot, who has done
5 the essential analytical work on it.

6 Mr. Maxwell. Article 1, Section 9, Clause 7 provides that
7 "No money shall be drawn from the Treasury, but in consequence of
8 appropriations made by law; and a regular statement and account
9 of the receipts and expenditures of all public money shall
10 be published from time to time."

11 Since the establishment of the CIA, NSA, DIA and particular
12 NSA and CIA, there has been no publication of the funds
13 appropriated to those agencies, and the paradox has been that
14 accounts in the Defense Department budget have been increased
15 by the amount which would then go to CIA and to NSA. Those
16 funds have been voted by Congress as a whole, but without
17 any knowledge on the part of Congress as a whole that those
18 funds were going to NSA, CIA or the national programs of the
19 Defense Department.

20 We have taken a considerable amount of testimony as
21 to the effect of the publication of the aggregate figure, and
22 both -- all of the DCI's that we have taken testimony from
23 have indicated that publication of a total figure would not
24 jeopardize national security and objected to it primarily on
25 the grounds that if that figure were published there would be

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1 a greater press for detail in regard to other activities, but
2 the constitutional analysis essentially is that unless there is
3 a countervailing constitutional interest, i.e., national
4 security, that would prevent publication, then there is a
5 constitutional obligation to publish.

6 Senator Tower. Well, actually, how do you arrive at an
7 aggregate figure for national intelligence activities when you
8 have got them ongoing in many, many agencies of one kind or
9 another.

10 The Chairman. With the establishment of an oversight
11 committee, we are recommending that all of that will be brought
12 together and an aggregate figure can be presented to the
13 Congress when the authorization bill comes up, just the way
14 the Joint Committee on Atomic Energy presents a figure, and
15 the Constitution will then be complied with.

16 Senator Huddleston. We had a very excellent presentation
17 on the budget of the intelligence community before our
18 Committee or Subcommittee. I assume it has been reduced to
19 writing and is in some form that would be available to the
20 Committee.

21 And the figure that we anticipate as an aggregate figure
22 is still not near the total figure that can be at least
23 ascribed to intelligence in some manner, but is one that, as
24 the Chairman has pointed out, there have been indications by
25 people involved that it would not pose any great problem.

1 Senator Mondale. If you put out the aggregate figure.
2 What would the aggregate figure be now, approximately?

3 What would it be?

4 Senator Huddleston. This figure we are talking about is
5 only about \$4.7 billion.

6 Mr. Maxwell. The CIA has defined it, as the DCI makes
7 the presentation, he has defined the National Intelligence
8 program figure as approximately \$4.7 billion a year.

9 Mr. Aaron. It would consist of the budgets of CIA,
10 NSA, DIA, and of the National Reconnaissance program.

11 Senator Tower. It would not include the FBI and its
12 counterintelligence program.

13 Mr. Aaron. Well, that is an issue for your oversight
14 committee. Those are small amounts of money, and one can
15 include the INR, which is \$10 million.

16 The Chairman. John, that could be included in, under the
17 proposed oversight committee, the intelligence, the State
18 Department intelligence is included in the authorization.

19 Senator Schweiker. Well, the House figure came up with
20 \$10 billion. Where are we off \$6 billion?

21 Senator Huddleston. That is for a lot of support activity
22 that you couldn't necessarily eliminate. If you eliminated
23 intelligence you'd still have to have a part of that activity.

24 Mr. Maxwell. And it includes tactical.

25 The Chairman. Gentlemen, what are -- let's not get into

1 a long discussion of what the figure is. What we are recommendi
2 is that the aggregate figure be published, and that in the
3 future, the oversight committee establish the aggregate
4 figure in the appropriate way, and that it be made known to
5 the Congress when the Congress approves the authorization
6 bills.

7 Senator Mondale. Public disclosure, too.

8 The Chairman. Right, with the public disclosure, and that
9 is really the policy matter that is before us rather than the
10 discussion of whether the figure is \$4.1 billion or \$10 billion,
11 and depending on how it is broken down and how future committees
12 act upon it, but it is the policy question that prevails.

13 Senator Mondale. Does this approach meet the constitutional
14 standard?

15 Mr. Schwarz. In my judgment it does not. It is not
16 sufficient to put only the aggregate figure out, but the problem
17 is, understanding the conversation with Bill yesterday, that
18 the record of the Committee does not perhaps go quite far
19 enough to iron out the national security implications of going
20 beyond the aggregate figure. There may be a way of resolving
21 that tension between what the Constitution apparently requires
22 and the record of the Committee, would be to say something like
23 as a matter of principle the Committee believes the
24 Constitution requires disclosures beyond the aggregate figure,
25 but the oversight committee should hold hearings on the argument

1 against doing that to see if there is a convincing case on
2 national security grounds to go the other way.

3 But really, the Constitution is not going to be satisfied
4 by an aggregate figure which lumps together a lot of agencies.

5 The Chairman. But you see, what we do here in this
6 report, gentlemen, is we take the first step of publishing an
7 aggregate figure. It has not been done before. Then we
8 recommend that the oversight committee in the future not only
9 repeat that process, but examine the extent to which a more
10 detailed figure could be presented, breaking down the various
11 components in conformity with the necessary national security
12 considerations.

13 So we leave that properly, I think, to the oversight
14 committee that will exercise jurisdiction, now, on the issue.
15 We break the ground, we make the recommendation, and I think
16 it moves toward the satisfaction of the constitutional require-
17 ment. So for that reason I would hope that we could just
18 leave the sentence the way it is.

19 Senator Huddleston. The sentence to be accepted would
20 be more accurate to say that the Constitution requires at
21 least the public disclosure of an aggregate figure.

22 Senator Tower. In fact, we tend to disclose aggregate
23 figures rather than line items anyway. You don't bother with
24 every nut and bolt you buy off the shelf.

25 The Chairman. Yes.

1 Why can't we adopt this suggestion and say the Committee
2 finds that the Constitution at least requires public disclosure
3 and public authorization for an annual aggregate figure of --
4 for the United States National Intelligence activity, and then
5 later on, the permanent committee can look at that matter
6 further and see the extent to which --

7 Mr. Schwarz. And you do discuss that later on.

8 The Chairman. We discuss it later on.

9 Senator Baker. Could I make one minor suggestion?

10 Although the issue presents substantial constitutional questions
11 and requires further thought in general, which we hope the
12 oversight committee, if created, will give it, we recommend
13 on the basis of the present record that -- and then go ahead.

14 All I want to do is signal to the permanent committee
15 that we are still troubled by this, we would like to take a
16 look at it.

17 The Chairman. Howard, we do that later in the report, do
18 we not?

19 Senator Huddleston. We might flag that.

20 The Chairman. This is just a summary of our findings.

21 Senator Baker. But if they are going to be published in
22 this form, I would like that flagged, you know, so the people
23 can understand.

24 The Chairman. Well, I don't see any objection to that.

25 Senator Baker. I don't think it'd change it.

1 The Chairman. Well, why don't we say this --

2 Senator Huddleston. Constitutional and security problems.

3 Senator Baker. That's better.

4 The Chairman. Why don't you make that just a short opening
5 phrase on that sentence, and then say "The Committee finds
6 that the Constitution at least requires public disclosure and
7 public authorization of the annual aggregate figure."

8 Senator Baker. All right, or "is of the opinion."

9 Mr. Aaron. I am not too sure what the fragment is that
10 will precede the sentence.

11 Mr. Schwarz. You're saying that there is a tension
12 between the Constitution and national security, just an
13 announcement of the --

14 The Chairman. Howard, how did you put it?

15 Senator Baker. "Although there are substantial
16 Constitutional and security issues unresolved, the Committee is
17 of the opinion that" --

18 The Chairman. Unresolved as to the extent to which
19 the figures should be revealed, the Committee at least believes
20 that an aggregate figure is required by the Constitution.

21 Senator Baker. And if it can be done without being
22 too awkward, I would say "and to which we invite the attention
23 of any future permanent committee."

24 The Chairman. All right.

25 Well, no, I think that should come here, too, because that

1 puts it all together in one place.

2 Why can't -- well, let's have an understanding with the
3 staff that that provisions be rewritten in accordance with
4 Senator Baker's suggestion so that it says three things: one,
5 that there are or there is a question as to the extent to which
6 the Constitution requires it, an unresolved question as to
7 the extent to which the Constitution requires the publication
8 of, how much publication of figures; and that this is a matter
9 that we would call to the attention of the permanent committee
10 to settle. Nevertheless, the Committee believes that the
11 Constitution clearly requires or at least requires the publi-
12 cation of an aggregate figure, and then the rest of the
13 paragraph.

14 Is that all right?

15 Senator Baker. All right.

16 The Chairman. Does that satisfy you, Senator Baker?

17 Okay.

18 Senator Tower. Could I ask one question of counsel?

19 The Chairman. Mr. Maxwell?

20 Senator Tower. Has there been an adequate court test
21 of this issue?

22 Mr. Maxwell. No. The courts have found in the only
23 tests that have come to it that the plaintiff did not have
24 standing. There is another test case coming now in which the
25 issue is the publication of the CIA budget, the aggregate CIA

