NATIONAL INTELLIGENCE ACT OF 1980

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2284

NATIONAL INTELLIGENCE ACT OF 1980

FEBRUARY 21, 28, MARCH 24, 25, 27, 31, APRIL 1, 2, AND 16, 1980

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SENATE SELECT COMMITTEE ON INTELLIGENCE

[Established by S. Res. 400, 94th Cong., 2d Sess.]

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NATIONAL INTELLIGENCE ACT OF 1980

THURSDAY, FEBRUARY 21, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The Select Committee met, pursuant to notice, at 2:05 p.m. in room 5110, Dirksen Senate Office Building, Hon. Birch Bayh (chairman of the committee) presiding.

Present: Senators Bayh, Stevenson, Huddleston, Biden, Moynihan, Jackson, Leahy, Goldwater, Garn, Chafee, Lugar, Wallop, and Durenberger.

Senator BAYH. We are here for hearings on S. 2284 which is a result of a significant, long, and assiduous undertaking of the Subcommittee on Charters and the work of Senator Huddleston and Senator Mathias as the chairman, and ranking member of that subcommittee. I think we should compliment them.

We also have S. 2216 which has been introduced by Senator Moynihan and others, which will be the subject of our consideration.

I think that what we are after as an intelligence commitee, and as Members of the Senate, indeed, as citizens of the United States, is the best possible intelligence system that we can have.

Frankly, I think we have the best intelligence system in the world. We have any number of dedicated individuals working to collect intelligence and to protect our country. They are not perfect, just as we are not perfect.

What we are trying to do, and what, I think, the Constitution demands that we do, is to fulfill the responsibility that we have of giving our intelligence systems the best resources and the best cooperation that we can so that they can be effective in giving us the information that we need and the President needs. But I think we have a similar responsibility to see that this system functions under a rule of law and that it also recognizes those critical rights of American citizens.

We have a responsibility as no other system in the world, and I think so far we have done a good job of balancing those rights.

Senator Garn and I worked together, and I considered it a privilege to work with him, in the very delicate area of electronic surveillance, and I think we struck a good balance of giving our intelligence system what it needs to work with and also seeing that the temptation to direct this sophisticated intelligence-gathering operation against our own citizens is not there, that it is directed against our adversaries.

It has been a privilege for me to have the opportunity to work with Admiral Turner and others in the intelligence community. I am glad he is here. I am looking forward to what he has to say.

Before we proceed, why do I not yield to my distinguished vice chairman who has been a pillar of strength as we have tried to resolve some of these differences, and to deal with some of the difficult problems of the intelligence system.

[The prepared statement of Senator Birch Bayh follows:]

PREPARED STATEMENT OF BIRCH BAYH, CHAIRMAN OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE

The Senate Select Committee on Intelligence opens today hearings on a legislative charter to govern intelligence activities of the United States, and other proposals. This is the last stage in five years of work by the Congress to place the necessary intelligence activities of the United States under constitutional governance. S. 2284, the National Intelligence Act of 1980, represents the culmination of a considerable joint effort by the President and his chief advisors on the National Security Council, the intelligence community, and the Senate Select Committee on Intelligence. This Committee and its predecessor have worked closely with four previous Directors of the Central Intelligence Agency, as well as our witness today, Admiral Stansfield Turner. We have been able to work with both President Jimmy Carter and his Republican predecessor, Jerry Ford. In its exercise of continuing oversight and budget authorization responsibilities, the Select Committee has held many hearings concerning our intelligence system, including hearings in 1978 concerning S. 2525, the predecessor to the present charter bill. It is the view of all who have been involved in this process, in both the Legislative and Executive branches, that we have now reached the point where we should make final judgments and enact legislation.

It would be useful to survey what has been accomplished in the past five years:

First, acting on the findings and recommendations of the Rockefeller Commission, the Church Committee, and numerous other inquiries, the Senate and House created fully empowered oversight committees for intelligence. The Senate Select Committee on Intelligence was established in 1976 and has functioned under the mandate of S. Res. 400 which provides the following key elements vital for effective oversight:

Unfettered access to all information concerning intelligence activities.—This information must be given fully and currently, and specific materials must be provided upon request. There should be no barriers to types or detail of information. We have used this power with discretion, recognizing that sensitive information must be treated with care and security. On the basis of our experience, we have found that while in some cases the information the Committee requires is very general in nature, in other instances the Committee has needed extremely detailed information. In responding to these requests, the Executive branch has in most instances provided information to the Committee on a timely basis. In especially sensitive areas, such as covert action, and certain collection programs, pursuant to authorities contained in S. Res. 400 and E.O. 12036, we have asked for and received information prior to initiation. Our experience has also led us to recognize the necessity of limiting the number of Committees which must be given notice of covert action projects. The process has worked well thus far and we believe it is in the Nation's interest to institutionalize this process in law. The charter legislation before us, therefore, provides that the Hughes-Ryan Amendment should be amended to limit notification of presidential approvals of covert action to the intelligence committees of the House and Senate, *provided that* the two intelligence committees are fully and currently informed, including notification of covert action *prior* to initiation. Without prior notice, oversight would be an empty fiction, because the most sensitive and significant activities are precisely those events which require advice, careful consideration and restraint. On the basis of review of the full record, there are no sensitive activities that have been engaged in since the intelligence system was created in 1947 that would not have benefited by review by an oversight committee before they were embarked upon. Had the review procedure that now exists been in being from 1947 on, some ill-advised

programs might have been averted and damage to the United States perhaps prevented.

The power of the purse through annual authorizations of all intelligence activities has proven to be a necessary and valuable tool of traditional constitutional review and approval of intelligence activities.

The subpoena power to compel testimony, while given to the Committee, has never been exercised because we have thus far been able to work out the few disputes we have had with the Executive branch.

The power to conduct inquiries and investigations has proven to be an indispensable tool to assure that intelligence activities are being conducted in conformity with the Constitution and the laws and that intelligence activities are organized and used to give the best possible information to our policymakers in the White House, the State Department, the Pentagon and the Congress.

Second, we have worked together with the Executive branch to provide interim governing authorities. President Ford's Executive Order 11905 and President Carter's Executive Order 12036 were written jointly by the Committee and Executive branch. In fact, shortly after President Carter was inaugurated, the full Committee met with the President and we jointly agreed, first, to work together to complete an Executive Order, and then work together on a permanent legislative charter to govern intelligence activities that would take account of the experience of the past five years and the usefulness of the Intelligence Executive Orders and regulations.

Finally, we have established a good working relationship with the Executive branch. This relationship grew out of the common understanding of both the Executive and Legislative branches that the governance of intelligence activities is a *shared* responsibility. Our constitutional form of government of separate branches with separate duties also requires shared responsibilities and the exercise of shared duties.

S. 2284 represents the consensus arrived at by the Committee, the President and the intelligence community. This is a long, complex and carefully-negotiated bill. It reflects considerable give and take on the part of both sides. As President Jimmy Carter wrote to the Select Committee concerning his support for S. 2284:

"* * * we have reached virtually complete agreement on the organization of the intelligence community and on the authorizations and restrictions pertaining to intelligence collection and special activities."

Admiral Turner, our lead-off witness, will speak for the Executive branch, expressing the views of the President and the intelligence community that this legislative charter is needed to strengthen the quality and effectiveness of our intelligence system and to ensure that our intelligence activities are conducted in a manner consistent with the Constitution and laws of the United States.

Senator GOLDWATER. Mr. Chairman, I will follow your example and put most of my statement in the record.

I would like to express my thanks and appreciation to Senator Huddleston and Senator Mathias and the other subcommittee members and the staff for the long and often thankless task of trying to develop a charter. I think it is one of the greatest jobs that we have ever watched happen and I hope we have some success out of it.

One last thing, I would like to remind my colleagues that problems are rarely solved by passing hundreds of laws and throwing millions of dollars at our grievances. There is no sure cure for these things other than to have strong, dynamic leadership and have troops who are effectively trained and motivated.

If we can assure ourselves of these things, then and only then, will we have a strong intelligence community and strong nation.

I want to join my chairman in recognizing what I think is the best intelligence gathering system in the world today and I am sure that with Admiral Turner and the others working with him, we will regain our position and in time understand what we have gathered.

I would like to have the statement put in the record.

Senator BAYH. So ordered.

[The prepared statement of Senator Barry Goldwater follows:]

PREPARED STATEMENT OF SENATOR BARRY GOLDWATER

Mr. Chairman, members of the Committee: First of all, I would like to express my thanks and appreciation to Senator Huddleston and Senator Mathias and other Subcommittee members for the long and often thankless task of trying to develop a charter to give our intelligence agencies an existence in law. I know that because of the various groups and individuals who have expressed an interest in this process, it has not always been an easy task to reach a consensus. Even now, that consensus has not been joined but, I would hope that reasonable men of good will could come to agreement some day and this hearing today is just one step in that direction. While I may or may not agree with everything that is in this particular bill, I think we can all agree that our common goal is to have the best intelligence system in the world.

What we now have to do is to help the agencies get back to where they once were. The biggest damage that was ever inflicted upon the agencies occurred as the result of some over-zealous Senators and Congressmen who tried to make political "hay" out of some problems which were basically none of their doing. Time after time, we have seen the White House order something done, the CIA and other agencies did what they were told and then, in a fit of 20-20 hindsight, Congress gets all moralistic and changes the operating rules. This is unfair to all of the dedicated and patriotic people who have devoted their lives to enhancing our country's security.

Another point I would like to make is that this nation simply has to get rid of a spirit of meanness which seems to pervade our whole process of government. We have reached a point where cynicism and distrust have replaced good will and trust. Too often we are ready to enact laws, pass regulations and use the other coercive forces of government against all sorts of seeming ills. If we continue this trend, I can foresee the day when mediocrity and "do-nothingism" become the watchword of the governors and governed alike. If that is the case, this nation will never fulfill the dreams of our Founding Fathers.

One last thing, I would remind my colleagues of is that problems are rarely, if ever, solved by passing hundreds of laws and throwing millions of dollars at our grievances. There is no sure cure for these things other than to have strong, dynamic leadership and to have "troops" who are effectively trained and motivated. If we can assure ourselves of these things then, and only then, will we have a strong intelligence community and a strong nation.

Senator BAYH. Senator Stevenson?

Senator STEVENSON. I will pass.

Senator BAYH. You should not feel deterred.

Senator STEVENSON. No.

Senator BAYH. Senator Huddleston?

Senator HUDDLESTON. Thank you very much, Mr. Chairman. I, too, will submit a formal statement for the record.

I think most people are aware of the long and very difficult task that has preceded the introduction of this legislation. The reception of it was not at all surprising to those of us who have worked in this area.

We expected the kind of reaction that we got from those who feel that any restraint at all on the intelligence operations of this country is inappropriate and from those who feel that they should be under very great restraint.

We think that we have reached a proper balance and will, as the chairman indicated, provide this country with the most efficient and most effective intelligence apparatus in the world. I, too, believe we have that now and I think we must make sure that we protect that and give it what it needs to meet the challenges that will be faced in the future.

I want to use this opportunity to thank Admiral Turner, too, for the manner in which he has participated in these deliberations from the beginning and to thank his staff, the staff of the select committee and

the other members of the subcommittee that have assisted in this endeavor.

Let me just say that we are here today because certainly there has been a change in the climate and a change in the attitude in recent weeks. We had hoped, of course, to be able to present charter legislation last year.

A number of things kept getting in the way and it appeared, toward the end of last year, that it would be impossible to even contemplate dealing with this kind of legislation during that particular year.

Other events intervened and we find ourselves here today in an atmosphere that I believe is conducive to reasonable legislation that will establish in law the missions and responsibilities and parameters for our intelligence operations.

We will not be unduly inhibitive of their effort but, at the same time, will protect the rights and liberties of the citizens of this country. That has been our objective from the beginning. I think what we are presenting today comes as close to that as humanly possible considering the very strong positions held by many people on all sides of the issue.

So I am hopeful it is with that attitude that we consider this legislation and that we will reach a conclusion, that we can, by going through the normal legislative process of fine timing and honing emerge from this committee with a piece of legislation that we can recommend to the full Senate and to the House and to the President for enactment.

I might just pass this on. I have talked with the chairman of the Intelligence Committee of the House, Congressman Boland. He has indicated that he, too, feels now that the proper course is the full charter approach and that he intends to work to that end over on that side of Capitol Hill.

So, Mr. Chairman, with that, I would like to submit for the record a formal statement.

Senator BAYH. Without objection.

[The prepared statement of Senator Walter D. Huddleston follows:]

PREPARED STATEMENT OF SENATOR WALTER D. HUDDLESTON, CHAIRMAN, SUBCOMMITTEE ON CHARTERS AND GUIDELINES OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE

Finally, after countless hours of staff work, after lengthy Committee discussions, and after numerous meetings with the President, the Vice President, the Director of Central Intelligence, the Attorney General and others, we have before us today an intelligence charter that represents a joint product of the Administration and the Subcommittee on Charters and Gnidelines. This effort, which began during the Ford Administration, has been thoroughly bipartisan; regulation of intelligence activities is far too important to be the subject of partisan wrangling.

In a letter to the Chairman of this Committee, President Carter stated that "only a comprehensive intelligence charter will give the American intelligence community the kind of endorsement it needs and deserves from the American people." The National Intelligence Act is that comprehensive charter. For the first time in history, a nation would set into law what it expects from its intelligence agencies. This Act gives the intelligence agencies the tools they need to do their job. While the bill does contain restraints on activities affecting Americans, these restraints have been designed not to affect the agencies' major task of collecting and analyzing foreign intelligence and counterintelligence.

Instead of emphasizing restrictions, the Act stresses a system of oversight and accountability. Never again could an intelligence agency be out of control. By

insuring accountability, we hope also to insure that decisions are made by the right people, at the right time. This bill is not cluttered with excessive detail. The President is required to approve only two types of activities which by their nature demand the highest-level attention—covert actions and use of intrusive techniques to obtain essential foreign intelligence from an American who is not a spy.

The foundation of this charter enterprise is congressional oversight. Because intelligence operations are secret, they are not subject to public scrutiny and debate as is normal foreign policy. Thus, the intelligence committees must play key roles as representatives for the American people in overseeing intelligence.

As a result, the intelligence committees must have full access to information and prior notice of significant anticipated activities, including covert actions. Approval of the committees would not be required. Their deliberations and advice would, however, help insure that covert actions are undertaken only when important to the national security and when the risks are justified.

I am hopeful that recent world events have given intelligence charters a major impetus. These comprehensive charters would significantly help the intelligence agencies by giving them statutory authority for clearly defined missions. If the impetus for charter legislation is spent only on short-term needs, this might undercut the chances for passage of comprehensive charter legislation containing provisions that could very well prove more important to the strength and effectiveness of our intelligence system in the long run.

This committee plans to hold ten days of hearings on the National Intelligence Act, S. 2284, and other proposals intended to achieve many of the aims of that bill. We have been studying what is needed for three years. By the end of April then, we should be ready to report a bill to the Senate that removes unwarranted restraints on intelligence agencies, protects the rights of Americans, and promises proper congressional oversight.

I would like to welcome Admiral Turner, who has been a key figure in the formulation of the National Intelligence Act. Almost all of the provisions of the Act have been accepted by the Administration. Thus, we look forward to hearing his views on the rationale behind many of the features of the Act. I hope we can focus especially on the provisions that mandate prior notice of covert actions to the intelligence committees, foreign intelligence collection against Americans, surreptitious entries into Americans' homes by court order, and relief from the Freedom of Information Act for intelligence agencies.

Senator BAYH. The Senator from Utah?

Senator GARN. Thank you, Mr. Chairman. I will be very brief. I do not even have a prepared statement. But I do feel a sense of frustration as a charter member of this committee—and it has been nearly 4 years now since we started talking about charters and one of the reasons I wanted to get on this committee was because I felt the CIA had been overly abused by the press despite the fact that there were abuses that needed to be corrected. Their public image was far less than they deserved to have and I had hoped, as a member of this committee, to strike that balance that you talked about that we worked on in the wire tap legislation, to correct the abuses that had occurred and at the same time enhance the legistimate intelligence gathering activities of our intelligence agencies.

So the frustration is going on 4 years. We have not achieved that.

As Senator Huddleston just said, I hope the climate is now ripe, and I hope that we do not pass another year without coming up with some legislation that frees up the CIA to do the legitimate intelligence gathering that is the necessity for the defense of this country. And we certainly cannot separate intelligence from an immeasurable portion of our defense.

It is not just buying weapons and tanks and airplanes and things of that nature. It is extremely valuable that we have the intelligence necessary that we can anticipate what our enemy is going to do.

So I just hope that that frustration is relieved, that we are able to achieve that balance, that we do have some legislation this year that will be signed into law and a year from now I will not be making my same speech about my frustration of 5 years having passed.

Thank you very much.

Senator BAYH. Thank you, Senator Garn.

Senator Biden?

Senator BIDEN. Mr. Chairman, I would like to begin by complimenting Senator Huddleston for his work in the thankless task of guiding the charters for the last several years through the Charters Subcommittee to the full committee and also I would like to point out that this Nation of ours tends to overreact. We are like a pendulum.

I think 5 years ago we overreacted as a Nation, not just a Congress, but as a Nation. We talked about the overwhelming abuses of the Central Intelligence Agency, about how bad it was and how everything about it was noxious.

Now we find from the editorial of the Wall Street Journal today and from some of the comments of some of our colleagues on the floor, that we seem to be overreacting the other way. We are suggesting that we should return to the supposed good old days—the good old days when the Congress did not know what was going on in the Agency—as if the Agency worked well then—as if the Agency was not the original reason for the charter in the first place. This nostalgia is an urge to return to the good old days of the Bay of Pigs, the good old days of those wonderful estimates on Vietnam and how well we were doing.

The incentive for centralized intelligence operations was Pearl Harbor. We, the Congress, centralized intelligence operations to give them a better ability to function. The history of the CIA is not all bad, but I am a little worried about those good old days. I did not think those good old days were that good in terms of how competent intelligence personnel were, and I would like to suggest to you that congressional oversight of the intelligence community is necessary not only from the civil liberties point of view but also from a national security point of view.

People forget the role that Congress played in the first instance. Recently we in the Senate and the House committees, I think, served the public interest and strengthened the intelligence community by the important studies that were done pointing out not only the failures but also the strong points of the Agency and by developing and introducing graymail legislation, enabling the agencies as a consequence of the probing preceding this legislation to make some internal and external changes that resulted in more prosecutions. Three times as many people are being prosecuted these days as 2½ years ago before we started looking at the graymail problem. The point I would like to make is that congressional oversight is not all one-sided.

The CIA, I believe, happens to house probably the most intelligent group of people that work in Government, in my experience on the Foreign Relations Committee, the Budget Committee, the Judiciary Committee, and this committee. In dealing with the personnel of the intelligence agencies I find them among the best and the brightest the Government has to offer. Our greatest hope for preserving peace is through a very, very competent intelligence community.

But I am not so worried about the intelligence community going off on its own and abusing their powers. I am worried about a President, this President, the last President or the next President, deciding how they are going to use that Agency. I am not prepared, as one Senator, to leave that to the good judgment of this President or the next President. The issue is not the CIA in this Senator's mind. The issue is the President of the United States.

I think we can cut back on congressional oversight. We can cut back on the number of committees receiving prior notice of special activities. We can do all those things and many that are suggested in the charter without having to go back to the good old days when nobody up here but one man knew what was going on. It is alleged that, 15 years ago when that Senator exercising single-handed oversight was asked what the intelligence budget was answered, "I do not ask because I am afraid I will talk in my sleep and someone will hear."

I do not know whether that anecdote is true. I hope that we do not overreact now and that we go about the business of doing what Senator Huddleston has been working on for 3 years and develop a charter that the CIA and Congress can agree on and settle this matter once and for all.

Thank you.

Senator BAYH. Thank you, Senator Biden.

Senator Chafee?

Senator CHAFEE. Mr. Chairman, I would like to join in welcoming Admiral Turner and his colleagues here today at the start of these very important hearings.

I am particularly interested in the reforms which we are considering which are intended to halt the activities of those whose publicly stated purpose is to cripple the CIA in the accomplishment of its mission.

Furthermore, I am interested in those provisions dealing with the Freedom of Information Act which need correction; at present this act allows any person in the world to request information concerning the activities and procedures of the CIA.

It seems to me, Mr. Chairman, that we have worried about potential abuses of the CIA and that a good deal of time and energy has been spent on this in the past 7 years. But clearly the greatest check on the potential abuse of the special powers that are given to the intelligence community is the oversight provided by the Senate and the House Intelligence Committees and it is incumbent upon us as elected representatives of the people to do our job properly in this oversight capacity.

And if we do that, I think that we will have fulfilled the purpose for which these committees were established.

Thank you.

Senator BAYH. Thank you, Senator Chafee.

Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, Senator Huddleston remarked that the negotiations which our subcommittee had been conducting for 3 years were not reaching any conclusion because events kept getting in the way. Our chairman, as we all know, is perhaps too much of a gentleman to identify what those events that got in the way were—namely, that we could not get an agreement with the White House on

the question of the notification of this committee in matters involving our oversight responsibilities.

And it was with that stalemate in mind that a number of my colleagues and I, as you, Mr. Chairman, noted, introduced an abbreviated charter to see if we could not break that stalemate. Whatever the case, we now have that, 3 years after these negotiations have begun.

I would like to pay tribute to my chairman, Senator Huddleston, in this matter, and to say that, the larger issues having been engaged, we propose to involve ourselves completely as he and I said in a colloquy on the floor, so let's get on with it.

Let me take the opportunity also to welcome Admiral Turner.

[The prepared statement of Senator Daniel Patrick Moynihan follows:]

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Mr. Chairman, thank you for this opportunity to make an opening statement concerning the business at hand.

Last month, as you know, several colleagues, some of whom are members of this committee, and I introduced an abbreviated charter. We did so in order to break the deadlock which we perceived existed in the negotiations between the leadership of this committee and the Administration. By January 24, when we introduced our bill, these negotiations had been going on for three years, and with uncertain success.

We acted as we did in order to ensure that some intelligence legislation would be debated and passed by this session of the 96th Congress. Now that our negotiations with the Administration have been sufficiently successful to allow a comprehensive charter to be considered, I know we will all work together to make as much progress on it as we can.

Since the introduction of our abbreviated charter, the House Intelligence Committee has held hearings on its identities protection bill, the language of which we had included in our own legislation. At the hearings on this bill, which had been introduced by the entire membership of the House committee last October, expert legal testimony, including that of Mr. Floyd Abrams of New York, suggested that the bill did not protect the activities of responsible journalists in the manner which the drafters had intended. I have been persuaded that the original House language was defective in this manner, and wish to take this opportunity to say that when the Committee takes up this issue, I will move to strike Section 501(b) or any equivalent.

Finally, Mr. Chairman, I would like to comment on a bill on this subject drafted by the Department of Justice. Section 801(a) of this bill, the "Foreign Intelligence Identities Protection Act" reads as follows:

"Whoever knowingly discloses information that correctly identifies another person as a cover agent, with the knowledge that such disclosure is based on classified information, or attempts to do so, is guilty of an offense."

This seems to me extraordinarily careless of the rights of journalists. Under this provision a journalist would be liable to be hauled into court and required to reveal his sources in order to prove he did not know that what his newspaper, or radio or television station reported was based on classified information.

There is a phrase for this: prior intimidation. I for one will have nothing to do with it. Nor, do I think, will my colleagues.

Senator BAYH. Senator Lugar?

Senator LUGAR. Mr. Chairman, I think that we commence a very important testing of not only this committee but also of the American public's understanding of intelligence and what it should be about. I think it may have been fortuitous that these hearings have not begun until this point because I suspect the pendulum has been swinging and now, as a matter of fact, the President of the United States, at least as I see it, is desirous of having a very strong intelligence capability and of using it.

Our question, I suppose, is twofold: to what extent, as Senator Garn has so well pointed out over the years, the people who are in intelligence feel that they need the protection of a charter, to what extent they have felt inhibited by congressional inquiry, and by other public assaults so that they feel a fallback position is required to cover their activities. Likewise, to what extent we need to give the President a great deal of benefit of the doubt and a very substantial latitude in doing things on behalf of all of us that may require the utmost of secrecy.

It seems to be that intelligence requires secrecy and our quest here is to figure out how there can be a check and balance with a minimum amount of check, I believe, by the Congress, given the fact that we live in a democracy, an open society, and there are some natural checks in terms of our political tradition.

I am not sure how that is going to be able to sort out in these hearings, as a matter of fact, so I come to hear the debate and to listen to the witnesses and to draw some conclusions on what I will support on that basis.

Senator BAYH. Senator Jackson?

Senator JACKSON. Mr. Chairman, I want to commend you and Senator Huddleston and Senator Goldwater and Senator Mathias for the efforts that are being made regarding a charter.

I must confess, however, that I have deep reservations about writing a book that contains lists of "do's and don'ts"—in other words, "wouldst that my adversary might write a book."

In dealing with intelligence, it seems to me that there are three things specifically that we need to enact now. That is, we should address the reforms included in the Moynihan bill on which I joined specifically: (1) reduce the reporting requirements contained in the present Hughes-Ryan Act; (2) fix the Freedom of Information Act to exempt certain information and search requirements; and (3) provide legislation to cover the exposure of agent identities.

I think these are very important, but when we try to put down in law the things that the agency can do and cannot do, and then something comes up and you want to change the law, you are in a difficult position. The greatest intelligence organization has been, I think, over the years, the British one—it saved Britain in many ways in World War II. I guess I am prejudiced, but I do think we have an equal level of maturity here in the United States.

The issue is people. I think Admiral Turner has some of the finest people in the world. I would hope that we would be sitting here talking about how can we strengthen the CIA. That is something that we really need to address, and I must say I am troubled about the events over the years regarding the Agency, the denigration of it, and I think it is an absolute indispensable tool to the preservation of freedom.

Unless we know what we are doing, we are going to make terrible mistakes, and the most important thing that we can do is to go back to our Founding Fathers and rely on checks and balances.

I learned a long time ago that people are the essential factor here, and where we have failed in intelligence—and I know about this personally from my service on the Armed Services Committee—is the failure of Congress to do its job.

There needs to be one committee and a thorough, continuing oversight on the part of Congress. That is the most important safeguard that we have for the preservation of our freedoms and liberties.

I do not think we can account for—at least, I am not sharp enough to be able to put down in a charter—all the things that I see that could happen down the road, because I cannot see all of them. I must say this large draft charter does trouble me—but I will reserve final judgment. My inclination is to avoid writing a charter, a book on this subject, with all of the trouble that it can portend for the future.

Senator BAYH. Thank you, Senator Jackson.

Senator Wallop?

Senator WALLOP. Thank you, Mr. Chairman.

May I add my thanks and compliments to those who have labored on this bill and begin by saying that I do not think that anybody in hopes of strengthening the CIA is out to contrive the destruction of the civil liberties of American citizens.

I do not know anybody, that I know of, at least, who denies the value of responsible oversight.

I share some of the troubles that Senator Jackson has expressed because the charter that we had before, as I read it authorizes some activity. It prohibits a great deal of activity, and it directs no activity. It provides no mission, no standard by which to judge the performance of the Agency.

We are chartering but nothing is out there to direct it to accomplish something—no mission, as it were.

Then you have it operating in a vacuum and that vacuum can be either an excuse for inactivity or a means by explaining away failure, or it can be, by that same token, in the hands of a zealot, the excuse for operating outside of all the words that were not written.

I do not think that we know enough words to prohibit every act that an ingenious mind can contrive, and goodness knows the ingenious minds that can be brought to bear on these kinds of activities.

Some specifics are needed, some specific protections. I have no problems with that, but more than anything else, we need to know as a country what we expect our intelligence agencies to do, where we expect them to operate and how we expect them to accomplish it and provide them a mission and charge that they must fulfill to protect our freedom.

Lastly, Mr. Chairman, I think it is a great mistake for us, no matter how well-meaning we are, to vest in every one of the world's populations the protections of the Constitution of the United States because they will not be playing that game back with us.

Senator BAYH. Senator Leahy?

Senator LEAHY. Mr. Chairman, I am going to welcome Admiral Turner and listen to his testimony today and I apologize to the Chair that I have to be at a meeting out West later this afternoon and I will have to leave.

I have been a member of Senator Huddleston's Subcommittee on Charters. I think that the whole committee owes a great bit of gratitude to him for the work that he has done.

Also, I know and appreciate how long Admiral Turner has worked to help us arrive at a bill that assures the United States will have an

intelligence community that is effective and accountable which are not mutually exclusive. They are not mutually exclusive terms at all.

I think they can be reconciled. Anybody who would suggest that a major military power, especially the United States, could deal without intelligence, an effective intelligence service, is naive.

In fact, one of the best safeguards for peace—the best safeguard for peace—is an effective intelligence service that can help us make the choices and decisions to keep us from war.

I agree with what Senator Bayh has said about how much we have already accomplished and I would like to focus particular attention to the fact that the effective and successful operation of our constitutional form of government does hinge on the shared responsibility of the separate branches.

I noticed with concern the Supreme Court's decision yesterday on the *Snepp* case. The Supreme Court has, of late, come in with some sloppy decisions. At least in the judicial reading of this one, they are maintaining tradition. I am concerned because I feel, on the one hand a grave fear about anybody from any intelligence agency going out and willy-nilly printing the secrets of our country, printing the names of our agents, as has been done by Mr. Agee and others, matters that not only do terrible damage to the security of our country, but also create incalculable danger to very patriotic, hard-working, American men and women.

And I want to make that well known.

At the same time, I have been an advocate and supporter of the constitutional and statutory right of an individual who is an employee of the U.S. Government to display examples of malfeasance or abuse of that agency. I hope the Supreme Court will soon make a far more clear ruling in this matter, because I have concern when they speak of an employee's fiduciary relationship with an agency, I am afraid of the kind of chilling effect it will have on this kind of whistleblower right, which is not only within the intelligence agencies, but also within others.

I am concerned the decision might affect the willingness of people to come forward and tell Congress—people on this oversight committee—of abuse and wrongdoing by the agencies of the intelligence community.

As I said, of course, there is no excuse for somebody going out and doing, as Mr. Agee has done with his book, and I have no truck for somebody who breaks a contract that they have agreed to, but at the same time I would hope that we would not, one, try to push ourselves down the path of legislation that very directly affects all of our first amendment rights.

Second, I would hope that we do not cut out the ability to have whistleblowers come before us and I will submit for the record, Mr. Chairman, a number of questions for Admiral Turner basically along this line, on whether the employees of the intelligence community are now prohibited from coming before the committee.

Does the opinion, especially where the court speaks of a fiduciary relationship with the CIA, provide the Director with the legal basis for insisting that all employees sign new employment agreements promising not to disclose wrongdoing to Congress and whether indeed

there should not be a proper avenue for such disclosure and if people cannot get proper redress within their own agency or the intelligence oversight board, should they not be able to turn to Congress for help?

I sponsored an amendment to the Civil Service Reform Act of 1979 last year on whistleblowers which was unanimously adopted. However, of course, CIA employees are not under Civil Service. I am asking whether you think there should be, indeed, especially in light of the Supreme Court case, some similar protection for CIA employees before these committees.

Mr. Chairman, I have spoken twice as long as the Senator from Vermont is accustomed to speak. I just want the chairman to know that I feel strongly that we do have to have an effective intelligence community, one that can adequately deal with today's problems, which are way beyond those of a former time when one said that gentlemen should not read each other's mail. We live in a far more real world than that.

At the same time, I share the concern expressed by so many here that we do have a government of checks and balances.

Senator Jackson has said a government where people must be involved.

I would hope that we are able to work out a charter that allows this committee to maintain the oversight function as representatives of all the American people, that we have begun, that we have done, I think, effectively and responsibly over the last several years.

Senator BAYH. Thank you, Senator Leahy.

Senator Durenberger?

Senator DURENBERGER. Thank you, Mr. Chairman.

I will heed someone's admonition to be brief. I do not know whether that was directed at me because I am junior on the committee or was the last one in the room, or whether everybody got it.

Senator BAYH. It was directed at the chairman as well as anybody else.

Senator DURENBERGER. Thank you, Mr. Chairman.

I would start out by expressing my appreciation to Senator Huddleston and Senator Mathias for the efforts that went into this bill, to Senator Wallop for not making me sit under those cameras under which the two of us sat for 7 weeks on the windfall profits tax, and to just highlight a statement I would appreciate being able to introduce in the record, that it seems to me the drafting of an intelligence charter is a little bit like being the judge in "Kramer v. Kramer." There are very legitimate interests on both sides, and everybody is going to cry when you are through.

I personally do not believe in drafting legislative charters that regulate every move that an agency makes. I think a preferable approach is to design a charter that sets forth principles for the executive branch to follow in intelligence operations. There should be reasonable, somewhat flexible procedures for the most sensitive activities, and a requirement to provide all the information to the intelligence committees of each House of Congress.

Importantly, I think, intelligence committees will change over time, with the times. While legislative language will become out of date, congressional oversight will remain sensitive to the needs of both the intelligence agencies and the American people.

Whatever our approach, it is my belief that a charter must rest on one central proposition, that Congress will grant authority to engage in various intelligence activities only in return for complete access to information.

Witbout this, there can be no effective congressional oversight of intelligence and no assurance that the public interests which intelligence agencies are created to serve will be respected. And without the assurance of effective oversight, we would be left with a Hobson's choice between crippling inflexibility and dangerous license.

Thank you, Mr. Chairman.

Senator BAYH. Thank you, Senator Durenberger.

[The prepared statement of Senator Dave Durenberger follows:]

PREPARED STATEMENT OF SENATOR DAVE DURENBERGER

Drafting an intelligence charter is a little like being the judge in "Kramer v. Kramer" : there are legitimate interests on both sides, and everyone's going to cry when you're done.

The American people need assurance that intelligence agencies will not trample on the constitutional rights of our citizens or charge off on foolish missions. But the American people also have no illusions of living in the City of God. They know that the world's troubles call out for a vigorous U.S. foreign policy, based upon a strong and effective intelligence capability.

I do not believe in drafting legislative charters which attempt to regulate every move that an agency makes. Our committee may have intelligence, hut it is not omniscient. We cannot tell what new circumstances may arise, or what new technology may be developed, which would make our legislation obsolete. We can predict that change will occur. We can predict that too tight a legislative charter will only produce inflexibility and efforts to worm around its provisions.

A preferable approach is to design a charter which sets forth principles which the Executive Branch should follow in intelligence operations, reasonable and somewhat flexible procedures for the most sensitive activities, and a requirement to provide all the information to the intelligence committees of each house of Congress. These committees are trustworthy; they have handled extremely sensitive information over the years with an exemplary security record. They are representative, and therefore can review intelligence activities with a broader perspective than is found in the Executive Branch. And most importantly, the intelligence committees will change over time, with the times. While legislative language will become out of date, congressional oversight will remain sensitive to the needs of both the intelligence agencies and the American public.

It is a great achievement for the Select Committee on Intelligence to have come this far in its charter efforts. Senators Huddleston and Mathias, in particular, are to be congratulated for their skill and perseverance. But the National Intelligence Act is very complex and still in need of work. It bears the jagged scars of the bloody inter-agency feuds that attended its birth.

We should approach charters realistically. It is not clear that a thorough charter bill can be passed this year. Only a unanimous Intelligence Committee can get a bill through both houses, and this may be hard to achieve in a session cut short by conventions and electioneering. So at some point the Committee will have to consider the option of a short bill incorporating those provisions on which agreement can readily be obtained.

Whatever our approach, a charter must rest upon one central proposition: That Congress will grant authority to engage in various intelligence activities only in return for complete access to information. Without this, there can be no effective congressional oversight of intelligence and no assurances that the public interest, which intelligence agencies are created to serve, will be respected. And without the assurance of effective oversight, we would be left with a Hobson's choice between crippling inflexibility and dangerous license.

Senator BAYH. Admiral Turner, it is good to have you here. Let me just make one personal observation, if I might, relative to what I have read in some of the things that we have collectively said here.

You hear a lot of words used by Senators and the President as well as members of the fourth estate to try to describe for the public generally what is happening in intelligence. We hear the words "strengthen" and "weaken" and "more effective" and "ineffective."

For the record, I want to say I think we now have an excellent intelligence community. I think the CIA is doing an exceptional job. They are not saints and neither are we.

But I think there have been some bad reports recently spread, particularly in light of the Afghan experience, which said in one publication that the CIA was caught with its pants down again and did not know it was going to happen, did not know what the Russians were about.

Anybody who had a scintilla of an idea of what was going on in the intelligence community and the work that you were doing and the communication you were having with this committee—and I assume the President—knows that that is not right.

I just wanted to say that I think you are serving this country well. I think we have an opportunity here to help you do it better. You are concerned about the eight committees. I think you have a unanimous vote here that there is no need to report to eight committees. You are concerned, I am concerned, about this fellow Agee running around pumping out information that jeopardizes people's lives. I think we can deal with that. Nobody has a constitutional right to do that kind of thing.

I would hope by the time we are through with the product that Senator Huddleston and some of the rest of us are working on, we can establish the responsibility to inform the legislative branch and to protect the rights of the people of this country, and I think that delicate balance is what we are shooting for.

Maybe I have already said that once so why do I not say it a third time. It is good to have you with us.

[The prepared statement of Adm. Stansfield Turner follows:]

PREPARED STATEMENT OF ADM. STANSFIELD TURNER, DIRECTOR OF CENTRAL INTELLIGENCE

Mr. Chairman, I am pleased to be here today to lead off the administration's testimony with respect to the proposed congressional charters for the intelligence community. For the entire three years that I have been the Director of Central Intelligence, I have been a strong supporter of these charters.

The first reason for this is the fact that the guiding legislation today is incomplete. It is the National Security Act of 1947 as amended. The evolution of the United States intelligence community in the intervening years has not conformed with the image which the constructers of that legislation had in mind; clearly, we are not doing anything illegal or in contradiction to those laws, but the picture they portray of what the intelligence community is and how it functions simply has not worked out in practice. I believe that it is important that the Congress enunciate to us and to the American people what kind of an intelligence community it expects and wants.

Secondly, intelligence is by its very nature a risk-taking business. The intelligence professionals of our country are trained to take those risks on behalf of the country. They deserve, I believe, as expressed a description of what they are expected to do and not to do as it is humanly possible to create. There are definite limitations as to how such authorities and restrictions can be expressed, but we owe it to our intelligence officers to give them the best guidance we can. They will still necessarily have to assume considerable initiative and risk on their own, but we should provide them all the support that is possible.

Thirdly, in the last five or six years we have been moving to an exciting and important new concept in the world of intelligence. This is the concept of close congressional oversight of the intelligence process. It is the complement to the authorizations and the restrictions which should be enunciated in a charter. In short, through oversight the Congress can and should check on whether the authorizations are being used to good advantage and whether the restrictions are, in fact, being followed in their spirit as well as their letter. Under this concept of intelligence, it is possible to avoid such detailed and specific restrictions as would hobble our intelligence operations beyond usefulness. This new and important concept of the complementarity of authorizations and restrictions on the one hand, and oversight on the other, needs to be clearly enunciated by the Congress. Only then can the citizens of our country readily understand how the Congress is exercising its responsibilities in an area where, due to the requirements of secrecy, the public cannot be adequately informed to make its own judgment.

Fourth, and finally, it is very important that the intelligence community of our country be given greater protection for its necessary secrets. There is no issue of higher import to the success of our necessary intelligence efforts today. The charter legislation is a proper and important vehicle for providing the necessary protection to what we refer to as our sources and methods of collecting intelligence and to substantive intelligence information itself. Any intelligence apparatus that cannot conduct sensitive operations in secrecy cannot offer human sources assurances that their cooperation with the United States will remain sacrosanct. It also cannot give assurances of withholding from public exposure, private sensitive information, the exclusive possession of which is of great value to our policymakers. Without the ability to provide these assurances we simply will not be able to produce the kind of intelligence that our Nation must have if we are to conduct our foreign policy successfully. The boundary line between provisions for adequate secrecy on the one hand and sufficient congressional oversight and protection for the rights of the American citizen on the other is a narrow one. It can be drawn to protect all of these interests, but all three interests must be kept in mind in that process.

When this committee introduced its original charter bill S. 2525, some two years ago, we all recognized that an extended period of negotiation among intelligence community officers, community staff, and administration officials would be required to achieve the right balance between these three interests. It has been a long and arduous process, but I believe that all those who have taken part in these negotiations can be pleased with the results we have before us today. It is particularly significant that there has been an evolution from an emphasis on overly specific restrictions to the system of oversight and accountability.

Unfortunately, several outstanding substantive issues have prevented the introduction of a bill which could be fully supported by the intelligence community and the administration. In part, these differences are over whether the draft bill adequately provides protection for our necessary secrets. Other differences relate to whether we would have the flexibility and the capacity to act with necessary dispatch in crisis situations. Still, I certainly agree with the remarks of the President that the substantial agreement we have already achieved places us well on the road to resolving the remaining differences. Let me address those differences specifically.

First, I am troubled by the organization of the bill. I believe that it is important that intelligence charter legislation follow the logical sequence of dealing successively with authorities, standards of conduct, and the system of oversight and accountability. I think that the organizational structure of S. 2284 tends to obscure the oversight process somewhat but that these structural problems can be easily remedied.

Second, a comprehensive charter should contain authority for the President to waive any provision of that act in time of war or during a period covered by a report to the Congress under the War Powers Resolution, to the extent necessary to carry out the activities covered by the report. The only such authority in S. 2284 is for a limited wartime waiver of the prohibition on cover use of certain institutions. This is insufficient. S. 2284 still contains a variety of restrictions and requirements, both procedural and substantive which in time of war could impede necessary action. The administration favors a wartime waiver which would deal with exigent circumstances, while at the same time

preventing any potential abuse by requiring notification to the Senate and House Select Committees on Intelligence when the provision is invoked. The provision favored by the administration is set forth in an appendix to my statement.

Third, the administration believes that the requirement for reporting of significant anticipated intelligence activities, including special activities or covert actions, is unnecessary, improper and unwise. Consequently, it cannot support sections 142 and 125 as they are now written. To begin with, I believe that this committee and the House Permanent Select Committee have been kept fully and currently informed of significant activities undertaken by the intelligence community. I am not aware of any complaint by the select committees, or of any inadequacy with current oversight which prevents the committees from fulfilling their responsibilities.

In addition, it would be improper to attempt to impose such requirements in statute. Such statutory requirements would amount to excessive intrusion by the Congress into the President's exercise of his powers under the Constitution. The administration favors alternative provisions which would confirm existing oversight arrangements by requiring that the intelligence committees be kept fully and currently informed of the activities of the intelligence community. Such provisions would continue the current reporting standard under the Hughes-Ryan amendment by requiring that special activities be reported "in a timely fashion," but would limit such reporting to the Senate and House Select Committees on Intelligence.

Prior reporting would reduce the President's flexibility to deal with situations involving grave danger to personal safety, or which dictate special requirements for speed and secrecy. On the other hand, activities which would have long-term consequences, or which would be carried out over an extended period of time, should generally be shared with the Congress at their inception, and I would have no objection to making this point in the legislative history.

Certain facets of intelligence collection are by their very nature risk-taking ventures. By risks I mean that either the lives and reputations of individuals are at stake and/or that the prestige and position of the United States with respect to other nations could be endangered. There are clearly situations in which I personally would not ask an individual to accept such risks to his welfare or place the reputation of the United States on the line, if I were required to report such intention to more Members of the Congress and their staffs than I would permit persons within the CIA to be privy to this information. Moreover, we must recognize that rigid statutory requirements requiring full and prior congressional access to intelligence information will have an inhibiting effect upon the willingness of individuals and organizations to cooperate with our country. In short, it may not only be a case of my unwillingness to ask individuals to accept risks: those individuals simply may not be willing to take them.

Our fourth concern is that section 142 of the bill fails to specifically mention the duty of the DNI to protect intelligence sources and methods. Our ability to recruit foreign sources and to deal with friendly foreign intelligence services would be significantly impaired by the signal that the omission of this long-standing provision would give. This language has been a backbone of our assurances to such individuals and organizations that the DNI can and will provide protection for their legitimate interests. Accordingly, the administration favors provisions concerning oversight of significant intelligence activities that are different than those of S. 2284, and such provisions are set forth in the appendix.

While I recognize that there is an argument which sounds most reasonable that the Congress should be entitled to access to all intelligence information, I would like to point out that the practical impact of such a provision in this legislation could be very harmful. To begin with, the kinds of information we would wish to withhold are the kinds of information which this committee has sagaciously and consistently indicated it would never seek to obtain. The names of human sources of information is one good example. On the other hand, the inclusion of a provision that would theoretically require us to provide such a name could have a very chilling effect upon the confidence we can instill in such individuals that working with us is a reasonably safe proposition. We are asking you for relief from the Hughes-Ryan amendment, from the more onerous provisions of the Freedom of Information Act, and for legislation to deal with instances of the revelation of the identities of our personnel. All of these measures will be of great assistance to us in developing confidence in foreign individuals and

intelligence services. The inclusion of a provision for all-encompassing access to our data would run directly contrary to these steps and would in large measure nullify them.

Fifth, another provision of the bill that stands out as an example of unwarranted limitation of flexibility is section 132, concerning intelligence relationships with certain private institutions. While the provision does not prohibit relationships with individuals who are members of media, religious, or academic organizations or exchange programs, it prohibits the establishment or maintenance of any cover involving those groups. I share the view of Congress that these institutions play an important role in our democracy and must have their independence preserved. The Central Intelligence Agency itself took steps some time ago to regulate intelligence relationships with these institutions and their members. Our self-imposed regulation for all practical purposes prohibits cover use of these groups or paid use of their members. Such prohibitions should not be enacted as law, however. There can arise unique circumstances in which intelligence relationships with members of these institutions are not only warranted, but may be the only means available for accomplishing important intelligence objectives. In such circumstances, internal regulations permit waiver of the general prohibitions against the use of these groups. I have granted such waivers on rare occasions. In order to maintain this flexibility there should be no blanket prohibition in statute. In this regard, it makes little sense to distinguish between actual intelligence relationships with members of such groups and the establishment and use of cover. While cover use should be kept to an absolute minimum, circumstances are conceivable in which such use would be the only means available to the Government in a situation of the highest urgency and national importance. The way to deal with such situations is through internal guidelines. Thus, the administration cannot support section 132 as written. Cover and intelligence relationships involving these institutions should instead be regulated by executive branch guidelines. These guidelines would be available to the select committees, as is now the case.

Sixth, a major shortcoming of S. 2284 is its failure to adequately confirm our ability to protect intelligence sources and methods, and to ensure the necessary secrecy for intelligence activities. There are two major areas of concern here. One is the Freedom of Information Act and the other is the unauthorized disclosure of identities of intelligence personnel.

We must recognize that it is inappropriate to apply government-wide freedom of information and public disclosure concepts to intelligence information that must remain secret. While the bill exempts certain CIA operational and technical files from the search, review, and disclosure requirements of the Freedom of Information Act, except for requests by U.S. persons for information on themselves, it fails to provide any relief for NSA, the FBI, and other intelligence community components. The same problems which face the CIA in this regard face the other intelligence community components as well. The administration favors community wide relief, under which the Director of national intelligence would be authorized to exempt operational and technical files of any intelligence community entity from the FOIA, except in the case of requests by U.S. persons for information about themselves. This would not preclude any requests for finished intelligence, since only operational and technical files could be designated for exemption. The administration's proposal is set forth in the appendix.

An area of even more serious concern is the failure of S. 2284 to effectively proscribe unauthorized disclosures of the identities of intelligence officers, agents and sources. Section 701 of the bill would make this perverse activity an offense only for persons who have had authorized access to classified information that identifies intelligence personnel. It would not cover accomplices who knowingly assist in the commission of the section 701 offense, or others who make unauthorized disclosures of classified intelligence identities. This failure to provide adequate protection for the men and women who serve our Nation in difficult and dangerous assignments is, in my personal view, one of the most serious shortcomings of the bill. To ensure that the intelligence structure we are building today remains effective in the future, the administration favors broader protection for intelligence personnel. We must weigh the absence of any legitimate public purpose in the unauthorized disclosure of intelligence identities against the real and certain damage such disclosures cause, and we must accept the necessity to deter with carefully crafted criminal sanctions the unauthorized disclosure by anyone

of the classified identities of our intelligence officers, agents, and sources. The administration's preferred statutory language for section 701 appears in the appendix to my statement.

Mr. Chairman, the administration also believes that amendments to the Foreign Intelligence Surveillance Act (FISA) in addition to those proposed by S. 2284 are warranted. Over the course of the charter process significant inadequacies in the FISA have become apparent. These deficiencies were not foreseen at the time FISA was enacted and they should be remedied as soon as possible. The additional amendments include:

a. Modification of the targeting standards to permit targeting of dual nationals who occupy senior positions in the government or military forces of foreign governments, while at the same time retaining United States citizenship. Frequently the activity of such persons when they visit the United States on official business is not such as to bring them under the quasi-criminal targeting standard now found in the FISA.

b. Modification of the targeting standards to permit targeting of former senior foreign government officials even if they are not acting in the United States as members of a foreign government or faction. Again, this problem was not anticipated at the time the FISA was passed, but various situations have arisen in which it is clear that a former foreign government official who is present in the United States may have significant foreign intelligence information. Under present law such an official can be targeted only if a member of a foreign faction or government.

c. Extension of the emergency surveillance period from 24 to 48 hours. Recent experience indicates that the 24-hour period is inadequate, leading to the necessity of delaying implementation of emergency surveillances.

Language to accomplish these amendments is set forth in the appendix.

Mr. Chairman, I believe that we are in the midst of an important evolution. We are attempting to integrate the legislature of this country more intimately into the intelligence process than has ever been attempted anywhere before. This new process has been evolving over a number of years now. I know that we in the executive branch are pleased with the way this new relationship has developed. I hope that the members of his committee are also. The enactment of this legislation which would charter our intelligence activities anew would codify the practices we have developed and ensure their perpetuation. The most important remaining differences between the administration and this draft bill concern areas where the bill goes considerably further in regulating matters that are being handled satisfactorily. In this light, we should recognize that:

A strong system of oversight and accountability already exists and is functioning effectively. This committee and its counterpart in the House of Representatives are key elements in that system.

Executive Order 12036 and the Attorney General guidelines which have been issued pursuant to it set forth rigorous standards of conduct for intelligence activities. The proper execution of the Executive order and the Attorney General's guidelines is subject to congressional oversight.

The one area where present practices are inadequate is the security of intelligence operations and the protection of intelligence sources and methods. An adequate legal basis for support here is not now in existence and is urgently needed.

I make these points because the charter is a complex piece of legislation. Careful study and analysis will be required by those who have not been intimately involved in the drafting process for the past two years. This is, as we all know, a short legislative year, and there is some question as to whether both Houses of the Congress will be able to take up and pass the charter even if all of the outstanding differences between this committee and the administration are settled quickly. In this connection, let me once again emphasize the importance of remembering that the charter is a carefully constructed web of interrelated provisions, whose delicate balance must be maintained. Individual changes which would upset this balance must be resisted, lest our hard-won consensus be jeopardized and our entire endeavor endangered.

Mr. Chairman, the President, the intelligence community, and I are committed to the concept of intelligence charter legislation. I am confident that this committee will report out a bill which provides essential authorities, reinforces needed guidelines, ensures proper congressional oversight, confirms our ability to protect intelligence sources and methods, and can be enacted this year.

APPENDIX TO THE STATEMENT OF THE DIRECTOR OF CENTRAL INTELLIGENCE

Add the following new section in Title I:

PRESIDENTIAL AUTHORITY IN WAR OR HOSTILITIES

Sec. 146. (a) The President may waive any or all of the restrictions on intelligence activities set forth in this Act during any period—

(1) in which the United States is engaged in war declared by Act of Congress; or

(2) covered by a report from the President to the Congress under the War Powers Resolution, 87 Stat. 555, to the extent necessary to carry out the activity that is the subject of the report.

(b) When the President utilizes the waiver authority under this section, the President shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate in a timely manner and inform those committees of the facts and circumstances requiring the waiver.

Amend sections 125 and 142 of Title I as follows:

CONGRESSIONAL NOTIFICATION

Sec. 125. A report of the description and scope of each special activity authorized under section 123(a)(1) and each category of special activities authorized under section 123(a)(2) shall be made in a timely fashion to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence in accordance with section 142 of this Act.

CONGRESSIONAL OVERSIGHT

Sec. 142. (a) Consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches and by law to protect sources and methods, the head of each entity of the intelligence community shall—

(1) keep the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, that entity of the intelligence community; * * *.

Add the following to subsection 304(j):

In furtherance of the responsibility of the Director to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall be exempted from the provisions of any law which require publication or disclosure, or search or review in connection therewith, if such files have been specifically designated by the Director to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information; Special activities and foreign intelligence or counterintelligence operations; Investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; Intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; Provided that requests by United States citizens and permanent resident aliens for information concerning themselves, made pursuant to Section 552 and 552a of title 5, shall be processed in accordance with those Sections. The provisions of this subsection shall not be superseded except by a provision of law which is enacted after the date of this Act and which specifically repeals or modifies the provisions of this subsection.

Substitute the following for the provision in Title VII:

Title VII—Prohibiting the Disclosure of Information Identifying Certain Individuals Engaged or Assisting in Foreign Intelligence Activities of the United States

STATEMENT OF FINDINGS

Sec. 701. (a) The Congress hereby makes the following findings:

(1) Successful and efficiently conducted foreign intelligence activities are essential to the national security of the United States.

(2) Successful and efficient foreign intelligence activities depend in large part upon concealment of relationships between components of the United States government that carry out those activities and certain of their employees and sources of information.

(3) The disclosure of such relationships to unauthorized persons is detrimental to the successful and efficient conduct of foreign intelligence and counter-intelligence activities of the United States.

(4) Individuals who have a concealed relationship with foreign intelligence components of the United States government may be exposed to physical danger if their identities are disclosed to unauthorized persons.

DEFINITIONS

(b) As used in this Section:

(1) "Discloses" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available to any unauthorized person.

(2) "Unauthorized" means without authority, right or permission pursuant to the provisions of a statute or Executive Order concerning access to national security information, the direction of the head of any department or agency engaged in foreign intelligence activities, the order of a judge of any United States court, or a resolution of the United States Senate or House of Representatives which assigns responsibility for the oversight of intelligence activities.

(3) "Covert agent" means any present or former officer, employee, or source of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency (i) whose present or former relationship with the intelligence agency is protected by the maintenance of a cover or alias identity, or in the case of a source, is protected by the use of a clandestine means of communication or meeting to conceal the relationship and (ii) who is serving outside the United States or has within the last five years served outside the United States.

(4) "Intelligence agency" means the Central Intelligence Agency or any foreign intelligence component of the Department of Defense.

(5) "Classified information" means any information or material that has been determined by the United States government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.

CRIMINAL PENALTY

(c) Disclosure of Intelligence Identities.

(1) Whoever knowingly discloses information that correctly identifies another person as a covert agent, with the knowledge that such disclosure is based on classified information, or attempts to do so, is guilty of an offense.

(2) An offense under this section is punishable by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.

(3) There is jurisdiction over an offense under this section committed outside the United States, if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

CRIMINAL PENALTY

(d) Disclosure of Intelligence Identities by Government Employees.

(1) Whoever, being or having been an employee of the United States government with access to information revealing the identities of covert agents, knowingly discloses information that correctly identifies another person as a covert agent, or attempts to do so, is guilty of an offense.

(2) An offense under this section is punishable by a fine of not more than $25,000 or imprisonment for not more than five years, or both.

(3) There is jurisdiction over an offense under this section committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

Add the following additional amendments to the Foreign Intelligence Surveillance Act of 1978:

Section 101(b)(2) is amended by deleting "or" at the end of (C), changing the period at the end of (D) to a semi-colon, adding "or" at the end of (D), and adding the following new provision:

"(E) is a current or former senior officer of a foreign power as defined in subsection (a) (1) or (2)"

Section 105(e)(2) is amended by inserting "search or" before all appearances of "surveillance," by inserting "physical search or" before all appearances of "electronic surveillance," and by deleting "twenty-four" wherever it appears and inserting in lieu thereof "forty-eight."

TESTIMONY OF ADM. STANSFIELD TURNER, DIRECTOR OF CENTRAL INTELLIGENCE AGENCY

Admiral TURNER. Thank you, Mr. Chairman.

I am pleased to be here to be the administration's leadoff witness in testifying on these congressional charters for the Intelligence Committee.

For the entire 3 years that I have been Director of Central Intelligence I have been a strong supporter of charters. My first reason for this is the fact that the guiding legislation today is incomplete. It is the National Security Act of 1947 as amended. The evolution of the U.S. intelligence community in the intervening years has not conformed with the image which the constructors of that legislation had in mind.

Clearly, we are not doing anything illegal or in contradiction to that law, but the picture or portraits of what the intelligence community is and how it functions simply is not working out in practice.

I believe that it is important that Congress enunciate to us and to the American people what kind of intelligence community it expects and wants.

Second: Intelligence is, by its very nature, a risk-taking business. Intelligence professionals of our country are trained to take those risks on behalf of our country. They deserve, I believe, as express a description of what they are expected to do and not to do, as is humanly possible, to create.

There are definite limitations on how such authorities and restrictions can be expressed, but we owe it to our intelligence officers to give them the best guidance that we can. They will still necessarily have to assume considerable initiative and risk on their own but we should provide them with all the support in advance that is possible.

Third: In the last 5 or 6 years we have been moving to an important new concept in the world of intelligence. This is the concept of close congressional oversight of the intelligence process. It is the complement of authorizations and restrictions that should be enunciated in a charter.

In short, through oversight, Congress can, and should, check on whether the authorizations are being used to good advantage and whether the restrictions are in fact, being followed in spirit as well as in letter.

Under this concept of intelligence it is possible to avoid detailed and specific restrictions that will hobble our intelligence operations beyond usefulness.

This new and important concept of the complementarity of authorizations and restrictions on the one hand and oversight on the other needs to be clearly enunciated by the Congress. Only then can the citizens of our country readily understand how the Congress is exercising its responsibilities in an area where, due to the requirements of secrecy, the public cannot be adequately informed to make its own judgments.

Fourth: And finally, I support this charter legislation because it is very important that the intelligence community of our country be given greater protection for its necessary secrets. There is no issue of higher import than the success of our necessary intelligence efforts today.

The charter legislation is an important vehicle for providing this necessary protection for what we refer to as our sources and methods for collecting intelligence and for substantive intelligence information itself.

Any intelligence apparatus that cannot protect sensitive operations, that cannot offer human sources assurances that their cooperation with the United States will remain sacrosanct and cannot give assurances that withholding from public exposure, private, sensitive information is in trouble.

Without the ability to provide these assurances, we simply will not be able to produce the kind of intelligence that our Nation must have if we are going to conduct our foreign policy successfully.

Now, the boundary line between provisions for adequate secrecy on the one hand and sufficient congressional oversight and the protection of the rights of American citizens on the other is a narrow one. It can be drawn to protect all of these interests, but all three interests must be kept in mind in that process.

When this committee introduced its original charter bill, S. 2525, some 2 years ago, we all recognized that an extended period of negotiation among intelligence community officers, committee staff, and administration officials would be required to achieve the right balance between these three interests. It has been a long and arduous process and I would like to digress and thank Senator Huddleston and his committee for the tremendous job they have done and the great spirit of cooperation in which we have been able to work together.

I believe that all who have taken part in this negotiation process can be pleased with the results we have before us today. It is particularly significant that there has been an evolution from an emphasis on the really specific restrictions to a system of oversight and accountability.

Unfortunately, several outstanding substantive issues have prevented the introduction of a bill which could be fully supported by the intelligence community and the administration.

In part, these differences are over whether the draft bill adequately provides protection for our necessary secrets. Other differences relate to whether we will have the flexibility and the capacity to act with necessary dispatch in crisis situations. Still, I certainly agree with the remarks of the President that the substantial agreement that we have already achieved places us well on the road of resolving the remaining differences.

Let me, Mr. Chairman, address those differences specifically. First, I am troubled by the organization of the bill. I believe that it is important that intelligence charter legislation follow the logical sequence of dealing successively with authorities, standards of conduct, and a system of oversight and accountability.

I believe that the organizational structure of S. 2284 tends to obscure the oversight process somewhat, but these structural problems can be easily remedied.

Second: A comprehensive charter should contain authority for the President to waive any provision of that act in time of war or during a period covered by the report to the Congress under the War Powers Resolution to the extent necessary to carry out the activities covered by the report. The only such authority in S. 2284 is for a limited wartime waiver of the prohibition on cover use of certain institutions. This is insufficient.

S. 2284 still contains a variety of restrictions and requirements both procedural and substantive which, in time of war, could impede necessary actions. The administration favors a wartime waiver which would deal with exigent circumstances while at the same time preventing any potential abuse by requiring notification to the Senate and the House Select Committees on Intelligence when this provision is invoked.

The provision favored by the administration is set forth in an appendix to my statement.

Third: The administration believes that the requirement for reporting on special activities, special or covert actions is unnecessary, improper, and unwise.

Consequently, it cannot support sections 142 and 125 as they are now written.

To begin with, I believe this committee and the House Permanent Select Committee on Intelligence, I think, have been fully and currently informed of significant activities undertaken by the intelligence community. I am not aware of any complaint by the select committees, or of any inadequacy of the current oversight, which prevents the committees from fulfilling their responsibilities.

In addition, it would be improper to attempt to impose such requirements in statute. Such statutory requirements would amount to excessive intrusion by the Congress into the President's exercise of his powers under the Constitution. The administration favors alternative provisions which would confirm existing oversight arrangements by requiring that the intelligence committees be kept fully and currently informed of the activities of the intelligence community.

Such provisions would continue the current reporting status of the Hughes-Ryan amendment by requiring that special activities be reported in a timely fashion, but would limit such reporting to the Senate and the House Select Committees on Intelligence.

Prior reporting would reduce the President's flexibility to deal with situations involving grave danger to personal safety or which dictate special requirements for speed and secrecy. On the other hand, activities that would have long-term consequences, or which would be carried out over an extended period of time should generally be shared with the Congress at their inception.

I would have no objection to making this point in the legislative history. Certain facets of intelligence collection are, by their very nature, risk-taking ventures. By "risk," I mean either the lives or the reputations of individuals being at stake and/or that the prestige and position of the United States with respect to other nations could be endangered.

There are clearly situations in which I personally would not ask an individual to accept such risks to his welfare or to place the repu-

tation of the United States on the line, if I were required to report such intention to more Members of the Congress and their staffs than I would permit persons within the Central Intelligence Agency to be privy to this information.

Moreover, we must all recognize that rigid statutory provisions requiring full and prior congressional access to intelligence information will have an inhibiting effect on the willingness of individuals and organizations to cooperate with our country.

In short, it may not only be a case of my unwillingness to ask individuals to accept risk; those individuals simply may not be willing to take them.

Our fourth concern is that section 142 of the bill fails specifically to mention the duty of the director of national intelligence to protect intelligence sources and methods. Our ability to recruit foreign sources and to deal with foreign intelligence agencies would be significantly impaired by the signal that the omission of this longstanding provision would give. This language has been the backbone of our assurances to such individuals and organizations that the DNI can and will provide protection for their legitimate interests.

Accordingly, the administration favors provisions concerning oversight of significant intelligence activities that are different from those of S. 2284 and these are set forth in an appendix.

While I recognize that there is an argument that sounds most reasonable that the Congress should be entitled to access to all intelligence information, I would like to point out that the practical impact of such a provision in this legislation could be very harmful.

To begin with, the kinds of information that we would wish to withhold are those kinds of information that this committee has sagaciously and consistently indicated that it would never seek to obtain. The names of human sources of information is one example.

On the other hand, the inclusion of another provision that would theoretically require us to provide such a name could have a very chilling effect on the confidence we can instill in such individuals that working with us is a reasonably safe proposition.

We are asking you for relief from the Hughes-Ryan amendment, from the more onerous provisions of the Freedom of Information Act and for legislation to deal with instances of the revelation of identities of our personnel.

All of these measures will be of great assistance to us in developing confidence in foreign individuals and intelligence services.

The inclusion of a provision, however, for all encompassing access to our data would run directly contrary to these steps and, in large measure, nullify them.

Fifth: Another provision of the bill that stands out as an example of unwarranted limitation of flexibility is section 132 concerning intelligence relationships with certain private institutions.

While the provision does not prohibit relationships with individuals who are members of the media, religious or academic organizations or exchange programs, it prohibits the establishment or maintenance of any cover involving these groups.

I share the view of the Congress that these institutions play a most important role in our democracy and must have their independence

preserved. The Central Intelligence Agency itself, some years ago, took steps to regulate intelligence relationships with these institutions and their members.

Our self-imposed regulations, for all practical purposes, prohibits cover use of these groups, or paid use of their members. Such prohibitions should not be enacted as law, however.

There can arise unique circumstances in which intelligence relationships with members of these institutions are not only warranted but may be the only means available for accomplishing important intelligence objectives. In such circumstances, internal regulations permit waiver of the general prohibition against use of these groups.

I have granted waiver of this nature on very limited occasions. In order to maintain this flexibility, there should be no blanket prohibition in the statute in this regard. It makes little sense to distinguish between actual intelligence relationships with members of such groups and the establishment and use of cover. While cover use should be kept to an absolute minimum, circumstances are conceivable in which such use would be the only means available to the Government in a situation of highest urgency and national importance.

The way to deal with such situations is through internal guidelines. Thus, the administration cannot support section 132 as written.

To cover intelligence relationships involving these institutions should, instead, be regulated by executive branch guidelines. These guidelines would be available to the select committees as is now the case.

Six: A major shortcoming of S. 2284 is its failure to adequately confirm our ability to protect intelligence sources and methods and insure the necessary secrecy for intelligence activities. There are two major areas of concern here. One is the Freedom of Information Act. The other is the unauthorized disclosure of identities of intelligence personnel.

We must recognize that it is inappropriate to provide Government-wide freedom of information and public disclosure concepts to intelligence information that must remain secret.

While the bill exempts certain CIA operational and technical files from the search, review, and disclosure requirements of the Freedom of Information Act, except for requests by U.S. persons for information on themselves, it fails to provide any relief for the National Security Agency, the Federal Bureau of Investigation, and other intelligence community components.

The same problems that face the CIA in this regard face the other intelligence community components as well. The administration favors communitywide relief under which the Director of National Intelligence would be authorized to exempt operational and technical files of any intelligence entity from the FOIA except again in the request of U.S. persons for information about themselves.

This would not preclude any requests for finished intelligence since only operational and technical files could be designated for exemptions. The administration's proposal is again set forth in the appendix.

An area of even more serious concern is the failure of S. 2284 to effectively proscribe unauthorized disclosures of the identities of intelligence officers, agents, and sources.

Section 701 would make this perverse activity an offense only for persons who have had access to classified information that identifies intelligence personnel. It would not cover accomplices who nominally assist in the commission of the section 701 offense or others who make unauthorized disclosures of classified intelligence identities.

This failure to provide adequate protection for the men and women who serve our country in difficult and dangerous assignments is, in my personal view, one of the most serious shortcomings.

To insure that the intelligence structure we are building today remains effective in the future, the administration favors broader protection for intelligence personnel. We must weigh the absence of any legitimate public purpose and the unauthorized disclosure of intelligence identities against the real and certain damage that such disclosure causes and we must accept the necessity to deter, with carefully crafted criminal sanctions, unauthorized disclosure by anyone of the classified identities of our officers, agents, and sources.

Again, we have preferred language in the appendix.

Mr. Chairman, the administration also believes that amendments to the Foreign Intelligence Surveillance Act, in addition to those proposed by S. 2284, are warranted. Over the course of the charter process, significant inadequacies of this act have become apparent.

These deficiencies were not foreseen at the time the act was enacted and they should be remedied as soon as possible.

The additional amendments we seek include: A. Modifications of the targeting standards to permit targeting of dual nationals who occupy senior positions in the government or military forces of foreign governments while, at the same time, retaining U.S. citizenship. The activity of such persons when they visit the United States on official business is not such as to bring them under the quasi-criminal targeting standard now found in the Foreign Intelligence Surveillance Act.

B. Modification of the targeting standards to permit targeting of former senior Government officials, even if they are not acting in the United States as a member of a foreign government or faction. Again, this problem was not anticipated at the time that the act was passed, but various situations have arisen in which it is clear that a former government official who is present in the United States may have significant foreign intelligence information. Under present law, such an official can be targeted only if a member of a foreign faction or government.

C. Extension of the emergency surveillance periods from 24 to 48 hours. Recent experience indicates that the 24-hour period is inadequate leading to the necessity of delaying implementation of emergency surveillances. Again, we have language in an appendix.

In conclusion, Mr. Chairman, let me say that I believe that we are in the midst of an important evolution. We are attempting here to integrate the legislature of this country more intimately into its intelligence process than has ever been attempted anywhere before.

This process has been evolving over a number of years.

I know that we, in the executive branch, are pleased with the way this new relationship has developed. I hope that the members of this committee are also.

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Enactment of this legislation which would charter our intelligence activities anew would codify the practices that we have developed and insure their perpetuation.

The most important remaining differences between the administration and this draft bill concern areas where the bill goes considerably further, regulating matters that are being handled satisfactorily today. In this light, I believe that we should recognize:

First: That a strong system of oversight and accountability already exists and is functioning effectively. This committee and its counterpart in the House of Representatives are key elements in that system.

Second: Executive Order 12036 and the Attorney General guidelines that have been issued pursuant to it set forth rigorous standards of conduct for intelligence activities. The proper execution of the Executive order and the Attorney General's guidelines is subject to congressional oversight.

One area where present practices are inadequate is the security of intelligence operations and the protection of intelligence sources and methods. An adequate legal basis for support here is not now in existence and is urgently needed.

I make these points because the charter is a complex piece of legislation. Careful study and analysis will be required by those who have not been intimately involved in the drafting process over these past several years.

This is, as we all know, a short legislative year and there is question as to whether both Houses of the Congress will be able to take up and pass the charter even if all of the outstanding differences between the administration and this committee are settled quickly.

In this connection, let me once again emphasize the importance of remembering that the charter is a carefully constructed web of interrelated provisions whose delicate balance must be maintained. Individual changes that would upset that balance must be resisted lest our hard-won consensus be jeopardized and the entire endeavor endangered.

Mr. Chairman, the President, the intelligence community and I are committed to the concept of intelligence charter legislation. I am confident that your committee will report out a bill that provides essential authorities, reinforces needed guidelines, insures proper congressional oversight, confirms our ability to protect intelligence sources and methods, and can be enacted this year.

Thank you, sir.

Senator BAYH. Thank you very much, Admiral. I appreciate your statement.

I was surprised to see that there were eight differences. I thought that we had resolved all the differences in the spirit of give and take except two. Apparently there were six others that were brought to mind.

I thought the access to information and the use of clergy, press, academics were the two areas that were outstanding. Did I misunderstand where we were the last time we all got together down you know where?

Admiral TURNER. I apologize if we did not make it clear that we disagreed on two subjects that were taken up in those several meet-

ings to which you refer. I believe your staff and my staff had been, at that same time, working on these other six and several more that were resolved behind the scenes and which did not seem to warrant the high-level attention we had at those meetings.

Senator BAYH. Is it fair to say that, with the exception of those eight provisions, the administration concurs in the remainder of the 172 pages of provisions that exist in the bill?

Admiral TURNER. There are a couple of small adjustments in some of the Agency charters that have come up in our last-minute review of this, Mr. Chairman.

Senator MOYNIHAN. Would the chairman yield for a question?

Apart from those eight provisions, is there anything left in the bill?

Senator BAYH. I think it is fair to say there is and everyone can make that determination for themselves.

I think the work of the subcommittee and the agencies and the White House has indeed resulted in what you describe as a web of interrelated provisions. I am sure that none of us who have dealt with this is happy with the provisions outside of the eight, hut it has been a matter of give and take.

I must confess I am deeply concerned about the notification of Congress. We want to go along and we want to make this as simple as possihle. A notification process that involves reporting to 200 Members of Congress is ridiculous.

I fail to see how it is, in any way, inhibiting to report to two committees carefully selected, carefully crafted, carefully staffed with a maximum amount of security and sensitivity. It appears that it is a concern about some of the provisions that you have reservations about. You talk about certain exigencies that if Congress were notified of warmaking capability, this kind of thing, this would jeopardize the ability of the President or the country to conduct war.

Can you give us an example of that?

Admiral TURNER. It is very difficult in this open forum to be very explicit, Mr. Chairman. My personal concern with prior notification is my ability to look somebedy in the eye whom I am asking to risk his life and tell him that the safety of his endeavor is going to be dependent on a considerable number of people over whom I have no control whatsoever.

I do not think it is fair. I do not think I would do it. I do not think many people would accept it—and this is not to impugn the integrity of the Members of the Senate and their staff. It is simply in recognition of the fact that when you ask people to perform in this way you have to be able to give them assurances which you cannot when it is quite out of your control.

My basic thesis in life with respect to security, sir, is the more people who know anything, the greater the probability of a risk. I am not talking about the quality of the people or their penchant for secrecy.

Senator BAYH. I should say I think we should operate under the 10-minute rule so all of us will have a chance to ask questions of the admiral.

You mentioned, Admiral, that you thought the relationship that had developed hetween—let me be specific—this committee and you personally and your agency and the other intelligence agencies had worked well. Do you still feel that to be the case?

Admiral TURNER. Absolutely.

Senator BAYH. Do you think any of the reporting that you did to this committee inhibited your ability to do the job?

Admiral TURNER. I would say that there were activities that we did not bring forward at all because we would have had to report to eight committees of the Congress including this one.

Senator BAYH. Let's confine it; suppose it was only this one. You have told us, selective members. As you know, this committee recognizes that certain information and certain situations require a much higher degree of security than others, so we established a certain procedure that does not permit this to be laid out on the record and not permit equal treatment of all classified information.

That kind of information has been treated in a very sensitive way.

Have you had any problems with that?

Admiral TURNER. I have had circumstances in which my conscience would not permit me to proceed with an operation if I had to notify—not you, sir, or any of your people, but that number of people outside of the Agency.

Senator BAYH. I think we have to be specific. We talk about that number, and 200, and we understand that is wrong. We are trying to change that. We are trying to have a carefully crafted committee which I frankly feel, if I may take myself out of this, that the membership of this committee has been chosen in that way. And I was of the opinion that we have a very good relationship.

I have been able to report to the President that I felt that we had a good, forthcoming relationship. Have I been wrong?

Admiral TURNER. Not at all.

Senator BAYH. I have difficulty, Admiral—you know how strongly I feel toward you personally, but when we look at the institutional structure of this, I have difficulty seeing how half a dozen members of this committee or two or three members of this committee, are less secure than 20 members of the staff of the National Security Council or, indeed, certain members of your staff.

If we are talking about patriotism and who can handle sensitive information—in fact, I and members of this committee have gone to bat to try to get more resources for the kinds of methods that are very sensitive and we cannot talk about. Yet those of us who are willing to do battle and expend the taxpayer's dollar in this regard, it seems to me, also have a responsibility to be kept fully informed in a timely fashion.

Could you just think out loud?

I really have difficulty seeing the problem there, considering the kind of relationship that this committee has had with you and with the CIA.

Admiral TURNER. I can only come back to my example. I believe that there are things you cannot ask people to do unless you can give them assurance that, it seems to me, transcend notification to any substantial number of people outside of your own authority to control.

We could have had activities where the number of people in the whole Central Intelligence Agency and the National Security Council would be less than 20 people. In circumstances like that, where you are asking somebody to put his neck on the line, it is not that I would

have personal concern that this committee is notified on a restrictive basis or its staff would leak this; it is the concept of can you create this sense of confidence in the man or woman you are asking to do this?

My perception of how those people feel and react is no, you could not. It would have a chilling effect on their willingness to cooperate. Whether that is rational or not is not the issue. It is what I can get people to do if they feel this chilling effect.

Senator BAYH. You see, I think to a very great extent, their ability to do the job and their confidence can be attributable to you or whoever asks them in your agency.

You say, here we have a strong system of oversight and accountability which already exists and is functioning effectively, and yet you are saying it really is not functioning effectively enough that we can go out and ask people to do the kinds of things that they need to be doing.

Was I wrong when I said earlier in my opening remarks that I thought we had an effective system out there doing the job? I had no idea we were not being able to get people to do what was necessary to collect this intelligence. I thought you were doing a pretty good job of it.

Admiral TURNER. It is one thing for me to have that sense of confidence. It is another thing to be able to impart that to people abroad, people within our own organization who have their own concepts of the secrecy of parliaments in general, not necessarily this one. But I am dealing with people here who do not understand this fine relationship that exists between this committee and the intelligence community.

It seems to me that everything has worked well today and what we are asking here is to extend those requirements. I am not sure why we need to change a proven system that has been working, I believe, to your satisfaction as well as to ours.

Senator BAYH. The concern that I have, and at least some of the Members of Congress have, is that the provisions which concern the administration and concern you, frankly, I have a feeling in the bottom of my heart, do not concern you as much as one or two other people, but that is neither here nor there; you cannot address yourself to that.

The concern that I have is that the position that is now being proposed by the administration is a less-stringent provision than its own Executive orders.

Admiral TURNER. Let me make it absolutely clear, sir. This is an issue on which I feel deeply and personally and I have not been pressured into taking this position. I have initiated this within the administration because I am the guy who has to look the case officer or agent in the eye, literally or figuratively, and hold up the standard for him.

The only change we are suggesting is in regard to these words "significant activities," as opposed to the covert action side.

We are getting on a little touchy ground here. We view this as a change by the committee more to the Executive order standards, a more substantive change than a change in the other direction.

Senator BAYH. We have taken, within a letter or two, the exact same language from the Executive order. The concern I have, in your testimony, does not mean a lack of sincerity on your part. Being privy to the give-and-take of those here and yourself, we agreed, as I recall, that there were certain types of emergency situations during the middle of the night that had to have action right away, may be extremely sensitive. Give us 48, 72 hours or handle it in a specially sensitive way; that did not create a problem.

But now I see in your testimony where you say, as far as long-term policy having significant consequence to the country, it should "generally" be shared.

What example of something like that should not be shared?

Admiral TURNER. I cannot think of one.

Senator BAYH. That "generally" business is a word of art, sort of like Mother Hubbard's skirt. It covers everything and touches nothing.

Admiral TURNER. Statements will be quoted back from these hearings for years to come, sir, and one has to be a little cautious.

Senator BAYH. If the Congress of the United States and the representatives of the people cannot be involved before that project moves beyond the point of recall, it seems to me we have not learned a great deal.

Admiral TURNER. That is to be resolved in the legislative history, the proper wording that generally can be negotiated. I do not think there is a problem on these long-term ones. I think it is real short-term, import operational activity, actual endangerment of human life, and the only reason that the legislature can require notification here, it seems to me, is they want to have an opportunity to cancel these—and I leave that to others who are more profound in constitutional law. But the Executive needs some freedom here to take actions on a short-term basis critical to the national interests.

Senator BAYH. I appreciate your candor because I am concerned that I was, and still am, of the opinion that the kind of relationship that we had and have, has worked very well and has involved extremely sensitive information being given, in almost every instance, in very timely fashion. I think we have handled it judiciously, and I think you have handled your responsibility judiciously.

I sense a moving back from that, a reliance on legislative history or an Executive order instead of putting in the bedrock law of the land, not the specifics, but the general principles in the charter itself.

To rely on Executive orders is, I think, to forget the changing scene of the political process. We had a President not too long ago who established a select group, ostensibly for foreign policy reasons, because he could not trust anybody outside of his immediate circle.

Now, if Presidents who are to come along later on should feel the same way, they can do away with Executive orders like that—and thus, I think it is important for us to put something right down in the law.

Senator Garn?

Senator GARN. Thank you, Mr. Chairman.

Admiral, what I am going to say—to begin with you are familiar with it because you heard me say it for 3 years and it is along the same line, of leaks, advance disclosure of information.

I would not only like to see Hughes-Ryan amended to cut it down to two committees, the Intelligence Committees in the House and the

Senate, but I would like to go further to minimize those in Congress who know, to have one select committee with representatives from both the House and the Senate not only to minimize the amount of people who have access for oversight purposes, which I agree with in the Congress, but also to minimize the time of this agency and others reporting to us.

Because now there is a great deal of time spent just in physical time reporting to a number of different committees.

So I would go further, to one select committee. I think that would even be better.

I would even advocate going further, which may shock some of my colleagues, but I see no reason why, if staff members have to go through long agency checks, security checks before they can receive their clearances, I have never been able to understand why, merely by being elected to the Senate or the House, because we have been able to convince our constituents that we should be elected, that we should have access to all of the most classified, top secret, compartmentalized information just as a result of being elected.

I would even go further and say that agency checks that are run on buck privates in the Army and so on should be run on Congressmen and Senators as well. I realize no one is going to propose that probably but me, but I see no reason why I, as a member of this committee, should not have been subjected to one of those checks just as I was every year as a military pilot or every other year, 3 years, or whenever it was updated.

I feel very strongly about this matter of leaks, and you know of my frustration from it.

Having said that, I will also say that I agree with the administration's position, as I said down at the White House a couple of weeks ago, that there are certainly narrowly defined areas of operations that I believe prior notification of anybody endangers lives and endangers the success of some of those missions.

I emphasize narrowly defined. So I happen to agree, again, with your position in opposition to probably a majority of this committee.

This is leading up, again, to my frustration with leaks. I know of no leaks from this committee for 3 years, and you have testified before us many times about the relationship that the chairman was talking about.

The thing that bothers me—and even if we did all of this—even if we had security checks on our colleagues, if we had one select committee, if we did not have prior notification, I do not believe that solves the problem. In my experience most of the leaks have come from the executive branch. Not just this administration—that is why I said executive branch rather than this administration, because I have served under two.

How do we plug up that gap?

I get a little bit sick and tired of having disclosed to me, in many cases top secret information that could not have come from this committee, because we have not been briefed yet, but to read it in the New York Times, the Washington Post, or Aviation Week and Space Technology, some of those.

So if we did everything the administration wanted to do, security checks, cut down the number of people, I am not convinced that we have accomplished a great deal.

Do you have any suggestions of how we cure the leaks from the executive branch of Government where I think most of them have come?

Admiral TURNER. I appreciate your thoughts on this and certainly they are not off the mark at all, in my view.

I do want to emphasize that we are talking about several different issues here. The one I have been emphasizing thus far is not the leaks but the perception of risk that individuals who are going to do things for us in a dangerous mode are willing to accept.

Like it or not, they have a perception that intelligence officers are more likely to keep secrets than Members of Congress. I am not saying that is right or wrong. I am saying that my problem is to persuade them to take risks, if they are going to tell it to people whom they do not view——

Senator GARN. I am not talking just about intelligence officers. I am talking about the executive branch.

Admiral TURNER. The second problem that you very properly raise is how do we curtail actual leaks within the authorized structure of the Government, particularly the executive branch. We are frustrated as everyone is about leaks that occur.

We are doing a number of things, but I cannot guarantee you that they are going to win. We can try.

We have done a great deal in the last 2½, 2 years, to tighten internal security procedures in each of the agencies. The intelligence community and other places, the Department of Defense, the National Security Council, the State Department and so on.

Clearly we need to keep after that and do more. We will.

We have created and are installing a new security control system, the APEX that you have been briefed on, which, we hope again, will help in several directions, forcing more information out of the highly sensitive categories when it can be and into areas where it can be kept so that what is left in the highly sensitive areas can be controlled better and instituting better controls over that which must remain compartmented.

We are doing more with the Attorney General in trying to follow up leaks and are waiting to get our hands on cases where we can really prove it.

I do not have a simple solution.

Senator GARN. Do you believe that the Espionage Act is sufficient, or do we need amendments to the Espionage Act?

Admiral TURNER. The Espionage Act is pretty old. It is hard to define an amendment that will not impair the First Amendment of the Constitution.

The identities legislation we have been talking about here today is a partial step in that direction of putting some teeth into a portion of the Espionage Act's coverage.

Senator GARN. Does the administration intend to come up with any specific recommendations on the Espionage Act so we can punish those who can endanger this country with leaks?

Admiral TURNER. We do not have anything at this time that we have been able to find as a satisfactory compromise to the First Amendment.

Senator GARN. Are you working on that?

Admiral TURNER. We have worked on it enough that I am not sure that I feel there is much likelihood of our coming up with something soon.

Senator GARN. What has changed so greatly when we used to be able to keep secrets? I would have hated to try to fight World War II with the sieve that now exists in Government. I really very seriously wonder about the outcome of the war had we had the types of leaks, exposing British intelligence operations and all sorts of things. Certainly it would have been much more costly.

So where are the holes? What has happened? Is it in laws, in enforcement? Is it attitude? Is it the press which used to have more restraint over disclosing, knowingly top secret, classified information?

There does not seem to be any responsibility there except once in awhile. Fortunately, once in a while, some of them keep their mouths shut and we have six hostages out of Iran as a result of some press restraint.

I would like to see more of that.

I am grappling, is what I am saying. I will not take any more time. It is just terribly frustrating to me that we have to conduct all of these operations with such openness that injures this country and endangers American citizens and laws.

Senator, a lot of my other colleagues are here who would like to ask questions so I will stop at this point.

Senator BAYH. Thank you, Senator Garn.

Senator Stevenson?

Senator STEVENSON. Thank you, Mr. Chairman.

I hesitate to prolong this matter but it is important. In fact, it may be the key to any legislation at all.

Admiral, the Congress suffers from periodic fits of righteousness but that is not the case at the moment.

We are trying to be helpful and I believe that all of us recognize the need to enhance those perceptions about our intelligence services and the confidentiality with which they handle sensitive information including the identity of assets and sources.

And not only for the reasons that you mentioned, but because it is of great importance to maintain productive relationships with friendly services.

I believe, from what I have heard, that for the purpose which we share, the members or the majority of them, are prepared to amend the Freedom of Information Act to reduce requirements for public disclosure. They are, I believe, willing to amend the Hughes-Ryan Act in order to reduce the number of committees to which reports are required from eight to two, and I would go further than that, as Senator Garn suggests, to reduce it from eight to one.

I personally, and I know others would be willing, to eliminate the prohibitions in here against the use of certain individuals or institutions for cover purposes, as you have suggested. And I think many of

us are willing, again, for your purposes, and those perceptions, however unjustified they may be, to prohibit unauthorized disclosures although some of us would not go quite so far as you suggest, all of this to give sources, assets, friendly services, confidence.

To do that, we also have to give the public some confidence in the intelligence services and also in our own ability to oversee them.

During your confirmation hearing I asked you certain questions which were intended to elicit your feelings about accountability to the Congress. A moment ago you said you talked personally and with conviction as if to suggest that you were not simply representing the opinions or the policies of this administration.

At your confirmation hearing, you were asked if you would inform the committee in advance of covert operations and collection operations which carried high political risk. You replied that you would anticipate no difficulty in making every effort to comply with the sense of that resolution. That was a reference to Senate Resolution 400 which requires advanced notification.

You added, and I quote:

> I think it would be an extremely rare occasion when it was not possible to provide information on covert actions in advance.

You stated there, and I quote:

> There is always the possibility that something might come up in the middle of the night when a decision absolutely has to be made right now, and that is the kind of thing that I have in mind in not wanting to be pinned down absolutely.

We can understand that too, and accommodate it.

Why, Admiral, are you unwilling now to support the very principles that you did support in this very room before this committee during your confirmation hearings and in exchange, if that is the right expression, for all of the measures which we were willing to give you in order to enhance confidence in the intelligence services of the United States, but not without also giving the public some confidence in our ability to prevent abuses?

Admiral TURNER. Senator Stevenson, I stand behind my prior comments. I do not think they are inconsistent with my present position. I do not think that the procedures that would be set forth in the charter as now drafted would allow for the exceptions that are proposed here when it is not possible to provide information on covert activities in advance and I believe that your committee, and we, over the last 2 years, have instilled in the American public a greater sense of confidence that these covert actions are under adequate oversight and supervision and therefore, I am not sure why the committee is asking to change the ground rules under which we are presently operating and which, it seems to me, to be eminently satisfactory to both sides and the American public.

Whereas, a change I believe, will be very chilling, as I said, on my ability to accomplish the things we need to accomplish and get any benefit from these other actions which I am most appreciative of your willingness to support.

Senator STEVENSON. Those are the ground rules. We want to change those that you want changed.

All we are trying to do is to incorporate existing procedures in law in order to give the public the confidence that I referred to.

Admiral TURNER. I do not believe that, sir. The existing procedures do not require prior notification. The new law would absolutely require it.

Senator STEVENSON. You accepted Senate Resolution 400. You have been living by Senate Resolution 400.

Admiral TURNER. No, sir, I have not.

Senator STEVENSON. You have provided with one possible exception that I know of—advance notice—and I am told now that the Executive order provides for advance notice, too.

You are objecting to advance notice in this draft law. Where am I wrong?

Admiral TURNER. I have not endorsed Senate Resolution 400. I said I had no difficulty in trying to comply with every sense of that resolution, not that I was sure I could comply with it.

Senator STEVENSON. Well, I must say it does not give me more confidence in the Agency to find that it now refuses to accept a provision in this resolution which is intended, at least, to incorporate existing provisions in the procedures in the charter, notwithstanding the fit has passed. We are trying to be helpful, a good return. You have an equitable climate at the moment in which to legislate and to get authorities whicb you are seeking.

Let me ask one other question, if my time has not expired. The subject of leaks came up. Judging from some recent executive branch leaks, counterintelligence is not among the highest priorities of the FBI.

As you well know, the responsibility for counterintelligence is divided in the United States between the FBI and the CIA notwithstanding that the activities in question frequently fall on both sides of the line.

I think this division of responsibility is unique in the world, although I may be wrong, and also I have a strong feeling that our counterintelligence capabilities need to be improved, perhaps especially in the United States.

Do you have any suggestions as to how these charters could be improved to either consolidate responsibilities for counterintelligence, or to improve the cooperation and coordination between the present agencies with responsibility for counterintelligence?

Admiral TURNER. I believe that it would be injudicious to create a single Director of Counterintelligence. It is such a delicate area, one in which the excesses of any individual or group can be so inimical to our country that I think that we need some objective balance which we do have now with the Central Intelligence Agency and the FBI being the principal agencies involved.

I believe in the last half-dozen years the scars of the past of the inadequate cooperation have been completely removed and the cooperation between these two agencies in this field is very fine today and we have set up some organizational structures, that I cannot discuss here in public, to encourage, perpetuate, and insure that cooperation in the area of greatest importance here.

So I do not believe at this level that there is more activity needed. I would suggest that the committee should properly, in its regular oversight process, insure that these mechanisms I am talking about

that can he discussed in a classified forum are functioning as well as I believe they are, and you can reassure yourself of that fact.

Senator STEVENSON. Thank you.

Senator BAYH. Senator Chafee?

Senator CHAFEE. Admiral Turner, I would just like to say as regarding this committee, that the chairman has several times referred to it as a carefully crafted committee. I would like to agree with Senator Garn that I am concerned as to how we ourselves are selected. I do not helieve that we have taken any lie detector tests. There are 17 of us on the committee, counting the leaders and I helieve there are 15 in the House including the leaders who are ex officio on it. That is a total of 32 plus staff members. You have a large committee here and therefore a large group of people who would be privy in advance to these covert activities under the provisions of the charter, so I must agree with the concerns that you have raised.

It may well be that there have been no leaks from this committee and that the leaks have come from elsewhere hut your word "chilling" is, I think, very aptly chosen.

I do not think that we should hrush aside too quickly the suggestion that you have made here regarding your reluctance to give prior notice under the present system, the way it is functioning now. As I understand it, it is timely notice. Is that not correct?

Admiral TURNER. Yes, sir.

Senator CHAFEE. I would like to refer to a couple of specific points in the charter itself.

Would you please turn to page 19, section 131.

I believe that this language is all presently in the Executive Order 12036. I do not think necessarily that the Executive order is perfect, hut let's look at these provisions.

"No person employed by, or acting on behalf of the United States Government, shall engage or conspire to engage in assassination." In your remarks you did not touch on that.

I presume that it is clear that had this provision been law during World War II the CIA's predecessor could not have engaged in any effort to assassinate Hitler. Would that be true?

Admiral TURNER. May I ask my legal counsel to respond?

Senator CHAFEE. You do not need a legal counsel on that one. If his answer is different, I would be curious what it is. What is the answer?

Admiral TURNER. The answer is yes.

Senator CHAFEE. Yes; you could?

Admiral TURNER. We could not. That is why we would like a waiver provision for the President in time of war.

Senator CHAFEE. Of course we would.

Let me give you another one. Admiral Yamamoto was shot down as he was coming into the Solomon Islands, into New Britain. The information on the admiral's flight was gained from the hreaking of the Japanese code and our Air Force laid in wait for him in P–38's.

He was flying in a transport and was shot down. That was assassination, lying in wait. He was in an unarmed plane. We could not do that under the prohihition in the charter?

Admiral TURNER. Now you are talking about——

Senator CHAFEE. If there is no waiver, under the charter we could not do that.

Admiral TURNER. I think that probably could have been done. The military agencies would have only been providing the information, the intelligence, but it would have been the military that would have been providing—I am sorry.

Senator CHAFEE. That was not conspiring.

Admiral TURNER. I am sorry. You are right.

Senator CHAFEE. I think we need a serious look at this charter if that is the way we are going to go into a war. They were lying in wait there and suddenly word would come out, hold everything. This is a conspiracy to assassinate, call it off.

You have no argument with that?

Admiral TURNER. There might be an argument whether that comes under the definition of assassination. The lawyers could argue that all night. The waiver would take care of that, I feel.

Senator CHAFEE. Without the waiver, that major who shot him down would be in serious tronble, the way we are doing things nowadays.

Senator BAYH. Would the Senator yield?

As an old Navy man, as a fighter plane shooting down another armed plane?

Senator CHAFEE. Lying in wait, having broken the code, attacking an unarmed plane?

Senator BAYH. If I may suggest something. If you shoot someone with an M–1, that is assassination. I do not make a major point of it. I think we both want to accomplish the same purpose.

Senator CHAFEE. I won my Hitler one clearly?

Senator BAYH. You won that one clearly.

Senator CHAFEE. Why do you want to make—you are for this charter with eight reservations? I have a few more than that.

Why do you want to make an annual report to the public on your activities? Page 75 of this charter. What goes on? Does the Secretary of Agriculture make a report on his activities every year?

Admiral TURNER. There has been a great deal of pressure on us from some sections of the Congress to do this. I can only say that it would be fairly watered.

Senator CHAFEE. It would be pap.

Admiral TURNER. I was hesitant to produce one for the other committee of Congress because it was pap when I looked at it.

Senator CHAFEE. There would be a picture of the Director and possibly one of the President and a picture of the headquarters, maybe, and that would be about it.

I think we could make some savings on that.

Mr. Chairman, I will not use any more time, but let me ask you this, Admiral Turner. You said some nice things about this committee which we have reveled in. If two committees make 32 people plus staff, if 32 people rotating—you know we have to rotate here—so over the course of a 4-year war like the last war, we would have maybe 50 people on this committee. Do you think that 50 people could have kept the secret of the breaking of the Japanese code?

Do you think we could do that again?

Admiral TURNER. Yes; I think it can be done, because I think more than 50 people had that knowledge during World War II.

Senator CHAFEE. Then it leaked?

Admiral TURNER. As I say, I think the risk of a leak goes up geometrically witb the number of people who know it. Therefore, you have got to keep it to a reasonable minimum.

Senator CHAFEE. Thank you, Mr. Chairman.

Senator BAYH. Thank you, Senator Chafee.

Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Admiral, you have, No. 1, indicated your support for a charter in legislation. You indicated, quite correctly, that through the development of the process of the draft legislation before us there were areas wbere we had reached accommodation. By "we," I mean the subcommittee and the intelligence community and the administration itself.

You have indicated the areas in which you still find some disagreement. I guess, first of all, I would like to know if you are, in fact, representing the total administration picture?

Admiral TURNER. Yes; I am.

Senator HUDDLESTON. We have sometimes found difficulty, when we are dealing with so many entities of the intelligence community, in being exactly sure of what the final position is.

And then I would like to suggest—and I think I would like to have your comment on this—as to whether or not, with the exception of the two very crucial points where we have a disagreement that have already been talked about—the question of prior notice and access to information—if we are not talking about disagreement in degree, to some extent. What we have here now before us already represents a considerable movement on the part of the subcommittee from its starting point. I think it reflects a desire, on our part, to reach an accommodation that will satisfy the concerns that the agencies have and, at the same time, satisfy the oversight responsibility that the intelligence committees have, representing, as we do, not only the Congress but the people of the United States.

There are a lot of things in this bill; if I were to write my own bill of particulars, I could site numerous instances where I would say also that I disagreed and I am sure that all of the other heads of the other agencies will find a good many that they could, too.

Essentially, the question I want to know is, are we so far apart on these other issues that you would feel that it would jeopardize the bill? Or are we close enough, with some adjustment, that we can work out the differences that exist and still have a good, comprehensive charter?

Let us start from the top, if you want to. You mentioned structure. I can perceive that as being more cosmetic than substantive, so I doubt whether that is worth even going into a great deal of discussion on. But down the list, the wartime waiver, we recognize the need for a wartime waiver. I guess our central question is, must the citizens of the United States give up all their rights when we declare war, or how many should they give up, or just which ones? We thought that we pretty well had covered the situation, but it is not a closed issue, as far as we are concerned.

The question of prior notice is, as I say, crucial and I think that it ought to be read in the record here, a statement made by Mr.

Carlucci when he testified before the House committee and I want to quote what he said.

Admiral Turner and I, as congressionally approved Presidential appointees, insure that these committees are now, and will continue to be, supplied with whatever information they need in order that the Congress might be satisfied that the Central Intelligence Agency is conducting its activities within the law.

Do you disagree with that statement?

Admiral TURNER. No.

Senator HUDDLESTON. Did you interpret it to believe that whatever information they need is to be decided by you and the agency and not by the Congress?

Admiral TURNER. I think we have all found the provision of information in a timely manner and in completeness that has been carried out, the President's Executive order has been satisfactory to the Congress, meeting its requirements under law to supervise and assure that we are working under law.

Those procedures in the Executive order provide that—and in taking into account the requirements to protect sources and methods—we should keep you currently informed, not necessarily prior information.

Senator BAYH. If the Senator would yield, just to read specifically what it says, that is why I was asking about a step backward, Admiral.

Keep the Senate fully informed regarding intelligence activities "including any significant anticipated intelligence activities." Excuse me, Senator. I think that is where you were coming from.

Senator HUDDLESTON. That is correct.

And it has been pointed out, with the exception of possibly one case, as far as we know, you have done that. But if my impression is correct, there has been no instance where you have not informed some Members of Congress about anticipated activities. Is that not correct?

Admiral TURNER. That is not correct.

Senator HUDDLESTON. We understood that a select group of Members of Congress were informed about all activities.

Admiral TURNER. We are in a dangerous ground, a public forum.

Senator HUDDLESTON. I understand that. I do not want to pursue it, but that was the information given to the committee.

Admiral TURNER. The provision that Senator Bayh just read is certainly accurate. It is prefaced by the provision that I read, that all of that is subject to the protection of sources and methods.

Senator HUDDLESTON. We virtually never ask for the identity of human sources.

Admiral TURNER. The other feature—well, I cannot quite be fully forthright.

The other feature is that this is an Executive order and the President can, if he has to make an exception to this, in some circumstances where if it is in the law he cannot and any exception would, I am sure, be made in writing and made available to the committees so that they would understand what process went on here.

Senator HUDDLESTON. I would point out in recognition of the very kinds of situations that you are concerned about, we did change the original draft of this particular section to provide that in the kind of cases that you are worried about that there would be a very limited

prior reporting requirement. The entire committee, and the so-called 32 members plus the staff, would not have to be informed, you would only inform the chairman and the ranking minority member and the leaders of the House and Senate. That is a much reduced number. That question of prior notice—I do not want to belabor it too much further—as has been pointed out—it is crucial to the legislation and to the responsibility of this committee.

You mentioned the fact that some projects had simply not been undertaken because of this requirement. That was a requirement to go to eight committees, not to two.

Have there been any instances where, after reporting an anticipated action, after the committees had an opportunity to comment on them, that those comments were taken into account and that those actions were altered in any way?

Admiral TURNER. I believe that one certainly can say that the actions of both committees in reviewing these covert action findings has influenced the way in which we have carried them out. We have not canceled one.

Senator HUDDLESTON. Has some of that been, do you think, beneficial?

Admiral TURNER. Absolutely.

Senator HUDDLESTON. There is some benefit to accrue from having the input from Members of Congress about anticipated actions?

Admiral TURNER. I think that is a fundamental tenet of having oversight. We do benefit from it. I am not opposed to it. I just say that there are these instances where it will make actions probably impossible if you have too close an oversight. That oversight slightly after the actions is not that critical.

Senator HUDDLESTON. I guess we get down to the question of where the greatest good comes. Is it from having some input, and having the committee have the confidence of its fellow members? Many times when these things are revealed, I know I have had—and I am sure other members of the committee have had—other Senators who inquire, "Did you know about that?" But if we get in a position where we cannot tell them that we did, it seems to me that there is going to be a great lessening of confidence on the part of the general membership of Congress that we are, in fact, exercising oversight.

Admiral TURNER. It also comes to a question of whether the Presidency should have certain authorities to take actions without clearance with the Congress. That is an issue which you will hear from the Attorney General when he comes up here.

Senator HUDDLESTON. We have tried hard not to interfere with the executive power. We recognize the separation between the branches and there is nothing here that implies a requirement of approval on the part of the committee for any executive action that might be anticipated. So I do not think that is a question here, because we do not have a veto power for these kinds of activities and have never sought one.

Now, in the case of the disclosure of agents and identities that we are all concerned about—and I think we started with as great a concern there as the Agency did, and it is a legitimate concern, here, again, the complaint is we do not go as far in the legislation as perhaps we should.

We went as far as we thought the Constitution of the United States let us go. We cannot repeal the Constitution. We have gone about as far as you can go and we have, for the first time, provided criminal penalties which, of course, you do not have now.

Would what we have here be better than what you have now, even if we do not go as far as you would like us to go?

Admiral TURNER. I am sorry. Would the provisions here be better?

Senator HUDDLESTON. We would be happy to hear from Mr. Silver on this question.

Mr. SILVER. Thank you, Senator. I think there are two points in response to your question. One is perhaps a misconception of the language that the administration is suggesting in the appendix to Admiral Turner's testimony. To replace the identities provision of the Senate bill is the language the Attorney General himself has proposed and to which the Justice Department testified in the recent hearings on the House bill on this subject.

The second answer to your question is "Yes," the provision in the Senate bill will be some improvement over the present law, but in my opinion not a sufficient improvement to really deal with the problem.

Senator HUDDLESTON. I have not had a chance, of course, to review what was brought up today because we have just seen it for the first time. I do not think you will have any trouble with this committee going as far as the committee feels that the Constitution will permit us to go in dealing with that particular problem.

I suppose that this was the area you were referring to when you said in your statement that we did not give the DNI sufficient authority to protect sources and methods—this plus the Freedom of Information?

Admiral TURNER. Yes.

Senator HUDDLESTON. What beyond the Freedom of Information Act, beyond this draft legislation do you feel necessary? We do restrict it to Americans. We restrict it to Americans asking about their own personal involvement. We do restrict it to allow only finished intelligence.

Admiral TURNER. Our only problem with the Freedom of Information Act provisions in the charter are in respect with other agencies beside the CIA.

Senator HUDDLESTON. That should not be of any difficulty.

Admiral TURNER. I would not think so.

Senator HUDDLESTON. I would not think it would be. We left out the FBI, for instance, because we figured on handling that in another way.

So then, journalists, academics, and clerics. Of course, we started from a position of an absolute prohibition on the basis that agencies of the Federal Government should not be undermining the integrity of institutions that enjoy a particular place in our open and democratic society. And we have come a long way from that in what is actually in the bill at the present time.

I don't know what the full committee thinks of them. That, too, might very well be altered in the direction that you are suggesting.

So really when you get down to the differences in what we presented as almost a consensus bill and one in which there was certainly substantial agreement on the part of the administration and the subcommittee,

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except for the prior notice and access to information, there really is nothing that you have suggested that is very far from being resolved as I see it.

Admiral TURNER. I think you are correct. I think those two are very difficult ones.

Senator HUDDLESTON. Those two are the most difficult ones by virtue of the fact we have gone 3 years and have not resolved them yet. That is not to say that they cannot be resolved.

I am sure the committee will want to think of its own responsibilities and at the same time think of what is necessary in order to carry out an effective intelligence operation.

Other than that, as you look through the bill, besides the question of assassinations that has been brought up, the bill does not, would you not agree, contain a long list of "would-not's"?

Admiral TURNER. No, and I'm very grateful, which I mentioned in my remarks, that we have given reliance on oversight rather than on certain prohibitions that would be disabling in certain circumstances.

Senator HUDDLESTON. Oversight and a procedure to be followed before certain types of activities would be engaged in. That would give the committee and I think the American people confidence that the agencies are operating properly and placing responsibility where it ought to be, starting with the President of the United States and on down. That is generally the theory on which we have evolved this final piece of legislation.

I am notified that my time is up.

Senator BAYH. Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman.

Admiral Turner, although you have been back and forth over this territory before, the heart of the matter as I see it in your testimony, is that testimony on pages 9 and 10 in which you are talking about keeping the intelligence committees fully and currently informed in a timely fashion and this sort of language.

As I have listened to your testimony I must say that I am persuaded that the amendments that you are suggesting have a lot of merit; and I think that as the historical aspects of this have been laid out that we have had a fairly accurate recounting of the swing of the pendulum back and forth.

But it appears to me that the charter legislation came forward following the Church committee, and the atmosphere of the Church committee was one of fear that a President of the United States might misuse the intelligence agencies of this country and/or if a President did not do so for his own political purposes, that the intelligence agencies might be misused in the pursuit of warfare.

Some feeling about the Vietnam war and work done during that led to this sort of feeling, so that by the time that this committee met in the beginning of 1977 and you were before it for confirmation, you were being asked the questions that Senator Stevenson has recounted today, and it certainly was important for you to assure us as director that we were going to be partners in the situation. As a matter of fact, it goes beyond that.

As I recall, our first meeting with the President—that is, the Senate committee—was in the Cabinet room in which he, you, and the Vice

President were there. There may have been others. I had the impression that this had somewhat of a chilling effect on the President as he surveyed how many of us there were and really what sort of responsibilities he had come to as Chief Executive at this point.

I bring that up because it is not only your problem, although you have expressed it, but likewise that of the President. And I quote from your testimony today starting with the first full sentence:

> There are clearly situations in which I personally would not ask an individual to accept risk to his welfare or place the reputation of the United States on the line if I were required to report such intention to more Members of the Congress and their staffs than I would permit persons in the CIA with privileged information.

That is a tremendously important statement because we then get to the heart of the matter as to how important intelligence is to this country. As head of the CIA you are testifying here that even if there are situations, as I see it, that would be advantageous to our country for certain risks to be taken, and even if the President came to that conclusion, as things are now constituted—that is, prior notification—you are saying that you would not ask an individual to accept those risks. This is the big argument or one of the big arguments of this charter legislation.

Is that a fair reading? I don't want to read more into what you are saying than you meant, but I see this to be a very substantial delimitation on the intelligence capabilities of this country.

Is that not what you are saying on page 10?

Admiral TURNER. That is what I am saying, sir. I feel that there is not 32 people, as Mr. Chafee said, but I believe this committee has a committee staff and the House committee staff. We have over 100 people, and we would have opportunities to do things that there would be far less than that in the executive branch that would be knowledgeable.

Senator LUGAR. You said that there was a fine line between the desirability of having first-class intelligence capability in this country and the issue of civil rights. This is, I think, so important that the public understand this, quite apart from Senators and you.

But at one time, I think not too long ago, the overall spirit, and in some cases fear of people, was that civil rights were likely to be violated. Therefore, if we did not have a first-class intelligence capability or maybe not a first-class one but one that really was gung-ho, picking up what we needed to know everywhere we needed to know it, that would have to be sacrificed simply because we were trying internally to protect ourselves against the CIA.

Now, the problem is that the public, I think, and I certainly as an individual Senator, want to know is what is going on in the Soviet Union, in Iran, in Afghanistan, and everywhere in the world. I would be willing to take some risks with regard to all of the apparatus and protections we have set up. However meritorious they may have been in an absolutist civil rights situation, I don't think on a continuum we are going to be able to have both—an ongoing intelligence capability and a totality of civil rights protection. I think it is a fine line and a very fine balance.

In short, I do not see, and I say this as a member of the opposite party, how the President of the United States in a situation not

only of wartime but maybe of even near wartime could cope effectively with the world as we see it given these constraints. I simply do not think it is in the cards. I think somebody really has to say that.

I think this committee will finally have to say that, because President Carter is going to be between a rock and a hard place in this situation. If things really get tough, he's going to have to do some things, and then he's going to have the committee nitpicking back to a prior notification and this and that.

It will not work, and it is time we talk about it now, and that you come out as you have today. I am not surprised at your testimony. In a way I really am, because I suspected that in accommodating what you always thought was the prevailing mood of this committee that you probably would not speak out and say as you have that you could not look somebody in the eye and ask him to take risks.

If we had all the reporting requirements that are implied by the charter, there is a very serious limitation. It is not a question of whether we are hobbling intelligence or not. The fact is intelligence has been hobbled. It's been cut off at the legs for a long time.

This may be the turning point, and I sure hope it is. I think there is a serious disagreement. I think what could happen is not that the Intelligence Committee has a disagreement with you or the administration; indeed, a majority of the members of this committee might agree with you. That would be a turn of events, too. I think that has to be contemplated.

A number of us in our opening statements said we're going to listen to the evidence. I'm saying I thought you were pretty persuasive. I'd like to hear what the President has to say about this personally. Maybe we'll have that opportunity. Based on a day-by-day assessment, I am one who is perfectly willing to give the President a lot of latitude in terms of Iran and the hostages and a lot of other things right now. I am very interested in what he really needs to have from this committee, from the Congress, and from the public. The public wants to know that, too. It does not mean we're throwing over our civil rights or checks and balances. I think we as Senators are able to throw our 2 cents' worth in very frequently, and we are demanding, and ought to be, and we're not going to go to sleep on it.

The question now is how can we craft the situation that does fulfill the checks and balances, that does not throw in the towel on the part of the committee at home, and how can the administration sensibly react to that situation without simply throwing down the gauntlet, saying there is executive power here and we have to use it, which we are sympathetic with, and leaving this thing in limbo. I'm optimistic really.

Even in as complex a document as this charter legislation is, given the sort of amendments that you are crafting and the signaling that goes along with that, it is conceivable that accommodation could occur.

Let me pursue this a little more. We don't know whether we will have the President testify before this committee, therefore you are presenting the administration's case. What would he ask for if he were here today? What does he need in his judgment as a person who,

as far as I can tell, has abided by the Constitution, has a healthy respect for civil rights in this country historically in terms of his personal performance?

Can you represent at all what his position is?

Admiral TURNER. On these particular issues, 9 and 10 and so on?

Senator LUGAR. Yes.

Admiral TURNER. I believe that the President feels very firmly about these two issues. We have discussed it with him, and some of the members of this committee have had that opportunity also.

Might I make one comment if I could, because I appreciate your thoughtfulness on this. I would like respectfully to suggest to you on this committee, in working with you for the last 3 or more years, we have become so accustomed to this process of bringing the legislature right into the heart of the intelligence process, and it has worked so well that I think we sometimes don't stand back from it and see what a revolution it is; and to intelligence professionals around the world this is unthinkable.

In the United Kingdom the Parliament is not even given access to intelligence information of the type we're talking about. And certainly in less democratic societies than that it is totally unheard of.

And what I am trying to say, as we step back and look at this in that perspective, I have to deal with human beings and services who just cannot possibly understand sharing anything about the intelligence process with a parliamentary body. Therefore, the way this is constructed is very important to me, whereas I would not intend any change in the way we have been doing business as being necessary; and I believe the wording proposed in these two important areas substantially changes the impression that we will give all of those other people, whereas, I do not think that you would want or I want to change the procedures that we have in fact been following.

Senator LUGAR. Thank you very much.

Senator BAYH. Thank you, Senator.

Senator JACKSON. I have been sitting here reflecting back 30 years on this issue. There is nothing new here that we are discussing. I served on the Joint Atomic Energy Committee; it had nine Members from the House, nine from the Senate. I served there 30 years ago from the House. We did not have a leak, never, and we handled, relatively speaking, information that was just as sensitive at that time. The secrets of the bomb, and the numbers that we had were indeed the most sensitive information.

The great spy on the executive side that we allowed in the country, because the British had a system that said everyone's loyal to the King or the Queen, was Klaus Fuchs, and he came into the country, and his father came in in 1933. He was a known Communist. He stayed on. But we accepted the British procedure. You will recall that background, I am sure. You have read about it.

My point is that none of these systems are foolproof. In all candor, one of the reasons we are in trouble and why we are at this meeting is that the congressional system broke down. I tried to do something shortly after I joined the Armed Services Committee. After I had been on it awhile I noted that sooner or later we will have a problem with intelligence, and we will have to work out some better system of sharing the responsibility.

I think that is a key thing. Responsibility at that time was handled on a very meager, off-the-cuff basis. I talked about it to some of your predecessors. They all agreed that something should be done, but nothing happened.

I think the Agency was hurt by it; Congress was hurt by it. The country was hurt by it as a result of the failure of the constitutional process to work.

That brings us down to where we are now. I agree with you completely that the problem of access to sensitive information does get down to numbers of people. I think you have to really limit the numbers of people that are involved. I think we should be negotiating how many Members of the House and Senate should have access to this information. Really, that is what we should be doing, Mr. Chairman.

And as far as the numbers that are involved in connection with some of these most sensitive things, the executive branch has a major problem. I notice that a rather minor person in the hierachy gave away some of the most sensitive information after he had left the Agency. So it seems to me, Admiral, that the situation we face is one of sharing constitutionally this responsibility in a way which will provide for our security.

I read recently in the newspapers of some matters that we cannot go into in this open session. The author of the newspaper article said it came right out of the White House, or the National Security Council, I forget which.

It is that kind of thing that is really disturbing and distressing.

So when I saw your third item here that the administration believes the requirement for the reporting of significant anticipated intelligence activity and so on should not be in here, that is where I part company with you. And I am one who is against writing a book on this subject, but I think you have to face the need to share this responsibility. It should be very limited, however.

We have 50 members of the staff up here. As you know, on very sensitive matters we are compartmentalized. It is not that 50 members of the staff, as I understand it, Mr. Chairman, all have access.

Senator BAYH. Senator Jackson, what concerns me is that the position that is being espoused—I know the Admiral does not feel this personally about any of us here—is that it is impossible to conduct an intelligence system if any of us are privy to it.

We have established a variation, and you were part of a discussion in which only a small number of this committee shares some of the most precious information.

Senator JACKSON. We do not even have staff present in situations like that. I agree. In all candor, I do not think you can compare our operation with the parliamentary system. For a while, the British were able to not make known the head of MI–6. Now it is being published every now and then, who is the head of MI–6 and MI–5, but I do not think this is an insurmountable problem.

I know if I were Director of Intelligence I would want to be able to share some of this responsibility because I think the system would work better.

I think the real issue is that all this boils down to numbers of people. I do not want everything spelled out in a statute. I want access

limited to the absolute minimum, and I think we should be talking to the leadership on both sides, the majority and minority of the House and Senate and really hold down numbers—because it is people that will make the system work.

I do not want to spell out all the "do's and don'ts." I think we bave to maintain a flexible situation. I think obviously there is a need here to share the responsibility as provided under the Constitution.

You get into an argument, Mr. Chairman, over where the President is acting as Commander in Chief, and so on. I think the problem is not a major one in any sense.

I think it is a lot better for the President to be able to share tbat responsibility, again with a very limited number of people.

As I pointed out, we had nine from the Senate, nine from the House in the Joint Committee on Atomic Energy, and we never had a leak, never had a leak, in 25 or 30 years of that committee. I must say that unless we resolve this issue of shared responsibility, we are going to be in trouble.

I want to ask one thing. There have been rumors around from time to time that you have been directed by the executive branch to withhold certain information from the Congress. Is that correct?

Admiral TURNER. No, sir.

Senator JACKSON. It has never happened?

Admiral TURNER. No, sir.

Senator JACKSON. Anything, any of your activities—that you have withheld from the committee—including intelligence.

Admiral TURNER. No, sir.

Senator JACKSON. Everything that we should be privy to? I can think of one thing that I did not know about but I do not want to bring it up here. It already has been alluded to earlier.

I think we all know about it. We learned about it after the fact, but you can give that assurance that you have never been asked by the President to withhold information that the Intelligence Committee should have?

Admiral TURNER. We could draw fine lines here. I have never been asked to exclude the Congress from information.

Senator JACKSON. I am talking about the committee, the Congress, everybody.

Admiral TURNER. The committee, but the timing was a delicate issue in some instances.

Senator JACKSON. I am talking about the time that the knowledge was known. Obviously when it appears in the press within hours or at the same time, that is hardly complying, Admiral, I think with the law.

Admiral TURNER. I agree with that.

Senator HUDDLESTON. That did happen.

Admiral TURNER. That instance can be explained in a classified forum to you.

Senator JACKSON. I understand, but this is not a classified question I am asking. It goes to this question of, you know, sharing the information. I think if we are going to be in this, I think we do have to share that burden, and if I were up here testifying, I would not want all this big, thick bill.

I have the greatest respect for Senator Huddleston. I admire him. But I just think we turn around and tie the hands of people by statute and it is going to cause a lot of problems.

The alternative is the system of the checks and balances that the Founding Fathers were so wise a long, long time ago to insist upon; I would take the checks and balances approach rather than trying to codify all the "do's and don'ts" because there has not been anyone around who has been smart enough to anticipate what is going to happen. Then when you change it, you are in trouble. You are in trouble.

Senator HUDDLESTON. If you would yield, this draft legislation does exactly what you suggested. It keeps the number down to fewer than the nine that kept the secrets of the atomic bomb. I do not know how you can do it if you do not codify it in some way.

How are you going to be assured?

We have not had any trouble with this administration. We have not had any trouble at all with the President or Admiral Turner. Who knows what next?

Senator JACKSON. Senator, the breakdown occured because Congress was not involved. That is my message.

Senator HUDDLESTON. That is our message.

Senator JACKSON. Not by statute. It gets down to people. It gets down to people. I do not think you try to write in advance the "do's and don'ts." I do not know of any reputable intelligence organization that operates under a great thick statute.

I am thinking of the long-lived democracies.

Senator HUDDLESTON. There are just four don'ts in this whole bill.

Senator JACKSON. I know, but if you look at the size of this thing——

Senator HUDDLESTON. That is just draftsmanship, Senator. That is draftmanship.

Senator JACKSON. As a lawyer, I can say that it can be handled in a lot simpler manner. It does get down to people and the least number involved is the key.

I know you are concerned. You have the problem on the most sensitive information, the clerks who have it, who type it out, others who have it, and some of the most sensitive information can be compromised by people who are in a very minor position on the payscale.

Is that not correct?

Admiral TURNER. Absolutely.

Senator JACKSON. I think we should be talking more and more about changing some of the archaic methods that we follow up here on the Hill and really adjust to the new realities. That is my message.

I think we can do a better job, and I would negotiate and hold down the numbers who have access.

I know when we get into certain situations—the Manhattan Project was very closely held, never laid out for the Congress. In World War II, it was the most sensitive thing at the time.

Nothing about breaking the code ever got out from the Congress. The Chicago Tribune had it but not from the Congress.

Thank you.

Senator HUDDLESTON. Thank you, Senator.

Senator, before you leave. I guess I ought to say that you talk about the congressional system breaking down. The reason it broke down was that there was no law or anything to require them to do exactly what you wanted to have done. That is the whole purpose of this, is to have in legislation a system.

Senator JACKSON. I joined with Senator Mansfield in 1955 to get a Joint Committee on Intelligence. We lost, we lost.

Some of us tried, you see. We could see it coming.

The magnitude of the activities of the Agency was such you just could not handle it with four people in the Senate. A ranking member on the Armed Services Committee and the minority member and the same on Appropriations. That is the way it operated.

I talked to some of Admiral Turner's predecessors and they wanted to get Congress involved in a more formal way. You know, we could not sell it because not enough members really believed that anything could go awry.

We are right back where we were 30 years ago.

Senator HUDDLESTON. Not quite. We do have the intelligence committees and Congress does have a formal way of dealing with this kind of thing.

Senator JACKSON. It should be a joint committee. As of now they are still having to go to all the other committees. Your bill and the one on which I joined with Senator Moynihan would reduce the numbers. It gets down to people, just plain old people—that is the problem in the world, people.

Senator HUDDLESTON. Senator Durenberger.

Senator DURENBERGER. Thank you, Mr. Chairman.

Admiral, I find myself having just listened to someone who has been here 30 years describing what the situation ought to be and Senator Huddleston, who put in 3 years of effort, on how it ought to be and there is rather substantial disagreement.

Probably, as someone who has only been at it a year and who has experienced the congressional oversight part of the operation, I would be inclined to be more sympathetic to Senator Jackson's view of a charter for the intelligence agencies than to the rather large documents of do's and don'ts that have been produced. And I know as you sit here today that we are 90 percent of the way toward the end of a process of developing some do's and don'ts as a part of the legislative process.

I also recall, a year or so ago, when I first heard you testify on the subject, that you said about the same thing that you said today, relative to the importance of charters.

What is bothering me, obviously, is the nature of that charter, and I have gone back to the first part of your statement today. You give three basic reasons—probably there are others for supporting a charter.

The first is that we need the legislation because the 1947 legislation is incomplete. The second is to aid the professionals in the intelligence agencies who need as full a description of what they are expected to do and not to do as is humanly possible to create. Those are the do's and don'ts. Then the third reason is the need for close congressional oversight of the intelligence process.

Maybe I could put a question at the end of Senator Jackson's little speech which says, assuming you did not have to worry about the 1947

legislation and assuming that congressional oversight is what it has been over the last year or so that I am familiar with, how specific, in the form of do's and don'ts, do we have to make a charter? Can we leave it with a set of purposes, a set of goals and objectives, and not get into the do's and don'ts but leave that part to something that changes with time, changes with need, changes with public attitudes as reflected by congressional oversight?

Admiral TURNER. I think the balance between the do's and don'ts and broad guidance in the draft charter is pretty good. The specific don'ts are rather limited and largely in the area of protecting the rights of the American citizens.

I think we all have a lot of sympathy for that assurance, which we want and need to be sure that we do not trespass further than the country wants because there are provisions for trespassing over those rights and they are specific and are working out quite well with a few amendments that we have asked in the Foreign Intelligence Surveillance Act.

My feeling is that there is a good balance here on the primary reliance on the oversight, the checks and balances that come from it.

Curiously, what we have been talking about most of the afternoon is when the bill gets to specifics, exactly when we are going to notify you and exactly in what detail, whereas I think here, again, you can rely on the checks and balances more and have assurance even if we got off the reservation you would find out about it rather quickly and take care of it.

I do not think we would get off. That is not what I had in mind.

I am saying just as you do not want to put so many specific prohibitions in that we get tight enough, that you want it reasonably general, with a system for checking, and we want not to create this chilling effect by unduly strict language on reporting but rely on the checks and balances of the oversight process to see to it that we are reporting adequately.

Senator DURENBERGER. Without a specific charter, that is, in the current condition, each President, I take it, comes along and establishes a set of do's and don'ts and guidelines. And this President, on January 26, 1978, promulgated Executive Order 12036 and, in this particular part that we have been talking about this afternoon, said:

> Keep the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate fully informed about intelligence activities, including any significant anticipated activities that are the responsibility of, or engaged in by, such department or agency. This requirement does not constitute a condition precedent to the implementation of such intelligence activities.

With regard to the phrase, "including any significant anticipated activities," there was some discussion earlier with Senator Stevenson on the relationship between that requirement and the requirement of advance notice that left me a little bit unclear as I related that, or tried to relate it, to your own statement on keeping this committee currently informed on anticipated activities.

I wonder if you would clarify that for me.

Admiral TURNER. That wording is in the draft charter, it is my understanding. We would prefer it not to be there, but our primary concern are the words at the top of the page, "to protect sources and

methods." That prefaces the whole paragraph that we are talking about here, and it has been omitted from the draft charter.

Senator DURENBERGER. But the issue is the one that you see as your sort of personal responsibility, to protect sources and methods. Is that correct?

Admiral TURNER. That is correct, and it does mean to me, in this instance, that if, in order to protect an individual I am sending out on a risky task today, the President feels that it is advisable not to notify the committee in advance, that we will do so in order to provide that protection and give you timely notification rather than advance notification.

Senator DURENBERGER. So that, in effect, that and your previous statement on sources and methods would be qualifiers of the current Executive order language that is going into the law.

Admiral TURNER. Yes, sir.

Senator DURENBERGER. Let me ask you then, again, what the current situation is versus what it would be with the charter, and let me ask you about surveillance of Americans and individual liberties, and so forth.

If the charter were not enacted and all the intelligence community had for guidance was the Constitution of the United States, what would be the effect on the privacy of Americans?

Or, in other words, would the intelligence community have more or less power in both the practical and legal sense to intrude on the privacy of Americans?

Admiral TURNER. I think that there would be more opportunity for invasion of citizen's rights, but it would be dependent on how the Attorneys General and Presidents interpreted the Constitution.

And that would be hard to predict.

Senator DURENBERGER. What I am hearing you say, then, is that under the Constitution there are a variety of activities that could be engaged in that might be intrusions on the privacy or the rights of Americans and that might not be unconstitutional?

Admiral TURNER. I believe so. I believe all of this legislation amplifies, or further narrows down, the range of opportunity to invade on the private citizen.

Senator DURENBERGER. The legislation restricts the opportunity to do what would be constitutional to do, but inappropriate for the current standard of the rights of individuals in this country.

Admiral TURNER. I would agree with that entirely.

Senator DURENBERGER. Let me ask you one other question, since one of the issues we are always dealing with, with regard to prior notification and advance information and so forth, is the issue of covert action. I guess I had the impression when I came on this committee, as many Americans do, that covert action usually means something like the CIA overthrowing governments and promoting secret wars and assassinations and so forth.

I wonder if you would take this opportunity to explain to us, and also to the American people, how covert action can be carried out in a manner that is consistent with the values of Americans.

Admiral TURNER. I think that is very difficult to do in an unclassified forum, Senator. But I guess, as close as I would want to come,

would be to say in the conduct of foreign policy there are efforts that one makes overtly, there are efforts that one makes quietly—not covert action—discussing things with foreign governments. One does not broadcast them out on the street in all instances. You talk confidentially to other people.

And there is also a place for doing things, covert action, without even any attribution to the United States. And I believe that there is a legitimate place for all of these gradations.

The infringment of the constitutional rights of the American citizen is not necessarily involved in any or all of these. One does have to be careful and watch that. That is why we have these oversight procedures, both within the executive branch and with you here.

I would be happy to give you specific examples in private session or classified session. .

Senator DURENBERGER. I think I have examples from previous private sessions which lead me to ask the question. It is obviously in those sessions that I come to the conclusion that there is a substantial difference between the American public's attitude toward what is meant by covert action and what the realities are.

I take it your explanation is in response to your perception of covert action today.

Thank you.

Senator HUDDLESTON. I do not want to keep you here too long, Admiral. I would want to object somewhat to the characterization of this legislation that has been made as a list of do's and don'ts. I think the Admiral has pointed out the fact that the don'ts, prohibitions, are very limited. As a matter of fact, if members will look under the tab of "Major Provisions" you will find there are exactly five don'ts in this whole piece of legislation, regardless of how many pages it might consist of.

Four of them, there is no objection from any source that I know of. One that the Admiral has mentioned relating to the use of journalists, clerics, and academics for cover, that is one where there is some question.

But on the other four, there is unanimity. So it is not in fact, a list of do's and don'ts. The don'ts are very limited. The do's are simply the authorization, generally, that the agencies need.

I should not have to point out that the 1947 act does not give the Central Intelligence Agency the legislative authority to gather information, to be a collection agency. It gives it the authority to coordinate information to inform the President.

There is a vast difference in that, so they are operating without legislative authority. That is one of the reasons that the charter was felt to be necessary and one of the reasons that the intelligence committee agrees that they felt they would be better off to have legislative authority, defined missions, and parameters to operate within.

One other point, Admiral. On your insistence that your responsibility to protect sources and methods inhibits you from prior notice to the Congress, your authority is, and your responsibility is, to protect intelligence sources and methods from unauthorized disclosure.

I think you are taking that a step further when you interpret unauthorized as meaning disclosing to Member of the Congress of the

United States. That is a point that seems to have been overlooked somewhat.

It will not, I am sure, change the attitude of the members of the committee on this issue, however, but I think it is worth pointing out.

Senator Durenberger got into what I think is another very important thing in the bill and that is the authority that is given to the agencies to target American citizens for "positive" intelligence gathering purposes. It has been said that because the hill does permit targeting an innocent American citizen when he is abroad that this goes much too far and gives the Agency too much leeway in infringing upon a person's right to privacy and his expectation that his privacy will not be invaded.

I think it is important to point out tbat this is permitted only in extreme situations.

Tbe President of the United States first has to determine that that person is likely to have information that is essential—I emphasize the word "essential"—to the security of the United States and then if extraordinary techniques are to be used—opening his mail, entering his premises or tapping his telephone—a court order bas to also be obtained.

So what we have done here is try to recognize that we should not require the President of the United States to sit idly hy and allow something very damaging to the security of this country occur.

If he has reason to believe that somebody has information that would prevent that from happening, we have given him the necessary authority in a very restrictive way.

To Senator Durenberger's question as to whetber or not you could do much more operating just under the Constitution, not under tbis law, I think there may have been some misunderstanding there. Certainly they could do more.

This legislation does try to halance the desire of this Nation that its citizens would not have its privacy infringed upon unnecessarily.

At the same time, it gives authority in very restrictive ways to meet requirements. But if you look back at the history, ohviously some constitutional rights have been abridged by intelligence operations in this country. It is in trying to avoid that but, at the same time, give what is needed, that we have arrived at the provisions that are in here now.

I know that there are many people, as we all know, who see these provisions as being very dangerous and going too far in allowing the rights to be abridged. But here again, as we knew when we started, if we had a final product that was satisfactory to either extreme, we probably would not have done a very good job and our best job probably would be reflected by having some very severe attacks from both extremes.

I think we have probably accomplished that much at least, if nothing else.

Senator Lugar, do you have any further questions at this time?

Senator LUGAR. No.

Senator HUDDLESTON. Some members had to leave, of course, and other members were not able to be here, so I am sure, Admiral, that we would like to submit some additional questions for the record. It

might be that during the course of these hearings as these various issues come up again and again and others are introduced that we will want to hear from you again.

[The prepared statement of Senator Charles McC. Mathias follows:]

PREPARED STATEMENT BY SENATOR CHARLES McC. MATHIAS (R-MD.) AT THE OPENING OF HEARINGS ON A LEGISLATIVE CHARTER TO GOVERN INTELLIGENCE ACTIVITIES

These hearings mark the end of a process that began over five years ago. The Senate and the country expect action on a charter to govern the intelligence activities of the United States within a constitutional framework that takes full account of the duties and responsibilities of both branches of government. What we want to achieve is a body of statutes that will give guidance for the necessary intelligence activities of the United States within the structure of our constitutional form of government.

In this regard, the Committee, and I think the overwhelming majority of the full Senate will support the Committee in this respect, is of the view that the heart of effective oversight of intelligence activities is full and complete information supplied at a time and in such detail as the oversight committees may require including prior notice of significant anticipated activities. We have functioned over the past four years with these authorities and as they are contained in S. Res. 400 and in Executive Order 12036. If Hughes-Ryan is to be repealed, it should be clear to all that prior notice of significant anticipated activities is an absolute essential. There obviously should be no restraint on the kinds of information the Committee may obtain, if it believes that such information about intelligence activities is required to carry out its mandated oversight duties.

I am hopeful that these hearings will lead quickly to passage of this much needed legal authority for this vital and permanent part of our government. World necessities require this action. But we must act in a way that enhances and strengthens our liberties. The opportunity for us to act is now.

Senator HUDDLESTON. I appreciate, as I said at the beginning, the cooperation we have had and I am sure this will continue right on through this legislative process as we put the final touches on the legislation.

Thank you sir.

[Whereupon, at 5 p.m., the select committee recessed, to reconvene at the call of the Chair.]

THURSDAY, FEBRUARY 28, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The select committee met, pursuant to notice, at 2 p.m. in room 5110, Dirksen Senate Office Building, Hon. Birch Bayh (chairman of the select committee) presiding.

Present: Senators Bayh, Huddleston, Leahy, Goldwater, Garn, Chafee, Wallop, and Lugar.

Senator BAYH. The committee will come to order.

With the array of expertise we have here, I hate to have it idle. We are pleased to have with us senior officials of the major agencies in the intelligence community: Judge Webster, the Director of the FBI; Frank Carlucci, Deputy Director of the CIA; Adm. Bobby Inman, Director of NSA; Gen. Eugene Tighe, Jr., Director of DIA; and Adm. Daniel Murphy, Deputy Under Secretary of Defense for Policy.

We look forward to your statements, gentlemen. I understand we have agreed that each one of you will present your opening statements and then we will go to questions from the committee, if you have no objections.

Before you begin, Director Webster, I would like to take this opportunity to recognize the gentleman who has served you and your predecessor and the country with distinction over a long period of time, Mr. Bill Cregar. He has been the Assistant Director in charge of the FBI Intelligence Division for the past 2 years. I understand that he is retiring. That is a well-earned retirement but I do not know what is going to happen to the country.

I say that just with partial jest, because Bill Cregar has performed admirably and we have a good working relation with him and I just say to you, Bill, the committee, and I think the country, is in your debt.

Senator Goldwater, do you have any remarks?

Senator GOLDWATER. You have adequately expressed my feelings.

Senator BAYH. Senator Huddleston, do you have any opening statement to make here? You have played such an active role in this charter.

Senator HUDDLESTON. I have no statement to make at this time.

Senator BAYH. All right, thank you.

Please proceed.

[The prepared statement of William H. Webster follows:]

PREPARED STATEMENT OF WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman, Members of the Committee, I welcome this opportunity to meet with you in the company of my colleagues to discuss a matter of concern to all of us, a legislative charter to define the legal authority and accountability of our intelligence agencies.

Since June, 1939, when President Franklin D. Roosevelt directed the FBI to investigate "all espionage, counterespionage and sabotage matters," until recent years, the FBI has worked under a general mandate in the foreign counterintelligence and foreign counterterrorism field. In 1976, President Ford issued Executive Order 11905, which was an attempt to produce a unified intelligence effort by the Government while at the same time placing limitations on our activities and leading to the creation of the Attorney General Foreign Counterintelligence Guidelines, under which we now work. President Carter further developed these concepts in Executive Order 12036. In addition, the Foreign Intelligence Surveillance Act was passed to address the narrow yet crucial problem of employing electronic surveillance in intelligence work.

The proposed National Intelligence Act of 1980 follows years of preparation and discussion between the Congress, the Administration and the intelligence agencies. It evidences our shared recognition of the need for an intelligence charter. The President stated in a letter to the Chairman of this committee "only a comprehensive charter will give the American intelligence community the kind of endorsement it needs and deserves from the American people."

The drafting of a charter is difficult. It must strike an acceptable balance between the need to protect individual rights and the need to have an effective intelligence capability. We believe too that it must insure that the dedicated men and women who serve our country in intelligence positions know with certainty the range of permissible intelligence activities available to them.

As you know, a charter for the FBI that would define our duties and responsiblities in the field of criminal investigation is presently before the Congress. A legislative charter for the FBI's counterintelligence activities would be a logical supplement to it.

Counterintelligence and counterterrorism are activities that are not always fully understood by the American public. It is relatively easy for most to understand the necessity for foreign intelligence activities and their relationship to the national defense and foreign policy of the United States. The protective function of counterintelligence, however, and its demands on the counterintelligence elements of the Government are not so readily apparent.

Because of the FBI's counterintelligence mission in the United States, American citizens are sometimes of necessity the objects of inquiry, either as a result of their clandestine relationship with a foreign power, or because of a foreign power's interest in them. Contacts between Americans and foreign intelligence officers must also concern us, even though contacts may turn out to be innocent. But given the need for such inquiries, there should be legislative recognition for our actions.

Now, I would like to comment briefly on some of the proposed statute's provisions that directly affect the FBI.

Title VIII amends the Foreign Intelligence Surveillance Act to subject physical searches to the same review and certification procedures, plus the same criminal standard for U.S. persons, as was carefully designed for wiretaps by this Congress in late 1978. The same compelling reasons of security that led to the foreign intelligence wiretap process, apply to physical searches of foreign powers and their agents. Judicial review exists except in that limited number of searches that do not affect U.S. persons, property or premises. I am confident that with the Foreign Intelligence Surveillance Court having the expanded role regarding physical search, plus Congressional oversight, the American public can be assured of the lawfulness of the process, while affording necessary security to the activity.

Standards affecting the counterintelligence and counterterrorism mission of the FBI that appear in section 214 of the Act are the result of considerable work on the part of this Committee and the intelligence agencies. They strike an acceptable balance between the legitimate needs of the Government to undertake measures to protect itself and the rights of the individual.

The standard in the proposed statute is that the FBI cannot undertake counterintelligence or counterterrorism activities against a U.S. person unless it has facts or circumstances to indicate not only clandestine intelligence activity on the part of the individual, but also that this activity is on behalf of a foreign power or is an international terrorist activity. The bill recognizes that since we are not ordinarily engaged in traditional criminal investigation in these matters, it is inappropriate to tie the threshold investigative standard to a criminal act. In my view this approach permits sufficient authority for the FBI to act where necessary yet imposes restrictions and oversight on our judgment to do so.

Because of the concern that an investigation might be undertaken on a person who is otherwise a legitimate agent of a foreign power, such as a lobbyist, section 214(d) requires notification to the Department of Justice in any investigation that may significantly intrude into a person's political or religious activity.

We should look closely at the case of past completed intelligence activities which continue to be of legitimate investigative concern. In certain cases, an agent may have ceased intelligence activities, as for example when the agent has been convicted and incarcerated, but the investigation of the agent's activities is continuing. The current statutory language which is limited to facts or circumstances indicating the person is or may be currently engaged in intelligence activities must be clearly examined in this context.

Another part of the proposed bill that recognizes the realities of intelligence work is section 215. It provides for a controlled process of intelligence activity that could be directed against unsuspecting targets of clandestine intelligence gathering by foreign powers. Such activity, however, could be undertaken only after a finding is made that the person is indeed the target of a foreign intelligence service and the Attorney General is notified. Additionally, techniques of collection are limited.

I would also like to express to this Committee my continuing concern about the impact of the Freedom of Information Act on sensitive records of the FBI, including those relating to its foreign counterintelligence and counterterrorism activities. As you know, Mr. Chairman, foreign counterintelligence is one of the top priorities of the Department of Justice. The importance of an effective program to combat hostile intelligence activities cannot be overemphasized. I, therefore, endorse the concept of providing relief to the FBI and other intelligence agencies from the excessive disclosure requirements of the Freedom of Information Act.

As this charter process continues, consideration should also be given to the inclusion of FBI and other intelligence agency personnel and assets in the identities protection provisions of Title VII. Even though the personnel of the CIA have been the main target of those who would cripple our intelligence efforts by disclosing affiliations with that organization, the same compelling reasons for protection exist in our other intelligence agencies.

There are several language changes, mostly technical in nature that we would like to suggest as this charter process proceeds which are unnecessary to discuss at this time.

Now, I would be pleased to respond to any questions you may have.

TESTIMONY OF JUDGE WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY BILL CREGAR, ASSISTANT DIRECTOR, INTELLIGENCE DIVISION

Judge WEBSTER. Mr. Chairman, I first would like to thank you for taking time to recognize the distinguished service to his country offered by Bill Cregar. We are very proud of what he has done and we are glad that you have taken the opportunity to recognize this.

Since June 1939, when President Franklin D. Roosevelt directed the FBI to investigate "all espionage, counterespionage, and sabotage matters," until recent years, the FBI has worked under a general mandate in the foreign counterintelligence and foreign counterterrorism field.

In 1976, President Ford issued Executive Order 11905, which was an attempt to produce a unified intelligence effort by the Government while at the same time placing limitations on our activities and leading to the creation of the Attorney General Foreign Counterintelligence Guidelines, under which we now work.

President Carter further developed these concepts in Executive Order 12036. In addition, the Foreign Intelligence Surveillance Act

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was passed to address the narrow yet crucial problem of employing electronic surveillance in intelligence work.

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The drafting of a charter is difficult. It must strike an acceptable balance between the need to protect individual rights and the need to have an effective intelligence capability. We believe, too, that it must insure that the dedicated men and women who serve our country in intelligence positions know with certainty the range of permissible intelligence activities available to them.

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needs of the Government to undertake measures to protect itself and the rights of the individual.

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The importance of an effective program to combat hostile intelligence activities cannot be overemphasized. I, therefore, endorse the concept of providing relief to the FBI and other intelligence agencies from the excessive disclosure requirements of the Freedom of Information Act.

As this charter process continues, consideration should also be given to the inclusion of FBI and other intelligence agency personnel and assets in the identities protection provisions of title VII. Even though the personnel of the CIA have been the main target of those who would cripple our intelligence efforts by disclosing affiliations with that organization, the same compelling reasons for protection exist in our other intelligence agencies.

There are several language changes, mostly technical in nature, that we would like to suggest as this charter process proceeds which are unnecessary to discuss at this time.

Mr. Chairman, that concludes my opening statement.

Senator BAYH. Thank you very much, Director Webster.

Mr. Carlucci?

[The prepared statement of Frank C. Carlucci follows:]

PREPARED STATEMENT OF FRANK C. CARLUCCI, DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE

Mr. Chairman, as program manager of the Central Intelligence Agency, I am pleased to be here today to testify on title IV of the "National Intelligence Act of 1980."

In my opinion the best focal point for discussion of the provisions of title IV is section 401, the "Statement of Purposes," which lists the goals that the title IV provisions seek to accomplish. Title IV generally achieves those goals.

Admiral Turner, in his opening statement before this committee last week indicated that one of the reasons he has been a strong supporter of charter legislation is the fact that "the guiding legislation today is incomplete." While both of the Agency's enabling statutes, the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, have been invaluable tools which enabled this country to build a strong inetelligence collection capability, they, like anything else, must be reviewed and updated in light of past history, new demands, and future contingencies. The CIA has functioned for the past 30 years under these statutes, but the time has come, as section 401(a) puts it, "to clarify the statutory authorities, functions, and responsibilities of the central intelligence agency". Mr. Chairman, the President, the Director of Central Intelligence, and I support this effort fully.

Title IV of S. 2284 would repeal provisions of the National Security Act of 1947 that relate to the CIA and the CIA Act of 1949, and would reestablish the Agency "under the direction of the National Security Council and subject to intelligence plans, objectives, and requirements established by the Director of National Intelligence." Section 412 provides that the Director of National Intelligence and the Director of the CIA shall be the same person, unless the President decides otherwise, with the advice and consent of the Senate.

In accordance with the second "purpose" of title IV (section 401(2)), "to authorize the Central Intelligence Agency to perform intelligence activities that are necessary for the conduct of the foreign relations and the protection of the national security of the United States", title IV clearly delineates the authorities of the Agency to collect, analyze, produce, and disseminate intelligence and to conduct special activities (section 414(h)). One of the key provisions of title IV is reiteration in section 412(e)(4) of the director of the Agency's authority "to protect intelligence sources and methods from unauthorized disclosure."

Mr. Chairman, title IV contains many other positive provisions too numerous to mention. I would like, however, to commend four provisions to the attention of the committee:

First, section 414(h)(10) authorizes the Agency to "coordinate the overt collection of foreign intelligence by entities of the intelligence community from witting and voluntary sources within the United States." A slightly modified version of this provision which has administration approval is attached in an appendix. This amendment would make clear that the coordination of these overt collection activities would be subject to policy guidance of the Director of National Intelligence. Such guidance is now provided by the Director of Central Intelligence.

Secondly, section 431(c) would allow the Director of the Agency in specified circumstances to extend to CIA employees by regulation certain benefits and allowances for foreign service employees that are enacted subsequent to the enactment of S. 2284. This authority to provide for the extension of such benefits by regulation of the director alone does not have administration approval. The administration and the Office of Management and Budget recognize, however, that it would frequently be appropriate to extend these subsequently enacted

allowances and benefits to CIA personnel. Thus, we and the Office of Management and Budget will want to work with the committee as the legislative process moves forward in order to determine how best to provide for the extension of these alowances and benefits. I want to add that I personally feel quite strongly that parity with the foreign service should be achieved where the situations and circumstances of our personnel serving abroad are indistingulshable from those of Foreign Servlce personnel.

Thirdly, I must note that the section 426 requirement for congressional notificatlon of withdrawals from the reserve fund is intlmately related to the issue of prior notification of special activitles, whlch the committee has been discussing with Admiral Turner. We should keep in mind that section 426 should track with whatever requirements are eventually decided upon in sections 125 and 142;

Finally, there is the provision concerning relief from the Freedom of Information Act (section 421(d)). Admiral Turner has already expressed the administration's view that thls provision should have inteligence community-wide applicability, and I believe that Senator Huddleston has indicated that he does not think there will be any difficulty in accommodating the administration's concerns.

Mr. Chairman, that concludes my prepared remarks. I will, however, be glad to answer any questions with regard to the provisions of title IV.

APPENDIX

SECTION 414(b)(10),

AMENDATORY LANGUAGE IN ITALIC

"(10) *In accordance with policy guidance provided by the Director of National Intelligence,* coordinate the overt collection * * * States;"

TESTIMONY OF FRANK C. CARLUCCI, DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE AGENCY

Mr. CARLUCCI. I am pleased to be with you today to testify on title IV of the National Intelligence Act of 1980.

In my opinion the best focal point for discussion of the provisions of title IV is section 401, the "statement of purposes," which lists the goals that the title IV provisions seek to accomplish. Title IV generally achieves those goals.

Admiral Turner, in his opening statement before this committee last week, indicated that one of the reasons he has been a strong supporter of charter legislation is the fact that "the guiding legislation today is incomplete." While both the Agency's enabling statutes, the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, have been invaluable tools which enabled this country to build a strong intelligence collection capability, they, like anything else, must be reviewed and updated in light of past history, new demands, and further contingencies.

The CIA has functioned for the past 30 years under these statutes, but the time has come, as section 401(a) puts it, "to clarify the statutory authorities, functions, and responsibilities of the Central Intelligence Agency." Mr. Chairman, the President, the Director of Central Intelligence, and I support this effort fully.

Title IV of S. 2284 would repeal provisions of the National Security Act of 1947 that relates to the CIA and the CIA Act of 1949 and would reestablish the Agency "under the direction of the National Security Council and subject to intelligence plans, objective, and

requirements established by the Director of National Intelligence." Section 412 provides that the Director of National Intelligence and the Director of the CIA shall be the same person, unless the President decides otherwise, with the advice and consent of the Senate.

In accordance with the second "purpose" of title IV, section 401(2), "to authorize the Central Intelligence Agency to perform intelligence activities that are necessary for the conduct of the foreign relations and the protection of the national security of the United States," title IV clearly delineates the authorities of the Agency to collect, analyze, produce, and disseminate intelligence and to conduct special activities—section 414(b). One of the key provisions of title IV is reiteration in section 412(e)(4) of the Director of the Agency's authority "to protect intelligence sources and methods from unauthorized disclosure."

Mr. Chairman, title IV contains many other positive provisions too numerous to mention. I would like, however, to commend four provisions to the attention of the committee:

First: Section 414(b)(10) authorizes the Agency to "coordinate the overt collection of foreign intelligence by entities of the intelligence community from witting and voluntary sources within the United States." A slightly modified version of this provision which has administration approval is attached in an appendix. This amendment would make clear that the coordination of these overt collection activities would be subject to policy guidance of the Director of National Intelligence. Such guidance is now provided by the Director of Central Intelligence.

Second: Section 431(c) would allow the Director of the Agency in specified circumstances to extend to CIA employees by regulation certain benefits and allowances for foreign service employees that are enacted subsequent to the enactment of S. 2284.

This authority to provide for the extension of such benefits by regulation of the Director alone does not have administration approval. The administration and the Office of Management and Budget recognize, however, that it would frequently be appropriate to extend these subsequently enacted allowances and benefits to CIA personnel.

Thus, we and the Office of Management and Budget will want to work with the committee as the legislative process moves forward in order to determine how best to provide for the extension of these allowances and benefits. I want to add that I personally feel quite strongly that parity with the foreign service should be achieved where the situations and circumstances of our personnel serving abroad are indistinguishable from those of foreign service personnel.

Third: I must note that the section 426 requirement for congressional notification of withdrawals from the reserve fund is intimately related to the issue of prior notification of special activities, which the committee has been discussing with Admiral Turner. We should keep in mind that section 426 should track with whatever requirements are eventually decided upon in sections 125 and 142.

Finally: There is the provision concerning relief from the Freedom of Information Act (section 421(d)). Admiral Turner has already expressed the administration's view that this provision should have intelligence community-wide applicability and I believe that Senator

Huddleston has indicated that he does not think there will be any difficulty in accommodating the administration's concerns.

Mr. Chairman, that concludes my prepared remarks and I will be glad to answer questions.

Senator BAYH. Thank you very much, Mr. Carlucci.

Admiral Inman?

[The prepared statement of Vice Adm. B. R. Inman follows:]

PREPARED STATEMENT OF B. R. INMAN, VICE ADMIRAL, U.S. NAVY, DIRECTOR, NATIONAL SECURITY AGENCY

Mr. Chairman, I appreciate this opportunity to appear before the Subcommittee on Charters and Guidelines of the Senate Select Committee on Intelligence to testify on S. 2284, the Intelligence Reform Act of 1980.

My perspective on S. 2284, and particularly title VI which deals with the National Security Agency, is shaped by my experience as the Director, NSA, and by the experiences of my colleagues who preceded me as Director. As you know, when I was appointed Director of the National Security Agency, the Agency had recently been the subject of extensive investigation by Senate and House Committees. In addition, there had been several Administration reviews of intelligence and communications functions. The Agency had been called upon to cite in detail its authorities as these were defined in laws, executive orders and memoranda, and directives. One of my early actions in assuming the direction of the Agency was to review these authorities. I determined that, although there was widespread acceptance of the Agency and its missions, the Agency's authorities were not clearly set out in detail. A recent, now superseded, executive order, E.O. 11905, defined the structure of the Intelligence Community, the functions of the individual agencies, including the NSA, and the restrictions governing those agencies. Presidential Memoranda, a few National Security Council Directives, and certain Department of Defense Directives and delegations of authority provided additional elaboration of these authorities. I found that, although over the years the Congress had challenged Administration authority to establish various agencies within the Defense Department, the authority to establish and maintain the National Security Agency was not so challenged. However, I noted that virtually every Director at some time during his tenure expressed a need for legislative authority for the Agency.

I also determined that the Congress over the years had expressed a keen interest in protecting the sources of signals intelligence and sensitive cryptographic methods and techniques. Indeed, as early as 1933, Congress acted to protect such matters by enacting what is now section 952 of title 18 of the United States Code. Later, in 1950, Congress enacted another specific and somewhat unique statute, section 798 of title 18, U.S.C. to provide more comprehensive protection of those two categories of information and materials. Likewise, Congress enacted legislation to protect information concerning the Agency, provide certain administrative authorities and recognize the professional status of cryptology. Still later, in 1964, the Congress enacted Public Law 88-290 to establish a personnel security system and procedures governing persons employed by or granted access to sensitive cryptologic information.

I mention these in some detail because, as Director, I found it somewhat anomalous that while the Agency has been provided with significant Congressional guidance and protection with respect to the information and products produced by the Agency, there was little Congressional guidance on the functions and responsibilities of the Agency and few Congressionally provided statutory tools to be used to perform those functions.

History provides some highly instructive examples of the need for such guidelines and tools. Our signals intelligence and communications security functions were originally quite fragmented and subject to discontinuance for various reasons. Early in the twentieth century, elements of those functions were split between the Department of State and the military services. After World War I, for economic and other reasons, the Department of State discontinued its highly successful cryptologic efforts and the various service elements so engaged fell on hard times as well. The first statute protecting cryptologic successes was prompted by disclosures resulting from the discontinuance of that effort. As World War II approached, the services were engaged in fragmented, duplicative, but sometimes highly successful efforts now popularly known as "Magic." How-

ever, the collection, processing, and dissemination of this highly important and useful intelligence was impeded by questions concerning legality, by lack of effective communications, and, as the Congressional Pearl Harbor inquiry found, by "too many fingers in the pie" engaged in rewriting, interpreting and synthesizing the original intelligence product. Throughout the War, there was relatively effective coordination principally due to the almost total focus on strategic and tactical military intelligence support. However, after the War, this cohesion began to dissipate as the services went their own ways and strategic national signals intelligence received little attention. An attempt was made to coordinate these efforts in a manner somewhat like the early Confederation of the United States, with the establishment of an Armed Forces Security Agency governed by an advisory council, but this arrangement was no more effective or successful than the Confederation.

Finally, in 1952 President Truman made what I believe was an important and farsighted decision by establishing the principle that the U.S. should have a single unified signals intelligence effort, and that the National Security Agency headed by a Director responsible to the Secretary of Defense should be established as the core of that system. About this same time, the President also determined that the communications security function of the U.S. Government should be centralized under the Secretary of Defense and the lead role in this function assigned to the NSA. Each of these presidential determinations was based on a number of principles that have withstood the test of time extremely well. These principles are:

There should be a unified signals intelligence system;

Signals intelligence collection activities should be under the control of the Director of the National Security Agency to eliminate duplication and ensure effective processing and reporting;

Signals intelligence should be disseminated to users and, since such dissemination is necessarily source and method revealing, it should be provided strong and unique protections;

The development and production of communications security protections for U.S. communications should be centralized;

The two disciplines, signals intelligence and communications security, should complement one another, with each discipline providing the results of its learning to the other to further enhance the effectiveness of both; and

The Secretary of Defense should serve as Executive Agent for these functions because of the major contributions of the Service Cryptologic Elements, the close relationship between national and tactical signals intelligence collection and processing, and because the military services remain the largest customers for communications security devices which must be integrated into strategic and tactical communications systems.

Title VI of S. 2284 will effectively preserve these principles in law. It will provide guidance to the Director with respect to the proper role of the agency, and it will provide a solid set of administrative tools with which to carry out these two increasingly important functions. I do not need to go through a long recital of the various administrative authorities contained in Title VI of S. 2284 except to note that it provides those authorities we need to perform our missions, and I consider them necessities that will enable us to function effectively in the environment we face today and in the future. There do exist, however, some purely technical issues that I expect the staff can resolve.

The Charter for the National Security Agency is a welcome legislative proposal that, if enacted in its present form, will provide the nation with strong and effective signals intelligence and communications security programs. It will also serve to preserve what has proved to be a highly successful, efficient and effective system and to prevent a recurrence of some of the mistakes history has documented. Thank you. If you have any questions, I would be glad to answer them.

TESTIMONY OF B. R. INMAN, VICE ADMIRAL, U.S. NAVY AND DIRECTOR OF NATIONAL SECURITY AGENCY

Admiral INMAN. Mr. Chairman, I appreciate this opportunity to appear before the Subcommittee on Charters and Guidelines of the Senate Select Committee on Intelligence to testify on S. 2284, the Intelligence Reform Act of 1980.

My perspective on S. 2884, and particularly title VI which deals with the National Security Agency, is shaped by my experience as the Director, NSA and by the experiences of my colleagues who preceded me as Director. As you know, when I was appointed Director of the National Security Agency, the Agency had recently been the subject of extensive investigation by Senate and House committees.

In addition there had been several administration reviews of intelligence and communications functions. The Agency had been called upon to cite in detail its authorities as these were defined in laws, executive orders and memoranda, and directives.

One of my early actions in assuming the direction of the Agency was to review these authorities. I determined that, although there was widespread acceptance of the Agency and its missions, the Agency's authorities were not clearly set out in detail.

A recent, now superseded, Executive order, Executive Order 11905, defined the structure of the intelligence community, the functions of the individual agencies, including the NSA, and the restrictions governing those agencies. Presidential memoranda, a few National Security Council directives, and certain Department of Defense directives and delegations of authority provided additional elaboration of these authorities.

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History provides some highly instructive examples of the need for such guidelines and tools. Our signals intelligence and the communica-

tions security functions were originally quite fragmented and subject to discontinuance for various reasons.

Early in the 20th century, elements of those functions were split between the Department of State and the military services. After World War I, for economic and other reasons, the Department of State discontinued its highly successful cryptologic efforts and the various service elements so engaged fell on hard times as well.

The first statute protecting cryptologic successes was prompted by disclosures resulting from the discontinuance of that effort. As World War II approached, the services were engaged in fragmented, duplicative, but sometimes highly successful efforts now popularly known as "Magic."

However, the collection, processing and dissemination of this highly important and useful intelligence was impeded by questions concerning legality, by lack of effective communications and, as the congressional Pearl Harbor inquiry found, by "too many fingers in the pie" engaged in rewriting, interpreting and synthesizing the original intelligence product.

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The development and production of communications security protections for U.S. communications should be centralized.

The two disciplines, signals intelligence and communications security, should complement one another, with each discipline providing

the results of its learning to the other to further enhance tbe effectiveness of both.

And the Secretary of Defense should serve as executive agent for these functions because of the major contributions of the Service Cryptologic Elements, the close relationship between national and tactical signals intelligence collection and processing, and because the military services remain the largest customers for communications security devices which must be integrated into strategic and tactical communications systems.

Title VI of S. 2284 will effectively preserve these principles in law. It will provide guidance to the Director with respect to the proper role of the Agency and it will provide a solid set of administrative tools with which to carry out these two increasingly important functions. I do not need to go througb a long recital of the various administrative authorities contained in title VI of S. 2284, except to note that it provides those authorities we need to perform our missions, and I consider them necessities that will enable us to function effectively in the environment we face today and in the future. There do exist, however, some purely technical issues that I expect the staff can resolve.

The charter for the National Security Agency is a welcome legislative proposal that, if enacted in its present form, will provide the Nation with strong and effective signals intelligence and communications security programs. It will also serve to preserve what has proved to be a highly successful, efficient and effective system and to prevent a recurrence of some of the mistakes history has documented.

Thank you. If you have any questions, I would be glad to answer them.

Senator BAYH. Thank you, Admiral Inman.

General Tighe, do you have a statement, or is Admiral Murphy going to——

General TIGHE. Mr. Chairman, I am very pleased to be here. I do not have a statement, but I will be very glad to answer any questions you may have.

Senator BAYH. All right. Glad to have you with us.

Admiral Murphy?

[The prepared statement of Adm. Daniel J. Murphy follows:]

PREPARED STATEMENT OF DANIEL J. MURPHY, ADMIRAL, U.S. NAVY (RETIRED), DEPUTY UNDER SECRETARY OF DEFENSE (POLICY REVIEW)

It is a pleasure to appear before the Committee this morning to present Defense Department views on S. 2284. It has had a long and arduous journey getting here. I recall seeing an early draft of S. 2525, the predecessor of this bill, shortly after I came into my present position in June of 1977. I must say it raised doubts in my mind whether legislation on this subject was feasible at all. Now, nearly three years later, we are at the point where the Administration and the Committee are in general, but not complete, agreement on this legislation. Both branches of Government deserve credit for bringing us here. I believe—both for their perseverance and for their willingness to recognize the legitimate concerns of the other. I trust this same spirit of accommodation will carry us over the last mile as we work to iron out the remaining differences.

I am here today to discuss the Defense Department's particular perspective on this bill and how we view its impact on Defense intelligence activities.

Although the Defense Department does not receive a specific charter under the bill, the bill would recognize for the first time in statute a number of Defense

intelligence components as members of the national intelligence community, and provide them with express statutory authority for the conduct of their foreign intelligence and counterintelligence functions. We view this as beneficial to us, although we realize the benefit does not come without strings attached. The national intelligence framework created by the bill, as well as the restraints and limitations imposed by it, will impact as much on Defense intelligence components as on the CIA and FBI.

It is important to us that the bill—as we read it—does not hamper the Department from collecting and disseminating tactical intelligence needed by operational commanders. "Tactical" intelligence units, assigned in support of such commanders, are excluded from the bill altogether in proper recognition, we believe, of their role in direct support of operational forces.

Only one Defense intelligence component—the National Security Agency—receives a detailed "charter" under this bill. The decision to charter NSA, and not other DOD intelligence components, was based essentially on the unique place NSA occupies in the national intelligence community, and the fact that other Defense intelligence components are either staff elements of a headquarters organization or intelligence elements in the command structure of the military services.

NSA, on the other hand, is the only DOD intelligence component originally created by presidential directive, and it performs signal intelligence functions for the Government as a whole. In view of its collection capabilities, it is important that its functions be clearly defined; and that because of the extraordinary sensitivity of its activities, special statutory allowances be made for the performance of its functions. The Department of Defense strongly supports the charter proposed for NSA, believing that it will considerably strengthen that agency's operations.

With respect to the missions and functions assigned by the bill to the Director of National Intelligence, we generally find the formulation contained in S. 2284 acceptable. While the bill goes into great detail in identifying such functions, it essentially would only codify the functions and responsibilities which the DCI now has as a matter of policy or practice under Executive Order 12036 and other Executive Branch guidance. Defense does not view the provisions in S. 2284 in this regard as significant departures from the status quo.

Similarly, with regard to the charters for CIA and the FBI, Defense does not view provisions of these charters as significantly altering present Defense Department relationships with these agencies.

In a number of respects, however, the bill would alter the status quo, and I would like to devote the remainder of my time to these. Since these are somewhat repetitive of points already made by the DCI last week, I will only highlight them here, rather than read all of my prepared statement.

First, with regard to special activities, the bill would replace the Hughes-Ryan framework with one that is at once more limited and more encompassing—more limited in that reports to Congress under the bill would go to only the two intelligence committees; but more encompassing in that the bill would apply to special activities conducted by any agency, not just CIA, and prior notification to Congress would, for the first time, be required by statute.

S. 2284 would permit the Department of Defense to conduct or support special activities in peacetime, only if the President determined that it was better able to achieve the intended objective. In time of war or hostilities, however, the Secretary of Defense could be delegated authority to approve special activities undertaken in support of combat operations. Whether approved by the President in peacetime, or the Secretary in war, the bill would still require prior notification of the special activity to Congress. We share the concern of the Administration that such a requirement not be written into law. First, as has been pointed out by the DCI, the requirement is too inflexible. There may be occasions when the United States is faced with taking action in highly explosive circumstances, where a delay or a loss of secrecy could be fatal to those involved. Recent events readily suggest such scenarios. A requirement to notify Congress in advance of such an undertaking, even if it were limited to the eight senior members identified in the bill, could pose a significant problem in terms of acting with necessary dispatch. Second, Defense is also concerned with how the definition of the term "special activities" will be interpreted in time of hostilities. Would it encompass, for example, a raid to free American prisoners of war, assuming the raid was

carried out by persons whose affiliation with the United States was not apparant? It seems to us the bill could be read that way, confronting the Secretary, in this instance, with a choice between possibly jeopardizing the safety of those involved and carrying out the operation in disregard of a statutory requirement.

Defense shares the Administration view that a requirement that Congress be "fully and currently informed" of special activities—supplemented by language in the report on the bill that under all but extraordinary circumstances, this means prior reporting—is a far more desirable resolution of this problem.

Let me turn now to several of the limitations and restrictions on intelligence activities proposed by the bill.

We view as unwise the outright ban on the use of religious organizations, educational institutions, and media organizations as "cover" for intelligence activities. Given the way the term "cover" is defined in the bill, it would appear to preclude the Department from asking any person who is a member of the professions or programs listed in the bill to collect positive intelligence for the Department, notwithstanding the fact that he may be in a unique position to obtain it, is willing to do so, and the information is of vital importance to the United States. The prohibition is so sweeping, in fact, that it appears to preclude us from even using a military chaplain, a reporter from the Stars and Stripes, or an announcer for the Armed Forces radio for intelligence-gathering purposes even if the person volunteered to do so.

The Department recognizes the committee's concern here that intelligence agencies not "subvert," if you will, those institutions which occupy a special place in our society and thereby cast doubt upon the complete independence of such institutions from government control. The Executive Branch shares this concern, and, indeed, has taken steps through internal regulations to ensure this does not happen. But we think it is a mistake to ban by statute the use of persons in these professions who are willing to help their government.

The bill's treatment of foreign intelligence collection involving United States persons is acceptable to Defense. However, I would like to offer a few comments on one particular aspect of it since it has prompted considerable apprehension among some. I think it is important to allow, as the bill does, some latitude, albeit very limited, for the collection of foreign intelligence from United States persons abroad without their consent. I recognize the use of intrusive surveillance against such persons who have not broken any law raises serious objections in the minds of some. I would emphasize, however, that in most such cases we will be dealing with "United States persons," as that term is defined in the charter, whose cooperation with the United States over a matter of vital concern to its security is not forthcoming. These are the only circumstances where such surveillance is contemplated by the bill. Furthermore, before such surveillance could be undertaken, the President must certify that it was warranted, and a court would have to issue a warrant authorizing it in each particular case. Such collection is also subjected to review by the Attorney General, and oversight by this committee. Thus, I do not think it fair to characterize this particular provision of the bill as unleashing the intelligence community to spy on innocent Americans abroad, as some have charged. This provision of the bill constitutes an extremely limited authority which our experience indicates would rarely be employed. But to foreclose forever the ability of the Government to undertake such collection would be a mistake.

With regard to the bill's treatment of counterintelligence, Defense also finds it acceptable. Our concern here is to retain authority to investigate activity on the part of a U.S. serviceman who is suspected of cooperating with a hostile intelligence service. The conduct involved may itself involve no criminality—a serviceman or woman may be seen talking with a suspected KGB agent in a parking lot—but we need to be able to investigate such a circumstance to determine whether or not he or she is cooperating with, or is a target of, the KGB agent. We believe the bill provides us this latitude. It does require that specified procedures be followed when certain collection techniques are used in these circumstances and requires that an annual review of such collection be conducted by the secretary of each military department or his designee. While these requirements are somewhat more onerous than those now in effect, they are acceptable to the department.

Similary, I note that the bill prohibits the use of covert techniques in investigations of potential sources of assistance to intelligence activities; investigations

of persons who are targets of clandestine intelligence activity, and security investigations. While in some respects creating a formal limitation where none has existed before, this requirement does conform with existing investigative practice within Defense and should present no difficulty to us.

Before leaving the area of restrictions, I also wanted to comment on the lack of any real waiver in the bill during time of war. The only provisions to this effect appear in the section forbidding the use of clerics, academics and the press, suggesting that otherwise the limitations and restrictions contained in the bill remain in effect during time of war or hostilities. Defense has a particular concern that such restrictions will continue to apply abroad, indeed, even in the area of hostilities. It may not be possible to observe the requirements of this bill and still take necessary action in a combat environment. If we have information, for example, that a U.S. citizen or company in a combat area is furnishing information on U.S. troop movements or battle plans to the enemy, chances are we will not be able to wait for an application to be filed with a court in Washington and still be able to protect our combat personnel and activities. We must have greater flexibility, and therefore support the Administration's request that the bill include a wartime waiver.

I would now like to turn to two particular provisions in the bill which are designed to provide protection to intelligence activities: the provisions granting a limited exemption from the Freedom of Information Act and the so-called "identities protection" title.

As you are aware, the provision granting a limited exemption from the Freedom of Information Act applies only to CIA. It provides the Director, CIA, authority to designate certain files as exempt from the Act. This means that the Agency would not have to search these files every time it receives a Freedom of Information request only to determine that the documents identified by the search are classified and not releasable to the requestor. The Defense Department recommends this provision be amended to permit the DNI to exempt similar files of NSA, DIA, and other elements of the intelligence community which deal with sensitive matters. There are some types of NSA files, for example, which we know contain information that is clearly exempt from release under the Freedom of Information Act. Nevertheless, the law requires that NSA locate and identify particular documents that are responsive to any request it receives and rule on the continued classification of each, separately. This is a serious waste of time and resources, and serves no useful public purpose. I would further point out that the proposed exemption would not apply to requests for personal information involving the requestor—all files would continue to be searched for this purpose.

With regard to the identities protection provisions, the Department of Defense supports any constitutionally defensible provision designed to address this problem. Although CIA has borne the brunt of the adverse impact of this type of recent assault on the intelligence community, the revelation of agent identities is a serious potential problem for Defense as well. We also have agents whose lives would be endangered by disclosure of their relationship with us. While we appreciate the need for drafting legislation that will meet constitutional requirements, we urge the Committee to report out a criminal provision that will permit the Government to prosecute such egregious actions.

The Department also supports the Administration's position that the Foreign Intelligence and Surveillance Act ought to be amended in the three respects identified in the DCI's presentation. These are limited amendments designed to remedy several shortcomings which have become apparent in our short experience with the FISA.

In closing, Mr. Chairman, I want to stress again that the Defense Department has a vital stake in continuing to collect and receive high quality, timely intelligence. From predicting armed atack against the United States and its allies, to designing and producing weapons, to deploying our forces around the world, Defense is dependent upon intelligence. It is absolutely essential, therefore, that any statute regulating intelligence activities not prevent us from collecting and using the information we need to cope with our responsibilities. As the committee continues to deliberate this bill, and hears from others, I know you will keep our concerns in mind.

Mr. Chairman, this concludes my formal statement. We do have several minor technical changes to suggest to the Committee but none merit raising here. I will be pleased to respond to any questions you may have.

TESTIMONY OF DANIEL J. MURPHY, ADMIRAL, U.S. NAVY (RETIRED), DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY REVIEW

Admiral MURPHY. Mr. Chairman and gentlemen, it is a great pleasure to appear again before this committee. I am here today to discuss the Defense Department's particular perspective on this bill and how we view its impact on defense intelligence activities.

Although the Defense Department does not receive a specific charter under the bill, the bill would recognize, for the first time in statute, a number of defense intelligence components as members of the national intelligence community, and provide them with express statutory authority for the conduct of their foreign intelligence and counterintelligence functions.

We view this as beneficial to us, although we realize the benefit does not come without some strings attached.

The national intelligence framework created by the bill, as well as the restraints and limitations imposed by it, will impact as much on defense intelligence components as on the CIA and the FBI.

It is also important to us that the bill as we read it does not hamper the Department from collecting and disseminating tactical intelligence needed by our operational commanders.

Tactical intelligence units assigned in support of such commanders are excluded from the bill altogether in proper recognition, we believe, of their role in direct support of Operational Forces.

Only one Defense intelligence component—the National Security Agency—receives a detailed charter under the bill. The decision to charter NSA and not the other DOD intelligence components was based essentially on the unique place that NSA occupies in the national intelligence community and the fact that other defense intelligence components are either staff elements of a headquarters organization or intelligence elements in the command structure of the military services.

With respect to the missions and functions assigned by the bill to the Director of National Intelligence, we generally find the formulation contained in S. 2284 acceptable. While the bill does go into great detail in identifying such functions, it essentially would only place into law the functions and responsibilities which the DCI now has as a matter of policy or practice under the Executive Order 12036 and other executive branch guidance.

In a number of respects, however, the bill would alter the status quo and I would like to devote the remainder of my time to these.

These are somewhat repetitive points already made by the DCI last week. I would like just to highlight them and not read the whole statement, if that is all right with the chairman.

First: With regard to special activities, S. 2284 would permit the Department of Defense to conduct or support special activities in peacetime, only if the President determined that it was better able to achieve the intended objective.

In time of war or hostilities, however, the Secretary of Defense could be delegated authority to approve special activities undertaken in support of combat operations.

Whether approved by the President in peacetime or the Secretary in war, the bill would still require prior notification of the special activity to Congress.

We share the concern of the administration that such a requirement not be written into law. First, as has been noted by the DCI, the requirement is too inflexible. There may be occasions when the United States is faced with taking action in highly explosive circumstances where a delay or loss of secrecy could be fatal to those involved.

Second: Defense is also concerned about how the definition of the term "special activities" will be interpreted in times of hostilities. Would it encompass, for example, a raid to free American prisoners of war, assuming the raid was carried out by persons whose affiliation with the United States was not apparent?

It seems to us the bill could be read that way, confronting the Secretary, in this instance, with a choice between possibly jeopardizing the safety of those involved or carrying out the operation in disregard of a statutory requirement.

Let me turn now, Mr. Chairman, to several of the limitations and restrictions on intelligence activities proposed by the bill. We view as unwise the outright ban on the use of religious organizations, educational institutions and media organizations as cover for intelligence activities. Given the way the term "cover" is defined in the bill, it would appear to preclude the Department from asking any person who is a member of the professions or programs listed in the bill to collect positive intelligence for the Department, notwithstanding the fact that he may be in a unique position to obtain it, he is willing to do so, and the information is of vital importance to the United States.

I also wanted to comment, Mr. Chairman, on the lack of any real waiver during time of war. The only provisions to this effect appear in the section forbidding the use of clerics, academics or the press, suggesting that otherwise the limitations and restrictions contained in the bill remain in effect during time of war or hostilities.

Defense has a particular concern that such restrictions will continue to apply abroad, indeed, even in an area of hostilities.

It may not be possible to observe the requirements of this bill and still take necessary action in a combat environment.

I would now like to turn to two particular provisions in the bill which were designed to provide protection to intelligence activities: The provisions granting a limited exemption from the Freedom of Information Act and the so-called identities protection title.

As you are aware, the provision granting a limited exemption from the Freedom of Information Act applies only to the CIA. The Defense Department recommends this provision to be amended to permit the DNI to exempt similar files of NSA, DIA and other elements of the intelligence community which deal with sensitive matters.

There are some types of NSA files, for example, which we know contain information which is clearly exempt from release under the Freedom of Information Act. Nevertheless, the law requires that NSA locate and identify particular documents that are responsive to any requests it receives and rules on the continued classification of each separately.

This is a serious waste of time and resources and serves no useful public purpose.

With regard to the identities protection provisions, the Department of Defense supports any constitutionally defensible provision designed to address this problem.

Although the CIA has borne the brunt of the adverse impact on this type of recent assault on the intelligence community, the revelation of agent identities is a serious potential problem for Defense as well.

In closing, Mr. Chairman, I want to stress again that the Defense Department has a vital stake in continuing to collect and receive high-quality, timely intelligence. From predicting armed attack against the United States and its allies, to designing and producing weapons, to deploying our forces around the world, Defense is dependent upon good intelligence.

It is absolutely essential, therefore, that any statute regulating intelligence activities not prevent us from collecting and using the information that we need to cope with our responsibilities.

I know that as the committee continues to deliberate this bill and hears from others, that you will keep our concerns in mind.

Thank you, Mr. Chairman, and I, too, will try to answer any questions that you have.

Senator BAYH. Thank you, Admiral Murphy.

Gentlemen, we appreciate your opening statements and I understand that Director Webster has to leave by 3:45, so gentlemen, if we have questions for Director Webster, perhaps we should concentrate on those first.

I think we have general consensus here that the charter is good for the country and good for the intelligence agencies of the country. This committee has undertaken to cooperate with you in any way that we possibly could to get you the resources you need to improve the quality of intelligence gathering, and I have not been ashamed or reluctant to brag about the general quality of intelligence that has been forthcoming from your shops.

I think we have a darn good intelligence-gathering capability. Once in a while, something falls through the cracks, but basically I think you have an outstanding operation.

What we are trying to do in this charter is to fulfill a dual commitment that we have, and I know that you respect the sensitive position we are in. We have a responsibility, on the one hand, to give you the resources and give you the legislative mandate to provide the best possible intelligence we can to policymakers to protect the country.

On the other hand, we have an equal responsibility, it seems to me, to see that this whole mechanism operates under the rule of law. Some of the devices that I have witnessed that are in the jurisdiction of some of you almost defy belief in their ability to provide information.

I guess in the shorthand of the world we are living in, what we want to try to do is find a way we can make those systems operate even more effectively and also make sure that they are directed at our adversaries. And therein, sometimes, we get a difficult mixture of those joint responsibilities.

Director Webster, let me just start off—you stressed the importance in some of your past statements of limiting the FBI to investigation of criminal activity.

In working, in putting together the Foreign Intelligence Surveillance Act, that I and others labored on mightily and finally got out of

the subcommittee, on the rights of Americans, we were able to find language which tied electronic surveillance to a criminal act, or a possible criminal act.

Now, can we not find and develop a similar standard to apply to FBI counterintelligence as far as investigation of Americans is concerned?

Judge WEBSTER. Mr. Chairman, I frankly believe that that is very difficult to do. I must say I first thought it would be difficult to do in the domestic area. I am now thoroughly convinced and have supported a criminal standard for all of our domestic investigations.

I have also supported such a standard in terms of the more sensitive techniques, which are more intrusive and therefore require a higher threshold of information, but in counterintelligence you engage in a number of activities in order to determine the presence of clandestine activity, without the clear indication of criminal conduct.

Additionally, there are other circumstances in which the counterintelligence agencies have a very legitimate interest in finding out whether foreign governments have an undue interest in any person who might be a U.S. person in this country.

The recruiting effort goes on constantly. It is important for us to be able to identify that recruiting effort not only so that we can seek possible targets of foreign, hostile intelligence gatherers, but also in order that we can determine from the types of people that they are attempting to recruit, what their basic interests are in this country and thereby be in a better position, in cooperation with other intelligence agencies, to protect those interests.

My sense of it is that instead, the thrust should be to upgrade the level of factual determination or accountability within the agency itself to require a higher threshold of approval before such investigations can commence, coupled with a higher level of accountability to the Attorney General and to the Congress.

Senator BAYH. What types of techniques do you feel need to be accorded different kinds of protection?

Judge WEBSTER. I think surveillance, to begin with. That is a customary technique and one that is most generally employed in the collection of human intelligence, or human counterintelligence.

Mail covers, as distinguished from mail openings, where there is no real intrusive governmental intrusion into people's private lives.

Inquiries or interviews conducted with third parties to find out whether there is a basis for any suspicion, or the indications that are there.

These, I would contrast with electronic surveillance or mail openings, the very intrusive types which I am prepared to accept under a criminal standard or a court order.

Senator BAYH. Would you put physical search under those same criteria?

Judge WEBSTER. Physical search I would put under the second category; that is, if it involves a trespass.

Senator BAYH. The very difficult, very real problem, that every member of this committee, I suppose, has dealt with in the last matter of months, is where we have an American citizen who is very concerned about his native land.

To use two specific examples, suppose he is concerned about Israel or an Arab country, or he is a Greek or a Turk American. And we get into the kind of legislative differences of opinion we have here and he feels very strongly that the position of his homeland is a good one and he consults confidentially with the Ambassador and then he goes to see his Senator and his Congressman, exercising his protected political rights as an American citizen.

How do you deal with that situation?

Judge WEBSTER. It is a tough one to deal with because we do not know the motivation at that time. We simply know that an American citizen is having extensive contacts with foreign officials under circumstances which could either be innocent or an exercise of his constitutional right, or could be for some purpose not in the best interests of the United States.

That is why I want to leave an area open to us to develop, on a case by case basis, under approved Attorney General procedures, the information that is there.

I believe the charter also provides for a higher level of accountability in those situations which might significantly affect the exercise of political or religious rights. So that if there is a possibility that there is a political activity afoot, rather than an espionage or intelligence activity, we would have to report that to the Attorney General and he would be made aware of our interest in that individual and could control, if he chose to do so, the level of our activity.

Senator BAYH. Could you conceivably deal with this counterespionage problem by specifying a list of countries that are kinds of countries that we are particularly interested in gathering intelligence about and confine those intrusive tactics to Americans who are contacting one of those countries?

Judge WEBSTER. I should say this—taking into account that this is a public hearing—that we already function in a similar way under our classified foreign counterintelligence guidelines, and I would assume that similar procedures would be put in place by the Attorney General to supplement the provisions of the charter.

Senator BAYH. Senator Goldwater?

Senator GOLDWATER. Thank you.

Many Americans have the idea that the FBI is the only agency permitted to conduct intelligence operations within the United States and that the CIA operates only abroad. But the charter would let the CIA operate domestically to target foreigners in a limited category of U. S. persons in this country.

Now, does the FBI have any problems with this CIA rule inside the United States?

Judge WEBSTER. No, Senator Goldwater.

It has been the practice in the past, and I believe it would be spelled out in this charter, that the Director of the FBI is the coordinator of counterintelligence activities within this country, that we would be made aware of, and have an opportunity to object to, any type of counterintelligence activity by agencies other than the military on their own reservations who might be conducting these activities.

We have a good working relationship with the CIA, not only in terms of unilateral activity, but also in terms of some joint activity.

So long as the agency responsible primarily for counterintelligence activity in this country is given the responsibility and the opportunity to interpose objections to modify the procedures, I have no concern.

Senator GOLDWATER. You have a good working relationship, then, with the whole family?

Judge WEBSTER. The whole family, without exception.

Senator GOLDWATER. Have you ever run into difficulties at all?

Judge WEBSTER. Not difficulties. From time to time, there are manpower constraints within a particular agency—sometimes our own. Other agencies have interests that need to be protected and furthered and time constraints, and always we try to work these matters out. When there are many of us involved, we refer the matter to the National Security Council.

Senator GOLDWATER. Now, the charter permits the FBI to provide support for the positive foreign intelligence collection programs and other intelligence agencies.

Now, this support would include FBI investigation of Americans who are not suspected foreign agents and in order to collect positive foreign intelligence for another agency.

How often would you expect such investigations would be conducted?

Judge WEBSTER. This is merely an estimate on my part. I would say that that would not be the significant part of our responsibilities.

We carefully monitor it and I have no doubt that it would not be a significant assignment on our part, based on past experiences.

Senator GOLDWATER. One more question.

As you know, this is a rather comprehensive bill, some 172 pages, and there are only 90 days, I am reminded, until the quadrennial Olympics take place between the two parties. And we do not have a good hockey team.

If the full charter cannot pass in this Congress, are the provisions relating to the FBI sufficiently important to the Bureau that we should consider enacting them separately?

Judge WEBSTER. That is a difficult question for me to answer. The provisions relating to the FBI are important to us, and I believe probably could be enacted separately, but this is an integrated document and there are other values to be served by enacting it as a single charter.

The counterterrorism provisions that are contained in the charter are not dissimilar from the authorities under which we operate, both against domestic terrorists and international terrorists.

Senator GOLDWATER. I think that is a question the whole family should be considering. But we have heard great emphasis placed upon three areas of this charter and I think that the general agreement on the importanee of those three entities that we—and we might find ourselves coming out with just those three, but you would be happy if you got that?

Judge WEBSTER. I would, yes. I cannot speak for the rest of the community, but I would.

Senator GOLDWATER. Thank you very much.

Senator BAYH. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman and gentlemen, I am sorry I was not here at the beginning to offer publicly my

personal thanks to each of you and your staffs for the labor that you have put into this effort over these many months. As you have alluded in your testimony, we have come a long way. I think we have resolved a great many differences all in the spirit of attempting to develop the very best mechanism for our intelligence operations that we can and, at the same time, protecting to the fullest extent possible the rights and privileges of our citizens.

I want to reemphasize Judge Webster's statement that there is some advantage to having the total package of charter legislation because its elements are all related to some degree, and I think we will have a much better understanding of how the intelligence operation should function if we have the full charter than we do if we just pick out certain parts of it that might be particularly popular at this time. I think the long-range effect would be advantageous.

Judge Webster, I believe—did you say that the Judge needed to leave at 3:45 or 2:45?

Senator BAYH. Three forty-five.

Senator HUDDLESTON. Well, I have got an hour.

Actually, I will not take that much time. I have the feeling that I should rest my case right here but, Judge Webster, just a couple of things.

You mentioned also a need for some relief from the Freedom of Information Act for the FBI. Could you give us any specifics?

You are not asking, I am certain, for total exemption from the Freedom of Information Act. Could you give us the areas that are posing the biggest problems for you?

Judge WEBSTER. I would be happy to do that, Senator.

I have, as I believe you know, submitted to the various committees who have oversight responsibilities for the FBI some seven suggestions.

The Attorney General has been considering a much more extensive study within the Department and has not yet taken his position, but if I can, I might just mention the seven of these, and mention them as briefly as I can.

I can give them to you largely from memory.

One request would simply be a practical one and that is to address the time frame within which responses have to be made. It is impossible for even 300 people working full time and a budget of about $9 million to comply with. We are trying to be realistic about that so we can be in compliance with the law.

Senator HUDDLESTON. Right. And this is the staff that is required now, about 300 people?

Judge WEBSTER. Yes, indeed.

Senator HUDDLESTON. $9 million a year.

Judge WEBSTER. Yes.

Senator CHAFEE. I wonder if I might interrupt. Is the Director saying that 300 people are required in the FBI to answer Freedom of Information requests?

Judge WEBSTER. That is correct.

Senator CHAFEE. At a cost of $9 million per year?

Judge WEBSTER. That is correct.

Senator CHAFEE. But 300 people are devoting full time to answering Freedom of Information requests.

Judge WEBSTER. Yes, sir.

Senator CHAFEE. All right.

Judge WEBSTER. The second suggestion was that we not be required—but be permitted to make the judgment—as to whether to disclose our records to felons in prison and citizens in foreign nations, which we are now required to do.

The third would be delete the requirement that a record must be an investigatory record before it could be protected under the exemptions. That would insure that our manuals of investigative procedure would be also protected under the act.

The fourth would be to divide the FBI records into two categories: one which would include our most sensitive information—foreign countorintelligence, foreign intelligence, organized crime and counterterrorism and exempt those records from public disclosure.

Records generated in the other category would be available under the normal provisions of the current act.

The fifth suggestion is that the statute specify that State and municipal agencies and foreign governments merit confidential source protection when they provide information on a confidential basis. When we get information from outside the Bureau, from foreign governments—our friends and allies and from municipal governments and other sources—we must be in a position to guarantee that that information will remain confidential.

Sixth, and perhaps the most important, we would like to be permitted to withhold information which might tend to identify a source. Currently we are required on a line by line, word by word basis, to decide whether it will identify a source. We do not know what the requestor already knows and could learn. The green car may be significant to the requestor, but we cannot strike the word "green" because it does not clearly identify.

Seventh, finally I did suggest a 7-year moratorium on our criminal investigative records before they could be submitted to disclosure so as to give some age to them, to reassure our informants in the field who are not at all assured today, that our information can be kept secret.

Those are the seven suggestions that I have made. All of them are important and any that we can secure will enhance our ability to do our work effectively.

Senator HUDDLESTON. Now, the question of information that might tend to identify a source, that seems to me to get into a very difficult area that could be interpreted very broadly. As you say, you do not know what the questioner might know. The question is whether or not what he is asking for is that final piece of the jigsaw puzzle that gives him the answer.

Judge WEBSTER. It would not just be our own judgment because the same records would be subject to the same appeal process that the act provides for at the present time, eventuating an important determination of whether or not it might tend to do so.

If we are unrealistic, or overreaching, the courts can correct us.

Senator HUDDLESTON. Of course, as I understand what you have outlined there, you would pretty well close off most information about intelligence operations.

Judge WEBSTER. We would, sir.

Senator HUDDLESTON. Now, would you suggest any kind of a time limit? You mentioned a 7-year moratorium on criminal records, but should there be a time somewhere down the road, 20 years or 30 or whatever that intelligence records might be released under the FOIA for the sake of historians, or should they be closed forever?

Judge WEBSTER. I guess I have not gotten that far in my thinking. We have found over the years that we have had relationships with assets and others that have gone 20 or 25 years.

Many of these people have resumed private lives. They still have families and are subject to both reprisals and intimidations.

So I am not prepared to suggest a figure to you. I am sure that at some point when the risk of harm ceases to outweigh the public interest, then I would have confidence that the Congress could make that judgment.

Senator HUDDLESTON. Judge Webster, one of the areas that has given us—and you and Mr. Carlucci too, I think—the most concern and the most difficulty is the question of targeting and collecting intelligence against American citizens, particularly innocent American citizens. When speaking of positive foreign intelligence, the one thing that seems to me to be lost by those who raise the red flag and express so much concern—and I do not question the legitimacy of their concern—is the difference in targeting an individual for a criminal investigation and in targeting an individual for the collection of positive intelligence, which presumably is not to be used against him in a criminal case.

Judge WEBSTER. At the end of your sentence you put your finger on the main distinction.

Very few intelligence cases go to prosecution for a number of valid reasons. If an American citizen is involved there may be reasons where it is not wise to surface the case. It may be that you would want to follow or further investigate for a substantial period of time what that person is doing, in terms of minimizing the damage and in understanding the interests of the foreign power in dealing with that individual.

It may also be that we will want to develop a technique of disinformation with respect to confusing the foreign power who was seeking information. So there are a wide variety of techniques which can best be discussed in closed session, all of which tend to distinguish positive intelligence gathering from criminal investigation where prosecution is the end objective.

If it is for identification or development of evidence for prosecution, we are operating in an area in which clandestine behavior is hard to identify. You have to be very carefully controlled by outside forces. Much dry pleading, as they say. The process is extended over substantial periods of time.

And I think the national security of the country demands that we have an earlier threshold than probable cause, or reasonable cause that the individual has committed a crime.

The counterbalance to that is the safeguards which are built into this charter which are to protect American citizens who are exercising religious and political activities, by requiring us to make the decision at a higher level and to make senior officials, such as the Attorney General and the oversight committees, aware.

Senator HUDDLESTON. Let's consider the situation of an individual who may not be involved in any criminal activity, but who may have information that the President has determined to be essential to the security of the United States. Now, that kind of collection against an individual is not, of course, intended for the purpose of developing any kind of a criminal case against him. There are to be minimization procedures established so that this information must not be used in a way that would be detrimental to this individual.

Is there not a distinct difference between that kind of an intrusion on a citizen and an intrusion that might involve trying to develop information purposely to present a case against him?

Judge WEBSTER. Oh, yes; there is a certain very significant difference in the case of foreign intelligence. The vast majority of it is the intrinsic value of the information.

I say the vast majority, because at times the information may be related to other individuals, but the collection of positive intelligence never relates to the conduct of the individual himself.

Senator HUDDLESTON. And, Judge Webster, in your judgment, would the procedures that have been established in S. 2284 for that kind of protection—although this is outside of the United States and outside of your jurisdiction, but I want your judicial opinion on it more than anything—which include the President's finding that it is essential to the security of the United States and a requirement of a court order when intrusive techniques are to be used after reasonable and sufficient protection for the individual's right of privacy?

Judge WEBSTER. I do, Senator, and I suspect that it provides more care and more safety than any other nation on Earth.

Senator HUDDLESTON. It seems to me the question, as I have said earlier, boils down to whether or not the President of the United States must sit idly by and allow some impending damage to occur to the security of the United States without taking some action when he knows, or has reason to believe, that a citizen of the United States has information that would prevent that occurrence from happening.

That basically directed us in reaching this particular provision.

I appreciate your comments. My time has expired.

Senator BAYH. Senator Garn?

Senator GARN. Thank you, Mr. Chairman. I know you want us to ask questions of Judge Webster because he has to leave, so I will just ask one followup question.

He testified the FBI had 300 people and was spending $9 million to comply with freedom of information; if the others representing CIA DIA, and DOD could just give me those same figures.

Mr. CARLUCCI. In the case of CIA, approximately 115 man-years and $2 million but I must emphasize that that is for the search alone and does not cover costs for the whole FOIA process. It does not take into account what we might categorize as the indirect labor in reviewing the files.

Admiral INMAN. Senator Garn, I do not have precise numbers. Ours are lower than that, thanks to the protection of laws we already have. We still spend a substantial amount of manpower for the search process, even though we know the courts will uphold us, and they have in their record of nondisclosure.

Senator GARN. Thank you.

General TIGHE. Senator Garn, I will furnish as precise an answer as I can for the record. It is a heavy burden.

We also have a lower volume of requests and do not have the same kind of a burden as the FBI. There is nevertheless a heavy burden in furnishing manpower for that task.

[Freedom of Information Act costs of Defense Intelligence Agency follows:]

The following is a recapitulation concerning the number of Defense Intelligence Agency personnel and annual expenditures for processing of Freedom of Information Act requests and search, review and disclosure of information in response to such requests. The immediate administrative cost of permanently assigned personnel amounts to three man years and a total administrative cost of $150,000 on an annual basis. This does not include the full cost for operational personnel to search and review their records and time expended for legal preparation in defense of suits under the Freedom of Information Act. It is my estimate that the additional man hours for operational personnel to review the records for declassification and other requirements under the Act would amount to an additional ten man years and an additional $250,000. As an example, one Freedom of Information Act request concerning uncorrelated material relating to prisoner of war matters required the use of nine people for approximately ten months at a total cost of almost $95,000.

Senator GARN. Admiral Murphy?

Admiral MURPHY. I would have to furnish that information for the record as well.

Senator GARN. Fine. Thank you very much.

Thank you, Mr. Chairman.

Senator GOLDWATER. Could you supply us, Judge, with a breakdown on the sources of these applications for information under FOI, those that come from abroad and those that come from the United States?

I cannot believe you should keep 300 people busy.

Judge WEBSTER. We receive between 11 and 16 percent, it varies, of all applications from prisons.

Senator GOLDWATER. From where?

Judge WEBSTER. From prisons.

We are getting over 62 applications each day and sometimes for thousands and thousands of documents.

Senator BAYH. It would be meaningful, I think, Judge Webster; it would be helpful for this committee to have a breakdown of those requests that have relevance in intelligence and the other law enforcement kinds of requests.

Judge WEBSTER. That may not be available to us, Mr. Chairman, unless we make a value judgment on the over 14 million pages that we have already supplied, although I would be glad to see what we can do about that.

Senator GOLDWATER. I think we ought to do away with the whole damn thing.

Senator BAYH. The Bureau?

Senator GOLDWATER. The FOI.

Judge WEBSTER. Is the record clear on that, Mr. Chairman?

Senator BAYH. Senator Garn, were you finished, sir?

Senator GARN. Yes, thank you, Mr. Chairman.

Senator BAYH. Senator Leahy?

Senator LEAHY. All of us are concerned of the Philip Agee type situation where leaks not only endanger our own agents, endanger the security of the United States, but let's go a little step further. Let's say that once that person has leaked, one of your agents in the CIA leaks material to a journalist, what do we do there?

Where do we go? Do we try to punish the journalist who has printed it, or do we try to go only to the person who does the leaking?

Does it become fair game once it is in the hands of the press?

Judge WEBSTER. Well, it is fair game. I have never looked at legislation as a means to curb the press. I do think that the sanctions for those who knowingly break the legal obligation of confidentiality are entirely appropriate.

So we would support the benefits of the protection of identity section as it applies to the FBI as well as the CIA.

The risks we have in today's society where on one hand there is a certain hero quality to whistle blowing— and it is very easy to convince yourself that what you are doing is somehow akin to whistle blowing— it creates the temptation, I believe, within organizations to let go of information which under an earlier time would have been unthinkable.

We are working within our organization to reemphasize the importance of protecting the lives and safety and reputation of individuals who provide us with information on a confidential basis. That tradition has always been a strong one in the Bureau. It is the exceptions to those traditions that give us cause to ponder.

I do not mean to suggest in any way that the Bureau supports any type of restrictions on the press. We have to learn, as do all the other intelligence agencies, to do our job better in keeping information confidential that is supposed to be confidential. And that involves further internal procedures, compartmentalization, and also wanting to reduce the risks of these types.

I do think that the charter very rightly addresses the issue of the issue of identity and so I support it.

Senator LEAHY. Do I understand that the Justice Department has proposed a bill that would punish anybody, including journalists, who correctly identify another person as a covert agent with the knowledge that his disclosure is based on classified information.

Would that not allow the Government to prosecute reporters? Would it not allow them to go after reporters irrespective of what they have done?

Suppose a reporter writes a story of United States involvement in Chile but in doing so he is met with the knowledge that his disclosure is based on classified information. Should we be able to go after him?

Judge WEBSTER. Perhaps Mr. Carlucci, who has been following this and has a more intimate involvement with this can respond.

Senator LEAHY. All right.

Mr. CARLUCCI. The administration's proposal, Senator Leahy, would read as follows:

Whoever knowingly discloses information which correctly identifies another person as a covert agent with the knowledge that such disclosure is based on classified information, or attempts to do so, is guilty of an offense.

That threshold, in our judgment, would not encompass a journalist in the normal performance of his duties.

Senator LEAHY. But it could. I mean, if we turn on the tube tonight and saw Fred Graham over here reading off the names of covert agents, having received it from, say, a source within your agency, would not Judge Webster be able to say, aha, he has violated this law and send the boys in the fedoras after him?

Mr. CARLUCCI. We are talking about a deliberate intent to disclose classified information and to reveal the names of CIA personnel. We are not talking about the occasional disclosure by journalists.

And when we speak of "journalists," quite frankly, we must keep in mind the fact that the people who publish the Covert Action Bulletin call themselves journalists. So there should be nothing really sacrosanct attached to that term.

We really are intending to get at people who have knowledge that the U.S. Government is attempting to conceal the identity of people and, knowing that, deliberately reveal classified information.

Senator LEAHY. You see, the concerns that I have, Mr. Carlucci, are really these. I do not want Americans working for our Government to be put in danger both here and abroad because they are carrying out duties for their Government—put in danger because of somebody who goes and discloses their names and activities, whatever the motivation might be, however well or evilly intentioned it might be.

Conversely, however, I do not want a statute that can be used even as a subtle threat to journalists, to people within the news media, to those exereising their first amendment rights.

I want to make sure that, indeed, we have kept the kind of protections in here for whistle blowers—Judge Webster has mentioned whistle blowers. I think, with adequate protection for them, it does not become a pejorative term, but rather a proper one.

We have done this with a number of governmental agencies where indeed persons coming to the committee or coming to the Congress to blow the whistle, however defined, are not going to be given short shrift unless they have gone through a series of very major steps within their Department—the Inspector General, counsel, whatever. And unless that has been done, they would be treated, as many might well be, just someone looking for publicity and would not be given a quorum.

But assuming—then we have to build in those kinds of safeguards, just to make sure the protections, the checks and balances, the oversight functions of the Congress are carried out and still the inviolability of the type of activities they must be involved in.

Judge WEBSTER. I would have no objection to adding to that amendment that I read, a provision to the effect that nothing in this section could be interpreted to prevent anyone from providing information to the committees or to the intelligence oversight board, or to the Attorney General, however you want, if that is your concern.

I do not think anything in this title would prevent that kind of activity.

Senator HUDDLESTON. That is in our bill.

Senator LEAHY. I understand.

I am also, though, concerned on just the other part that once the horse escapes the barn that we are out after the person who slipped the lock on the door and not the person who might ride the horse once it got out there. That's a terrible metaphor—my colleague from Ken-

tucky—I have moved away from any kind of a Vermont metaphor and so I used a Kentucky one. You understand what I mean. I can imagine the consternation in your department, Judge Webster, and probably everybody else who picks up the newspaper in the morning and you suddenly read in great detail something that has been kept very secret.

I just want to make sure that when the hammer comes down it comes down on the person doing the leaking, not the person doing the printing.

Judge WEBSTER. We agree thoroughly with that.

Senator BAYH. Gentlemen, I hate to be in this position but I have been trying to let everybody have as much as he could in the time constraints. I hate to interrupt, but could we come back to that?

Senator LEAHY. I am finished with that. I think Mr. Carlucci and Judge Webster and I all understand each other.

Senator BAYH. Senator Chafee?

Senator CHAFEE. The plan is to ask our questions of Director Webster now so that he might be able to leave. Is that correct?

Senator BAYH. Perhaps we should, because he has to leave very shortly.

Senator CHAFEE. Judge Webster, you had seven suggestions dealing with the Freedom of Information Act and I would appreciate it if each of us could have a copy of those suggestions. It would be helpful.

And I would also address a question to Mr. Carlucci. You state in your testimony that finally there is provision in section 421(d) for relief from the Freedom of Information Act.

Now, my question is whether that relief is adequate? What I think could be helpful to us is to have the option. If you want more, at least let us know so could have that option to be able to decide.

Now, maybe you would like no Freedom of Information, but if so, at least tell us so that we could make that decision. I would like to ask the same question of Director Webster: What do you need in relief from the FOIA. Now, maybe we cannot do it, but at least we would know. And the same question to Admiral Inman, General Tighe, and Admiral Murphy. Again, what you would prefer to see in the charter dealing with those areas?

[Freedom of Information Act changes proposed by Gen. Eugene F. Tighe, Jr. of Defense Intelligence Agency follows:]

It is my view that each component of the Intelligence Community should be exempt from provisions of any law which requires the publication or disclosure or the search or review in connection therewith, of files directly relating to analysis and production of foreign intelligence or counterintelligence and all information collected, analyzed and produced as a result of those actions and operations. This would include all foreign intelligence information pertinent to intelligence and security matters. It is my view that the DIA and the entire Intelligence Community should be exempt from the provisions of any law which requires the disclosure as indicated above; this would include intelligence records relating to raw intelligence, finished intelligence and intelligence in the process of transition from raw intelligence to finished intelligence.

Senator CHAFEE. I have some additional questions dealing with section 701 of S. 2284, the criminal penalties for those who would reveal identity information, but those are for Ambassador Carlucci, so in order to allow Director Webster to go, I will pass on the balance of my questions.

Senator BAYH. Senator Wallop?

Senator WALLOP. Thank you, Mr. Chairman.

I have just a couple of questions for Director Webster.

First of all, I guess, in your mind, when does a journalist become a journalist, or when does somebody who is toying with the secrets of the country come under the protection of that mystical word called "journalist"?

Judge WEBSTER. Well, it is that question, unless it is carefully defined in the charter. Are you asking the question in relation to Senator Leahy's line of questioning, or in relation to our——

Senator WALLOP. Well, generally. I think it was your response that you said those who produced the Covert Action Bulletin called themselves journalists. Now, if somebody can, by merely cloaking himself in that word, become free of any other obligation to this country or any burden that this country might seek to place on him, it seems to me that we will have a real obligation to try to find some means.

I am with Senator Leahy. I would prefer to attack the leak, not the publisher of the leak. But on the other hand, there is sometimes a question of teamwork that might be involved in that.

Judge WEBSTER. He may have associations with the intelligence agency which forms the basis of the information.

In matters of that kind, that would clearly disqualify someone who happens to want to publish from claiming the sanctuary of journalism as an excuse.

Senator WALLOP. Not everybody who works for the press has always been totally devoted to the principles of this country. Most are, 99.9 percent, but the 0.1 of 1 percent who do not, we ought to have some means of dealing with traitors—and I drop that at this moment, before we pass this thing lightly, we ought to try to find some means of taking care of those.

Let me ask you this. Just generally, what is wrong with counterintelligence in the country today?

[Pause.]

Judge WEBSTER. I am taking time to answer your question because I wish it had been framed to address what is good about counterintelligence.

Senator WALLOP. Well, I do not mean it to be when did you stop beating your wife, but I do mean it to be, why has it taken us so long to find a Boyce-Lee? Why is it impossible for us to cast surveillance on people who work in such sensitive positions?

Why is it not possible for us to look at their personal habits to give ourselves some kind of a clue that this kind of devastating leak is going on, this devastating loss of the most sensitive things in this country?

I know there is plenty good. I am witness to that. That is the reason—I should have prefaced my question by saying I realize that there are plenty of excellent examples of your work.

But why do we have a Boyce-Lee go on so long?

Judge WEBSTER. There are a wide variety of factors that enter into a number of these cases. We can and should police our internal security within the agencies and there has been, within the last year, a significant effort and progress made in all of our agencies as a result of

certain information being disseminated in various ways and out of various agencies.

In the private sector, there needs to be a greater awareness of efforts to recruit employees willing to supply classified technological data made available to Government contractors on a classified basis.

Senator WALLOP. But in your checks that you provide for those private agencies, should you not be able to go further into the personal habits?

It seems to me that if anybody had taken a look at Boyce and the personal habits that were displayed in that book—and I have reason to believe that that is a fair characterization of it—they might not have given him a clearance to such an extraordinarily sensitive position.

Judge WEBSTER. To the extent that security checks are processed through our agency, most of us believe that in intelligence issues, those being held for classified employment positions, that we are entitled to go into and ascertain personal background which might reasonably impact upon the person's vulnerability, on their dedication and the term used to be "unswerving loyalty."

We do find that in some investigations, while we collect the information when we find it, we are not getting the information in some quarters due to, for example, the civil service prohibitions on asking if a person is a member of the Communist Party, or has been a member of the Communist Party. We believe that is a legitimate question, and if we can obtain it, we record it.

But such information is not as easy to come by any more because many agencies are not allowed to inquire in those areas.

Senator WALLOP. I guess that is the point of my question. I would ask if you, and other gentlemen who may be faced with the same kinds of problems, could supply us with some kind of an assessment of the legal inhibitions that prevent you from obtaining the kind of information that might lead to an earlier assessment of the character of somebody like Boyce.

[Counterintelligence security matters of Defense Intelligence Agency follow:]

DIA does not have the authority to conduct, manage, or direct counterintelligence operations or investigations.

Executive Order 12036 ("United States Intelligence Activities"), Section 1-201, defines DIA's responsibilities, but does not include counterintelligence operations or investigations as a mission or function.

DOD Directive 5105.21 ("Defense Intelligence Agency"), paragraph B, establishes DIA's mission as one of satisfying or ensuring the satisfaction of the foreign intelligence requirements of the Secretary of Defense, the Joint Chiefs of Staff, DOD components and other authorized recipients, and to provide the military intelligence contribution to national intelligence.

DOD Directive 5240.1 (Activities of DOD Intelligence Components that Affect U.S. Persons), paragraph D.5., limits DOD components to performing only those procedures necessary to perform their assigned mission.

DOD Directive 5240.2 ("Department of Defense Counterintelligence"), paragraph H.3., defines DIA's role in DOD counterintelligence and limits it to preparation of analyses; coordination of counterintelligence programs of the Military Departments; establishment and maintenance of a DOD counterintelligence data base; participation on boards, committees, and other organizations involving counterintelligence as requested by Deputy Under Secretary of Defense (Policy Review); provision of staff support to the Chairman, JSC, on NSC SCC (counterintelligence) matters; and represent the Chairman, JCS on the Defense Counterintelligence Board (DCIB). (The nine member DCIB was established to advise

and assist DUSD(PR) on counterintelligence matters within the purview of Executive Order 12036 and DOD Directive 5254.2).

In the event that a valid incident of a counterintelligence nature occurs and involves DIA personnel, we are required to advise the FBI if the matter involves civilian personnel and the appropriate Military Department if it involves military personnel. In the latter instance, the Military Department will coordinate with the FBI in accordance with the "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation," 5 April 1979.

Judge WEBSTER. The example I just gave was not an inhibition on us. It was an inhibition on other agencies who would have the information to supply us but for the inhibitions placed on them, not us.

Senator WALLOP. There are certain problems that you face, though, with regard to personal habits, marihuana and other things, are there not?

Judge WEBSTER. No; we look into that. At least we do for our own employees.

Senator WALLOP. Well, if there is an assessment, I think we would appreciate it before casting this thing in concrete.

Thank you.

Senator BAYH. Are there any further questions of Judge Webster, gentlemen?

Thank you, Judge. We appreciate your being here and look forward to continuing to work with you.

Senator Goldwater, do you have any questions to ask other witnesses?

Senator GOLDWATER. I would just like to ask Mr. Carlucci the same question that I asked the judge. If we could only get through a small portion of the charter with the limited time we have, would the three areas that are receiving the most emphasis help you?

Mr. CARLUCCI. Well, Senator Goldwater, my answer would be approximately the same as the judge's. We find the whole charter valuable. It lays out a structure for us. It puts the authorities and responsibilities in specific spots in the community.

We think it would enable the community to function better and in particular we think it would be helpful to the CIA.

There are any number of individual provisions that in themselves would be helpful. As you are aware, Senator Goldwater, I have testified many times before this committee on such things as identities legislation, Freedom of Information, Hughes-Ryan. They are matters of major concern to us and we would hope that they would be incorporated. Whatever is passed, it is really a judgment for the Congress to make, what it is possible to pass this year.

Senator GOLDWATER. Well, I am sure you realize that the mere suggestion of making intelligence easier to gather in this country is going to upset a lot of people and the witnesses we will have in this room will turn the air blue with injustices that they see in gathering information on behalf of our country. That is going to cause some problems, too.

I do not want to imply that I am not going to do all that I can to get this whole charter passed, even though there are parts of it I could live without, but we have to get ready for almost anything.

I am not going to ask any more questions. As you said, you are a very familiar face before this committee. Thank you.

Senator BAYH. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Admiral Murphy, you made reference to the fact that as the charter is written, with the prior notice requirement and with the wartime waiver in it as it is, it might still require prior notice during wartime of certain covert activities. Are you more concerned with prior notice during wartime than in peacetime?

Admiral MURPHY. Yes, sir; I gave the view of the Department of Defense which is primarily concerned with prior notification in wartime, but we do agree with Admiral Turner's testimony of the other day where he expressed concern about the limitations on the prior reporting in peacetime as well.

Defense, of course, is not involved in special activities in peacetime unless the President approves it.

Senator HUDDLESTON. The question of the wartime waiver is something we have thought about, of course, and we provide for waiving certain provisions of the bill.

Is it your suggestion that there should be a virtual blanket waiver in wartime, that all rules should be suspended and we just follow the direction of the Commander in Chief?

Admiral MURPHY. Yes, sir. I am suggesting that all the restrictions in the bill be waived in wartime.

Senator HUDDLESTON. The entire bill, even those relating to the protection of individual liberties and rights and constitutional guarantees?

Admiral MURPHY. No, sir. While I am saying that I would waive the bill, I don't mean to imply that we would not protect the rights of our American citizens under the Constitution.

Senator HUDDLESTON. One concern we have had in observing our intelligence product through the years has been its quality and the use made of it. One question that has come up from time to time is whether or not the policymaker is getting competing analyses, whether there are enough independent analyses available to him so that he sees more than one side of an issue.

Mr. Carlucci, is it your judgment that these charters would allow enough flexibility for the community to develop various competing analyses that would be made available to the President?

Mr. CARLUCCI. Certainly I do, Senator Huddleston. This is, as you know, not a legislative matter. It is principally an administrative matter. But the coordinating authority given to the Director of National Intelligence, I think, can be used to help promote competing analysis while, at the same time, eliminating unnecessary duplication. It serves both functions.

Senator HUDDLESTON. It is your judgment that the DCI would have—or the DNI, under the charter—would have the proper authority to make certain that the analysis from the various elements of the community——

Mr. CARLUCCI. Yes, he is given the authority to have access to intelligence information and authority to task the various elements of the community and I think that would be sufficient for him to insure that there would be competing analysis.

Admiral MURPHY. As a matter of fact, Senator, I believe the charter actually directs that he show dissenting opinions in coordinating intelligence estimates.

Senator HUDDLESTON. On the question of cover restrictions on journalists, academics, and clerics, it has been indicated by at least one American journalism official that to permit unrestricted cover use could very well endanger correspondents abroad and inbibit them from carrying out their duties there of collecting news.

What response do you have to that?

Mr. CARLUCCI. I do not think that is accurate. In the first place, for a number of years it has not been prohibited and I have seen no indications that it has put journalists in any great danger. Second, we are not arguing in favor of unrestricted access to cover using journalists. We are arguing in favor of some flexibility so that, in exceptional circumstances, we can avail ourselves of this.

Senator HUDDLESTON. But that flexibility would be of your own design. How would you set your guidelines?

Mr. CARLUCCI. We would support a provision which parallels the provision in the bill regarding the use of journalists, clergy, and academics. That is to say that the executive branch would be required to draw up guidelines.

We have been operating under those guidelines for a number of years.

Senator HUDDLESTON. Have there been, would you say, many waivers of those guidelines, or a few waivers? How many would you estimate?

Mr. CARLUCCI. Let me clarify a point which I think was misunderstood the other day, and I have discussed this with Admiral Turner, when he said that he had authorized waivers with regard to the use of journalists. He was referring to cases in which he was asked whether, in certain circumstances, he would waive the regulations.

As the committee knows, the regulations allow the Director of Central Intelligence to issue a waiver in exceptional circumstances. These were exceptional circumstances and he did indicate that he would be willing to issue a waiver. In the event, however, the operations were never carried out, and there was no use of journalists.

[TV cameraman's lights go out.]

Senator HUDDLESTON. I guess you have noticed we missed the deadline for tonight's 6 o'clock news, so anything important you fellows have to say will have to wait awhile.

Do you see any difference in the kind of damage that might occur from using journalism as a cover, which I would take to mean that an actual agent of the CIA would pose as a journalist, as compared to entering into an agreement with a bona fide journalist, a person who is principally a journalist but, at the same time, is working for the CIA?

Now, that is actually the distinction we have drawn in the bill.

Mr. CARLUCCI. Senator Huddleston, I am not really happy with that distinction because I can see a need for exception in both cases. But let me say, first of all, as one who has lived in a number of countries and has experienced the constant barrage of Communist propaganda against the United States, you could write a prohibition in 10 bills on the use of journalists, clergy, and academics and it still would not be believed overseas.

The Communist propaganda machine would continue to function on this issue, so I do not think we are giving the guarantees that you think you are giving.

Second, let me emphasize that we are not asking for unrestricted license. We recognize that these three areas ought to be given special consideration, but we also recognize that there may exist exceptional circumstances, conceivably circumstances in which human lives are at stake and the only way of gathering the necessary information may be to use journalist cover, or the cover of clergy.

You can take a terrorist situation, for example. I can imagine one readily where you could only have access inside the compound where hostages are being held if you used one of these covers.

I think it would be extremely undesirable to prohibit this in legislation.

Senator BAYH. Senator Chafee?

Senator CHAFEE. Mr. Carlucci, under section 701 of this proposed charter, dealing with criminal penalties of those who reveal information, could Mr. Agee be prosecuted?

Mr. CARLUCCI. Senator Chafee, I would prefer to refer that question to the Attorney General. It has been our intent in working on this legislation that it encompass the kinds of activities engaged in by Mr. Agee.

There is a question at issue.

Senator CHAFEE. Why is it even close?

Mr. CARLUCCI. Because it is not crystal clear, and this could obviously be decided in litigation, should the case be brought, that he is presently operating on the basis of classified information.

The Justice Department, I believe, does feel that this provision would be sufficient to encompass these activities, but I would prefer that they speak for themselves.

Senator CHAFEE. Well, I realize that Mr. Agee's situation is complicated because having, or having had, authorized access to classified information that identifies those undercover and so forth. Let's take the situation of somebody who never worked for the CIA and, indeed, did not work for the State Department, but because of what he has picked up from other people he is able to identify, to break the cover of CIA agents through various techniques such as following the manuals and so forth. He is able to discover who is who and then reveals it, writes it up in Covert Word Action, or Counter-Spy magazine.

Now, that person clearly would not be subject to this legislation.

Mr. CARLUCCI. That would depend, Senator Chafee, if he is engaged in a conspiracy to reveal classified information.

Senator CHAFEE. I am not interested in whether it is classified—he is clearly intentionally disclosing it—he publishes a magazine, information that identifies an individual as an employee, a member, and so forth. He lists them and says "so and so working in Greece," "so and so in Ghana." He comes right out and identifies them.

Now, what about that?

Mr. CARLUCCI. My interpretation of this is that if he is not an employee or a former employee——

Senator CHAFEE. He never worked for the Federal Government.

Mr. CARLUCCI [continuing]. And he uses unclassified information, he would not be subject to prosecution under this bill, but I would, once again, refer you to the Attorney General for a detailed explanation.

Senator CHAFEE. Well, I do not know if we are going to have the Attorney General up here. Are we?

Senator BAYH. Yes; we are.

Senator CHAFEE. Let me ask you another question. You said that newspapermen, clergy, and people associated with academia fall in a special category. Now, why?

Set aside newspapermen—that is too volatile around here. Let's take academia.

Now, why do they fall into a special category? What is so special about them?

Is the theory that a member of academia goes abroad and thus others, those who deal with him, will know that he is not tainted by being associated with the CIA? You are supporting this charter and have said some nice things about it, and I am curious as to your views on that question.

Mr. CARLUCCI. Well, once again, let me stress, Senator Chafee, that that provision of the charter relating to academia and the clergy which we are supporting is a provision that says we shall have guidelines dealing with the use of academia and the clergy.

I am not supporting a blanket provision that says we cannot use any clergy.

Senator CHAFEE. I do not think that is what the charter says, though.

Senator HUDDLESTON. If you will pardon me, the charter deals with just that.

Senator CHAFEE. Yes. The charter says——

Mr. CARLUCCI. The charter prohibits the use of journalists, clergy, and academia for cover. That particular provision I am opposing.

There is another provision, unless I am mistaken, where it says that we shall operate under guidelines with regard to the use of members of the academic profession or the clergy. That provision is satisfactory to us and, indeed, we are operating under guidelines right now.

Senator CHAFEE. So what you want is guidelines.

Mr. CARLUCCI. Yes, sir.

Senator CHAFEE. But you are not suggesting that these guidelines should prohibit you from ever using——

Mr. CARLUCCI. No, sir. To the contrary. I am suggesting that the guidelines ought to enable us to make use of people in those professions, or to use entities in those areas for cover in exceptional circumstances.

Senator CHAFEE. I have trouble in this charter understanding the rationale that it is all right for a member of academia to volunteer information but that somehow if he is paid it becomes a different story.

But you are not defending that to begin with?

Mr. CARLUCCI. I am not defending that to begin with. I am saying that we need some flexibility in this area, while recognizing the general public view that these professions need some kind of special consideration. We think these should be done through guidelines.

Senator CHAFEE. Why did you have to choose to include academia as needing special consideration?

Mr. CARLUCCI. That, Senator Chafee, is really a historical question which I—there seems to be a feeling, and they can best speak for themselves when they come before this committee—that their area is so sensitive that they wish to have our activities on campus regulated in some way.

Mind you, the regulations under which we are currently operating are not an absolute prohibition. They lay down certain guidelines, such as informing the head of the university when we have a contract with that university, or suggesting to a particular individual who might enter into a relationship with us that he inform his superiors.

But we would not, ourselves, unilaterally inform his superiors. We think to do that would be depriving him of his civil liberties.

So these are the kinds of guidelines that I am talking about.

Senator CHAFEE. Thank you.

I would like to ask Admiral Inman a question, if I might.

I gather from your comments here that you find the charter satisfactory.

Admiral INMAN. Senator Chafee, a famous Senator once said he was going to work hard to get the charter enacted even though he could live without parts of it. I subscribe strongly to what he said.

The problems I have are not unknown to this committee. They are different views on how a community might be organized. It was decided to go a certain way. We have got 2½ years of trying that and, sooner or later, there will be differences whether that was a good way to go. And one can hope that we make organizational changes later in any case.

Title VI is what I am here to support very strongly. I believe, after a lot of time working with it, that succeeding directors of the National Security Agency will be able to do a substantially better job of getting on with doing with signals intelligence and communications security work if this is law.

There are two basic reasons. One is the unambiguous authority to do a number of things we need to do in the systems acquisition process and the process of running operations overseas. If you do not have law, I find that the bureaucrats can nibble you to death. And all the reasons why you cannot have authority to do things, or why you should not be given an exception because everybody else would want one.

The charter was very helpful there.

Second, there are still people who question from time to time whether or not this country ought to engage in signals intelligence. I believe very strongly it should. I believe the country has benefited greatly from the fact that we do it and I want to see it as an acknowledged matter of law; and we intend to continue it.

Senator CHAFEE. Well, Admiral, you know that you are held in the greatest respect on this committee and if you say that title VI is all right, there will be a tendency on the part of many of us up here not to monkey with it. But, on the other hand, you are closing the door to any improvements if you think they are there unless you speak out at this time.

Admiral INMAN. We could cut the verbiage to 12 pages in length and still save the substance of the matter. There are many people who

have worked on it on both sides who treasure those extra words. I have read them. They do not end up ultimately inhibiting getting on with the concept of the job.

So if you do not mind thumbing through a very thick bill, we can live with it exactly as it is. One could clearly get the functions outlined in a shorter bill.

Senator CHAFEE. Well, if they are de minimis, obviously you are not going to go back and start over, nor are the people you have worked with here. But if they are important, now is the time to speak out, because if you do not, the rest of us—at least speaking for myself, and most of us here—are going to say, well, if he is satisfied, that is all right with us.

Admiral INMAN. Senator Chafee, probably the most difficult part was before the Foreign Intelligence Surveillance Act. It was the unknown. But when one considers how the restrictions, as part of this total charter, impact primarily it is in the area of court-ordered electronic surveillance. We have a bill. It, in fact, has worked very well.

There are some minor changes we would like simply because we were not farsighted enough to recognize in the bureaucracy, with week-ends and things like that, 24 hours is not very long for emergency authorization; 48 would be better.

We did not quite recognize some of the problems we would end up with things like dual nationality. Those were some minor technical changes that I would indeed like to see incorporated.

But the experience with having the court has reassured any reservations I might have had earlier about the fact that one can get legislation that both restricts but also spells out authorities very clearly and find it, in fact, not difficult to use. Security is infinitely better than I have predicted in that aspect. The legislation did, of course, give us some benefits in helping.

Senator CHAFEE. Well, Admiral, if I have one complaint with the intelligence community since I have been on this committee. It is their reluctance to come forward and ask for things to help them do their jobs.

Admiral INMAN. The prime thing I could ask you for to do my job is resources.

Senator CHAFEE. Resources?

Admiral INMAN. We have gone through 10 years of manpower reduction across the intelligence community and we are overdue to assess the impact of that on this country's ability to do its job. I do not believe that we will do that adequately as long as we do it in a constrained, adversarial environment, to concentrate on what can you do without, rather than what the country needs.

But dealing with that problem is not really a charter legislation problem, but it is one that I certainly would like to discuss.

Senator CHAFEE. Yes; but they are not mutually exclusive. You are not restricted to ask for only one thing here. You can ask for resources and also you can ask for the ability to do your job better under legislation and while we might not approve it, we will never know until you tell us. I think we have had great difficulty in getting the CIA, for example, to state their wishes more strongly as to what they would like to have to help them do their job.

Senator HUDDLESTON. It's called OMB, Senator.

Senator CHAFEE. Well, no. We have asked them for suggestions on cover. We have asked them for suggestions on the Freedom of Information Act, how to deal with Agee, and the Hughes-Ryan amendment. This is the first time in 3 years we have dealt with these issues.

Mr. CARLUCCI. Mr. Chairman, may I respond to that?

Senator BAYH. Yes.

Mr. CARLUCCI. I believe that I have expressed my problems regarding the Freedom of Information Act and Philip Agee to this committee well over a year ago and I received a very sympathetic response. We have also had an ongoing dialog with the committee for some time now about the problems occasioned by the Hughes-Ryan amendment and there is no doubt that in all three of these areas, we find ourselves hampered in conducting our activities, and we very mucb appreciate the kind of support that we have gotten from the committee.

Senator CHAFEE. Thank you.

Tbank you, Mr. Chairman.

Senator BAYH. Yes. I would just like to say, is it a fair, if not too self-serving assessment, that as far as this committee is concerned, we have tried our best to help you with resource requirements?

Mr. CARLUCCI. I would say so, sir.

Admiral INMAN. I would say very much so. In fact, there have been occasions when the committee has been very helpful. When I have been asked if I am supporting the President's budget.

Senator BAYH. It is hard for me to believe that anybody on this committee would ask a question like that.

Senator Leahy?

Senator LEAHY. Mr. Chairman, so that Senator Chafee's mind might be put somewhat at ease, should he come over to the Appropriations Committee where I also serve, and I know the national inhibitions and restraints, modesty of requests and so forth of various agencies we are involved with, that somehow they are able to put those, at least slightlv, aside in the Appropriations Committee and requests are made, I might say quite often and quite often granted, as quite appropriately, they should be.

Ambassador Carlucci, just to go to one item—and I do not mean to be hammering on this journalists-clerics-and-academics issue, but I know that Admiral Turner mentioned it last week and you mentioned it and as I understand it, he said that he had granted waivers from the CIA's internal regulations on some rare occasions concerning relationships with businessmen, clerics, and academics and you referred to that here today.

Separate and apart of how the question should be addressed in the charter, would you agree in the interim, and while the regulations are in force that this committee should be advised on any occasion that such a waiver is granted?

Mr. CARLUCCI. I would have no problems with that, sir.

Senator LEAHY. How about in advance?

Mr. CARLUCCI. I think I would have some problems with that, sir. I think that is part of the ongoing dialog that the committee is having with Admiral Turner.

Senator LEAHY. Aside from the question of notification in advance, then will this committee be advised if such waivers are granted, either after the fact or——

Mr. CARLUCCI. Let me clarify once again what I said. That is to say that Admiral Turner indicated that he would be prepared to give waivers in three cases. For one reason or another the intelligence collection operation did not take place, that is to say, in one case it became impossible to do and another case, the need to do it was suddenly removed. They were indeed extraordinary circumstances, hut Admiral Turner, in being as forthcoming as he has always been with this committee, felt obliged to tell you that he had decided that he would grant three waivers and that, I think, was misinterpreted a bit in the press.

Senator LEAHY. And I had to leave about three-quarters of the way through that hearing so I did not get a chance to follow up myself and that was one of the reasons I was asking now.

Had these matters gone through—and I do not really want to go through any greater discussion than that in open session as to the nature of the matters, but had they gone through, matters that caused the waivers, would we have been notified in the normal course of events, eventually.

Mr. CARLUCCI. Yes; we would be glad to notify the committee. We do not have an automatic process.

Senator LEAHY. That is basically the question.

Mr. CARLUCCI. Simply because we have not yet fully exercised this authority. But I would be glad to establish such a process so that we could fully inform the committee.

Senator LEAHY. I leave that up to the chairman and vice chairman whether they felt that was necessary, but I might—while I understand what you are saying, that even if we were to set up a procedure where notice would be given to this committee as to such waivers, you would be opposed to its being automatically in advance?

Mr. CARLUCCI. Yes, sir, I would, consistent with the statements that Admiral Turner made the other day.

Senator LEAHY. Thank you.

That is all I have, Mr. Chairman. I will go back and see how Judiciary is percolating.

Senator BAYH. Senator Wallop?

Senator WALLOP. Thank you, Mr. Chairman.

Admiral Inman, as you, perhaps more than any of us are aware, the emphasis on intelligence collection has shifted over the last decade or two away from human and toward technical means and traditionally this country's intelligence collection activities, like every other country's, were paralleled by counterintelligence activities. And it is natural, given the targets of collection, they can be expected obviously to try to misinform the collectors.

Now that collection in many respects has become largely or predominantly technical—and your agency has a big share in that—yet the counterintelligence agencies, the FBI and the CIA small staff of counterintelligance—are oriented still toward the human.

Is there a need for greater attention for the possibility of technical deception?

Admiral INMAN. Senator Wallop, may I first, with your permission, deal with the myth of the drawdown of human effort to pay for technical collection. There has been a very major drawdown in manpower to pay for technical collection systems and the overwhelming drawdown did not come from dedicated human collection. So the very frequently quoted fact that we have drawn down the human effort to pay for the technical effort just is not valid.

But that is not your question. Your question is, are we, in fact, taking full advantage of technology to support all that can be done in the counterintelligence area? I am pretty sure we have not.

But I am not persuaded that that would be the most cost-effective way to do it. There are some things that one needs to be concerned about, and if you will forgive me for being cautious, I would rather go over those in detail with you in closed session, things we know from our own collection efforts that, in turn, have strong counterintelligence aspects.

Senator WALLOP. Mr. Chairman, might we hear that at some time?

Senator BAYH. Yes, sir.

Senator WALLOP. Thank you.

Again, too, representatives of the NSA routinely take part in interagency discussions which lead up to the national estimate, but there is no analytical process in counterintelligence comparable to the NIE process and the proposed charter before us today neither mandates it nor forbids it.

Do you think that your agency should be involved in such an analysis in the counterintelligence analysis?

Admiral INMAN. We, in fact, have a very active program of collaboration in this field with CIA and with the FBI and with some of our foreign colleagues. Again, the examples for you, I would ask you to go into closed session.

Taking off my NSA hat and as a practitioner of 20 years in this field, counterintelligence has been looked at, structured, in an entirely different matter much as communications security.

There has not been a perceived need to go through the same detailed process that goes into, for instance, the structure of the national estimate where you are trying to help guide national policy in the years ahead and indeed, I would question whether one would want to invest all of the manpower in some of those exercises without being sure who was going to read it and how it was going to be used.

Senator WALLOP. That would be an assessment that could be made, though?

Admiral INMAN. It could be done. Clearly there could be more things done. It is, again, largely manpower.

Senator WALLOP. Well, again, on the same kind of line, the charter neither forbids nor encourages a greater degree of coordination amongst the counterintelligence functions.

Admiral Murphy?

Admiral MURPHY. I would like to say that the administration has set up the Special Coordinating Committee on Counterintelligence which will address counterintelligence as opposed to intelligence and special activities. Counterintelligence will be looked at in isolation.

And all the agencies in the community are represented on that. This body is charged with developing policy. Your charter also requires the same thing, but we are out ahead on that a little bit. I would also think that from that work if it appears that separate analysis in the counterintelligence area is periodically required, that it would fall out of the work already ongoing.

Senator WALLOP. But agreeing with that—and I do, and I appreciate the assessment that both of you have given—but just in general with counterintelligence activities, is there sufficient coordination foreign and domestic, in other words, where it has adequately fulfilled the country's needs? I am not necessarily talking about desires, but the country's needs?

Admiral MURPHY. My personal view is that in the past it did not exist, but it does exist today and it will take a while to reach fruition.

Senator WALLOP. Is there anything that we could provide within this that would encourage that, or not inhibit it?

Admiral MURPHY. In reading your section on counterintelligence, I was impressed that you have laid all the necessary groundwork and I do not think that we need to go beyond what is there.

Senator WALLOP. Thank you, Mr. Chairman.

Senator BAYH. Thank you, Senator Wallop.

Senator Moynihan?

Senator MOYNIHAN. Thank you, Mr. Chairman. I am sorry, but I was in a conference committee, which broke up in total disagreement and which, I am happy to say, allows me to appear on this scene of harmony and common purpose.

I wonder if I could speak to Ambassador Carlucci, and to not so much put a question to him as to ask his comment on a comment of mine. It has to do with the evolution of attitudes within the administration which, it seems to me, has brought us to the rather surprising testimony of Admiral Turner the other day, and which we have made no attempt to hide, surprised us. We thought ourselves to be close to agreement and found that we were farther apart than ever.

As you know, the negotiation on this matter has been going on for 3 years, and there was one rather critical point, to me, in the negotiation—which I was not present at and therefore do not feel at all hesitant to blab about—and that was a meeting within the administration. The general counsels of the various agencies represented here got together and put together their charter and they produced a tax code in the manner that lawyers would do over anything.

It was a code somewhat defensive, or such it was thought, of the current authorities and the activities of the intelligence agencies. And the Vice President, who presided at this meeting, looked at this, and looked down sternly, in his way, to the poor wretches assembled for the purpose, and said, "You fellows do not seem to understand who won the last election."

The clear understanding of the purpose of that statement is to say that a member of the Church committee is now Vice President of the United States and all of those things that we stood for are now here in the administration, and we expect some response.

Well, that was a year and a half ago, and then 2 weeks ago appears the administration's choice for the head of the CIA who says, no, we

are not going to give Congress any information, or not much information, or not enough information, or not as much as Congress expected.

And you see the problem is now suddenly that it is we who do not seem to understand who won the last election.

One gets the impression that the administration is now dominated more by the thought that they need good intelligence than that the intelligence machinery might somehow be abused, and so forth. And there is, after all, an elemental fact which is any democracy, one our size, needs an intelligence system and it has to operate in a constitutional situation; that its citizens have rights that have to be observed, and you have to find the way to accommodate to meet both necessities.

And one of the clear ways is an oversight mechanism of the Congress. And suddenly we find ourselves being resisted on that and up here we have the feeling that we have been producing legislation which you no longer want and are willing not to have—another 3 more months and there is no chance.

But whatever happened to those fine, brave ideals that the Vice President brought to the Oval Office?

I am trying to make the point that we know that the most important thing we have to have is a good intelligence system and we know that there is no problem whatsoever in creating a bureaucracy that does nothing. This city is filled with bureaucracies that do nothing.

It could be that yours is already one of them. As long as you do not do any of the things that it says do not do here—and there are 172 pages of "don'ts"—you will never get fired and you will retire comfortably to Silver Spring. And a risk-taking enterprise will cease to take risks.

And that we do not want.

Neither do we want to give up what we have learned, that a risk-taking enterprise can sometimes take unacceptable risks and therefore there should be the kinds of restraint that is involved in consultation.

But we want good intelligence, and we have a feeling, I have a feeling, that we are going to lose both. We are not going to get the restraints and we are not going to give you the mandate to do a job that involves risk taking and the certainty of a certain amount of failure.

Yesterday morning, Secretary of Defense Brown was testifying to the Budget Committee about the way we had fallen desperately behind in our defenses and chart after chart showed us about the Russians roaring ahead. He had been doing so for 15 minutes and I said to him, but you represent a President, of whom you were adviser during his campaign, and he was very proud of you as an adviser, and your advice to him was that he could cut the Federal Defense budget $5 billion to $7 billion a year. If he had kept his campaign commitment we would have a budget of $59 billion now, instead of $142 billion.

Are you aware of this shift in the administration, and do you see it in terms of your response to the work we have been trying to do here? It is no accident that 3 years of negotiation have produced more division than not.

That is a long speech. I asked you to comment, obviously, not to answer a question.

Mr. CARLUCCI. I guess my first comment would be that it was much more enjoyable to work with you within the administration than it is to face you across this table, Senator Moynihan.

And it is hard to compete with your articulateness. And, of course, it would not be appropriate for me to comment on the internal debates within the administration. But I would like to say that there was a thorough airing of views and a good give-and-take as we attempted to strike the very balance that you talk about. And we do not think that we have produced 172 pages of nothing. To the contrary. We think that the dialog within the administration and the dialog with representatives of this committee has been a very constructive dialog and that the charter that we are considering does enable us to produce good intelligence and, at the same time, gives the necessary guarantees regarding civil liberties.

Senator MOYNIHAN. Could I interrupt you there for one moment? I do not want to suggest that there is nothing in this. There is a great deal that is good in it.

But if you read the summary of key provisions that is in our book here, it says, "The purpose of the act is to insure that special activities are undertaken only——" The purpose of the act is not to see that we have an intelligence system, but to restrict it.

Mr. CARLUCCI. There are obviously some items like that that could be fine-tuned and we would be glad to work with the committee on those. After all, we are still at the start of the hearing process and the purposes of this hearing, and all others, is to——

Senator HUDDLESTON. To make certain the record is straight, let's look at the first sentence of the bill:

> This is a bill to authorize the intelligence system of the United States to establish under a statutory basis the national intelligence activities of the United States and for other purposes.

Senator MOYNIHAN. Both things are true.

Senator HUDDLESTON. But you were referring to only one section of the bill.

Mr. CARLUCCI. May I go on and address myself just briefly to Senator Moynihan's fundamental point that the administration's views have shifted. Certainly there has been a dialog and a lot of give and take, as I indicated, both within the administration and in our discussions with the representatives of the committee, but in the point to which I think you are referring—and that is, the question of oversight prior notification, I frankly am saddened to see some of the confusion that has surrounded this, because we are quite content with the present oversight arrangement and it has been our impression that the committee has been satisfied with that arrangement, and we would be prepared to see that arrangement codified.

We see the change as arising in the draft that has been negotiated and that is the point of disagreement. That is to say, we think it is the committee that is in effect introducing a change in the current oversight arrangements, and not us.

Senator HUDDLESTON. Would you excuse me, please. I guess we do not accomplish anything by trying to point the finger one place or the other about what is being changed, but in your statement—and with

all respect to Admiral Turner, his had the same general thrust—I must disagree when you talk about a change made of this committee. I would just like to read where our authority rests:

It is the sense of the Senate that the head of each Department and Agency of the United States should keep the Select Committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities.

Now, that is what we have been operating on from the moment of our inception and that has been the relationship we have had with the community.

Mr. CARLUCCI. Mr. Chairman, that provision that you read does entail a change from the Executive order under which we are operating.

Senator BAYH. May I just read the Executive order under which we are operating?

Keep the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate fully and currently informed concerning intelligence activities including any significant anticipated activities.

Now, are we talking about different Executive orders?

Mr. CARLUCCI. There is a preamble to that and it says:

Consistent with applicable authorities and duties including those concurred by the Constitution upon the Executive and Legislative branches and by law, to protect sources and methods.

Senator BAYH. That is in the charter.

Mr. CARLUCCI. No; it is not.

Senator BAYH. Yes; it is.

Mr. CARLUCCI. It is not in section 142 of the charter.

Senator BAYH. Well, neither is yours, in the same section that I just got through reading to you.

Mr. CARLUCCI. It is in the same section of the Executive order that talks about keeping——

Senator BAYH. What is the issue there?

Mr. CARLUCCI. It is in the same section of the Executive order that talks about keeping the committee informed and it is not in the same section of the charter that talks about keeping the committee informed and I think that is a significant difference.

Senator BAYH. It seems to me we are picking at gnats that are turning into the size of watermelons and I do not see why we cannot resolve this, but I will be darned if this committee has changed its position any. It seems to me that the people who are trying to change the charter and not have it consistent with what it says in the Executive order and in Senate Resolution 400 are the ones who are changing it, and we are making a great big deal out of this when I think we can arrive at an acceptable procedure where you can, consistent with the Executive order, include significant anticipated activities in a manner that is not going to breach security.

Mr. CARLUCCI. I think we can work this out, yes, sir. I am not sure we can work it out in this forum right now, but I think——

Senator BAYH. I doubt if we can.

I am sorry, Senator Moynihan.

Senator MOYNIHAN. I am not sorry. You are right, Mr. Chairman.

Could I just ask one question of Admiral Inman which is because we do put such a great store on his judgment in these matters and his work, which is how would the title II provisions of S. 2284 affect your intelligence activities?

Admiral INMAN. Title II would have very little impact on us.

Senator MOYNIHAN. Would have very little.

Admiral INMAN. The real impact on us was the question of going for warrants for electronic surveillance. I can honestly say it works well.

There is some improvement that we would like in the amount of time we have, emergency authority and things like that.

That is really where the restrictions impact on us.

Senator MOYNIHAN. We will hear from you privately about these other restraints.

Mr. Chairman, thank you. I just wanted to make the point, which I think Senator Huddleston may share, which is that I think the administration and we would be working better if they were a little more aware of the degree to which their position has changed. It just may be because they are right now and were wrong then. I am not arguing that. But it is when people who have changed their position do not seem to be aware of it—sometimes it is so incremental you do not notice it. Sometimes it is because you are under instructions to deny it.

If your position in foreign policy generally has not changed, read what Mr. Leslie Gelb says about it in the New York Times Magazine.

Peace, peace.

Senator BAYH. Is that a prior activity?

Senator MOYNIHAN. And if there is any outbreak of peace and we do not hear about it in advance——

Senator BAYH. Let me ask a question too, if I might. Admiral, since its inception, NSA has been a part of the Defense Department. As we look at the charter for the future, do you feel it should remain there?

Admiral INMAN. My biases were formed before my present job and my biases have been reinforced. I will choose words fairly carefully in open session.

More than half of the product produced in peacetime directly supports the military commanders. It is a single system and that is the best way to run it.

The combination of communications security and signals intelligence in a single organization is the right way to do it. You benefit from the interchange.

Again, the largest customer by far of communications security is the military.

In time of war, the use would go overwhelmingly to the military.

Where the organization is located does not impact on who can get access to the knowledge, but it does impact on where you get the support that you need to do the job day by day.

The placing of the organization where the Secretary of Defense is the executive agent was a very sound decision at the time. My enthusiasm would wane greatly if you were submerged very substantially down in the Defense Department and were subject to all the bureaucratic problems that could entail. I have enjoyed in my 2½ years in this job the greatest support of the senior leaders in the Department. They are responsive to my problems.

They only added to my biases.

Senator BAYH. Well, thank you.

I suppose as much, if not more, than any other entity of the intelligence community, your sources and methods are particularly fragile. We do have a provision in the United States Code that protects some of this information. At the same time, we see leaks in communications intelligence.

Is there anything we can do further in the criminal code? Is there anything we can do in the charter context to help remedy this situation? This drip, drip, drip?

Admiral INMAN. I believe that the legislation of Senator Biden's subcommittee will be of substantial help.

The basic problem in being able to use the authority we now have is what you have to disclose in order to proceed with prosecution.

I also have in mind that one should not look just to criminal remedies, that civil remedies may be a way that we should examine, too, to deal with the question of leaks, the flexibility to be able to discharge people as opposed to the question of simply looking for criminal prosecution.

There is also an attitude, an approach, which must reside in the executive branch and largely must reside with the Department of Justice, of the willingness to pursue, even though they are very manpower intensive and you have no great certainty that you can get a conviction. If, in my view, you are going to create the proper climate which discourages people from very casual disclosing very sensitive, very fragile, information.

Senator BAYH. Do you have anybody in your shop that maybe has been giving this some careful thought that could be helpful to us as to just exactly what to do about civil remedies? I know you are distressed and this committee is distressed at the way that some of this information gets out and anything we can do to help keep this from happening——

Admiral INMAN. We have appeared before Senator Biden's Subcommittee on Justice and we will be happy to provide our views on that.

Senator BAYH. Thank you.

General Tighe, are you at all concerned that DIA does not have any charter in this mix that we are talking about? Will this make it more difficult for DIA to maintain its place in the analytical community?

How do you look at that?

General TIGHE. I am sure the Secretary's decision not to include us in the charter in his negotiations with your committee, and the administration's negotiations, was intended to keep the Defense Department from being carved into little pieces, each of which had its own fence and rules, and so forth.

My personal view is that, since the aims of the bill are to produce good intelligence and to protect the civil rights of individuals in the process, providing the entire national intelligence community with charters is a good idea.

So in answer to your question, I believe in codifying the role of the Defense Intelligence Agency in national intelligence beyond that

which this legislation would do. There is a great deal to be gained in assuring that, for example, the Defense Intelligence Agency stays in the business of military intelligence analysis. Although there is flexibility in this bill to allow that, that flexibility could also stop it, if competition were no longer desired.

And for that reason, my personal view is that DIA could benefit from being included in this bill.

Senator BAYH. Without a specific charter?

General TIGHE. No, sir. I think a separate title could be enacted at a later time.

Senator BAYH. Fine. That is what I wanted to know.

Thank you.

Mr. Carlucci, let me just ask you one question here.

Under current law, the CIA really has to perform no internal security function. In the charter, the CIA in limited circumstances could direct intelligence activities against Americans in the United States as well as against foreigners in the United States.

Could you give us some idea of how this works? What kinds of activities are envisioned here? An example or two, a hypothetical?

Mr. CARLUCCI. Well, it is not related, Mr. Chairman, to a security function. It is related to a positive intelligence function and, of course, as the committee is aware, we do engage in the normal recruitment activities here in the United States.

But more importantly, with regard to the collection of positive intelligence from Americans, I would envisage that this would he used very sparingly and in extraordinary circumstances and, indeed, the charter makes it clear that it has to be in extraordinary circumstances by erecting a very substantial threshold.

That is to say, where the nonextraordinary techniques are utilized and those essentially would be limited to pretext interview, they have to be—the activity has to be—conducted pursuant to Attorney General guidelines.

Where extraordinary or, as the charter refers to, covert techniques are used and it is not a counterintelligence or counterterrorism case, there would have to be a Presidential determination that the information sought is essential information. Such a determination can only be made subsequent to a recommendation by the National Security Council, or if the individual targeted was a member of a foreign government or the organization targeted was substantially foreign owned, the President could designate the officials to determine the intelligence.

Senator BAYH. You think it is important enough, the circumstances are frequent enough, that this is not the kind of thing that the FBI should do? What I am thinking about is that that would be a significant signal, I think, to a number of concerned Americans.

Mr. CARLUCCI. I would not argue that the circumstances are frequent, hut hy their very nature they might be important enough to require this kind of provision. You might have an American who has very critical intelligence regarding a potential terrorism operation or a potential attack and he is unwilling to share it with his Government. Under those extraordinary circumstances the President might well determine that we should target that individual.

The CIA itself might already have some entree or some particular access that would make it more appropriate that we do it, that is to say, we might already have some contact. This, once again let me emphasize, would be under very exceptional circumstances and certainly would not be used as has been charged in some press articles, in a frivolous manner.

Senator BAYH. Is it possible to find words of art that would permit you to have this authority where you really needed it and do it in a way that would protect the first amendment activities of American citizens, with whom I am primarily concerned in this regard?

Mr. CARLUCCI. Mr. Chairman, I think those words of art have been found. I think anyone looking at just the sheer volume of paper that would be created by this process would be discouraged from collecting information on Americans.

One does not go through an NSC meeting and take an item to the President and then go to a court and do it lightly. I think this offers very substantial protection to Americans.

Senator BAYH. Senator Huddleston, do you have any further questions?

Senator HUDDLESTON. No further questions.

Senator BAYH. Admiral Inman.

Admiral INMAN. Senator, if I may, for the record, if you have not already been apprised by other means, I am told that the administration objects to the provisions in the bill which would extend to NSA employees some of the benefits which State enjoys. Mr. Carlucci mentioned this. The same decision applied to NSA. I was not a party to the decision. I did not see the rationale that went forward to justify that decision or to produce the result.

I feel very strongly that if we are going to try and have quality intelligence we have to try to look out for our people in a responsible way, but I had to make sure you knew for the record that the administration opposes that provision.

Senator BAYH. Can somebody tell me why?

Mr. CARLUCCI. I think I can clarify that, Mr. Chairman. What is being opposed in the administration is the provision for automaticity. That is to say that the DNI with regards to subsequent legislation can on his own by regulation have benefits that are granted to the foreign service via such subsequent legislation automatically applied to the intelligence community.

What is not being opposed is equality of benefits. Indeed, as I indicated in my statement, I feel very strongly that we ought to have equal benefits. I share Admiral Inman's view on this. We will defend them on a case-by-case basis working with the Office of Management and Budget and with this committee.

That is to say, we are not opposing granting equal benefits to members of the intelligence community. What the administration is opposing is the automaticity, the automatic provision, granting the DNI authority to do this should subsequent legislation giving benefits to foreign service be enacted.

Senator BAYH. Would that apply to Admiral Inman's shop as well as the CIA?

Mr. CARLUCCI. I would like to clarify this for the record subsequently, but I think it does.

General TIGHE. I would like to say I have the same concerns. I have them now. It is a problem that we have been working on for years. There is not equality now and I will strongly support that kind of a provision in this legislation. Those privileges that are extended now to the Foreign Service should be extended to the intelligence community, as should any future changes to those privileges.

Admiral INMAN. Senator Bayh, you recognize that we do not have the authority that the CIA in fact now does have. In some cases, though, the committee did in its classified report extend to us in certain circumstances, for this current fiscal year, some authorities. As I say, they have to become a matter of legislation, I am told, the Appropriations Committee will not repeat that in the coming year.

Senator BAYH. I suppose we could do that in the authorizing legislation. I see no reason myself why one element of the intelligence community should be treated differently than others in trying to maintain some status that is relatively equivalent with foreign service.

Admiral INMAN. We would all share, I think, an immediate concern that it not be the usual simple device as taking it away from the one agency as the easiest way to solve the problem. I strongly support their having it and I think the rest of us should have it.

Senator BAYH. I did not mean to infer that.

Thank you very much, gentlemen. We appreciate your contribution here today.

[Whereupon the hearing was adjourned at 5 p.m.]

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MONDAY, MARCH 24, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The select committee met, pursuant to notice, at 10:06 a.m., in room 1202, Dirksen Senate Office Building, Hon. Walter D. Huddleston presiding.

Present: Senators Huddleston (presiding, chairman of the Subcommittee on Charters and Guidelines), Goldwater, Garn, and Chafee.

Senator HUDDLESTON. The committee will come to order. We are continuing our hearings into legislation to establish charters and legislative guidelines for the inteligence operations of the United States. We are delighted this morning to have two witnesses: The distinguished Senator from Connecticut, Mr. Lowell Weicker, and Mr. Bill Colby, former Director of the Central Intelligence Agency and a longtime practitioner of intelligence.

We will begin with our first witness, Senator Weicker. Senator, you may proceed.

TESTIMONY OF HON. LOWELL WEICKER, JR., U.S. SENATOR FROM CONNECTICUT

Senator WEICKER. Thank you very much, Senator Huddleston. This is sort of a homecoming in the sense that, although I've never had the privilege of serving on this committee, I think I had as much to do as anyone in establishing it, which may be the reason why I'm not serving on it. So it is a delight to be with you and give my thoughts on the subject today.

I agree with the broad feeling that some adjustment of existing guidelines is in order. There is wisdom in accommodating to experience, and experience suggests that we may beneficially alter some of the strictures under which our intelligence agencies, particularly our foreign intelligence agencies, and most particularly the Central Intelligence Agency, function.

Yet, we must keep one fact firmly in mind while discussing the proposed CIA charter, and I think it's something that sails over the head of my colleagues in the Senate and those in the House and in the media and the American public as a whole. That is that the CIA is not exempt from the Constitution of the United States.

Article I, section 9, clause 7 of the Constitution provides that, and I quoto:

> No money shall be drawn from the Treasury but in consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. No money shall be drawn. All public money or a statement of accounts shall be published from time to time.

There's no exception that says funds expended by the CIA for its activities are exempt from the provisions of the Constitution.

I would also suggest that in exploring this issue we bear firmly in mind the circumstances which gave rise to the awareness and the need for guidelines, and which gave rise to the creation of the Select Committee on Intelligence. I especially plead the latter point, for it was only a few months ago, Mr. Chairman, when I had to rush to the floor of the U.S. Senate in the evening to once again fight to uphold the rights of citizens of this country as to the privacy of their tax returns. All the lessons learned only a few years ago, which resulted in legislation being put on the books to protect that privacy, have been forgotten and in a matter of 10 minutes could have gone down the chute. Fortunately, a large majority of my colleagues determined that the reasons for the law being on the books were valid and it would stay on the books.

In hockey terms, there was a last-minute kick-save. I don't know how many times I, or somebody else, will be on the floor to reteach a lesson.

In the early part of this decade it became apparent that the constitutional rights of Americans were imperiled by activities being carried out under the guise of national security. There was, Mr. Chairman, a simple contradiction: In order, as they thought, to protect America, our intelligence agencies were trangressing the rights of Americans.

To rectify this, the Committees on Intelligence were created. I might add that a specific recommendation that I made in my separate report on Watergate called for this recommendation No. 4:

> Establish a joint congressional committee with complete investigative powers and rotating membership to monitor domestic intelligence-gathering and law enforcement activities throughout the Executive branch, and be able under appropriate safeguards, to obtain and provide access to relevant materials required by any member of Congress. Similar oversight functions now held by congressional committees should be transferred to the Joint Committee.

So, in that regard, I believe it would be a good thing to draw these types of activities under one umbrella.

The Committees on Intelligence were created to permit the representives of the people to insure, through oversight, that the rights of the people were preserved.

There was, prior to the establishment of the Intelligence Committees, a congressional oversight function. It was there, but it was insufficient to prevent abuse. In the case of foreign intelligence, it was a matter of one or two Members of our body being told what was going on and no further transmittal of that information to the remainder of the U.S. Senate. In the matter of other law enforcement agencies, such as the Federal Bureau of Investigation, it involved a cup of coffee with the Director and a few minutes' chit-chat, but it certainly wasn't oversight. As I said at the time, of the role of Congress, "Call it what you will, we do not have oversight. We have had weak sight, we have had blind sight, we have had hindsight, we have had shortsight, but we have not had oversight."

Subsequently, congressional oversight committees were established, and as a result of the formation of these committees and the passage

of the Hughes-Ryan amendment, Congress has vigorously exercised its oversight responsibilities to see that there has been no further abuse of individual rights by the CIA. It has also seen that there has been no repetition of the disgraceful and absurd actions abroad which brought both shame and ridicule upon our country.

Let me say with regard to the new circumstances which gave the Congress a genuine oversight capacity, there has been no breach of security from within the Congress and no degrading of our intelligence and covert activities due to Congress. So the record is good insofar as the oversight activity of Congress is concerned.

That is not to say that the security of U.S. intelligence information is everything that it should be. To the contrary, there have been several significant breaches in recent years. However, these have been attributable directly to failings within the CIA. It was the CIA, and not the Congress, that allowed one of the CIA's employees to walk out the door and sell the Soviets our satellite secrets. To me, Mr. Chairman, this suggests the need for greater congressional oversight, not less.

There is a natural desire on the part of the CIA to explain its failures as being the fault of anyone and everyone except those responsible, so it is not surprising that the oversight function of the Congress should be singled out as causing the failures which the CIA prefers not to shoulder.

However, Mr. Chairman, nothing has been adduced, or can be adduced, to suggest that the effort in S. 2284 to constrict and limit congressional oversight is justifiable or acceptable. Congressional oversight, in its present breadth, has not harmed our intelligence gathering; it has enhanced it.

Nor are the provisions contained in the bill which would exempt the CIA from most of the requirements of the Freedom of Information Act justifiable or acceptable. The Freedom of Information Act holds the CIA publicly accountable for its actions. It insures that the American public will ultimately learn about mind control experiments, domestic spying operations, and other activities carried on by the CIA.

Under existing law, the CIA is afforded adequate safeguards against the release of classified information that should properly remain confidential. Although the Agency's denial of access to information about covert operations is subject to judicial review, it has not lost one lawsuit seeking to compel disclosure in the nearly 6 years the Freedom of Information Act has been in existence. In light of these existing protections, the effort in S. 2284 to exempt the CIA from public accountability is clearly not tolerable.

In lieu of existing provisions insuring congressional and public oversight of the CIA, S. 2284 would create a Presidentially appointed Intelligence Oversight Board, whose constituency would be the executive branch and not the American public. This board would simply be a stalking horse entered in all too private a race.

Mr. Chairman, I also believe that those provisions in this bill which would give the CIA the right to do with American citizens abroad what the Constitution will not permit the CIA to do to these citizens here at home are not justified and not acceptable. The CIA should not be able to conduct secret wiretaps and searches of Americans who

are not suspected of having committed a crime, solely for the gossamer reason that the person is thought to be in possession of intelligence information. The CIA should have to show that there is probable cause that the subject of their investigation has committed a crime before it commences a physical search or electronic surveillance. Our Constitution—again, our Constitution, the fourth amendment, mandates that. Unless, for an American citizen, there is one Constitution for home consumption and one abroad.

I am also deeply disturbed with the failure of the bill to provide adequate limitations on permissible counterintelligence activities. As Federal Bureau of Investigation Director William Webster admitted last week in testimony before the House Intelligence Committee, the proposed charter would enable the FBI to engage in disruptive techniques against American citizens or domestic groups merely suspected of having some foreign ties. Such latitude would permit the FBI to revive its COINTELPRO operations. There can be no justification for allowing our Government to ever again engage in smear campaigns such as those directed against opponents of the Vietnam war.

Likewise, the provision in S. 2284 which would permit a waiver of the prohibition against the CIA's use of clergy, the press, and academia as covers for intelligence gathering is unjustifiable and unacceptable. The integrity of these institutions would be irreparably damaged by a waiver, under any circumstance, permitting them to be used in intelligence activities. Any short-term benefit derived from their employment for intelligence reasons would be far outweighed by the long-term damage inflicted on the American society.

Similarly, I would urge the committee to consider extending this prohibition to include the use of domestic corporations other than CIA proprietaries. American overseas businesses would therefore not be subjected to pressure by the CIA to engage in intelligence operations against the very foreign governments with which they must deal to be successful. This prohibition would avoid repetition of incidents such as that which occurred in Chile.

Finally, that provision of S. 2284 which would create a Director of National Intelligence, in effect a czar, is not only ill advised on its face, but is rather astonishing in light of recent experiences. What wisdom is there in extending the present miseries of the CIA to the entire network of U.S. intelligence agencies? Furthermore, with the Director of National Intelligence serving in the dual role of CIA Director and chief intelligence adviser to the President, the ability of the President to objectively evaluate the quality of the information he gets from the CIA is seriously impaired, also, and I might add, for him to objectively evaluate the quality of his policy. This is the very reason why I objected, at the time, to the dual role played by Henry Kissinger as Secretary of State and as head of the National Security Council, where indeed he could shortstop that intelligence which he got which would make his policies look bad.

I laud the committee for its efforts to establish a comprehensive charter to govern our Nation's intelligence activities. S. 2284 seeks to accommodate the necessary role of the Congress, it seeks to accommodate our intelligence requirements, and it seeks to accommodate the administration. Unfortunately, these accommodations have led

to the invention of a new, lopsided wheel, which sacrifices many of the basic rights of the American people in a misguided attempt to smooth the path of the CIA. The bill's attempt to smooth that path will not mitigate our recent intelligence failures, but will only roll us back to the darkness that permitted the abuses that gave rise to the present guidelines. I urge the committee to closely reexamine this legislation in an attempt to accommodate the most important consideration of all, the Constitution of the United States.

We are, gentlemen, after all, a government of laws. It is not enough to say we remember the abuses of the past and so they will not happen again. We are not a government of memories; we are a government of laws.

It is not enough to get up after the abuses have taken place and say, I apologize. We are a government of laws, not a government of apologies. It is not enough to go ahead and issue an Executive order. That can be here today, gone tomorrow. We are a government of laws, not a government of Executive orders.

I thank you, Mr. Chairman. I'll try to answer any questions I can. I have a very deep commitment to your committee. It is the end result of being exposed to, I suppose, as many abuses of the intelligence community as any individual in the Congress has been exposed to, and then trying to respond to those abuses within the framework of the Constitution and of the legislative and executive process.

I remember at the time the committee was created there were those, and it is important to remember your history, who urged as an alternative to the creation of your committee, the abolishment of the CIA. Now that is as preposterous in its face as giving carte blanche to the CIA. What we tried to do was to assure that the Congress performs its oversight function and, in the course of that oversight function, create a better Central Intelligence Agency, one able to perform the task assigned to it.

Our government is also a government of human beings and, left without oversight, believe me, it will only be a matter of time before the very same abuses crop up again. We will then have to go through the terrible agony that this Nation went through a few years ago.

I will try to answer whatever questions I can, Mr. Chairman.

Senator HUDDLESTON. Senator, thank you very much for your testimony. The committee appreciates your interest, which goes way back to the very beginning of intelligence oversight, the contributions you made to establishing the committee, and the interest that you have maintained throughout these years that it has been in existence. I don't have any particular questions.

I might comment on a couple of concerns that you indicated. First, the question of the budgets for the intelligence community and the constitutional requirement for public appropriations has been one of the major subjects of concern to the committee. We have improved the process, I think, considerably, and if we are not totally satisfying the constitutional requirement, we are much closer to it than ever before in the past. The requirement in this bill that we are considering, S. 2284, and also in the Senate Resolution 400, does call for annual authorizations and appropriations. The figures are available—specifically, line item figures—to the committee and, therefore, to any

Member of the Congress. The question of whether we ought to publish an overall figure has been one that the committee really has not resolved. It has had two or three votes on it, as I recall, bnt we haven't resolved that yet.

There were those in the administration that had no objection to a gross figure being established, but up till now we have not adopted a procedure that would publicize this actual amount due to fear of what this figure could tell our adversaries. But, as I say, this legislation—and, as a matter of fact, actual practice—has moved a long way toward resolving the concern that you have there.

You made some reference to S. 2284 limiting congressional oversight of the intelligence community. With the exception of reducing the number of committees receiving Hughes-Ryan reports I think the opposite is true, that S. 2284 establishes very strict congressional oversight. And last, that while operating under the present administration's Executive order, we have had the kind of oversight that is certainly almost revolutionary compared to what preceded the formation of this committee.

This legislation itself, you know, requires prior notice on covert activities and requires that the committee have full access to information. Those are still issues that are being somewhat hotly contested at this point, but the legislation itself hopes to accomplish that.

Then I think you should not overlook the mechanism that is established here that if followed—and we would expect that it would be followed—eliminates the likelihood, if not the possibility, of many of the kinds of abuses that have been revealed in the past.

The question you brought up about dealing with Americans abroad has, again, been one of the areas in which we have had considerable difficulty. As I have said before in other hearings, I think the question really boils down to whether or not the President of the United States must sit idly by and see something very damaging to the country occur when he had reason to believe that some citizen had information that could have prevented it from happening. I think you need to look very carefully at the requirements for invoking that kind of activity.

No. 1, it has to be essential, and I believe this is the only place in the bill where we use the term "essential to the national security," which means it has a higher standard, even, than special activities, which only have to be important to the national security.

Second, if we are to indnlge in any of the what we would term obtrusive techniques for gathering information from that individnal—wiretapping, bugging, opening his mail, any other of the more onerons types of invasion on a person's privacy—then the President has to further get an order from the court in order to do that.

Judge Webster, in response to a question of mine, pointed out again that collecting intelligence against an individnal is vastly different from conducting a criminal investigation against him. The purpose of gathering intelligence is not to convict the individual or to bring charges against him. It's simply to gather information that might prevent a serious setback from happening to our country.

There are minimization procedures in the bill as to how information that is collected might be used to protect that individual from un-

necessarily suffering any harm from the information. So I think there is a reason to make a distinction between gathering information and conducting a criminal investigation or any other kind of investigation designed to bring harm to an individual, as Judge Webster pointed out.

Those are just some of the reasoning processes, Senator, that went into the final writing of these provisions.

Senator WEICKER. First of all, Mr. Chairman, let me say this. In the sense of limiting the number of committees that are involved in this process, I think that probably makes sense. Indeed, in my recommendation, if you'll note, I called for one joint committee, not two committees.

I would make a suggestion to you that you might mull over. If you're going to restrict the authorization-appropriations process to the Intelligence Committees—and I think that is what should happen—then you make darn sure that there can be no action of the committee vis-a-vis the budget of the various intelligence agencies, except by a very large quorum of the committees.

That will guard against what used to happen, which was a one-on-one appearance between the Director and the chairman of the Appropriations Committee and that sufficed for the rest of the committee. So if you go to that format, just make certain that committee action could only be accomplished by a large number of the committee, whatever quorum you wanted to establish.

Point No. 2. As to the issue of the fourth amendment as to whether or not you can go ahead and dilute that, in the sense of Americans abroad—there's no point in us debating it, because, believe me, I have no doubt that that is going to be settled by the Supreme Court of the United States. I don't think you can dilute those rights. I just don't think you can. Because I live or travel abroad is no justification for you to go ahead and strip me of my fourth amendment rights.

I would like to point out the extremes to which this can go, and the reason why I'm maybe a little bit sensitive in this area. During the course of the investigations that were being conducted several years ago it came to my attention totally separate and apart from Watergate that the Army intelligence units in West Berlin were breaking and entering into the premises of American citizens, more particularly the Americans for McGovern operation in Berlin. And the nature of the evidence produced from these break-ins were autographed pictures of our colleague, George McGovern—great work on the part of our intelligence unit. It seems to me there's quite a job to be done in both West and East Berlin relative to intelligence gathering, but instead this was the nature of our intelligence activity. That is probably the reason why I'm quite sensitive to this question. Because an American citizen happens to reside in West Berlin certainly, again, doesn't strip him of his basic rights as an American citizen.

And lastly—lastly, I want to say that my efforts in this regard in being the one that drafted most of the legislation that set up your committee was just not to protect against the abuses as we had learned of them during the past several decades, but to assure that we had the best possible intelligence agency. And I don't think you're ever going to get that unless there is congressional oversight. I never conceived

of the fact—when I wrote the legislation—I never conceived of the fact that we were going to have the names and addresses of the agents and every last bit of minutia as far as the intelligence budget was concerned. But as matters of general policy, that was an area for oversight. I still believe that today—in the sense of making certain that our intelligence units are of the highest quality.

I remember sitting down a year ago and conversing with the Deputy Director of Intelligence of one of our allied nations. I inquired of him as to why we were failing so badly in the intelligence that was being gathered and communicated to this Nation. This was right after the Iranian performance and the fact that we weren't on top of that—as indeed we hadn't been on top of many events—such as the overthrow in Portugal in 1974, the Egyptian-Israeli war in 1973, or the Tet offensive, or the Czech invasion, or the nuclear bomb. I wondered why, what was the problem?

We're not talking about abuses. We're talking about the quality of intelligence gathering. You know what his answer was? The first answer he came forth with was well, you've got the problem of all this congressional oversight. And I said, knock it off, General, knock it off. I said, I don't want to hear it. Since I was the one that devised the legislation, I won't accept that as the answer. And then he got to the core of it. He said it was because our people won't do the dirty work of good intelligence. And by dirty work he didn't mean assassinating foreign leaders or engaging in all these sort of exotic plots. He was just talking about the good old mundane business of just being out on the streets with the people rather than in the anteroom of the Shah or in the palaces of the Sauds—out there in the streets, out there in the countryside, the dirty work. In other words, not the James Bond-type of situation. Just being there and doing that very mundane, very tough, and absolutely essential job.

So, again, I want to repeat that I don't look upon the legislation creating the committee or anything that might follow as just treating abuses of the past. It is to try to make certain that in the future we have an intelligence agency that is not matched by any other in the world as to the quality of its work. And that's only going to happen if you fellows watch it, I can assure you.

Senator HUDDLESTON. Well, you won't have any disagreement among this committee with that objective, I'm certain.

Senator Goldwater?

Senator GOLDWATER. I have a question about a statement on page 4 when you say:

> * * * likewise the provision in S. 2284 which would permit a waiver of the prohibition against the CIA use of clergy, the press and academia, as covers for intelligence gathering is unjustifiable and unacceptable.

Now suppose we use the term "voluntary." Would you object to the use of clergy, and so forth, if they volunteered?

Senator WEICKER. Yes, I would, Senator, for the simple reason that I think it leaves the door open. My thought in this whole area is best put in the last sentence where I express my concern about the long-term damage inflicted on the American society. I just think these institutions ought to be left out of the act entirely.

Now look—if a professor at Princeton University wants to work for the CIA let him resign from Princeton University and work for

the CIA. I've got no problem with that at all. But I don't want the academic institutions brought into the act. I think we've already done damage in this area—I will refer to that in one second—in the sense of getting the best of these various institutions.

Aside from that fact, you know as well as I do, that in many instances the news media was being used to the point where they would feed the information to the CIA which would feed it back to the news media and it would come back to the American people as hard news.

That's not right. That damages the whole institution. So even in the voluntary sense the answer would be no. I wouldn't. I suppose the religious question is more emotional than it is practical. The other two, I think, have very practical effects in diminishing the strength of those institutions which are so vital to the future of the Nation. And I wouldn't want to leave it to even on a voluntary basis.

Both of us are very proud of the space program that we created here in this country. But it was always clearly delineated as to the military aspect of it, which was concluded at Vandenberg Air Force Base, and the nonmilitary which was taking place down at Cape Canaveral. We kept the two apart. And the net result was we got the finest academic minds to work on the peaceful exploration of space. Others I'm sure, might have been hired or might have been working for the Air Force. That's fine. I've got no objection. But they knew what they were doing.

Now, in this Space Shuttle program, some fellow that has his experiments from Yale University going up in the shuttle is going to find out he's in there side-by-side with the CIA. Wait and see what happens. You wait and see what happens as to how the academic community is going to go ahead and treat that. They're not going to be too pleased about it. All of a sudden we're going to split apart and the academic community is not going to throw itself into what it is that the space program can accomplish. Because they don't want to be part of the military and intelligence aspect.

That's what I worry about in the sense of blending these two operations together when it comes to intelligence gathering.

Senator GOLDWATER. Well, I can understand your feelings, but I also understand the feelings of a man or woman in these groups that you've covered who might want to help his country. I am not saying we should force any of them into it because I'm not sure that every one of them are worth a darn, to be honest with you. But, this part will cover what you said about your friend overseas in intelligence saying that we didn't get into the dirty work.

Well, the dirty work is many times covered by people who aren't necessarily in the body of intelligence. I think back to World War II where some of the greatest advancements in intelligence were made by academics, were made by individuals who merely volunteered to be available for whatever services they might want to give. And I would not want to see the door closed to any member of the press or academia or anybody else who wants to help in time of trouble, or constantly.

You know, you mentioned Iran. I would disagree with you. I think our intelligence on Iran was rather complete. The trouble over there was we had a lot of these people—40,000 of them—living in Iran and telling us don't pay any attention to what the CIA or the other intelligence agencies tell you. We know the Shah. We know the situation

and what you are hearing isn't true. So the thing bubbles both ways. And I would like to see us continue to have this provision, only I would like to use the word, if possible, "voluntary," in there someplace so that we cannot force anybody to provide information on anything they don't want to give.

Senator WEICKER. My response to you on that point would be that if an individual wants to go ahead and use the knowledge gained in their profession, as an individual, that's no problem. I repeat, if this professor at George Washington University wants to work for the CIA, please, leave George Washington University and work for the CIA, but don't bring George Washington University into the CIA.

If a reporter for the Washington Post wants to go ahead and work for the CIA, fine. As a knowledgeable reporter, you know, work for the CIA, but don't bring the Washington Post into the operation of the CIA.

You gentlemen know just as well as I do that during many of the hearings that were being held on intelligence functions—or the various House and Senate committee hearings that were taking place—reporters were writing on those hearings who had been or were employees of the CIA.

Senator GOLDWATER. I couldn't agree with you more.

Senator WEICKER. Both editorial writers and the reporters themselves. Now here's the danger. Here is an enormously important subject to the American people—the intelligence community, its past performance, its future, et cetera—and men were writing editorials in the leading papers of this country who were either former or present employees of the CIA. The same was true of reporters. What does all this do to the institution of a free press and the ability of that press to communicate to the American people what it is their Government is doing?

So all I'm saying is I don't disagree with your bringing in people that have these various types of expertise and having them employed by the CIA. No argument at all. But don't drag the institutions themselves in.

Senator GOLDWATER. I'm not talking about that. I'm talking about abroad. I am talking about a man who works for some newspaper, who might be in a field that he's learned something that could be of great value to intelligence in our country and he volunteers to give it. Or if he is approached by an intelligence agency would agree to keep his eyes and ears open. I am not asking that we engage this whole group. We can extend this. You can use the same arguments on every American, regardless of his trade, that he shouldn't be employed by the CIA. And I disagree with that, especially if he wants to do it. I am talking about voluntarily.

Now you made repeated reference to lack of our oversight before the committees. I have to agree, having served on the intelligence subcommittees for more years than I can remember, we didn't hold oversight hearings, for the main reason that we didn't want to know some of the details that our intelligence-gathering communities were engaged in. And I'm still of the opinion that we shouldn't know all. The best intelligence in this world—and let me enter here I think our intelligence gathering is as good as any country in the world. Our

assessment is not so good because we've lost a lot of the oldtimers and we have, unfortunately, an administration that doesn't quite understand everything they read about intelligence submitted to them.

But I think we have something we can be proud of. I don't want to see it further destroyed, as we seemingly tried to do within the last 10 or 12 years. You will have to remember every so-called abuse practiced by intelligence agencies, with probably the exception of the FBI and I am not in a position to know about that, these abuses—so-called abuses—were ordered by the President of the United States. So what are you going to do if you're the head of an agency and the Commander in Chief says see what you can do about Joe Blow. He's head of a country. You salute and say, yes, sir. And that's just exactly what happened in every case that I sat through on the Church committee, including Chile, which is still very much in the dark about who did what to whom and why.

I don't like to see the intelligence agencies abused for something that they had nothing to do with.

Senator WEICKER. All right, I'd be glad to respond to those comments. First of all let me say this. I don't think you mean to imply that intelligence has gone downhill since the creation of your committee.

Senator GOLDWATER. No, no. This is a different committee.

Senator WEICKER. I remember receiving the testimony when I sat on the Governmental Affairs Committee of, I think it was John McCone. What was the unit that he was the head of? What was it called at that time? Was he with the CIA?

Senator HUDDLESTON. CIA.

Senator GOLDWATER. CIA.

Senator WEICKER. He said we would sit down with Dick Russell and one or two other venerable names in this institution and would tell him what was going on at the Agency. Well, that's not good enough as far as I'm concerned. That's not the Government of the United States. There's nothing in the Constitution that delegates the oversight function to one or two men, and the Constitution makes that very, very clear.

Obviously what you do is try to handle oversight in a reasonable way. That is what we thought as we approached the setup of the Senate committee. But just because a President tells somebody to do something does not absolve the legislative process. You've got the same oversight responsibilities on your shoulders as I do. Just because the President gives an order does not mean to say that—and we're not talking about details now, we're talking about matters of policy—that absolves us. Unfortunately, we thought that for too long a period of time. And that's when the abuses took place. The only time any questions started to be asked, as I said, was when the can of worms was opened up around 1972–73, and then we found out who was giving the orders and what those orders consisted of. And we also found out that a few people in Congress hadn't been asking the questions they should have been asking for a long period of time.

So again, I have to repeat to you, Barry, please take yourself back to 1975 when the big issue confronting the country was whether we should abolish the CIA, or whether we should take a constructive ap-

proach to making sure we have the best intelligence gathering system. You could not stay with the status quo. Nobody was going to be satisfied with that. That I do know. And they still won't be satisfied with it today.

But God knows I am not here advocating the abolition of the CIA. I repeat, I want it to be the best unit in the world. I am satisfied entirely with the Senate Intelligence Committee. And I think that possibly, as I said earlier, perhaps the best way to handle it is to have both the appropriation and the authorization function handled by your committee and the House committee. But make sure there are enough committee members that are going to go ahead and pass on whatever it is that's offered.

Senator GOLDWATER. Well, I think the question really gets down to the point of when does intelligence cease to be intelligence and when does the function cease to be able to function when we give away too much intelligence? Now I have all the faith in the world in most Americans, but there are some Americans I wouldn't trust from here to there. And we certainly wouldn't trust our friends in the Soviet Union who probably have people listening to this testimony here today.

Senator WEICKER. Right. Right.

Senator GOLDWATER. I want to see intelligence gathering and intelligence assessment made the best in the world. I just don't want to hold them back.

Senator WEICKER. I agree. I think both—well, let's just take two examples that I think frame the situation in my mind as well as anything else. I don't want to know the name and address of every—or any—intelligence agent throughout the world. I don't want to know it. But I want to know about a general policy of when we're in disagreement with a government that we don't hesitate to assassinate that foreign leader. I want to know about that. Yes; I do. I think that's a broad policy matter which we can discuss out in the open around here. So that's what we're talking about. I agree with you. I think it is a balance in this area. Nobody's arguing.

Senator GOLDWATER. OK.

Senator HUDDLESTON. Senator Garn?

Senator GARN. Thank you, Mr. Chairman. I only have one question, or one comment to my good friend—and he is my good friend. In his overall testimony I disagree with most of it, and he knows the spirit with which I mean that, because we are close personal friends.

Let me refer to one of your comments in which you say that the provisions contained in the bill that would exempt the CIA from most of the requirements of the Freedom of Information Act are not justifiable or acceptable. You mentioned 1975. Let's talk about 1980.

And I've been on this committee since it was organized and there's an incredible difference in the oversight. I understand what you're saying about the previous oversight in which one or two or three people were informed. That was wrong. But in the 4 years I've been here we have had complete access to all information—every line item, if it is $1.76 we have known about it. We have been informed of all covert operations. As far as I am concerned I know of nothing that has been withheld from this committee. I mean from the committee—not from the chairman or anybody else.

And so there is a dramatic turnaround in that ——

Senator WEICKER. I agree.

Senator GARN. That is why I am concerned about the Freedom of Information Act. Not only does it create a great deal of unnecessary expense; hundreds of people involved in complying with a lot of nuisance requests—interestingly, a large percentage of them coming from overseas which they have to respond to. Even though they are sanitized there are examples in which a couple of sentences are removed from a particular document which makes it technically unclassified, but the intelligence agencies on the other side, with unclassified information, are able to fill in the blanks in many cases rather easily.

So I do think Freedom of Information hurts very dramatically our intelligence-gathering activities. It is preventing some great foreign intelligence agencies from wanting to disclose information to us for fear it will appear. My point is simply that I don't understand your desire to so open this up to the public when you have had the oversight function change so dramatically. And we do have a representative form of government with a broad cross-section of Republicans, Democrats, liberals, and conservatives on this committee who have access to that information and you, as a Senator, can have access to every bit of that any time you want. All you have to do is go down to the committee chambers and you can have it— all 100 Senators, all 435 Congressmen. Why do we have to spend millions of dollars a year opening up the files endangering information and—proven with much testimony—of disclosing information that is helping foreign governments and endangering some of our agents?

Senator WEICKER. First of all, let me make this clear, because I don't want to be misconstrued on this point about your committee. I think you've done an outstanding job. I want to make that clear. However, I just want to make certain that you are allowed to continue to operate and people understand why you are here.

Did you think you had everything ironed out in the way of this charter with the CIA? You thought that maybe you had reached some sort of accommodation with the CIA. Well, all of a sudden there was a great rash of testimony led by the present director indicating that they don't want the charter.

I've got no complaints with the way your committee's operating. I think it's operating exactly as was envisioned.

Senator GARN. No; and I didn't think that you did, Lowell.

Senator WEICKER. But what I want to make clear to you is that if you don't think that the CIA or any other organization that is having its turf tread upon by a congressional committee isn't going to keep banging away—publicly, privately or any other way it pleases—you've got another thought coming.

I remember at the time of the House Intelligence Committee and its hearings and then all of a sudden—boom. It was the time when one of the CIA's agents was killed in Greece. And I remember that his death was attributed, actually, by everyone to the fact that some article in a foreign newspaper or magazine had led to his discovery and, therefore, his assassination. But somehow it was filtered through the Washington scene that the man's death was actually caused by these hearings and they really ought to come to an end.

Now I am not accusing the CIA of filtering that word, but it's funny how people tried to match up an entirely separate sequence of events with a congressional committee.

I think you people are performing well, and I think your ideas are basically good ideas as I read them. I don't want you to dilute them. I don't have that much argument.

I will get to the Freedom of Information question, but first of all, I just want to make the point that you shouldn't worry about being accused that you are here weakening our intelligence. Believe me, you'll have a stronger intelligence because of everything you've done.

As far as the Freedom of Information Act is concerned, again I can really say no more than is in my testimony. The CIA has never lost a case before on this issue. There are some pretty good safeguards in place. If there was one situation, Jake, where information was leaked then I suppose your concern would be stronger. But the system has worked up to this point. Why shouldn't it continue to work?

Senator GARN. Well of course, I don't think it has. I think it's been inordinately expensive and I think it has revealed, for the reasons that I've indicated, even classified information, not just sanitized information. You know how the cost of our own CIA works. It's not James Bond. It's not covert operations. It's people sitting out at Langley poring over massive amounts of information trying to put bits and pieces together. And because we are such an open society we aid that intelligence effort on the other side rather dramatically. Even in nonclassified information you can effectively put the pieces of the puzzle together.

My point is simply that many of the things you say of the past were true. They are not true today. The oversight, today, in my opinion, is very complete. No one on this committee wants to weaken that. We only want to cut down the possibility of leaks by lessening the number of different committees that hear the testimony. But we are not talking about weakening this committee in any way whatsoever. And my point is, with that change from 1975 to today, it seems absolutely unnecessary to allow the Freedom of Information Act to continue to operate the way it is when that information is available in far greater detail than it has ever been before. And certainly it makes no sense at all to me to respond to foreign nationals—foreign governments—under the Freedom of Information Act, and to many dissident groups who want to use it for no other purpose but to discredit the CIA.

So I think the oversight is where it belongs and so I firmly believe that the changes for the FOIA are justifiable and acceptable.

Senator WEICKER. I would agree with you as long as the congressional oversight continues at its present pace and with the present degree of interest shown by you gentlemen and others. I suppose I also feel there ought to be a check on us, because I've seen all concerns degenerate in the last 7 years and all across the board, not just as far as CIA is concerned. Interest in the FBI's activities, the Internal Revenue Service, the whole attention of the world to potentials of misuse of Government power has waned. Boy, that was a hot topic in this town a few years ago and now nobody gives a damn anymore.

And I don't think it is bad for the public to have its own check. For that reason, as much I suppose as anything else I made my recommendations.

Senator GARN. Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you, Jake. Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman. On the first page of your testimony you say, in the second paragraph. "I agree with the broad feeling that some adjustment of the existing guidelines is in order." And then the balance of your statement seems to be against all the adjustments that we have considered here. Do I understand—what are some of the adjustments that you believe are in order? One is the Hughes-Ryan change, I suppose.

Senator WEICKER. Well, I've got a little problem there. However, as long as your committee has access to information. I'll be satisfied that the proper oversight function is being performed. But where you can be foreclosed information, that worries me. I'm not so sure that—depending on how the Hughes-Ryan issue ends up—you couldn't be foreclosed from getting the information necessary to perform your oversight function. Basically, John, I would say that I am satisfied with the situation the way it is. I don't feel that, as you have indicated, I am against most of the changes that have been recommended.

Again, I would repeat, I think the one matter that does require clarification, and could be improved, is the number of congressional committees involved in the process. I'd like to see two committees—the House Intelligence Committee, the Senate Intelligence Committee—with the appropriations and authorization function both dwelling in each committee, if you will. And then with the only requirement that there be a large quorum requirement before any actions are taken by the committee. That to me is protection enough, and that is the main reform. I would like to see that.

Senator CHAFEE. Well, I agree with you on that.

Senator HUDDLESTON. If the Senator would yield. Just to relieve any concern that you've got there. In practice over the past 4 years not only has there been a full quorum but every single member of the committee has been present and voting on the issues.

Senator WEICKER. Again, I want to make clear my admiration for all of you gentlemen on this committee. But I'm trying to get this thing in concrete for the future. And I know that it's going to continue to be under attack and God help you if ever a leak can be proven to your committee. That will be the end of it. So, as I said, you are already under enough attack and innuendo, quite frankly, as to whether you should even exist, with you performing an excellent job. Can you imagine what's going to happen if it's less than excellent?

Senator CHAFEE. Well, can I get back to the Hughes-Ryan? I take it, I thought, from your testimony by talking about the two committees that the appropriations and authorization and appropriations. You would thus agree with the elimination of the Hughes-Ryan. But I take it now that you would still require that in connection with all covert activities—that the eight committees would have to be notified?

Senator WEICKER. No, no. No. no. Whether you——

Senator CHAFEE. You'd be willing for just these two committees?

Senator WEICKER. Absolutely.

Senator CHAFEE. So therefore you would agree with a cutback on Hughes-Ryan.

Senator WEICKER. Yes.

Senator CHAFEE. The other question I had dealt with the problem of the cover. Now you say on page 4 that using clergy, the press or academia as cover would irreparably damage these institutions. And then you suggest that the prohibition perhaps should be extended to domestic corporations?

Senator WEICKER. Right.

Senator CHAFEE. What does that leave? In other words, it seems to me that you are opposed to cover overseas, except in the case of—you mention—a CIA proprietary corporation.

Senator WEICKER. Well, God knows, they are quite large. Or they used to be, anyway. I don't sit on your committee any more, but there were many of them and they were quite able to go ahead and give their cover to their agents.

Senator CHAFEE. I have trouble realizing why an institution would be irreparably damaged by the fact that a member of academia was assisting the CIA. Isn't that a matter of your putting—you would have it in law as a matter of fact. This is in law under this proposed legislation. I personally feel to put—you mentioned the word "concrete" several times. It is your desire that that be in the law.

Senator WEICKER. Prohibiting them?

Senator CHAFEE. Prohibiting them.

Senator WEICKER. I would like to see that in law. Absolutely.

Senator CHAFEE. It seems to me the purpose of this committee is to exercise oversight, as has been mentioned many times. But when we get into law that just can't be done. For example, in this bill there is a provision that no one—no CIA agent—can assassinate, nor conspire to assassinate. I don't know how you feel about that provision, but then that gets us into the ludicrous situation that no CIA agent could have conspired to assassinate Hitler in the middle of the war assuming the CIA or its counterpart were in existence in the future.

Senator WEICKER. Well, I think that one can always go ahead and repeal laws due to circumstances such as a declared war. You're not going to get them to handcuff the CIA. You can go ahead and repeal your laws. You can go ahead and vote the laws out, if you will, and then reestablish them or reinstitute them. Indeed, I remember a very interesting article about the period of time when we had all of the difficulties in the Watergate matter, with the involvement of the CIA and the various Government agencies, which compared Great Britain and the United States. For purposes of World War II the British suspended certain of the freedoms and the rights of their people, if you will. But, by God, the minute that war was over, boom, they were back in effect, whereas we never did. In other words, the fabric that set up these agencies was allowed to continue, and they were allowed to operate after the war.

Senator, to me the great strength of this Nation resides in its peoples and in its freedoms. And I don't think, except under the most extraordinary circumstance, that we should go ahead and limit them in any way.

So all I can say to you is if we have problems and we are involved in a war, this is a matter that your committee and the Congress can go

ahead and tend to. But in the absence of that, no. I don't care to go ahead and, in effect, when it comes to individual liberties and civil rights, keep us on a wartime footing.

Senator CHAFEE. Except I don't think when we're talking—on page 4 here of your testimony where you are talking individual civil liberties or rights when you are talking about the ability of the country to use the ability of the Agency to use some form of cover for its agents overseas, other than under its own proprietary corporations. It seems to me, I presume, that if you've gone this far—no clergy, no press, no academia—I suppose it would be logical to say no medical personnel. I can't see they're much different from clergy. Would you agree with that? Put that in, too?

Senator WEICKER. No; I didn't put that in there and I indicated I think the clergy issue is probably more of an emotional one. But the press, and academia, are essential to the operations of the Nation. Let's take, for example, Yale University—or my law school, the University of Virginia. What if, all of a sudden, it became obvious that there was a deep involvement, in other words, accommodations were made by those institutions with the CIA. How many great minds do you think would start to operate within that framework, within that context? The institution would be lost. Academicians wouldn't touch it with a 10-foot pole. Don't you think that's of value to the Nation, too—men's minds and the ability to have those minds operate freely, without feeling that they are associated with activities that they might personally not agree with? I think it is enormously important.

Senator CHAFEE. I guess where we differ is anything to start—I don't want to take anything out of context. But you seem to start with the assumption that good minds wouldn't want to be involved with the CIA.

Senator WEICKER. No, I say if they want to be involved go work for the CIA.

Senator CHAFEE. But I don't see that as counter to the aspirations of the Nation or the welfare of the Nation or the future of the Nation to have able people working other than directly for the CIA. If they are part of academia and they go abroad on a trip and they are able to obtain information which is of benefit for this Nation, I have trouble understanding what's evil.

Senator WEICKER. All right, Senator, let's go back to the example I used earlier. At the time of the House Intelligence Committee's hearings, the Church committee hearings, et cetera, there were reporters and there were editorial writers who either had been on the payroll of the CIA, or were on the payroll of the CIA, who were writing news reports and editorials which obviously weren't very favorably relative to those hearings and deliberations by the U.S. Congress. Do you think that's right, Senator? Do you think that's getting information to the American people?

Senator CHAFEE. Well, if somebody's a former—OK, let's take the first instance you gave. Somebody once worked for the CIA. Are they barred forever? When they leave are they barred forever from being a journalist or being an editorial writer for the Washington Post?

Senator WEICKER. I think I'd probably require them to make a statement of interest in the matter, but generally no. But how about the reporters, Senator? How about the reporter who's still on the payroll?

Senator CHAFEE. Well, now, the next example you gave. I was not here. I would be interested if somebody could substantiate that——

Senator WEICKER. You've got members, you've got staff on your own committee that can substantiate this.

Senator CHAFEE. Because the information I have that—we don't have examples of that, but if you say it, obviously you've got some evidence to support it and I would be interested to look into that. But the whole purpose, it seems to me, of Senate Resolution 400 and what has taken place since then is a recognition that we have oversight. But it seems to me your testimony and the answers to the questions here is you indicate great admiration for what has been done by the skepticism that we will keep our interest and keep on top of the situation in the future. And thus you are building. In your testimony you build a series of steps to protect, in your judgment, the public for fear that we would not do our job. That we wouldn't keep our interest.

Senator WEICKER. No. You see the steps in there as to what's permissible. In other words, insofar as these various institution are concerned. You are bringing that back into being by making it allowable, if you will.

Senator CHAFEE. I am. Yes.

Senator WEICKER. And why do you think there was such criticism of our intelligence-gathering activities in the first instance? Obviously a lot of people objected to the matters of these institutions being used in the past. Now I am not the one that's raising the issue. Your committee is raising that issue. You are trying to weaken what is presently—to say the law is incorrect—but certainly the public perception or public feeling is.

Senator CHAFEE. Well, we feel that we want to do the best we can to make this Agency its most efficient and most capable and to do the job, something you yourself believe in also.

Senator WEICKER. Yes.

Senator CHAFEE. And thus we've come forward with a series of measures in this legislation. You feel that each of those measures is weakening the protection that was erected as a result of hearings that were held in the past. My answer to that is that we have oversight and that is what we are here for. In other words, on page 3 you worry about changes in the Freedom of Information Act because you say FOIA holds the CIA publicly accountable for its actions. Now you say that is the duty of this committee—to hold it accountable. And if one has no confidence in the future this committee won't do its job, then I think we ought not to have the committee.

But there is no question that these various suggestions that have been made—the Hughes-Ryan, the changes in the FOIA, the attempts to get a handle on people like Agee—are done in order to make this Agency a more efficient one—a better agency and doing its job in a more substantial manner than it has. For example, take the covert action problem. Now we've had testimony after testimony that the Agency and the administration does not choose to go ahead with many covert actions. Why? Because prior to doing that they have to go and get permission from eight committees, or give notice to eight committees. I think, you'll acknowledge—you say in your statement there's never been a leak from Congress. I don't know. Of course,

many leaks have come and they don't know where they have come from. But I wouldn't be as bold as to say there hasn't been any leaks from Congress.

But if we are going to have covert activity, we've got to have a limited number of people to go to. That is the whole Hughes-Ryan argument.

Senator WEICKER. I would not argue the point that it ought to be limited as to who they must go to. I'm not arguing that point. Do you think they should come to your committee—your full committee?

Senator CHAFEE. I think they should. Now there's a different discussion as to whether it's prior or timely notice—whatever it is. And we're spending a good deal of time debating on that subject. But it seems to me the point—an acceptance has to be made somewhere that this committee and the House committee are going to do its job. Now if they're not, then don't change anything. And, as a matter of fact, you might as well get rid of the committees. That is the way I feel. If we can't make some of these changes that have been proposed and that you vigorously resist then I'm not sure we should keep the committee.

Senator WEICKER. Am I correct in assuming the fact that the committee thought that it had something fairly well worked out concerning the charter with the Central Intelligence Agency, yet when the Agency appeared before the committee there was much more that they felt that should be done?

Senator CHAFEE. You mean in connection with the charter?

Senator WEICKER. Yes.

Senator CHAFEE. Yes. But of course the charter was never fully committed or considered. That charter was drawn, as you know, by a subcommittee of the committee and other members of the committee—maybe a majority. I don't know. Certainly I and others here feel very strongly that some of these exemptions should take place.

As a matter of fact, we introduced legislation to that effect. Now the committee as a whole has not considered those measures, nor the charters. That is why we are here. That is why you are testifying.

Senator WEICKER. Right. What I'm trying to say is that I'm trying to present another side to the picture. In a public relations battle—Senators, Congressmen, or the committee versus the Central Intelligence Agency—I'm not so sure you're going to win if it is just left to that being the fight.

So maybe I'd like to stress the other side of this question, if you will, to put this in its proper context. I feel you have done a good job and I feel your recommendations were basically sound recommendations. I just want to make certain that the public understands there are those of us are far from favoring the giving of greater leeway to the CIA at this juncture. We're not of a mind to see it happen overnight, in view of the events that have transpired. And we would like to see you hang tough on these issues.

Senator CHAFEE. Could you comment briefly on the Agee situation and greater ability and power to punish those in a situation as Agee?

Senator WEICKER. I don't believe I raised that situation in my testimony. I'm not really prepared to go ahead and discuss that.

Senator CHAFEE. Thank you very much. Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you, Senator Chafee. I have just one comment on your concern about the use of academics, press, clergy. There was an interest in an absolute prohibition for any paid arrangements with these types of people and we've had a number of hearings on that, as a matter of fact. And in the academic field, for instance, there has not been unanimity as to just what approach ought to be made.

What the bill proposes is far stricter than anything we have now or ever have had. There has never been any restriction. We have now CIA guidelines which permit a waiver by the Director of Central Intelligence. The DCI has indicated to the committee that he has, in fact, waived the guidelines in some instances. So, in effect, there is no restriction now at all.

Senator WEICKER. No restrictions. Isn't that what you think the Agency would like to continue to have—no restriction?

Senator HUDDLESTON. They would like to have the flexibility.

Senator WEICKER. They would like to have no restriction. Well, this answers, I think, John's question the best. The CIA probably would like to have no restriction. But you have some guidelines which you put in there.

Senator HUDDLESTON. We put a specific restriction on the use of of them as cover.

Senator WEICKER. Right. And I'm coming along and advocating an absolute prohibition—just so that we get the whole picture up here as to how we all feel. It seems to me, it just might strengthen your position—I'm trying to strengthen your hand, if you will. I don't want the CIA or the public to feel it's all on one side of the issue.

Senator HUDDLESTON. I understand. I understand.

So that is where we are now. The bill itself would provide greater restrictions than we've ever had before. There is one school of thought—and I think it has some validity and it's been alluded to here—that you should not restrict the rights of other people who might want to engage in some part-time activity or whatever with a Federal agency. But even beyond that this practice could be totally eliminated without any law by those professions themselves. If they want to establish standards or procedures for enforcing certain standards, they could eliminate any use on their part by any Federal agency, including intelligence agencies. So there is a sentiment on the part of some on the committee that we should just put the ball back into their court and let the academies and the press and the clergy determine their own standards and means of enforcing them. And so that is why we have come down on something that is far less than what we started out with.

But, of course, the agencies can cite situations where this is very important. I was a purist, myself, in the beginning of this—much like you are—in believing that these institutions' integrity should not be violated. But the legislation as it's now written is stronger than anything that has even been put in writing, really, before.

Senator WEICKER. We went into World War II with some of the greatest scientific minds of Europe residing in this Nation because of the restrictions—use whatever term you want to—on academic free-

dom or on freedom of thought that existed in other nations in Europe. And I want to make sure that anybody that wants to in this Nation can pursue their ideas and their dreams and their thoughts without feeling in any way that they are going to be compromised either by the Government or by a colleague or by an institution. Just as I want the finest intelligence unit in the world, I also want to develop the finest minds in the world. And believe me, you're not going to be able to mesh those two without suffering some casualties. That's the only point that I tried to go ahead with.

Senator HUDDLESTON. There are two more aspects of this which you probably noted that I think strengthen this area. One is, first of all, agencies cannot enter into an arrangement with someone, whether it is a university or a member of the faculty of a university, without that person knowing he is dealing with the CIA or any other intelligence agency. Now that is a change from the past. In other words, a person cannot unwittingly be involved with a CIA operation. This is a substantial improvement over past performances.

Second, they are prohibited from disseminating in this country any book, magazine, news article, film or whatever without it being identified as being disseminated, produced by the intelligence agencies. I think these are some improvement in the legislation.

Senator, thank you very much for your testimony.

Senator WEICKER. Thank you very much, Senator.

And I would also, as I leave, like to—I know sometimes I've seemed sort of hardnosed on this subject and some people sort of get bypassed as individuals along the way. But the next witness, I believe, that you are going to have is the former Director, Bill Colby.

Before I leave I would like to say on the public record that I think that he was a thorough professional who did an outstanding job and in no way do I link him with any of the remarks that I have made here this morning. I have the highest respect and admiration for him.

Senator HUDDLESTON. Thank you very much, Senator.

Our next witness will be Mr. William Colby. Mr. Colby, you may proceed, sir.

TESTIMONY OF WILLIAM E. COLBY, REID & PRIEST, FORMER DIRECTOR OF CENTRAL INTELLIGENCE

Mr. COLBY. Thank you, Mr. Chairman.

Thank you for this opportunity to express my support of a new charter for our intelligence agencies. The previous charter, the National Security Act of 1947, reflected the consensus of America at that time that intelligence was a secret service necessary to the security of the Republic, best left entirely to the control of the executive, conducted outside the normal constitutional and legal system and shrouded with euphemism and total secrecy. Over the years since then, America has produced a new intelligence system. Its core is a center of scholarship; it constitutes a triumph of technology expanding our knowledge of the remote areas of the world and its products play a prominent role in our democratic debate of issues from SALT to oil policy.

The size and nature of the intelligence service the United States produced could not be contained within the old tradition of the secret service. The fundamental contradiction between the concept of a totally secret service and the requirements of the American constitutional system had eventually to be resolved. The process by which this took place was entirely too clamorous, and we injured ourselves in the pendulum swing from total acceptance of the idea of a secret intelligence service to a flirtation with total exposure and rejection of the necessities of intelligence operations in the world today.

The bill before you, Mr. Chairman, represents a return of that pendulum to a sensible middle position. This bill is a substantial improvement over the first early draft and the second version, which reflected much of the exaggeration and sensationalism which accompanied the exposure of our intelligence record of 30 years. During that period, my generation of professional intelligence officers contributed substantially to the safety and welfare of this Nation and indeed were honorable men and women in the process. But they were compelled to make up the rules as they went along, and I do them no discredit to say that in some cases, we made mistakes and were wrong in some of those activities, albeit for good motives of protection of our Nation.

The bill before you represents a new, better and American approach to this subject, in which the rules will be set by our constitutional machinery and the procedures for responsibility and accountability will be made clear. At the same time, the bill recognizes that intelligence is a special subject which cannot be handled in the same way as the Fish and Wildlife Service. It has thus sought reasonable compromises between the need for clear directives and control on the one hand and the need for flexibility and secrecy in intelligence on the other. I commend the result, even though neither I nor any of us will be totally satisfied with every detail of this new consensus about intelligence.

The result will be an intelligence community solidly founded upon a considered debate and vote as to what type of intelligence service Americans want. It will be stronger in the long run than one resting upon the old thesis that the American people should blindly accept its activities on their behalf. This new charter will particularly avoid the danger of another explosion some years hence over what our intelligence agencies do, because responsibility and accountability will clearly lie with our constitutional authorities.

This being said, Mr. Chairman, I do have several specific points that I suggest might be worthy of your further attention. I do not raise these as absolute bars to the adoption of the charter, as I believe that reasonable solutions will come out of this public consultation and the discussions between the Executive and the Congress over these subjects.

The most disappointing and even dangerous outcome of this Congress consideration of the charter would be the adoption of no charter whatsoever. Even if some of the items which I discuss were decided in a fashion opposite to my recommendations, I would support the idea of a charter because I believe the alternative is a continuation of the present drift and debate with respect to our intelligence opera-

tions, adversely affecting both the morale and the initiative of our intelligence officers. This is no time to dodge the need to update our guidance of American intelligence. If the decisions adopted should prove wanting, I am sure that appropriate amendments would be possible during the years ahead.

One of these points is the requirement in the charter for prior notice to the committees with respect to special activities. In truth, Mr. Chairman, I find this a rather small issue. The charter provides elsewhere that the committees be kept fully and currently advised of intelligence activities. The provisions of the charter calling for prior notice propose that the committees will have no responsibility for approval or disapproval of the activities on which they are briefed. The realities of these kinds of operations are that a Presidential decision to adopt them generally is followed by a series of activities to implement the program over a period of time. Whether the committees have "prior notice" or not, substantial objection to an activity will certainly influence the President as to whether it should be fully carried out. In my experience, most of the activities with which I was concerned could have been turned off after their notification to the Congress in a "timely fashion," if the Congress had asserted any real objection to them.

At the same time, it is obvious that a few cases will require immediate action if they are to be effective at all. Some procedure is essential, perhaps similar to the War Powers Act, to enable the President to act in such a case without convening a series of committee meetings to debate whether the action is wise long after it becomes possible. A provision for Presidential exception, advising as soon as possible the leadership of the Congress and the committees, would offer a reasonable compromise solution to this rather small issue.

Another substantial issue is whether the committees are entitled to "any information" with respect to intelligence activities or whether the provisions of the charter requiring that the committees be fully and currently informed are an adequate guarantee that they will, indeed, play their full constitutional role in the direction of our intelligence activities. This, of course, raises the constitutional issues as to Congress' right to information and the Executive's privilege to protect its decisionmaking process.

My preference in such situations, Mr. Chairman, is to avoid trying to settle such constitutional issues in the abstract. In the real world, Congress will receive the information it needs to do its job or it will react accordingly, and with respect to information upon which a satisfactory case can be made that it should not be informed, it will back off. In my experience, this issue arose over the names of our agents around the world and was successfully handled by convincing the responsible leadership of the committees that they really did not need to know the names of the agents, and that it is dangerous to spread them around, so they agreed that they would not learn them.

This is a practical, not a constitutional, solution and I believe the words of the charter should opt for practical solutions. The real problem is that we have another audience as we develop this charter, our foreign friends who are still convinced that the old secret service is the only system of intelligence. They look askance at any direct asser-

tion in our legislation that the Congress has a right to "any information" about our intelligence activities or our relationships with them. An insistence upon wording such as this can lead and indeed has led to individuals and foreign services deciding that they would not risk their sensitive material in our hands if it is subject to revelation to the Congress. Our intelligence authorities will be able to reassure them that we can protect their sensitive material by convincing our congressional colleagues that the revelation would indeed result in the end of the cooperative relationship. But this must not be torpedoed by a specific provision of law to the contrary. The "fully and currently informed" provision gives adequate authority for congressional oversight but does not raise the danger of the "any information" provision.

The same thoughts apply to the necessary exemption of our sensitive intelligence activities from the broad sweep of the Freedom of Information Act. The provision of the charter which provides that an American citizen can discover information about himself under the Freedom of Information Act is certainly appropriate. But, it is certainly inappropriate that we expose our intelligence operations and personnel to the chance of mistakes in the clearance process or to exploitation by those hostile to us, whether foreigners or Americans engaged in a cottage industry designed to expose and destroy American intelligence, and that we specifically declare to our foreign friends that their secret cooperation with us cannot be the subject of a pledge to protect them because under the law we would have no power to do so. The solution developed in this draft is excellent.

I also commend the provisions of this draft for the imposition of criminal sanctions upon officials of our Government with authorized access to intelligence who reveal the sources of our intelligence activities. I would like this sanction to go further to include those who would reveal the technological elements of our intelligence process and apply to outsiders with a deliberate intention to destroy our intelligence activities.

Also missing from this draft is a needed solution to the so-called "graymail" problem with respect to such prosecutions, but separate legislation under consideration presumably should provide this. I believe it so important, however, to impose better discipline upon our officers in intelligence and government who have authorized access that I fully support this move against the most flagrant cases hurting our intelligence community. We need to give a signal that we Americans are prepared to protect the real secrets of intelligence while we intend to discuss in our democratic society some of the more general things which other nations hold secret. But we must assert discipline over our own personnel.

A particular feature of this draft is its protection of the constitutional rights of our citizens against interference by our Government—or by others at our instigation—but its recognition that in some cases the need of the Nation for information may require such intrusion. The latter cases must be selected by procedures requiring consideration and accountability, and are of course subject to review by this committee and its counterpart in the House. This will prevent arbitrary use of this exceptional authority. But we must recognize that our citizens can be asked to yield some elements of their rights to the na-

tional good in serious circumstances, just as we ask our young men to risk their lives when the Nation drafts them and sends them into battle.

With respect to the integrity of our private institutions, I fully concur with the sensible way in which the committee has approached this problem, providing for public Presidential guidelines on the subject, barring the use of cover for officers of certain activities and yet leaving open the possibility of voluntary contacts. I do believe, however, that a special effort should be made in this section or elsewhere to make clear the need of our intelligence agencies for decent cover for their activities.

The present situation, as I have testified to the House committee earlier, is ridiculous and dangerous in the inclination of a number of Government agencies to bar the use of their cover for intelligence operations approved by the Congress. I believe it is not sufficient for the Congress to leave these agencies unmentioned in this provision, which bars the use of intelligence cover by certain institutions—including the Peace Corps—and that some positive charge should exist by which better cover can be arranged for our officers. This is one of the most difficult problems for American intelligence and it deserves the considered attention of the Congress along the lines that I previously discussed.

Mr. Chairman, I have several additional items on which I have some suggestions for this charter which I will offer in these supplementary notes. I offer these for the record in the hope that they can be of assistance to you, although I will not take your time to discuss them in detail at this point. Obviously, I would be delighted to answer questions with respect to any of these items.

Thank you, Mr. Chairman.

[The supplementary statement of William E. Colby follows:]

SUPPLEMENTARY STATEMENT OF WILLIAM E. COLBY

SECTION 103(8)

I agree that tactical intelligence must be excluded in this definition of national intelligence. I do believe, however, that a positive responsibility should be placed upon the Director of National Intelligence to ensure maximum contribution by tactical intelligence to the national intelligence process. Perhaps this could be included in Section 304(e).

SECTION 123(a)(1)

I commend the committee for the word "important" to the national security, rather than some of the earlier ideas of "essential".

SECTION 123(a)(2)

I also commend the committee for the arrangement with respect to a "category" of special activities as a reasonable way of solving what would otherwise be an impossible bureaucratic chore defeating its very purpose.

SECTION 131

I certainly concur with the prohibition on involvement in assassination. At the same time, I question the omission of this provision from the exception provided in Section 132 for waiver during war time. I also believe that this section might usefully be expanded to cover certain other activities on which I believe both American opinion and intelligence opinion is totally agreed should be out-

side the area of American intelligence involvement. Specifically, I would include in the prohibitions in this section any use or involvement in torture or the employment of weapons prohibited by any treaty to which the United States is a signatory. I would not extend this to a long list of prohibitions such as those contained in the earlier drafts of a charter, but I do think we should make very clear our rejection of torture in order to answer the charges made against us by some unfriendly groups abroad.

SECTION 141

I fully concur with the legislative endorsement of the Intelligence Oversight Board. I do suggest, however, reconsideration of the President's disbanding of the President's Foreign Intelligence Advisory Board. In my experience, this was an exceptionally useful group of high level private citizens who performed an enormously valuable function of stimulation and questioning, not merely of questions of legality and propriety, but of the substance of our intelligence programs. This is perhaps not appropriate for this section, nor even for legislative enactment, but I would sincerely urge that this or a comparable board be reestablished.

SECTION 142(a)(2)

A way of solving the problem involved in this respect for "any information" may be to delineate that there are certain subjects which require exceptionally careful handling, such as our relationship with liaison services abroad, the names of foreigners working with the United States intelligence agencies, the names of individuals cooperating in some of our more sensitive intelligence operations. In such situations, a provision for a specific Presidential exception followed by a review of the matter not only by the committees, but by the full House and Senate, might be a way of resolving any real problems but leaving open the fundamental constitutional issue. This, of course, was the technique adopted in Senate Resolution 400 of the 94th Congress and House Resolution 658 of the 94th Congress. This seems to have worked satisfactorily to date, and it might be continued.

SECTION 222

Since the Congress has defined here the importance of protecting our cooperative relationships against exposure to a court, consideration might be given to an equal clause protecting them against normal exposure to Congress. In order to protect Congress' ultimate rights, some provision for appeal and final adjudication as noted above might be adverted to, but some provision assuring extra protection would be of value in our relationships abroad.

SECTION 701(g)(6)

I urge that this provision be removed. If we are to protect agents abroad and foreigners who are agents in the United States, we should also protect citizens residing within the United States who provide secret assistance. This is not a theoretical point. Americans who provide our intelligence services with cover frequently are American citizens residing within the United States. Their actions are a patriotic service and can involve enormous risk to their enterprises, of which they allow us to use the name. I believe they are entitled to the same protection that we give similar individuals outside the United States. If the purpose of this provision is to remove this protection from individuals improperly involved with the agency, there are better ways to ensure that such relationships not occur than through encouraging the exposure of patriotic Americans who help our intelligence services at great risk to their enterprises.

Senator HUDDLESTON. Thank you, Mr. Colby. And I think I can speak for the entire committee in expressing our appreciation to you for the manner in which you have assisted this committee—cooperated with it—from its very inception, when you were Director of the Central Intelligence Agency. And you've been very helpful in all of our deliberations from the very start.

Mr. COLBY. Thank you.

Senator HUDDLESTON. And we appreciate very much your comments on particular legislation that we are dealing with now. You

state that the question of prior notice of covert activity is, in your judgment, a rather small issue. It is one on which we are having substantial difficulty, I might say, at the present time.

Do you see some value in the consultation with a select group of Senators and Congressmen about very difficult or sensitive covert activities that might be contemplated? Do the planners get, or would they likely get, some sense of direction from this kind of consultation that would be helpful to them?

Mr. COLBY. Oh, I think some, Mr. Chairman. No doubt about that. And I think that would be a new development. I understand that certain significant planned activities are being discussed nowadays. And I'm sure that that enables the Executive to get a sense of the congressional reaction and avoid a rather clamorous repudiation which has occurred in certain cases, because the Congress just didn't agree with a particular course of action. And I think that that is a helpful device. I think we'll be kept from the more egregious actions by the function of the oversight committee whether it hears about it beforehand or afterwards.

But I do think that hearing about it beforehand—if it's feasible—certainly is helpful.

Senator HUDDLESTON. If nothing else it would help add a few shoulders to commiserate with if the activity went wrong.

You did say that some cases require immediate action. If they're going to be effective at all they may have to be initiated before there's time, physically, to touch base even with a small number of people. Would you see that as the area in which we ought to concentrate our efforts to find some accommodation for this requirement?

Mr. COLBY. I think so, Mr. Chairman. I think both sides can recognize the value of as much prior consultation as possible. But I think the Executive probably hangs up on the idea of a flat requirement. And I am not sure that the Congress really needs a flat requirement in that sense. As I indicated, I think that most of the actions could probably be defused even if they were begun very rapidly for good reason. If they were begun very rapidly and the reason for so doing does not stand up, then I think the committees would probably be rather vociferous in their objection to the use of the exceptional procedure.

Senator HUDDLESTON. Some of us have thought that we could rely on the President's constitutional prerogative to act in an emergency and we so state, really, in the legislation—you know, consistent with his constitutional requirements—that that would in fact give him the authority and the right to move very quickly if he determined that the situation required it. I suppose you might have to make a determination that there was an emergency. There may be situations, it occurs to me, that you would be hard-pressed to call an emergency. But at the same time the success of it would require immediate action.

Mr. COLBY. Well, I can conceive of the cable arriving in the wee hours of the night from someplace which says that you have an opportunity to do something of vast importance. It makes a great deal of sense but if it is to be done the return cable has to go out in a matter of 3 hours. It would be a little hard in that situation to be able to go through the procedure and yet it might not be a national emergency

that would justify the constitutional right of the President. It might be very important and the committee might later agree with it, but to hold it up because you couldn't get to the committee at that point I think would be a mistake.

Senator HUDDLESTON. No; I have a feeling that the intelligence community, too, is misreading our effort to include in the legislation total access to information. The committee has been, I think, pretty circumspect in what it has asked for.

Mr. COLBY. During my experience it was. We had our arguments, but we usually worked them out in some fashion or other. I didn't have as much luck on the House side, I might add.

Senator HUDDLESTON. We have not asked for the names of agents and that type of information. But it seems to me that to accept your oversight responsibility you've got to have that authority in case it becomes necessary somewhere down the road. And it has, you know, in some instances.

Mr. COLBY. One of the members asked me aren't you helpless in this situation? Aren't you totally dependent? And I said, no, you really do have the power of the purse. Either you're going to get satisfied or you're going to use your constitutional tools to make it very clear that some satisfaction better be forthcoming. That's the system of the Constitution.

Senator HUDDLESTON. Well, that's kind of an awkward way to have to do it, but I suppose you could.

Mr. COLBY. It is, but my problem is the reading that the other countries put into this kind of language. They are already nervous about Congress role, of course. And they are unable from their perspective to see the difference between Hughes-Ryan and the workings of this committee. I think they are gradually learning, probably, to be a little happier with it. I can't speak from personal exposure to this. But I think that any kind.of flag that highlights the danger is a problem to a foreigner. That is why if it really is not necessary I think we might be able to get around it, just by using the overall language of fully and currently informed.

Senator HUDDLESTON. You made a very strong statement, which I concur with, of course, and that is that it is important to have in place the legislative charters. Do you see this as providing for the community the kind of fundamental basis that it needs so that this matter of making up the rules as you go along, as you referred to, can be a thing of the past? Do you see this also as a way to put the revelations and whatever behind us so that we will have a better chance of getting on with providing the best intelligence that we can.

Mr. COLBY. Very much so, Mr. Chairman. We had a great national debate in this country 1½ years ago about Panama. And there were strong positions taken on all sides and finally we had the formal debate in the Congress and the Senate and we voted and the subject is now just accepted. That's the way Americans settle problems like this. We've had this debate and discussion and agonizing about intelligence now for about 5 years. It really is time for us to pull up our socks and say all right now, this is the way we're going to do it. It will not be written in stone. Any one of these provisions, if it turns out not to work very well, can be amended and changed a few years from now. But at least we

stop debating about the whole concept of intelligence. We stop wandering again and again over the abuses of the 1950's or the 1960's. The result will be that we will put much more of our attention onto the problems of the 1980's, which are very serious problems indeed in the foreign world and our understanding of some of the currents loose there. That's where we need to be putting our real energies at this point, I believe.

Senator HUDDLESTON. Senator Chafee? I want to make sure you have time.

Senator CHAFEE. Thank you, Mr. Chairman. Mr. Colby, I'd like to join in welcoming you here and pay tribute to the wonderful service you have given to our country.

Mr. COLBY. Thank you.

Senator CHAFEE. I agree with the point you made about get on with the job. We are bickering here about prior notice or timely notice and so many of these things. Certainly this is a very strong statement you give in favor of the charter and the point that you made that even if you are not—even if the points you suggest for correction are not followed out, you would rather have a charter than not have it. That is about as strong a statement as we've had up here by anybody in favor of the charter.

Could you talk a minute about the "any information" as opposed to "complete" information. You said that you have always been able to work it out with the Senate, but you mentioned it always wasn't so with the House. So if that is a fact, then isn't it quite a serious problem? I mean, if you are a European and you are dealing with the CIA and the Director tells you well, the House they're very reasonable—I mean the Senate's very reasonable. They're not going to ask agents' names or anything like that. But I must confess, in the House—or vice versa, whichever one it is—they just demand every jot and tittle of information. Now what about that? Isn't that a concern?

Mr. COLBY. It is a concern. I think that under this bill and, I think, under the present House committee—and I am separating the former House committee from the present one very distinctly in my remarks about the House committee.

Senator CHAFEE. Because you worked with the former one?

Mr. COLBY. The former one. And that I had quite a lot of trouble with, as you perhaps know. I think that the distinction is that you do have two very serious committees at this time. They've built up a track record of being serious about these matters and I think you could convince foreigners that you'll be able to handle this kind of a problem with these responsible leaders. They've not been the source of great sensational stories in recent years. We haven't had that kind of a problem. You can protect the foreign collaboration with us under such circumstances from exposure from the Congress.

If you have a bill, however, that after we have debated this issue about total access and then the bill actually says "any information" then the foreigner will say well, how about this? You know, you've debated this and this is what you finally adopted. It says "anything." Does that mean my name? Does that mean the details of some of the things I am telling you? Does that mean this particular item that I would like to give you? I assure you I am not going to give it to you

if it has to spread all over Washington. And he's going to take that position.

I think this is a matter of trying to indicate that we Americans—and I mean all of us—are understanding of that problem with some foreigners. We're not going to run our intelligence service the way they do. We're going to run it differently. But we can handle this problem. We can work it out.

Senator CHAFEE. Let me ask you another question. You come forward with this very, very secret information. Let's say it's breaking the Japanese code, which was of incredible significance to this country and really made possible the battle of Midway and our victory there. Now what assurance do we have that when you report to a committee made up of Senators or Representatives—and even though it is restricted to just these two committees—what assurance would you have that a secret like that would be kept? Do you think the members of the committee should be subjected to some kind of a security clearance? Is it enough that they have just been sent here by the voters from their States? Plenty of Senators and Representatives have been well-meaning people, but they've been involved in graft or drunkenness, or a whole series of problems that might well cause them to divulge and maybe inadvertently an incredible secret. How should we handle that?

Mr. COLBY. Well, I certainly think that the staff of the committees should be subjected to a security clearance, which really in real terms doesn't say much other than he doesn't seem to have any active connections with some unfriendly intelligence service. I think they should also be subject, as the bill says, to criminal sanctions if they reveal things without authorization.

As for the Members themselves, I think that the reasonable way to work through this is not to demand that we change the whole constitutional structure of our country in order to adapt to intelligence. On this one we'll just have to rely on the responsibility of the leadership to choose the people who have the discretion—and, yes, we may lose a secret sometime in the course of this. We lose them out of the Executive branch as well. It is a cost of running this kind of operation in our society. It's an unpleasant cost, but it is, in many cases, I think, worth it.

Senator CHAFEE. Well, I'm not sure you'd have to upset the constitutional structure if you made a provision that to serve on one of these committees you would have to go through some kind of a clearance procedure.

Mr. COLBY. Well, I suspect that the leadership can do that privately anyway. I think they know as much about the Members of their Houses as the agencies do—or more.

Senator CHAFEE. You didn't address the problem Senator Weicker was discussing; namely, the journalists, clergymen. And he even went so far as academia. And then he went so far as to take the American corporations. Could you give us your thoughts on that?

Mr. COLBY. Well, I think that is a revealing kind of a statement, because we started this years ago. Let's not have intelligence in the Peace Corps. We adopted that rule and it's been respected. There have not been any intelligence connections with the Peace Corps. This hasn't

helped the Peace Corps much. They've been accused of espionage in all sorts of countries, but nonetheless it made us feel better, I guess. I think the investigations into CIA's relationships with some of these institutions—the relationships with the press, the relationships with academia. We weren't teaching in the colleges. We weren't directing what the pressmen were saying in their American columns. We were certainly using them abroad.

I handled so-called journalists myself and it was very clear that what he wrote for his American paper was up to him. I didn't have anything to do with that. What I used him for was some things in that country that I could get done through him that I couldn't do myself, which was very handy, very helpful.

That being said, I'm saying I don't have any great emotional feeling about the sanctity of some of these institutions from contamination by that terrible CIA. Part of this problem comes from this rather sensational way in which we went at the investigations, implying that anything about intelligence is by definition dirty—now being apparently extended to include even the normal work of getting out in the countryside, as the previous witness said.

Senator CHAFEE. I think the choice of the word dirty—I think you meant hard.

Mr. COLBY. I know he meant hard. But as you start this process, if you exempt one institution then the other one says how about me, and how about me and how about me. Now that has happened in the Government. We went through the Peace Corps and then the Information Agency said. And then the AID agency said no. Then you end up with what's left. And now we're going the same with the professions. We start with the clergy, who were enormously helpful to us during World War II in some of the missionary areas of Asia and we say no.

The press—we had some very useful agents in the press and we say no. And politically I accept this. I'm not going to argue about that too much. It's pretty well established. I am just trying to get through the issue and to make reasonable deals to keep as much as possible.

Now the idea of extending it to include all American business other than CIA proprietaries I think is a rather strange one. Let's let the businesses make up their own minds as to whether they do it or not. Let's not bar it. Most businessmen are pretty patriotic people and they would be glad to help their country in these situations. And many of them have. And I think, you know, we appreciated that enormously and they helped their country a great deal. So I think that the problem here is to accept some reasonable restriction. And I think the bill saying no cover for officers, fine. In those various specialties, fine. OK, let's accept that. Then let's say——

Senator CHAFEE. You're talking about Government agencies now?

Mr. COLBY. No, no. The other institutions—the press, clergy, and so forth.

Senator CHAFEE. No cover for officers?

Mr. COLBY. I think that's what the text says.

Senator CHAFEE. You mean for CIA officers?

Mr. COLBY. For CIA officers, yes. But then it says the President will outline a set of principles for the protection of the integrity of our institutions. And I'm sure there will be things in there which say

that CIA is not supposed to tinker with the management of these institutions. That I certainly agree with, just as the bill here includes a prohibition against CIA having anything to do with domestic publication of any journal or pamphlets or anything like that. That's fine.

But then you must leave at the other end an opening for some collaboration with some individual in an exceptional case approved by the Director, reported to the oversight committees so that they will have a sense that we're not being abusive in this. I think you're relying upon setting one particular extreme limit and saying no. But then you're relying on the good sense of these committees and the oversight function to protect yourself from other abuses. And at the same time you're not barring any use at all.

Senator CHAFEE. Except the legislation does not include that loophole that you're talking about, does it? The ability of the Director, after consultation with the committee, to use these professions?

Mr. COLBY. Well, I think this is in the guidelines, not to use it as cover for his officers, but I think they could have a relationship with an individual who is a legitimate newsman or clergyman under the guidelines, protecting the integrity of the institution that that individual belongs to—guidelines which certainly will be public—and will reflect the attitude of this committee as well.

Senator CHAFEE. Thank you. Mr. Chairman, I'll tell you the part of Mr. Colby's testimony that interests me a great deal is on page 10—the top of page 10 and the bottom of page 9—where he gets into this cover situation. And I would hope that we could use Mr. Colby's assistance here in going into these—some of these may be classified I don't know—in some greater detail, because, you are making a point here.

Mr. COLBY. Well, if we're going to have intelligence operations abroad, we can't send our officers over there with the word CIA on their hatband. They won't be able to do their job, aside from it being dangerous. We've got to improve this cover situation a great deal.

Senator CHAFEE. We're going to have some hearings on this subject. We're going to have some hearings on the subject of cover. So would you be willing to get up and give us your thoughts?

Mr. COLBY. I would defer to the present management, Senator. If you wanted me to come I could talk about some time ago, but I can't say much about what's going on now because I don't know. But I would certainly be available in any way I could help.

Senator CHAFEE. Well you've been very generous with your time. I hope your partners are tolerant.

Mr. COLBY. They are, Senator.

Senator CHAFEE. Thank you very much. Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you, Senator. Mr. Colby, giving us the benefit of your experience, could you briefly indicate to us what you see as the major challenges for the U.S. intelligence community in the future, say the next 10 years? I know it is difficult to look into the crystal ball, but I guess our concern is whether or not the structure that we have established is likely to allow us to meet that challenge.

Mr. COLBY. Well, Mr. Chairman, I think that thanks to the progress that has been made in technology and thanks to the really very fine corps of people that have been recruited into the agency that the col-

lection of information around the world—it is still a big job, it has to be done—but I really think that the major revolutions in that area probably have already occurred. There are certainly some improvements that can be made—changed approaches. But collection I really don't see as the major problem.

I think with this statute under our belts the problem of how you control intelligence in America will be pretty well solved. The part we are really just on the verge of, in my mind, is how to think about these problems better. How to analyze them, how to communicate better about these problems. As an agency and as a government and as a Nation we are going to be debating in public issues which most other countries keep secret. We have done that with the SALT debates. We've had very detailed discussions of Soviet weapons and things like that.

How are we going to improve our ability to analyze some of the more intangible political, social, psychological, religious, ethnic problems that we face around the world? And come up with better analyses of these that are not predictions of what is to come but better alerts. Because you really don't want a crystal ball put on your desk in the form of an intelligence agency. What you want is a warning or something so that you can go take action so that the thing being warned about does not occur. In other words, you don't want to be condemned to go through the experience you see in the crystal ball. You want to be able to change it.

We have a large number of very general problems of population increases, economic problems and inflation, unemployment, protectionism. We have the religious, sectional, ethnic problems around the world—racial problems. We have enormous problems of how we relate to the great mass of the world's population, conduct our affairs, set up the institutions that can solve the problem facing us.

These are all subjects that are going to have to be debated and analyzed and thought about. And we have got to do something better than have a computer that you push some garbage into and get garbage out of. And we've got to do better than having a nice, old pipe-smoking professor around to give us the word. We've got to do some research and development into new techniques of thinking and, I might say, communicating about these problems.

The Pentagon Papers showed that the assessments were pretty good but they weren't communicated and they didn't have the impact that they might have had and therefore might have saved us some problems. This is the area in which I think a lot of work has got to be done, not only in government but outside in the rest of society. I think we're coming to an age, Mr. Chairman, in which intelligence is becoming much too important to be left to government. You're seeing it spread into the private sector and business and academic life and so forth. And there all the same disciplines and procedures have to be worked out.

Senator HUDDLESTON. I think you've touched on nearly all the concerns that the committee itself has had. Of course the analysis of intelligence needs to be strengthened tremendously and a lot of the so-called intelligence failures were not failures at all by the intelligence operations. People don't always make the right decisions after

they receive the information. That is a problem I am sure we will always be confronted with.

Would you say the world as it is today and, I guess, the nationalistic inclinations that have developed in many countries have had a profound effect on what you actually can do as far as covert action is concerned? What you can expect to succeed? Has it increased the dangers of certain types of covert action as compared, say, to 20 or 25 years ago?

Mr. COLBY. I would say certainly, yes, Mr. Chairman. When you decide upon a covert action operation you decide how important it is, how much it would cost, how likely it is to be exposed.

Senator HUDDLESTON. And, the risk.

Mr. COLBY. And then you have to consider what will be the impact if it is exposed. And that impact today is a lot higher than it was in the 1950's. Clearly. This has to be ground into your evaluation about whether you go ahead or not.

Now in some areas it depends on what you do. If you are just supporting some group of people that seem to be doing something sensible and it's well known that the United States looks favorably upon them, then maybe it isn't such a shocker to find out that you're giving them some covert help. If you are trying to manipulate some situation by some tricky system then the exposure can set you back years in terms of the relationship with that country. These all have to be considered.

But I agree, certainly with the premise of your question, that the threshold is a lot higher now than it was a few years ago, in part because of the publicity and sensationalism with which we have surrounded this activity.

Senator HUDDLESTON. Do you see a possibility that we ought to perform certain activities overtly rather than covertly? Have there been instances where we have gone the covert route when we might have been even more effective if we had just been overt about it?

Mr. COLBY. Oh, certainly. In the past it was thought to be a quick panacea. You could just do a little covert action and it would be solved. We are actually carrying on some programs overtly now that started covertly—Radio Free Europe and things of that nature. Some of the paramilitary activities in Southeast Asia we eventully shook out and put into the overt area although they started being very secret. I think you always should do it overtly if you possibly can.

But that is not to say that you always can. Sometimes you can't. And I think that in some of these situations we should not be condemned to sit idly by while the situation polarizes between a brutal dictator on the one side and a ruthless terrorist on the other. We should be able to go in, give some assistance to some decent people in the middle trying to work their way through and solve the problems in a decent fashion.

Senator HUDDLESTON. Mr. Colby, you've been generous with your time. I don't want to keep you much longer here. We have a number of questions that we might just be able to submit to you for your response, if you would.

Mr. COLBY. I would be glad to.

Senator HUDDLESTON. One idea has been kicking around, I guess, since the beginning of our committee and that is whether or not the

Director of National Intelligence should be split off from also operating the CIA. I think you've even touched upon it.

Mr. COLBY. My basic feeling is he ought to be in charge of CIA. It gives him an institutional base that he can use. He does not have to ask for a formal memorandum to come up from another institution to tell him what happened in Ghana last night. He can pick up the phone and call the desk officer and say what in the world is going on over there. It's his organization.

I think he gets a lot more fluid support in that way and better support. I think he can act impartially with respect to the other agencies. I don't get very uptight about the fact that he'll make all the decisions in favor of the CIA, because if he does there'll be an uproar.

Senator HUDDLESTON. That is one point that is raised.

Mr. COLBY. I think that this bill is remarkably ingenious in the way it solves this issue, though. It says that basically there will be a national intelligence director and that he will be the Director of CIA unless the President decides to the contrary, which I think is pretty good. You know, that's a reasonable solution. You're not sure who's going to be the Director and what the major problems will be in the future.

Senator HUDDLESTON. We just leave the authority to someone down the road.

Mr. COLBY. I am not a great believer in the magical results of tinkering with organizational boxes on wiring diagrams.

Senator HUDDLESTON. Do you think there's justification, as we have tried to do in the charter, of separating foreign intelligence and national intelligence from tactical intelligence?

Mr. COLBY. Yes, very much so. I have remarked on that in one of my supplementary notes. I found it almost impossible for the Director of National Intelligence to get involved in how many radars there are on a cruiser, or something—I mean that's something that the Navy's going to have to work out on their own. I do think the Director of National Intelligence should have a positive charge to insure that the results collected in the tactical machinery flow freely into the national system. I think in effect they do. But just to make sure.

Senator HUDDLESTON. Mr. Colby, I believe we may submit some additional questions.

And I would just say again that we appreciate your appearance.

Mr. COLBY. Thank you, Mr. Chairman. I'm delighted to help and I am honored to be consulted. Thank you.

Senator HUDDLESTON. Thank you very much, Mr. Colby.

The committee will be in recess until 10 a.m. tomorrow.

[Whereupon, at 12:10 p.m. the hearing was recessed, to reconvene at 10 a.m. the following day.]

TUESDAY, MARCH 25, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The select committee met, pursuant to notice, at 10:37 a.m., in room 457 of the Russell Senate Office Building, Hon. Walter D. Huddleston presiding.

Present: Senators Huddleston (presiding chairman of the Subcommittee on Charters and Guidelines) and Biden.

Senator HUDDLESTON. The committee will come to order. We will continue our hearings on legislation creating charters for the intelligence community.

The first witnesses this morning will be representing the American Civil Liberties Union—Mr. Jerry Berman, the legislative counsel. Is Mr. Halperin accompanying you, Jerry?

Mr. BERMAN. Mr. Halperin will be here in a moment. He's paying off his bookie for last night's loss to Kentucky. The ACLU is always on the wrong side, apparently.

Senator HUDDLESTON. Well, if you'd just checked with me I could have straightened you out on both counts.

Mr. BERMAN. We knew that you had won and that was terrific. I guess that's three times you've come close and this did it. Mr. Halperin will be here in a moment. But I can begin.

Senator HUDDLESTON. If you care to begin, you go ahead, and we'll get Mr. Halperin when he gets here.

TESTIMONY OF JERRY J. BERMAN, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY MORTON HALPERIN, DIRECTOR OF THE CENTER FOR NATIONAL SECURITIES STUDIES

Mr. BERMAN. Mr. Chairman, on behalf of the American Civil Liberties Union, a nonprofit organization of over 200,000 members dedicated to defending the Bill of Rights, we welcome this opportunity to testify on S. 2284, the National Intelligence Act of 1980.

Today we will focus on those sections of the proposed charter which affect the rights of Americans. Because of time constraints we will only cover major areas of concern and submit for the record a lengthy prepared statement setting forth our detailed analysis of charter provisions affecting civil rights and liberties.

At the end of my remarks, Mr. Halperin will touch on those issues which preoccupy the committee: The issue of prior notice of covert operations; the proposed crime for revealing the identity of CIA agents or sources of assistance; and the CIA's request for relief from the Freedom of Information Act. We point out that our prepared

statement for the record and certain supporting memorandums also address these issues at length.

Mr. Chairman and Senator Biden, we focus on the rights of Americans issues today for more than institutional reasons. We are deeply concerned that Congress, in its haste to remove so-called unwarranted restraints on the intelligence agencies, may ignore or give short shrift to the rights of Americans sections of the charter. Administration testimony to date has largely passed over these sections. Congressional questioning of witnesses on these matters, particularly in this committee, has been unsystematic. Scores of public witnesses, including some past victims of intelligence abuse, others concerned about repetition of abuses in the future under authority of this charter, and representatives of institutions worried about compromise of their institutions' integrity and independence, appear scheduled for only limited hearings. We are here to urge through our testimony today more hearings, more thorough questioning of the administration concerning the authorities granted in this charter, and a concerted effort to resolve not just the important covert operations and secrecy issues but the more important civil liberties issues before any legislation affecting intelligence activities is reported by this committee or acted on by the Congress.

We do not have to remind the chairman and most members of this committee of the principal reason charter legislation is before the Congress today. It was the revelation of violations of citizens' rights which led Congress to investigate the intelligence agencies. It was congressional documentation of even more widespread violations of civil liberties than originally imagined which led to the call for charters, the creation of this committee with a mandate to develop charters, and the introduction of legislation in 1978, S. 2525. However, for those who are new in the Congress, and to underscore the significance of those sections authorizing and purportedly restricting intelligence activities directed at Americans, we believe the summary of the Senate Select Committee worth quoting in brief.

We quote from page 5 of the final report:

> Too many people have been spied on by too many government agencies * * * even when those beliefs posed no threat of violence or illegal acts on behalf of a hostile foreign power. The Government, operating primarily through secret informants, but also using other intrusive techniques such as * * * mail opening, and break-ins, has swept in vast amounts of information * * * investigations of groups deemed potentially dangerous * * * have continued for decades. Groups and individuals have been harassed and disrupted. * * * Unsavory and vicious tactics have been employed.

"We have seen segments of our Government," the report states, "adopt tactics unworthy of a democracy and occasionally reminiscent of the tactics of totalitarian regimes." Exposure alone is not the solution, the bipartisan committee emphasized. "Clear legal standards and effective oversight and controls are necessary."

We believe S. 2284 was introduced by Senator Huddleston and others in large measure because of the need to address the civil liberties issues. Even though agreement had not been reached with the administration on prior reporting of covert operations, full access to information, and other such matters, it was important to introduce the

comprehensive charter to insure some broader debate than the current political climate would seem to dictate.

In this regard, Mr. Chairman, we want to state our appreciation for the efforts that you and other members of this committee have made in seeking to develop an intelligence charter which would command broad support. At the same time, we must say in all candor that we are deeply disappointed in the results as they are embodied in S. 2284. We do not believe that, as regards the agencies' authorities to conduct surveillance of Americans at home and abroad, S. 2284 comes close to striking a reasonable balance between the legitimate needs of our Nation for intelligence and the more significant need to protect the privacy and associational political rights of law-abiding citizens.

Without developing a public record or providing a serious public explanation to date, the Carter administration and this committee have put before the public a bill which, as we read it, departs from nearly every significant principle of reform embodied in the recommendations of the Church committee, embodied in S. 2525—drafted by this committee—and the principles endorsed by the American Civil Liberties Union.

We do not mean that S. 2284 has been stripped of the excessive detail contained in S. 2525 2 years ago and roundly criticized by former agents and others—often wrongly suggesting that the ACLU endorsed the necessity for such detail. Rather, we mean that S. 2284 abandons criminal suspicion as the basis for intrusive investigations of citizens for intelligence purposes; statutory limitations on covert investigative techniques with strict controls on the use of all informants; traditional requirements for search warrants to open mail and—as the Church committee recommended—to search homes and offices; prohibition rather than authorization of COINTELPRO-type disruptive activities; and civil remedies for charter violations which adversely affect privacy or the exercise of lawful political rights.

Before discussing some of the more troublesome authorizations in the charter, we want to emphasize that we continue to believe that a satisfactory charter can be drafted and enacted this year or in the next. A concerted negotiation involving all concerned parties can, as the Foreign Intelligence Surveillance Act demonstrated, produce legislation which meets the requirements of the intelligence community and protects civil liberties. In this connection, we commend to this committee H.R. 6820 introduced by Congressman Les Aspin in the House, and which we hope will be introdueed in the Senate so that it can be before this committee. While we do not endorse the Aspin bill at this time, we do believe it incorporates many of the standards and controls which are essential to embody in any intelligence legislation and which, we emphasize, are missing in S. 2284.

Now, turning to the charter and some of its major provisions. Mr. Chairman, from press reports you already know that section 213's authorization for the intelligence agencies to collect foreign intelligence from wholly innocent Americans using covert techniques is high on our list of objections to S. 2284. Foreign intelligence information is exceedingly broad. Unless the President designates certain techniques as covert, and there is a disincentive for him to do so in our estimation, no standard has to be met—important, significant, or

essential—or approval obtained for the CIA to request the FBI to collect intelligence from innocent Americans using such techniques as informants, confidential third-party records—bank, medical, and so forth—and other such intrusive techniques in the United States and abroad. With this authority, it would not be difficult to justify such abusive collection programs as "Operation CHAOS" and FBI "New Left," broad investigations of the antiwar movement or investigations of business firms—because of their foreign contact and trade negotiations.

Abroad, the charter would authorize mail opening, wiretapping, and black-bag jobs directed at wholly innocent Americans to collect essential foreign intelligence. While Presidential approval and a judicial warrant would have to be obtained, the standards would erect no barrier to such past abuses as the Joseph Kraft wiretap, because he was in contact with Hanoi's negotiators in Paris, or future intrusive surveillance directed at reporters, politicians, businessmen, and political activists in contact with foreign persons and government, particularly in times of crisis.

We believe this authority is unconstitutional and dangerous. The authority to use covert techniques or clandestine means in the United States renders other standards and restrictions irrelevant. Why worry about establishing clandestine intelligence activity when foreign connections are sufficient to justify collection? H.R. 6820, the Aspin bill, contains none of this authority to target innocent Americans for purposes of so-called positive foreign intelligence collection.

Mr. Chairman, we are also concerned about the standards for conducting intrusive investigations of citizens for counterintelligence and counterterrorism purposes under section 214. By failing to define clandestine intelligence activity and omitting the requirement that the activity have some nexus to criminal conduct, we believe the counterintelligence investigation standard can be read to encompass FBI and CIA investigation of lawful political activity—for example, any suspected political influence of the political process on behalf of a foreign government or organization even if wholly lawful simply because the foreign connection was not readily apparent or admitted.

This authority would justify surveillance of the antiwar movement because of President Johnson's suspicion that the movement was acting on behalf of Hanoi. While a nonintrusive inquiry may be necessary to establish whether espionage or other illegal activity is involved when citizens under certain circumstances are in contact with foreign powers—especially hostile intelligence services—covert investigative techniques should not be authorized unless criminal activity is reasonably suspected. This is the principle embodied in the Foreign Intelligence Surveillance Act. It is incorporated in the Aspin bill as part of a two-tier inquiry and investigation authority, which is also modeled on the domestic FBI criminal investigative charter.

By removing the "may be engaged" basis for investigation in the counterterrorism standard as well, the Aspin bill would also narrow the focus of full investigations in the terrorism area. Here, as in the counterintelligence standard, section 214 appears to encompass lawful political activity within the authority to investigate international terrorist activity.

Most troubling, the authority to direct counterintelligence and counterterrorism activities at citizens and groups merely suspected of engaging or possibly engaging in undefined clandestine activity or terrorism also includes the authority to engage in measures to counter or protect against such activities. In testifying before the House Intelligence Committee last week, Director William Webster candidly admitted that this would include authority to use deception and neutralization techniques—in other words, COINTELPRO-type activities.

While certain forms of disinformation and protective measures may be justified against known agents of foreign powers engaged in espionage or to avert planned imminent acts of terrorist violence, the proposed charter sweeps much further by including potential agents and terrorists and by failing to define what measures might be employed—the techniques are undefined—and the exigent circumstances that would justify their use. Without such criteria, the charter scheme is dangerous and unacceptable. The Aspin bill, we note, bars COINTELPRO and provides a civil remedy if the prohibition is violated. No remedy is provided in S. 2284.

Finally, we turn to one other problem, which is fully, clearly near the top of our list. S. 2284 would authorize the intelligence community to go to court and get an order permitting intelligence agents to surreptitiously open the mail or break into the homes of American citizens in the middle of the night to steal their papers. The warrants would not be served. No notice would be given. No lists of items seized provided. It is difficult for us to conceive of an authority more repugnant to the purposes and intentions of the drafters of the fourth amendment—wholly apart from the requirement of probable cause. The protection of privacy requires that, absent exigent circumstances, the officer serving the warrant knock on the door and seek entry and that he leave behind a record of what was seized. We believe that any attempt to deviate from these procedures is unconstitutional. Moreover, we note that, at least in the United States, there is simply no evidence on the public record that such authority is needed.

The Executive order now in effect, 12036, authorizes secret searches of homes, but we understand the President has not used this authority to establish the program. The Executive order does not even attempt to authorize the opening of mail in U.S. postal channels without traditional search warrants. The charter would. Neither does the Executive order authorize use of fourth amendment techniques at home or abroad for positive foreign intelligence collection from innocent Americans abroad. The charter would.

The Justice Department has not indicated whether it believes these authorities are constitutional. Even if they are, we believe them unwise and dangerous. Except for extending the Foreign Intelligence Surveillance Act abroad for wiretapping, under the circumstances that control wiretapping since Katz and Keith brought it under the fourth amendment, the Aspin bill would require mail opening and surreptitious entries to be conducted only pursuant to procedures which govern law enforcement searches. The warrant must be served except in exigent circumstances and the person notified of items seized.

In our extended statement we go into other problems with the charter and some of the advantages it has, but, in concluding, simply

commenting on the rights of American sections, we think that rather than relying on strict standards this bill relies far too much on oversight and that this scheme, based on the whole past record, will fail.

Mr. Chairman, Mr. Halperin will turn to some of the matters which have been the central preoccupation up until now.

[The prepared statement of Jerry J. Berman and Morton H. Halperin follows:]

PREPARED STATEMENT BY JERRY J. BERMAN AND MORTON H. HALPERIN, AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman and members of the committee, on behalf of the American Civil Liberties Union, a non-profit organization of over 200,000 members dedicated to defending the Bill of Rights, we welcome this opportunity to testify on S. 2284/H.R. 6588, "the National Intelligence Act of 1980" (hereinafter referred to as S. 2284).

S. 2284 is the long-awaited comprehensive intelligence charter proposal designed to govern the intelligence activities of the CIA, FBI, NSA, and other entities of the intelligence community. Although this complicated nine-title bill raises a myriad of important issues, we will concentrate our testimony today on those sections of the bill which authorize intelligence activities directed at United States persons and which purportedly restrict those activities to protect the rights of Americans. At the end of our testimony and in separate memorandum, we state our views on the charter's scheme for authorizing and overseeing covert operations ("special activities"), and other matters of particular concern to the ACLU: the proposed CIA exemption from the Freedom of Information Act, and the criminal penalties for revealing the names of intelligence agents and sources.

We focus on the rights of American issues posed by the charter bill for more than institutional reasons. In response to President Carter's demand that certain so-called "unwarranted restraints" on the CIA be removed or modified, there is serious danger that Congress will ignore or give short shrift to the Charter's proposed standards and controls on intelligence activities directed at Americans. Two possible consequences extremely detrimental to civil liberties could result.

First, Congress could pass some version of a legislative package responding to the CIA's concerns regarding (1) reporting of covert operations, (2) making it a crime to reveal the names of agents, and (3) affording the CIA relief from the Freedom of Information Act. Even if the final legislation was narrower than what the CIA wants (see S. 2216/H.R. 6316, introduced by Senator Daniel Moynihan and Congressman Bill Young), the consequences could be to doom the comprehensive charter effort. Once the CIA achieves its immediate legislative objectives, it would have less incentive to work for comprehensive statutory charters which would include statutory restrictions to protect the rights of Americans.

Second, the Congress could resolve the three issues outlined above within the context of S. 2284, the comprehensive charter but without subjecting the sections affecting rights of Americans to close scrutiny. In our view, this would be worse than passing no charter at all, since we believe that the standards for investigating Americans set forth in S. 2284 are so vague and overbroad, the controls on investigations and the use of intrusive techniques so ineffective, and the enforcement mechanisms so inadequate that many types of investigative activities labeled "abusive" in the past would be authorized rather than prohibited in the future. A future administration would not have to claim an "inherent power" to conduct broad, non-criminal investigations of Americans but instead could rely on the express authority granted by the Congress in the charter.

By reminding this Committee of the original purpose that charter legislation was supposed to serve—protection of the rights of Americans—and demonstrating how S. 2284 fails to achieve this purpose, we hope to convince the Committee to undertake the serious and we believe essential work of examining and reworking this charter so that it does strike a proper balance between national security needs and the protection of civil liberties.

Fully aware that we are swimming against the tide, we would recommend that Congress take no action until all of the major provisions in S. 2284 are

examined including those dealing with the rights of Americans. If the Administration could fiddle with the charter legislation for a full three years. Congress should have more than a couple of months to make its judgment. Even on those matters where only a month ago congressional action seemed necessary, further study shows that time is really not of the essence. While reporting covert operations to eight committees is viewed as burdensome by the Administration, the fact of the matter is that far fewer members of Congress actually review covert operations and such operations are apparently going forward. While the Freedom of Information Act may create a perception problem that secrets cannot be kept, the fact of the matter is that they are being kept and the solution may lie more in education than radical surgery to the Act. Finally, if Congress wants to punish those who reveal the names of intelligence agents, it must take the time to devise a constitutional statute to accomplish this objective.

OVERVIEW OF THE RIGHTS OF AMERICANS ISSUES

In order to understand the proper emphasis which must be placed on the rights of Americans issues posed by S. 2284 it is necessary to review how the call for an intelligence charter came about and the principal purpose it was supposed to serve.

It was widespread allegations of FBI and CIA spying on Americans in contravention of law, existing charters, and the Constitution which led the Senate to establish a special Select Committee to Study Governmental Operations with Respect to Intelligence Activities in 1975. It is instructive that prior to this time, administration and the intelligence agencies had successfully resisted all efforts to establish congressional intelligence committees in addition to the Appropriations and Armed Services Subcommittees which exercised minimal supervision over the agencies. Not even the U–2 or Bay of Pigs changed this.

Resolution 21 which establishes the Senate Select Committee (which popularly came to be known as the Church Committee after its chairman, Senator Frank Church of Idaho) instructed it to determine "the extent, if any, to which illegal, improper, or unethical activities were engaged in" by the intelligence agencies. In addition to this general charge, the Select Committee was instructed to look into specific allegations of illegal domestic surveillance by the CIA, domestic intelligence and counterintelligence operations directed at Americans by the FBI, and the origins and possible implementation of the Huston Plan (the Nixon White House scheme to authorize coordinated illegal surveillance of Americans).

Although the Senate's Select Committee and its counterpart in the House, the Pike Committee, explored other important issues such as covert operations abroad, assassination plots, and the quality of the intelligence product, both committees focused on violations of the rights of Americans. Building on the report of the Presidentially-appointed Rockerfeller Commission on the CIA, the committees, and particularly the Senate Select Committee, developed a documented record of abuse that went far beyond what was known or even imagined when the investigations were commenced. "We have seen segments of our Government," said the Church Committee in its Final Report "adopt tactics unworthy of a democracy and occasionally reminiscent of the tactics of totalitarian regimes."

While the record of abuses is well known, it bears repeating at least in summary because memories in Washington tend to be very short, and because any statutory charter must be scrutinized closely to insure that its standards and controls prohibit rather than authorize similar abuses in the future. We quote from the Final Report, Book II at page 5:

"Too many people have been spied upon by too many Government agencies and too much information has been collected.

"The Government has often undertaken the secret surveillance of citizens on the basis of their political beliefs, even when those beliefs posed no threat of violence or illegal acts on behalf of a hostile foreign power.

"The Government, operating primarily through secret informants, but also using other intrusive techniques such as wiretaps, microphone 'bugs', surreptitious mail opening, and break-ins, has swept in vast amounts of information about the personal lives, views, and associations of American citizens.

"Investigations of groups deemed potentially dangerous—and even of groups suspected of associating with potentially dangerous organizations—have continued for decades, despite the fact that those groups did not engage in unlawful activity.

"Groups and individuals have been harassed and disrupted because of their political views and their lifestyles.

"Investigations have been based upon vague standards whose breadth made excessive collection inevitable.

"Unsavory and vicious tactics have been employed—including anonymous attempts to break up marriages, disrupt meetings, ostracize persons from their professions, and provoke target groups into rivalries that might result in deaths.

"Intelligence agencies have served the political and personal objectives of presidents and other high officials.

"While the agencies often committed excesses in response to pressure from high officials in the Executive Branch and Congress, they also occasionally initiated improper activities and then concealed them from officials whom they had a duty to inform."

The unanimous recommendation of the bi-partisan Senate Select Committee was that Congress should develop and enact a comprehensive intelligence charter to end the conduct of intelligence activities under claims of "inherent power" and bring them under a framework of statutory law that would prevent a repetition of intelligence abuse:

"The Committee is not satisfied with the position that mere exposure of what has occurred in the past will prevent its recurrence. Clear legal standards and effective oversight and controls are necessary to ensure that domestic intelligence activity does not itself undermine the democratic system it is intended to protect."

In its Final Report, Book II, the Committee made 94 detailed recommendations for embodiment in a comprehensive charter or regulations issued pursuant to it. Its principal recommendations are worth summarizing:

Criminal standard for investigation.—Except for limited inquiries involving relatively non-intrusive techniques, the charter should establish that no full intelligence investigation of an American may be conducted unless there is reasonable suspicion to conclude that the American soon will engage in terrorist or hostile foreign intelligence activity. Both were defined in terms of violations of the criminal laws of the United States, with on exception. At the urging of the Administration, the Committee included "clandestine intelligence activity" within the definition of hostile intelligence activity to cover—based on Administration averments—certain forms of industrial espionage not criminal under current law. The Committee called for a revision of the espionage laws to cover such espionage so that this non-criminal basis for investigation could be eliminated. (See Recommendation 44 and definition of "hostile foreign intelligence activity at page 340 of the Final Report, Book II.)

Strict limits on physical security, background, target of recruitment investigations.—The Committee recommendations make it clear that limited inquiries but not investigations involving intrusive covert techniques can be conducted by intelligence agencies for these purposes. (See Rec. 7, 44, 61.)

Limitations on use of covert techniques.—The Committee limited certain covert techniques for use in full intelligence investigations under a criminal standard and defined those techniques to include all Fourth Amendment techniques (e.g. wiretapping, mail opening) but also informants and other covert human sources, review of tax records, medical or social history records, confidential records of private institutions and confidential records of Federal, state, or local government agencies except law enforcement. (Rec. 58.)

Strict controls on recruitment of informants and infiltration by informants or undercover agents.—The Committee recommended that informants or agents could only be used in full criminal intelligence investigations and only with the specific approval of the Attorney General under a standard of probable cause. After two years, the Committee recommended reopening the issue of whether a judicial warrant should be required. (Rec. 55, 56, 57.)

Law enforcement-type warrants for mail opening and unconsented physical search.—The Committee recommended a judicial warrant requirement for all electronic surveillance, mail opening, and unconsented physical searches. However, while recommending standards for conducting electronic surveillance along the lines of the Foreign Intelligence Surveillance Act of 1978, the Committee specifically recommended traditional law enforcement warrants for opening the mail or searching the property of Americans. In other words, probable cause of a crime and traditional notice, including serving the warrant on the person to be searched. The Committee did recommend different rules for warrants issued

for searches directed against foreign powers or foreigners who are their agents. (Rec. 51, 52, 53, 54.)

A ban on COINTELPRO activities.—The Senate Select Committee called for specific prohibitions on tactics used by the FBI to disrupt and neutralize domestic political groups and movements (Rec. 40.)

Civil remedies for charter violations.—The Committee called for the establishment of statutory civil remedies not only for invasions of privacy using illegal Fourth Amendment techniques but for violations of the charter which interfere or adversely affect the rights of citizens. (Rec. 91.)

Executive accountability and congressional oversight.—A number of the Committee's recommendations call for high level supervision over intelligence activities, frequent review and reauthorization of investigations, sign-offs on requests to use investigative techniques, internal oversight mechanisms such as general counsels and inspectors general, and strong congressional oversight. These were in addition to strict standards for authorizing intelligence activities directed at Americans.

A congressional vehicle for translating these recommendations into legislation was established in March 1976, when the Senate created a permanent Select Committee on Intelligence. Under S. Res. 400, the Committee was authorized to conduct oversight over intelligence activities and to submit to the Senate appropriate proposals for legislation. Proponents of the Committee understood this to include comprehensive charter legislation. Early in the 95th Congress, the House established this Committee with a similar mandate.

With the election of President Carter, the expectation was that charter legislation incorporating the Church Committee recommendations would be introduced and debated in the 95th Congress. The President had campaigned on a platform of curbing intelligence abuses and Vice President Mondale, who had served on the Church Committee and was a principal drafter of its recommendations, had promised if elected to propose a comprehensive charter to define what the agencies can and cannot do.

After working with the Carter Administration on a new Executive Order on Intelligence Activities, E.O. 12036, which the President issued in January 1978 as an interim order and framework for charter legislation, the Senate Intelligence Committee introduced S. 2525, the National Intelligence and Reorganization Act of 1978 in February 1978. A counterpart bill, H.R. 11245, was introduced in the House.

While S. 2525/H.R. 11245 incorporated many of the Church Committee recommendations, it did include a number of departures from them. For example, it authorized the CIA to investigate Americans abroad under a non-criminal standard of "clandestine intelligence activity." It contained limited authority to engage in certain COINTELPRO type techniques, including violations of law, to counter espionage or prevent violence. While it established judicial warrants for wiretapping and surreptitious entries, the bill authorized the issuance of warrants for breakins on less than probable cause of a crime and without requiring that the subject of the surveillance receive notice as required under searches conducted for law enforcement purposes. Nevertheless, S. 2525 provided the basis for an enactable charter and it was hoped that after public debate, many of the troublesome provisions could be amended to strike a more satisfactory balance between national security needs and protection of civil liberties.

In fact, the best evidence that the principles set forth in the Church Committee recommendations could be incorporated in the charter was the final compromise reached on the Foreign Electronic Surveillance Act of 1978 (FISA). Widely viewed as a first step toward charter legislation and a possible benchmark test of principles that should be incorporated in the charter, the Act as it finally passed:

Contained a criminal standard for surveilling Americans. As drafted by the Administration, it did not.

Incorporated the additional principle that the more intrusive the technique, the higher the level of supervision must be to use it. The Attorney General had to approve each application. A judicial warrant had to be obtained.

Established procedures for minimizing the retention and dissemination of information gained from the surveillance.

Provided a mechanism for congressional oversight in addition to executive supervision and court scrutiny.

Created a civil remedy for citizens illegally wiretapped and a criminal penalty against officials who violated the act.

Now, almost two years to the day after S. 2525's introduction, the Congress has introduced what we view as essentially the Administration's version of an intelligence charter. In the context of the evolution of the charter debate as set forth above, S. 2284 and H.R. 6588 can only be characterized as the obverse of intelligence reform. No longer is the bill called the "National Intelligence Reorganization and Reform Act." Instead, it is simply the "National Intelligence Act of 1980." That is appropriate because reform has been stricken from major portions of the legislation.

S. 2284 substantially departs from the recommendations of the Senate Select Committee. While it retains the framework of S. 2525/H.R. 11245, the Administration has performed radical surgery on its key standards and restrictions designed to protect the rights of Americans. It violates the principles accepted in enacting FISA. Drafted by a committee made up of representatives of the intelligence agencies, S. 2284 reads the way we might imagine the Fourth Amendment to read if drafted by a committee of police chiefs. In another failure of communication by the Carter Administration, S. 2284 will not, to quote the President, "guarantee that abuses will not recur." Quite the opposite. S. 2284:

Authorizes counterintelligence and counterterrorism investigations directed against Americans at home and abroad under noncriminal, overbroad standards;

Permits intelligence agencies to use covert techniques to gather foreign intelligence from wholly innocent Americans in the United States. A warrant may be obtained to collect essential information from innocent Americans abroad using wiretaps, mail opening, and physical searches.

Does not prohibit the use of covert techniques in investigating persons suspected of being targets of foreign influence, or potential sources of assistance.

Does not limit infiltration by informants and undercover agents to groups suspected of criminal activity.

Establishes a judicial warrant for national security mail opening and physical searches in the United States directed at Americans but under standards lower than probable cause of a crime and without requiring notice to the subject of the search.

Authorizes unspecified COINTELPRO techniques against any American suspected of engaging in clandestine intelligence activity or who may threaten to engage in violent activity for political motive.

Bans activities designed to interfere with lawful political activity but fails to provide a civil remedy if the prohibition is violated.

Fails to provide a civil remedy for substantial violations of the charter which may affect civil liberties.

Most distressing, these fundamental alterations have been made in the charter without public explanation. The Administration was widely rumored to be upset with S. 2525 but never testified as to why it objected to its standards, procedures, or controls. Now, in testifying on S. 2284 officials are focusing on those parts of the bill they still object to and which has led the Administration to withhold full endorsement of the bill (e.g., prior notice of covert operations, providing all information requested by the committee, the absence of a waiver in time of war, the narrower crime of revealing the names of agents, etc.) but are not explaining why it supports and needs the permissive standards for investigating Americans set forth in the legislation. Equally troubling, Congress is not forcing the agencies to give an adequate explanation on the public record of the bill's intent and meaning in any systematic fashion. We hope our testimony today will bring about some hard questioning of the agencies. Certainly, Congress must know what it is authorizing before enacting this complex legislation into law. General testimony about how the agencies need or desire charters provided certain changes are made in the bill will not suffice.

S. 2284 AND THE RIGHTS OF AMERICANS

To back up our contention that S. 2284 as drafted does not constitute legislation protective of the rights of Americans, we turn now to an analysis of these provisions of the bill which affect—and we believe adversely—those rights: (1) the authority to investigate Americans for intelligence purposes; (2) the controls on the use of covert and other intrusive techniques; (3) and procedures for insuring accountability, oversight, and enforcement of charter limitations. Essentially,

these provisions are set forth in titles II and VIII of the nine title charter. (We observe in this regard that it is simply not true, as some have charged, that S. 2284 is "page after page of thou-shalt-nots." Most of the charter is devoted to setting forth the basic authority of the CIA, FBI, and NSA (titles IV, V, and VI) and establishing coordination of intelligence under a Director of National Intelligence (title III). Even Title II cannot be viewed as a compilation of detailed restrictions.)

Today, we limit ourselves to a preliminary assessment of the rights of Americans sections, not simply because the bill has only recently been introduced but because we are not at all certain we fully understand the full scope of the authorities in the bill. Since the Administration has not explained the bill, we are left to our own devices and while we claim some expertise in the special language of intelligence legislation (having followed the issue closely and participated in the debate over the Foreign Intelligence Surveillance Act), S. 2284 requires the analyst to constantly read between the lines. Provisions which seem clear on their face take on different meaning when read in terms of crucial definitions of operative terms or when artful construction of statutory language is read more carefully. For example:

Section 214 appears to authorize counterintelligence and counterterrorism investigations directed at Americans suspected of engaging in clandestine intelligence activity or terrorism. In fact, the section authorizes not only investigations, but also undefined types of COINTELPRO deception and preventive action to be directed at suspected Americans. The operative terms are "counterintelligence and counterterrorism activities" which encompass both collection and "other activities" undertaken to "counter and protect against" clandestine activities and international terrorism (see 103(3) and (5)).

A number of sections bar the use of "covert techniques" unless the President or other supervisory officials approve. However, the definition of "covert techniques" (sec. 202(h)(2)) only includes Fourth Amendment techniques such as wiretapping overseas unless the President at his discretion adds to the category. If the President does not, the bar on covert techniques in certain investigations authorized in the United States is a meaningless and misleading restriction.

There are many other examples of this kind of drafting in S. 2284. Whether these are intentional or inadvertent, the reader who is not careful is led to believe there are far more restrictions in the bill than really exist and that the executive branch and the agencies have far less discretion than is really the case.

INTELLIGENCE INVESTIGATIONS

Under Title II of S. 2284 the intelligence agencies are authorized to direct intelligence investigations at unconsenting United States persons (which by definition includes groups) to carry out six intelligence collection functions. We comment on each.

COUNTERINTELLIGENCE INVESTIGATIONS

Under section 214, the FBI at home and the CIA abroad may use intrusive techniques to extensively investigate citizens and organizations (e.g., United States persons) without their consent:

On the basis of facts or circumstances which reasonably indicate that the person is or may be engaged in clandestine intelligence activities on behalf of a foreign power.

We believe this standard for investigation would permit a future administration to authorize widespread investigations of lawful political activity that could "chill speech" and violate the privacy of political association guaranteed by the First Amendment, e.g., *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *NAACP* v. *Alabama*, 357 U.S. 449 (1958). It does not reflect the precision that is required of standards for surveillance in areas of activity where the distinction between lawful dissent and legitimate domestic security concerns are easily blurred. *United States* v. *United States District Court*, 407 U.S. 297 (1972).

First of all, clandestine intelligence activity is not defined. While it could have the narrow meaning assigned to it by the Church Committee (e.g., espionage as defined in the criminal code and certain forms of noncriminal industrial espionage, see page 152 supra), it obviously is meant here to serve as a catch-all for clandestine activities enumerated in S. 2525 and the Foreign Intelligence Surveillance Act of 1978, including espionage and other covert activities directed by foreign powers against our political process by foreign agents. Unfortunately,

our intelligence agencies construe it even more broadly to include what can only be understood as lawful political activity. Here, for example, is how the CIA defines the term in its implementing directive to the Carter Executive Order on Intelligence Activities, E.O. 12036:

"Clandestine intelligence activity means an activity conducted for intelligence purposes *or for the purpose of affecting political or governmental processes* by or on behalf of a foreign power in a manner tending to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any knowing activity conducted in support of such activity." [Italic added.]

Clearly, affecting "political or governmental processes" is political activity. While on behalf of a "foreign power," it does not have to be a "hostile" foreign power, as the Church Committee would have required, or a foreign government for that matter. Under S. 2284, "foreign" power includes governments but also "factions of a foreign nation," and even "foreign-based political organizations."

To insure that surveillance of lawful political activity was not authorized, both S. 2525 and the Foreign Intelligence Surveillance Act required an agency in addition to have reasonable grounds to believe that the clandestine activity involved or was about to involve a violation of the criminal laws of the United States (or "may involve" a violation in the case of intelligence collection). Neither this limitation, nor the FISA provisio that lawful political activity alone can not be construed as clandestine activities are contained in the counterintelligence standard.

Finally, even if the meaning of "clandestine intelligence activity" were limited, the level of suspicion which the FBI and CIA must have to meet it is so low as to permit overbroad targeting of citizens. We agree with the requirement that the agencies have "facts or circumstances reasonably indicating" the suspect activity. This is comparable to the reasonable suspicion standard articulated by the Supreme Court in *Terry* v. *Ohio*, 392 U.S. 1 (1968). However, the use of "may be engaged" rather than will or about to engage in clandestine activities greatly lowers the basis for investigation. Facts or circumstances which "may" indicate something can amount to mere words or association, a tip or an allegation of involvement in suspicious conduct. To trigger an investigation, using such techniques as physical surveillance, informants, searches or third party records, and the like on such a basis, and even activities to "counter or protect" against suspected activity (which may involve deception and other COINTELPRO techniques) is to severely threaten civil liberties.

As we read Section 214, we believe it could authorize the FBI at home and the CIA abroad to engage in many of the same kinds of investigations which were labeled abuses by every official investigation of past activities. For example:

> The targeting of an anti-war activist who secretly met or who was suspected of secretly meeting with representatives of Hanoi and who led demonstrations against the Vietnam War in the United States or lobbied members of Congress.
>
> The targeting of a black political leader who meets secretly with leaders of parties in several African states and then engages in intense lobbying to impose trade restrictions on countries practicing apartheid.
>
> The targeting of a member of the American Jewish Committee who travelled to Israel and then returned to lobby Congress on the Middle East situation and is suspected of following instructions of the Government of Israel.

The first example suggests a possible statutory authorization of CHAOS and FBI "New Left" surveillance programs. The other examples involve lawful if secret political association and efforts to influence the political process. If COINTELPRO is authorized, as it appears to be in some situations (see discussion on page 17 supra), we have come or threaten to come full circle.

Counterterrorism investigations.—Under section 214, the FBI at home and the CIA abroad are also authorized to conduct investigations of terrorism and other activities to "counter and protect against" terrorism directed against unconsenting citizens and groups (United States persons) on the basis of facts or circumstances which reasonably indicate that the person is or may be engaged in international terrorist activity.

Here again, the standard is overbroad and would permit intelligence agencies to conduct intrusive investigations and protective activities (e.g., preventive action) directed at persons and groups engaged in lawful political dissent and

protest or even minor forms of civil disobedience. There are two problems with the standard: first, the breadth of the definition of "international terrorist activity"; and second, the level of suspicion required to trigger an investigation or preventive measures.

The definition of "international terrorist activity" in S. 2284 (section 103(13)) defines it in part as killing, causing serious bodily harm or kidnapping one or more individuals or engaging in "violent destruction of property" which appears intended to "further political, social, or economic goals" by intimidating or coercing foreign populations, governments, or international organizations in the United States or elsewhere. Using coercion to "obtain widespread publicity for a group or cause" is also covered if the target is foreign-related and terrorism also becomes international if it transcends national boundaries in terms of the means employed (e.g. financial support from abroad) or if the perpetrators seek asylum elsewhere.

Certainly a group which is reasonably suspected of engaging in or planning to engage in violent crime for purposes of intimidation to achieve political goals should be subject to investigation. However, the definition of "international terrorist activity" is far broader, since it also encompasses "an attempt or credible threat" to engage in such violent activity. When combined with a level of suspicion standard that permits targeting of persons or groups who "may be engaged" in such activity, the standard seems to authorize surveillance of citizens who may "attempt" or "threaten" to engage in such activity.

Such a standard invites intrusive surveillance of potential terrorists which may include any group engaged in vigorous dissent or opposition to the policies of foreign governments. Moreover, even if the section requires an actual threat or attempt, planned civil disobedience can be viewed as a credible threat to engage in "violent destruction of property" since this term is not defined. In the proposed criminal code revision, violent destruction of property is any damage to property amounting to $500 or more, a definition that would easily encompass civil disobedience "to obtain widespread publicity for a group or cause." Finally, it should be noted that the definition and standard, unlike the wiretap bill, does not require that international terrorism be undertaken for or on behalf of a foreign power. Under section 214, it is possible to interpret the standard to permit surveillance of wholly domestic groups opposed to Soviet immigration policies who threaten civil disobedience in front of Soviet consulates or the Soviet Embassy or groups who demonstrate against the government of Iran because they may threaten or attempt violent action. The examples could be multiplied, because the standard is overbroad.

FOREIGN INTELLIGENCE INVESTIGATIONS

Under section 213, the FBI in the United States and the CIA and NSA abroad would be authorized to use intrusive covert investigative techniques to collect foreign intelligence information from unconsenting and wholly innocent citizens and groups. In our view, this is the most radical departure from the recommendations of the Church Committee and S. 2525/H.R. 11245 and poses the most substantial threat to civil liberties in the charter.

Unlike S. 2525/H.R. 11245 foreign intelligence could be collected from U.S. persons in the United States only by interviews or in the course of an authorized counterintelligence or counterterrorism investigation which required a reasonable suspicion that the U.S. person was engaged in criminal activity. Abroad, such information could only be collected from Americans engaged in "clandestine intelligence activities" or who were officials of foreign powers or associations directed and controlled by foreign powers.

The reason for the limitation was principally that foreign "intelligence" is exceedingly broad. Under S. 2284, it is defined as any information "pertaining to the capabilities, intentions and activities of any foreign state, government, or organization, association, or individual, or information on the foreign aspects of narcotics production and trafficking * * *" (sec. 103(8)). As a consequence, the drafters of S. 2525 felt it wise to heed the warning of the Church Committee with respect to authorizing its collection from U.S. persons in this country:

"Foreign intelligence is an exceedingly broad and vague standard. The use of such a standard raises the prospect of another Project CHAOS."

While permitting broader but still limited collection abroad, S. 2525 based the limitation on concern for the rights of Americans as well as the perception that

broad collection was not necessary. For example, the Church Committee made this observation in commenting on President Ford's Executive Order on Intelligence which appeared to authorize extensive collection:

"The Order then broadly defines 'foreign intelligence' as information about the intentions or activities of a foreign country or person, or information about areas outside the United States. This would authorize the CIA to collect, abroad, for example, information about the domestic activities of American businessmen which provided intelligence about business transactions of foreign persons. The CIA does not at present specifically collect intelligence on the economic activities of Americans overseas."

S. 2284 ignores previous caution and broadly authorizes foreign intelligence collection by covert means. To understand this requires a careful reading of section 213.

The section is written in terms which make it appear as a statutory limitation on foreign intelligence collection. The opening paragraph states:

"Collection of foreign intelligence by means of covert techniques shall not be directed against United States persons, except in the course of collection of counterintelligence or counterterrorism intelligence, or in extraordinary cases when authorized in accordance with this section."

While this reads like a limitation, in actuality it is not. Covert techniques cannot be used in the United States without presidential approval but by definition of the term "covert techniques" in the bill, there are no covert techniques in the United States except for wiretapping and other Fourth Amendment techniques unless the President designates them. In short, unless the President defines certain techniques as covert, any clandestine technique short of wiretapping, mail opening, and physical search can be used to collect foreign intelligence information from innocent Americans in the United States without meeting any standard (important, significant, essential) or requiring presidential approval. (See definition of covert technique in section 202(h)(2)). Without presidential designation, such techniques as informants and other covert human sources, review of tax records, medical or social history records, confidential records of private institutions and confidential records of Federal, state and local government (techniques which the Church Committee defined as covert techniques which should be limited to criminal intelligence investigations, see page 152 supra), not to mention physical surveillance, pretext interviews and other such techniques could be used to collect foreign intelligence information under lower standards than apply in counterintelligence investigations!

Of course, the Administration may argue that the President will designate many of these techniques as covert techniques for purposes of carrying out the authority of this section. However, it is instructive that in three years of negotiation over this charter, the Administration has not been willing to concede that any of these techniques qualify as covert or intrusive enough to merit statutory limitation. Moreover, we know of no limitation on techniques, outside of clear Fourth Amendment techniques (e.g. wiretapping, mail opening, and physical search) which current implementing directives define as prohibited or restricted for foreign intelligence collection in the United States by the FBI. (Directives do require the Attorney General to approve foreign intelligence collection by the FBI in the United States directed against any U.S. person but no meaningful standard is articulated.) Finally, the requirement that the President approve foreign intelligence collection involving covert techniques which he designates is a disincentive for him to define any techniques as such, since it will require his personal involvement in particular collection decisions. We need not even speculate how the Nixon Administration would have exercised this discretion.

If left in the bill, we believe this standard makes all other standards irrelevant in limiting the surveillance authority of the intelligence agencies. All Americans of any interest to our intelligence agences would qualify for surveillance under this standard if they have any foreign connections or contacts. This means in effect that any Americans returning from overseas, in regular or occasional contact with foreigners, or with knowledge of foreign matters can have their records seized without notice, can have their organization infiltrated, can have informants planted in or recruited from their business firm or political groups, can be followed around and eavesdropped on. Under this standard, most of the abuses of the past would fit readily:

> The Antiwar movement could have been surveilled to learn what it knew about Hanoi's intentions. Operation CHAOS.

The New Left and black nationalists could have been surveilled to learn about Cuba and other countries with whom its leaders were in contact. FBI New Left Program.

Civil rights groups could have been surveilled to determine the influence of foreign agents (CPUSA) on the movement.

Newsrooms could be penetrated to find out what foreign correspondents know about foreign leaders or governments.

Business firms could be subject to surveillance to learn about the business transactions of foreign persons.

Moreover, outside the United States, foreign intelligence may be collected from innocent Americans using wiretaps, mail openings, and break-ins. Under section 213, the President must approve this surveillance and find that the information sought is essential to national security of the United States. (By definition, extraordinary techniques used overseas against Americans are covert techniques.) As a protection for the rights of Americans, a judicial warrant must be obtained for this surveillance under section 221. However, the judge does not have to find probable cause of a crime to issue the warrant but simply that there is probable cause to believe that the United States person * * * is in possession of, or, in addition with respect to foreign electronic surveillance, is about to receive, the information sought. Moreover, if the information supporting the probable cause is supplied by a "foreign liaison" officer or cooperative source, the Attorney General, to protect confidentiality, may certify the facts to the judge and the judge "shall not refuse" to make a finding of probable cause (see section 222).

We view this proposed authority as unprecedented, dangerous, and arguably unconstitutional. Clearly, it is a departure from the current Executive Order, 12036, which only permits the use of such techniques abroad against Americans who are believed to be agents of a foreign power. Secondly, it is a departure from FISA which requires a criminal standard to conduct national security electronic surveillance against Americans in this country, a standard which we believe should apply to Americans overseas as well.

Certainly, this proposal raises constitutional questions. Although the decision in *United States* v. *United States District Court*, 407 U.S. 297 (1972) reserved the question whether a warrant was required to conduct national security wiretapping, there is nothing in the decision to suggest that electronic surveillance could be directed against innocent Americans to obtain foreign intelligence information. The Court, in reserving judgment in the national security area, stated that it simply did not address the issues which may be involved with respect to activities of foreign powers or their agents. The implication that a warrant may not be required to tap a foreign agent does not suggest that a warrant would permit tapping innocent Americans.

The authority is proposed for overseas surveillance. However, the courts have always held that the government must treat Americans overseas in the same manner as Americans at home. See *Berlin Democratic Club* v. *Rumsfeld*, 410 F.Supp. 144 (1976), (applying a warrant requirement for domestic security cases abroad in conformity with the *Keith* decision (*United States* v. *United States District Court*, 407 U.S. 297 (1972).) Moreover, since we do not believe there is an exception to the Fourth Amendment for national security mail opening and physical searches, the use of these techniques for positive foreign intelligence collection abroad would clearly be unconstitutional. *United States* v. *Ehrlichman*, 376 F.Supp. 29 (D.D.C. 1974) : aff'd 546 F.2d 910 (D.C. Cir. 1976). (See the concurring opinion of Judge Leventhal at p. 933.)

Even if constitutional, the proposal is unwise and dangerous. If enacted, we believe the Government could engage in widespread surveillance of Americans abroad. Abuses of the past would be legitimized in the future. For example,

Columnist Joseph Kraft whose Paris phone was tapped by the Nixon Administration could have had his phone tapped under this authority because he was in Paris to meet with North Vietnamese negotiators and arguably obtained vital information of interest to the United States.

A Congressman or Senator on a fact-finding tour to any foreign country could be subjected to intrusive surveillance if he or she met with high level foreign officials and wanted to respect their confidences.

Businessmen could be tapped at their offices overseas or their hotel rooms searched to find out vital economic information about a foreign corporation who they are dealing with or the foreign trade negotiation position of a foreign government with whom they have contacts.

This section cannot be amended. It must be stricken from the legislation.

Collection of information concerning targets of clandestine intelligence gathering activity of foreign governments.—Section 215 authorizes U.S. intelligence agencies to collect information concerning United States persons without consent if "the person is the target of clandestine intelligence gathering activity of a foreign government and such collection is necessary for counterintelligence purposes." There are two problems with this section.

First, the agencies are not required to obtain the consent of the person except in extraordinary circumstances. The case that comes to mind is the recent revelation that a U.S. intelligence agency collected information about a member of Congress in order to provide a double agent with information to supply to a foreign intelligence service that was interested in the member of Congress. Because of the kind of private information that might be collected and disseminated, consent should be the rule.

Equally troubling, the authority to collect information is not restricted in terms of the techniques that may be employed short of Fourth Amendment techniques and mail covers. As discussed in the previous section, page 155 supra, the bar on covert techniques in target investigations has no meaning unless the President designates certain techniques as covert. If he does not, informants, private records, and systematic physical surveillance, to name just a few of the techniques possible, could be used in target investigations.

Collection of information concerning potential sources of intelligence or operational assistance.—Under section 216, intelligence agencies are authorized to collect information concerning persons who are under consideration as potential sources of intelligence or operational assistance. This authority is troublesome in a number of respects.

First, the statute does not require an intelligence agency to obtain consent except in extraordinary circumstances. Files released under the FOIA to anti-war and other critics of American policy show that the CIA and FBI often conducted investigations of such persons in order to decide whether to approach them for operational assistance and often continued such investigations for years.

Second, because of the problems with the concept of covert techniques (see page 155 supra), all but Fourth Amendment techniques and mail covers could be used in source investigations absent a presidential designation of covert techniques.

Collection of information for security purposes.—Section 217 authorizes intelligence agencies to collect information "to provide personnel, document, communication, or physical security of intelligence activities." The section is extremely confusing and requires explanation by its drafters.

First, it is not clear who may be investigated under this section. Is it limited to the persons described in paragraph (a)(1) or can other persons be investigated to determine the "suitability or trustworthiness" of employees, contractors, etc.? Then, who may be targeted and under what circumstances to "protect against breaches of security"? Must a breach of security have occurred? Doesn't paragraph (a)(2) border on giving the CIA law enforcement functions which should be left to the FBI? Who is "that person" referred to in paragraph (a)(3) who poses "a direct or imminent threat * * *" to the physical safety of personnel, installations, property, etc.?

CONTROLS ON INVESTIGATIONS

In testifying on H.R. 5030/S. 1612, the FBI charter to govern criminal investigations now pending before the Judiciary Committee, we have applauded the standards and questioned the controls. S. 2284 presents us with the very opposite—inadequate standards but numerous controls. We believe that there needs to be both strict standards and effective controls.

Even if criminal standards are adopted to restrict overbroad intelligence investigations there must be carefully drawn procedures to insure that investigations are lawful, limited in scope and duration, terminated when appropriate, and otherwise held within bounds that minimize interference with a democratic society.

In contrast with S. 2525/H.R. 11245, S. 2284 relies far more on establishing benchmark principles to guide the drafting of detailed guidelines and procedures than in providing them in the charter itself. We have come to support this ap-

proach and believe that section 212 is an essential element in charter legislation. One important amendment we suggest would be to require that the procedures developed pursuant to Section 212 be made public, consistent with the need to protect sources and methods. Public orders and implementing directives can be debated and looked to as public law for purposes of informing the public of the agencies' mission and interpretation of authority and as a means of establishing some public accountability over what are essentially secret activities.

We cannot accept those parts of the structure of S. 2284 which depend simply on high level authorization to prevent abuse of permissive standards. For example: relying on Presidents to designate covert techniques and find that collection of foreign intelligence is essential (section 213) or a senior official to determine that placement of agents in groups is necessary (section 214) and other such procedures (e.g., notifying the Attorney General that covert techniques be used in a source investigation under section 216). This approach ignores a central lesson of the official record of abuses. Presidents, Attorneys General, and FBI Directors were often the ones most responsible for ordering broad, and abusive intelligence investigations.

It was President Roosevelt who called on Director Hoover to take charge of gathering information concerning subversive activities. It was President Johnson who ordered the CIA to conduct domestic security investigations of the anti-war movement to determine whether it was acting under the direction of Hanoi. It was Attorney General Robert Kennedy who approved the wiretap of Martin Luther King, Jr. It was Attorney General Ramsey Clark who ordered massive collection of information concerning civil disorders and who set up the IDIU Index at the Justice Department. It was President Nixon who ordered the establishment of the Huston Plan and a wiretap program to plug leaks, and Attorney General Mitchell who approved the warrantless taps.

This record strongly suggests that relying on the discretion of high officials, rather than on their duty to enforce clear and strict statutory standards, with necessary external checks (the approach of S. 2284 is flawed).

We recommend that the investigative standards be rewritten and certain external checks be added or expanded. For example:

We support the "independent audit" for placement of agents but believe the audit should also extend to directed collection in general (e.g., informants and recruitment).

We support high official sign-offs for access to confidential record but believe the procedures of the Financial Right to Privacy Act should be followed for bank, medical, and credit records (e.g., judicial approval when a waiver of notice is required).

We support certain prohibitions on the use of covert techniques but believe they should be defined in the charter as recommended by the Church Committee and generally embodied in H.R. 11245 and S. 2525 [and in section 214 of the charter].

CONTROLS ON FOURTH AMENDMENT TECHNIQUES

We have already expressed opposition to the warrant for collecting positive foreign intelligence from innocent Americans abroad using electronic surveillance, mail opening, and unconsented physical searches.

We do support the establishment of a judicial warrant for national security wiretapping of Americans abroad but under the criminal standards and procedures of the Foreign Intelligence Surveillance Act, at least with respect to Americans who are not officials of foreign powers. S. 2284 proposes a noncriminal standard.

S. 2284 also proposes a national security judicial warrant requirement for mail opening and physical searches in the United States under the standards of FISA and for the use of these techniques abroad under lower standards. We object to the extension of the FISA precedent to these other techniques, particularly the departure from the requirements followed in searches conducted for law enforcement purposes; namely, that the warrant be served on the subject of the search and a list of what was seized be provided. See *United States* v. *Miller*, 357 U.S. 301 (1958); *Katz* v. *United States*, 389 U.S. 347, 355 n. 16 (1967).

In contrast to wiretapping, which has only recently come under the protection of the Fourth Amendment, mail opening and physical search have always been at its core. There is no national security exception to traditional Fourth Amendment standards for physical search. See *Ehrlichman*, supra. The proposed war-

rants in Section 221 of Title II and Title VIII by departing from a probable cause criminal standard and not requiring knock or notice are unconstitutional. The proposed procedures do improve on the President's Executive Order, 12036, which authorizes searches (but not mail opening) without a judicial warrant, but that is no reason for Congress to enact an unconstitutional scheme. We believe that the charter should, as the Church Committee recommended, require that physical search and mail opening be conducted under standards applicable in law enforcement. (See page 152, supra.)

PROHIBITING COINTELPRO

We believe the charter must ban COINTELPRO, the use of counterintelligence or counterterrorism techniques to interfere with, impede, or neutralize lawful political activity. We do not have to detail the FBI's program directed at Martin Luther King, Jr., the Socialist Workers Party, or other activists to prove the case for a ban before this Committee or remind the Congress that this was the principal recommendation of the Senate Select Committee, the Pike Committee, and every other official investigation of intelligence abuses.

S. 2284 contains language which is intended to bar Cointelpro but it is ineffective, particularly in view of the fact that the charter also authorizes COINTELPRO techniques in certain—and we believe—untenable circumstances.

Section 111(e) of S. 2284 states what is intended as a bar on COINTELPRO: "Nothing in this Act shall be construed to authorize any entity of the intelligence community to conduct any activity for the purpose of depriving any person of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."

However, section 214 authorizes counterintelligence and counterterrorism activities, including activities to "counter or protect against" espionage and terrorism directed at persons reasonably suspected of engaging or who "may be engaging" in clandestine intelligence activity or international terrorism. Because this section may be read to direct activities at lawful political activity (see discussion at pages 155–157 supra), it authorizes COINTELPRO in conflict with section 111(e).

In order to bar COINTELPRO, the charter must tighten the standards in section 214 to focus on criminal conduct. In addition, the charter must define what is encompassed by the terms "country or protect against" to rule out programs of deception or neutralization, rule out resort to violence, and limit disinformation and passive measures to prevent violence to particular cases in circumstances where alternative means (e.g. arrest) would be ineffective. By itself, section 111(e) would not accomplish such limitations because it does not bar interference with lawful activity for purposes other than depriving persons of rights. COINTELPRO, it must be recalled, was in part rationalized by the FBI as a program to "prevent violence." Such a purpose is appropriate, if properly limited. Unlike S. 2525/H.R. 11245, S. 2284 does not attempt to circumscribe the permissible scope of counterintelligence or preventive measures. We believe it must.

PRIVATE INSTITUTIONS

We would add protections for independent institutions to any legislation. While we believe that the President should issue guidelines to protect the integrity of certain institutions pursuant to Section 132 of the charter, we also believe that the charter should bar paid use of the media, clergy, academics, and other independent institutions in all intelligence activities. S. 2284 only prohibits the use of these institutions for purposes of establishing cover and only for foreign intelligence and special activities. The integrity of independent institutions must be maintained.

ACCOUNTABILITY AND OVERSIGHT

The soundest feature of S. 2284 is its establishment of an effective system of oversight mechanisms. In separate sections, the charter requires the heads of the entities and the Attorney General to approve procedures for conducting intelligence investigation; sets up inspectors general and general counsels; institutionalizes the Intelligence Oversight Board; and requires that the intelligence committees be kept fully and currently informed of all intelligence activities. If the charter is deficient, it is in its provision for public accountability and enforcement of the charter through civil remedies and other measures.

CIVIL REMEDIES

Congress must add to S. 2284 a civil cause of action for damages and injunctive relief for intentional violations of specific sections of the charter designed to protect and enhance civil and constitutional rights and liberties.

Without a civil remedy in the Charter, victims of charter violations, including violations of the prohibition on Cointelpro in section 111(e) would be forced to pursue their remedy under the tort theory first advanced in *Bivens* v. *Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Even the most expansive reading of *Bivens* and its progeny would restrict this avenue of compensation to victims of conduct by federal agents which violated constitutional rights. Yet the basic premise of the charter enterprise is that Congress as a matter of overriding public policy should take steps to afford additional safeguards for privacy and liberty. For example, the bar on deceptive techniques to interfere with political activity § 111(e) or the standards governing placement of informants in groups or limitations on use of confidential records (see Section 214) are not today within the scope of the Fourth Amendment or otherwise constitutionally required. See *United States* v. *Miller*, 96 S. Ct. 1619 (1976) (bank records not protected by Fourth Amendment); *Hoffa* v. *United States*, 385 U.S. 293 (1966) (informants in criminal investigations not covered by Fourth Amendment). But even if they were, the government's extremely narrow interpretation of *Bivens* in pending litigation demonstrates the shortcomings of existing nonstatutory remedies for constitutional injuries. Constitutional tort theory simply provides little or no compensation for victims if charter limitations are intentionally ignored, nor does it serve to enforce these crucial elements of the charter scheme.

For example, *Bivens* involved a violation of the Fourth Amendment. But many of the most important protections in the Charter are directed at First Amendment interests. Although lower courts have extended the *Bivens* line to violations of the First Amendment, see *Paton* v. *LaPrade*, 524 F. 2d. 862 (3rd Cir. 1975), the Supreme Court has never so held and the Department continues to argue vigorously before federal courts against any extension of *Bivens* beyond those constitutional rights already explicitly within its scope. See *Socialist Workers Party* v. *Attorney General*, 73 Civ. Action 3160 (S.D.N.Y.). And we think it worth noting that to date, the Supreme Court has only recognized "two" constitutional torts—unlawful entry to search a home in violation of the Fourth Amendment and sex discrimination in violation of the equal protection component of the Fifth Amendment. *Bivens, supra; Davis* v. *Passman*, 47 LW 4643 (6/5/79).

Current litigation being handled by the Justice Department illustrates the inherent limitations of the *Bivens* line and the extent to which the Department has exploited those limitations. In the *Kenyatta* case, Civ. Act. N. J77–0298 (R) (S. D.Miss.), the Government circulated false and derogatory information about the plaintiff, mailed an anonymous letter to him to give the impression he was discredited at his college, and assisted a third party in obtaining false and derogatory information about him so that funds for a human rights project were cut off. On these facts, the Justice Department has asserted that Mr. Kenyatta has no remedy at law, arguing that *Bivens* is limited to the Fourth Amendment and that unless another right is violated, no violation of First Amendment rights arises. Similar arguments are advanced in another case involving COINTELPRO techniques. *Eikenberry* v. *Callahan, et al.*, Civ. Act. No. 74 C 592 (E.D.N.Y.). If accepted by the courts, the implication is that future cases such as that of Martin Luther King, Jr. or Jean Seberg would not entitle the victims to damages unless Congress establishes a statutory remedy.

While the Administration points to pending legislation to amend the Federal Tort Claims Act to provide compensation to victims of proven "constitutional torts," the legislation appears to have little chance of passage because of the opposition of other nonlaw enforcement agencies and the Justice Department's failure to lobby hard for the measure. Moreover, the amendments do not resolve what is a "constitutional tort" or whether charter violations would be compensable.

We will not dwell on the effectiveness of alternative enforcement mechanisms, such as internal discipline or criminal prosecution. Despite a massive record of abuses, few agents have been disciplined, and only one indictment has come about in the case of FBI burglary operations in 1974—a case likely to be aborted because of the problem or "graymail," the threat of the defendants to disclose national security secrets as part of their defense.

Congress should recognize the need for a civil remedy in the intelligence charter, as it did in creating a remedy under the Foreign Intelligence Surveillance Act and proposes to do with respect to illegal searches and seizures under title VII of this bill. The remedy should go beyond illegal use of Fourth Amendment techniques to cover other violations of the charter which substantially interfere with constitutional and civil rights. This was the recommendation of the Church Committee and a remedy along these lines was contained in S. 2525/H.R. 11245. It should be reinserted into S. 2284.

THE CASE AGAINST PROPOSALS TO REMOVE CERTAIN RESTRICTIONS ON THE CIA AND OTHER RELIEF SOUGHT BY THE CIA

Finally, Mr. Chairman, we turn briefly to discuss proposals put forward by the Administration to remove so-called "unwarranted restraints" on the CIA and which are embodied in S. 2284 in narrower terms than the Administration currently favors. As you know, the Administration and the CIA seek to narrow the Hughes-Ryan Amendment, obtain a total exemption for operational files from the disclosure requirements of the FOIA, and a broad criminal statute punishing the revelation of the identities of agents and sources of information. Their proposals are pending before this committee of legislation introduced by Senator Moynihan and Congressman Bill Young, S. 2216/H.R. 6316.

We object to S. 2216. In an attachment to this statement we discuss our position on covert operations and the Freedom of Information Act in detail. We have already testified before the Congress on the names of agents issue, a copy of that testimony is also attached. Here, we briefly state our positions on these matters.

COVERT OPERATIONS

We have no objection to changing the number of committees to which the CIA must report covert operations. If those committees (Appropriations, Armed Services, and Foreign Relations) do not want to exercise systematic oversight, we cannot force them to. Cursory oversight in fact would be unwise.

Having said this, we want to express strong support for the provisions in title I of S. 2284 which require covert operations to be reported to the two intelligence committees, including prior notice of "significant anticipated activities." Prior notice provides at least some check on further misadventures by our intelligence agencies and national security establishment.

Because the ACLU opposes covert intervention in the internal affairs of other countries as inconsistent with open government and democratic decision making, we would go further in our recommendations.

First, if covert operations are to be authorized, we believe the standard for presidential approval of significant activities should be "essential" rather than "important" to national security. This was the recommendation of the Church Committee and the standard set forth in S. 2525. It was also the position recommended by Cyrus Vance and Clark Clifford in their testimony before the Senate Select Committee.

Second, we would expand the definition of special activities in S. 2284 to include counterintelligence and counterterrorism activities of a significant nature. S. 2284 excludes these from the definition of special activities and it could present a serious loophole in the legislation (e.g., is a covert operation directed against the PLO a special activity or a counterterrorism activity?).

Third, we would include significant sensitive collection activities (a U–2 spy plan, for example) under the prior notice requirement of S. 2284.

Fourth, we would require that all covert operations be consistent with the publically announced official policies of the United States. For example, if the President states that we will not interfere in the internal affairs of Iran then the charter should not permit covert action to be approved in contravention of this policy.

FREEDOM OF INFORMATION ACT

Section 421(d) of S. 2284 would substantially exempt the CIA from the procedures of the Freedom of Information Act (FOIA), except for personal files and the finished intelligence product of its analytic staff. Apart from requests by individuals for their personal files, the CIA would not even have to search its files or examine requested documents to see if segregable portions could be released. The CIA could respond to all such requests simply with the assertion

that its files were exempt. If requests for personal files were made, a search would have to be made but the agency would have even more leeway than it does now to withhold any information related to the functions of the CIA.

In a separate memorandum (attached), we explain in detail that the CIA has not made a convincing case for changing the disclosure requirements for the CIA and other intelligence units under the FOIA. Here, we summarize our case in opposition to the change:

First, the intelligence community has ample authority under the current provisions of the FOIA to protect classified information and intelligence sources and methods. Indeed, the CIA has used the Act effectively and as of March 1980, not one sentence has been released to the public under a court order in circumstances where the CIA has argued that release would injure the national security.

The problem, as the CIA candidly admits when it testifies on the matter, is really one of perception or misperception on the part of foreign intelligence officers and foreign sources of information that secrets are not protectable under the FOIA. But this misperception cannot be solved by amending the FOIA since the perception is also based on fears of leaks, congressional oversight, the publication of CIA memoirs (censored and uncensored), civil lawsuits, CIA abandonment of its agents and allies in Vietnam (where they even left the list of agents behind) and elsewhere, and other factors having nothing to do with the FOIA and many of which are beyond anyone's ability to change.

When the CIA turns to the burden the FOIA places on the agency and how the new exemption will save money and reduce effort, it overstates its case. The Deputy Director of the CIA, Mr. Frank Carlucci recently conceded that only 15 to 20 percent of current requests for information from the Agency would be affected by the exemption.

More important, the CIA understates the adverse impact of the exemption on the public's right to know. Considerable amounts of information regarding CIA and other intelligence agency operations has been released by the CIA under the FOIA. Through the FOIA, the public has learned about the Bay of Pigs fiasco, mind-altering drug experiments, CIA spying on Americans, a nuclear power station disaster in the Soviet Union in the 1950's, aspects of the grain trade, and some of our involvements in Cambodia, to name just some of the matters disclosed. It must be emphasized that much of the information was not included in congressional reports on the CIA and some of the information makes it clear that CIA operations were more extensive than official investigations had indicated.

The FOIA serves as a form of public accountability and check on the agency and congressional oversight is no substitute for it but should be in addition to it. Moreover, while the CIA tells Congress that it is willing to turn over all information to the intelligence committees as a further justification for the exemption, it is telling those very committees that it will resist any legislation requiring the agency to turn over all information to them! On this ground alone, the exemption request should be rejected.

NAMES OF AGENTS

The proposal to punish present and former government officials who reveal names of agents and sources, contained in title VII of S. 2284 is a relatively narrow provision. Nonetheless, we urge further careful consideration of this provision and its relationship to the CIA's use of contracts to censor writings by former employees. See *U.S.* v. *Snepp*, 48 L.W. 3527 (2/19/80).

We believe improvements must be made in title VII. First, the section should be drafted to make it clear that the information must have been learned by a government employee during the course of his employment. Second, the *mens rea* should be changed from a knowing to an intentional revelation of an agent's identity, or at least the reason to know standard should be stricken. Employees should not be punished for negligence. Third we would still require an intent to place an agent's life or safety in jeopardy or knowledge of this fact. This was the conduct such a crime was originally supposed to punish. Title VII is a general crime to protect sources, a far broader purpose. Fourth, an agent should be able to reveal his own identity once his employment is terminated. Finally, there should be a defense to revealing the identity of an agent engaged in unlawful conduct.

CONCLUSION

Mr. Chairman, in our testimony today we have touched on the issues of most concern to the Congress today but focused our remarks on the rights of Americans provisions in the charter which we believe are of far greater importance.

While we have been critical of S. 2284, we are supportive of the effort to find a way to enact a rational intelligence system, without sacrificing civil liberties. We believe it can be done. However, it will require time, patience, and intense negotiation between all those concerned.

We remain convinced that the Congress will accept this challenge and see the wisdom of postponing action on the CIA's immediate demands pending resolution of all essential charter issues. As we said at the outset, we fear that if a bill containing provisions affecting covert operations, FOIA, and names of agents passes, the momentum for comprehensive charters will be lost.

That would be tragic in our view. The official who has best stated the importance of the task and the consequences that would flow from failure was Vice President Mondale when still a senator of the United States:

"The fact is that if you get the right of Government to investigate Americans for things that are not crimes, there are ways of destroying persons without even appearing in a courtroom * * * (I)f you cloak an administration with an all-defined power to investigate Americans outside the law, and in total disregard of their constitutional rights, it is inevitable that the police will be used to achieve political purposes, which is the most abhorrent objective and fear that we sought to avoid in the creation of the Constitution and the adoption of the Bill of Rights. So I (see) the enormity of the dangers here, particularly where we pass legislation to permit it—up until now it has been their fault, but now we know, and if we authorize it from here on out, it is our fault."

Thank you again for requesting our testimony on this most significant legislation.

Senator HUDDLESTON. Mr. Halperin, welcome to the committee.

Mr. HALPERIN. Thank you. First let me say a word about one other issue; namely, the protection of the integrity of private institutions, including the press, the clergy, and educational institutions. Our view is that the provisions that were in S. 2525 are necessary to protect those institutions. We would urge you to insert them in the bill. We would urge you to hear carefully from representatives of those institutions. You will find that they are, I think, quite disturbed by the provisions in this bill which, as we read them, simply authorize the paid use of people from all of those professions, except in one or two narrow circumstances.

Let me turn, then, to the three issues of prior notice, criminal penalties for identifying agents and sources, and the proposed exemptions from the Freedom of Information Act. Our view, in short, Mr. Chairman, is that we oppose the sweeping relief which is contained in S. 2216. In the context of the charter—a comprehensive charter which adequately protected the rights of Americans—we would not oppose limiting the reporting requirements to two committees, nor would we oppose a narrow names of agents bill limited to those who have had authorized access. We continue to believe that no case has been made for any broad sweeping amendments to the Freedom of Information Act.

As far as the Hughes-Ryan amendment goes, our principal concern is not with the number of committees but with the standards and procedures under which covert operations should be conducted. We continue to believe that if those operations are not to be abolished, they should be conducted only under the higher standard of essential to the national security—a standard recommended by the Church committee, embodied in S. 2525, and proposed to the Church committee

by Cyrus Vance, now the Secretary of State, and Clark Clifford, as well as a number of others.

With regard to the Freedom of Information Act, we continue to be unpersuaded by the CIA's argument. CIA essentially says that their problem is one of perception. Our view is that the perception problem needs to be dealt with by explaining the law and the law as it operates to foreign governments who may lodge concern, rather than seeking to amend the act. No amendment of the act, in our view, could deal with the perception problem. The proposed amendment simply would not deal with the problem and yet they would have the effect of substantially reducing citizen access to the act.

As you know, Mr. Chairman, you have received in the last few days a letter from more than 150 groups and individuals attesting to the importance of the Freedom of Information Act to scholarly research, to journalism, to public understanding of the CIA's activities. Those releases have been extraordinarily important, and we would urge you not to consider any amendment which would have the effect of making it impossible to get that information.

With respect to names of agents, we would simply urge you to move carefully and to consider in detail any legislation that you may be considering in this area. We note that the House committee had before it a bill which, while it was sponsored by every member of the committee, was, in the view of the Justice Department, unconstitutional. That committee is now switching to another bill which Senator Moynihan on the Senate floor said that he thought was an unacceptable as the bill that he had introduced was on constitutional grounds. Or I think he thought it was even more unacceptable. That bill would make it a crime for a reporter to publish information which was classified, which would mean that if any newspaper had reported that the Watergate burglars, for example, had previously had CIA connections they would violate that statute. We think that that statute is equally overbroad and unconstitutional.

The provisions in S. 2284 seem to us to raise a number of questions about the scope of what information they cover, about whether they would cover an agent revealing his own release of information and we would simply ask that if the committee is going to move on those provisions, either in a separate bill or as part of a charter, what you are doing is passing criminal penalties for the publication of information and that requires detailed, separate hearings and careful consideration of the meaning of the provisions of those acts. And we would ask if there is going to be movement on that we be given an opportunity to present full testimony separately on that issue.

Mr. Chairman, I think we would want to conclude simply by quoting from a—who, as you know, has devoted as much attention in the past as anyone in the Senate to the work of the Church committee, and who, in testifying on a previous piece of legislation, said what we have to say about this bill as well as we think it's ever been said. Then Senator Mondale said:

> The fact is that if you get the right of the Government to investigate Americans for things that are not crimes, there are ways of destroying persons without even appearing in a courtroom * * *. If you cloak an administration with an ill-defined power to investigate Americans outside the law, and in total dis-

regard of their constitutional rights, it is inevitable that the police will be used to achieve political purposes, which is the most abhorrent objective and fear that we sought to avoid in the creation of the Constitution and the adoption of the Bill of Rights. The enormity of the dangers here, particularly where we pass legislation to permit it—up until now it has been their fault, but now we know, and if we authorize it from here on out, it is our fault.

We think that statement well characterizes some of the provisions of this legislation and we urge you to carefully consider it and to amend it before moving this legislation to the floor. We appreciate the opportunity to testify and we would, of course, be glad to respond to your questions.

Senator HUDDLESTON. Thank you very much, gentlemen.

You have presented your case in your usual high quality manner and we appreciate that fact. I might ask, in view of what you said about S. 2284 if we now substituted S. 2525, what would be your reaction?

Mr. BERMAN. In many respects we had a lot of concerns about S. 2525. It was a very complicated piece of legislation and we said at the outset of our testimony that we read it with the worst case in mind to test its provisions. Because again, we had to read it facially. Many of the standards in S. 2525, particularly as we worked out the final understanding of what clandestine intelligence activity meant with respect to the wiretap bill, became far more understandable to us. We think that it had—or it did create a criminal standard for investigating espionage and other covert activities in the United States. It was far too complicated and I think we could have cut a lot of the complications out of it.

We still think we can cut some of them out of S. 2284, particularly where you spell out investigation after investigation where there's really no change in the authority being granted, except that mail covers are prohibited.

That doesn't add much clarity to the scheme. But I guess the short answer is, if you came back with S. 2525 standards for in the United States, we would be much closer to agreement and, as a matter of fact, Congressman Aspin, I think, has just borrowed wholesale from S. 2525 to put those standards back on the table, particularly since no one has explained why they were taken out.

Senator HUDDLESTON. Well, the point is we encountered about the same amount of opposition to S. 2525 as we are encountering now. And before this morning is over we will hear testimony about as far to the other side of the issue as your presentation this morning.

Mr. HALPERIN. Mr. Chairman, let me say something about that. We said something very different from S. 2525 than we said from S. 2284. We said there it was a bill from which it was possible to work to get a charter that we could support. We had some problems. We wanted to put them on the table and we made it clear that we thought those provisions were in the ballpark from which it would be possible to work out satisfactory language. We have said something very different about this bill. We think that this bill is not in a position where the standards can be tinkered with to produce an acceptable——

Senator HUDDLESTON. And salvage this one, from your standpoint?

Mr. HALPERIN. That's right.

Mr. BERMAN. I think it's salvageable if we move back toward S. 2525 with a different understanding of what some of those terms meant,

and in a less complicated fashion. Now in testifying on S. 2525, you remember that was also the time that we were very close to the period of the abuses. You know, as all of us move away partly we become perhaps more reasonable and more reflective and also the obverse, which is to begin to forget why we wanted the strict standards to begin with. So it cuts both ways.

Senator BIDEN. Would the chairman yield on that point for just a moment?

Senator HUDDLESTON. Sure.

Senator BIDEN. Aren't you fellows reflecting just what was the concern of Senator Huddleston and me and a few others. It really isn't that we are farther away. It's that you are more frightened now. It's that those of us who share the point of view that you've expressed this morning are on the wrong side of the curl. The momentum is moving away from us. We were riding high 2 years ago so we felt we could be a little bit obstreperous on occasion and pure all the time. The fact of the matter is it's not that we're very much farther away. It's a little like when I find people coming into my office now concerned about budget cuts. Last year they came in and they wanted a 400-percent increase for, you know, the study of the snail darter. This time they're just praying that they'll have anything in the budget at all. So I think we should be more upfront about it and acknowledge that we know we're in trouble.

Now the question is, it seems to me—and I will ask you to answer it on my time when it comes—how much do you realistically think we can get. I happen to agree with everything you've said, except possibly I'm much less concerned about the Freedom of Information Act as one of those glaring deficiencies than you are. But short of that I agree with you 100 percent. But what in the heck do you think we can get? And I hope that, in response to that question, you'll be a little more realistic in your response than, historically, the ACLU has been with regard to the political exigencies that happen to be prevailing.

Senator HUDDLESTON. Do you want to comment on that?

Mr. BERMAN. Yes, I do want to comment on that.

Senator HUDDLESTON. You might have forgotten the question.

Mr. BERMAN. No. In two senses I think we were well aware of the turn of the curl the last time and that we barely snuck through the Foreign Intelligence Surveillance Act in the House particularly. The part of making the hardest case and the purest civil liberties case in terms of S. 2525 was to create some, in our mind, some room for negotiation around that bill. It didn't help, no matter what we said. We were tagged as somehow the inspirer—that we inspired S. 2525 in all of its grandeur. It was the ACLU bill. How we get out of that——

Senator HUDDLESTON. It's kind of hard to get anybody to take credit for it, I'll tell you that.

Mr. BERMAN. But the second point is that we are—in terms of what we can get—we are not quite sure. We did work out the wiretap bill and we think that this charter can also be worked out. We think that part of the problem with it is that in terms of its restrictions sections—the charter has been drafted for intelligence commu-

nitywide application and in many cases to apply both at home and abroad. It has been our recommendation to staff of this committee—to staffers and Members of Congress, that this probably was a strategic error and that what should be done is to take these agencies one by one in terms of the different responsibilities—both FBI in the United States and CIA abroad—and look at the particular circumstances that each of them faced, rather than trying to find a common denominator.

When we talk to officials from different agencies they say "we know you are concerned about this section. But we don't care about that section. It doesn't affect us. But we are all operating—we've reached the lowest common denominator." And I think that if part of the process was to talk to the FBI and talk to the CIA separately, I think the changes could be made, Senator.

Mr. HALPERIN. Let me comment. I think we understand the political situation, but we also, I think, believe, as we believed about the wiretap bill, that there are provisions which will both protect the right of Americans and give the intelligence agencies the authority they need.

I remember when Attorney General Levi came up the first time on the wiretap bill the standard was clandestine intelligence gathering, or clandestine intelligence activity. And he said you change a comma of that and we will go off the bill, because that is the authority we need. Director Webster was up before the House Intelligence Committee a few days ago and he said the wiretap bill was working out just fine, that, with the exception of a few amendments they have asked for about former officials and so on, the standards were working well, that the bill was doing what it was supposed to do, which was to make them take the whole process more seriously. The amendments that the administration is asking for do not at all go to the issue of surveillance of Americans of the kind that we are concerned about.

We believe the same thing is true about this bill. We believe that if this committee indicates that enough concern has been expressed, that it wants an effort to be made to see whether agreement can be reached, we think that by applying the technique of going agency-by-agency not having a single standard. We think by talking to the differences that exist and trying to understand what the problems are, we continue to believe that it's possible to arrive at agreement on provisions which would satisfy both the concerns of civil libertarians and the protection of privacy and also give the intelligence agencies the authority that they need.

Senator BIDEN. I happen to agree with you. But you mentioned one big caveat. You said "if this committee"—my concern is as much with the Congress as it is the administration. I don't see any prospect of this committee or this Congress doing what I think should be done.

Mr. BERMAN. Well, I could make a political comment or comments. The administration does want certain things. In the state of the union message, the President stated he wants a charter which guarantees abuses will not occur, but also which removes unwarranted restraints on the agency. Those reporting requirements, FOIA and names of agents bill have been around this Congress for years now. Suddenly they are essential. But no one can connect them to any foreign event,

any crisis in Iran, anything in Afghanistan, anywhere in the world where the irresolution of these issues has constituted unwarranted restraints.

The Congress is moving toward some changes which, partly, are symbolic. We know that 200 Members of Congress and their staffs are not reviewing covert operations. So instead of saying it is necessary to move this immediatae package, this committee should tell it the way it is and say that there are no unwarranted restraints, and the committee is going to take the time to work out all of these issues over this year and next until it has a comprehensive charter. That's one way. It's to say that there's going to be no "carrots" for the agency without a worked-out title II arrangement or "strikes."

Senator HUDDLESTON. The problem with that, Jerry is this committee may not be able to keep the removal of unwarranted restraints from happening outside the charter content. There possibly could be amendments on the floor or whatever and they might have great impetus behind them. It would be my guess it would be awfully hard to vote against them and I think if someone moved in that direction it probably would be passed very quickly. So then you'd have those out of the way without any charters and without any at all compensating control or accountability.

Mr. HALPERIN. We understand that and, therefore, we think the effort you made to try to move a comprehensive bill is desirable in that regard. You sort of picked up the suggestion that's going to be made to you in a little while and endorsed it; namely, that we strip out of this bill the attempts to rewrite the authorities for the agencies which are already contained in present law and which produce a great amount of controversy, and simply focus on the two areas where there is, I think, some urgent need to consider legislation.

One is the three items which the intelligence agencies are pressing, and the other is the authority to conduct surveillance of Americans. Those two things together constitute a very small part.

Senator HUDDLESTON. But they constitute virtually all of the controversy here.

Mr. HALPERIN. Well, I gathered that at least the former intelligence officers have problems with the rest of it and it certainly clutters up trying to understand what the bill is about. I think it's also possible to simplify the provisions relating to the rights of Americans. And it seems to me that this committee is entitled, from its colleagues in the Senate, for a chance to work this out before anybody moves to deal with some of these issues on the floor. And it seems to me that as long as we're moving forward on the issue it ought to be possible to prevent precipitous floor action.

Senator HUDDLESTON. I don't think there's any impediment to a reduction in the size of the bill that is before us and taking out what Mr. Berman referred to as the rehashing of what is already law and whatever. And we, of course, are prepared to do that. But it seems to me that there's not much point in taking out the entity charters, for instance, which many in the intelligence community believe are very important and over which there's been virtually no controversy as far as the committee is concerned or as far as anybody in Congress is concerned at this point.

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Mr. BERMAN. Well, this is probably the ACLU version of misperception. The charter looks—is bandied about as nine titles of restrictions. In fact, we're really talking about a very small section of this bill which applies to rights of Americans. And most of the charter is concerned with how to move the agency and how to set up its procurement overseas and pension funds and so on.

But it seems that—what we cannot accept, I believe, is that because of the crisis that we're in, or the sense that the momentum is the other way, that this charter is worth enacting as it is—that you take it or leave it, We would say leave it. That's—I want to make that quite clear.

We are as concerned about working out the meaning of the language in the standards here as the Congress is about working out what it means to have access to information, sources and methods, and prior notice. And Congress will always be able to negotiate that up close with a lot more clout than citizens will be able to negotiate these standards once the charter is through.

So we're just hoping that the administration is committed to charters. Vice President Mondale participated on the Church committee. We believe there is still room to negotiate changes and for the administration to explain some of these provisions to the American public so that we can judge whether they have a legitimate case for some of this authority. There's no case for a lot of this, we believe.

Senator HUDDLESTON. We appreciate very much your concern for the rights of American citizens. I think most of us on this committee have similar concerns. How do you think those rights would be better protected? With charters that set out certain permissions and also certain restrictions? Or by just relying on the Constitution as we have been doing in the past?

Mr. HALPERIN. I think that we're very clear that we need charters. We need authorities and restrictions and charters. Now in some cases we think that what the administration now claims as a right to do is unconstitutional, particulary the claim to the right of secret searches in the United States without a warrant. But most of the issues have to do with what is good policy. And a lot of the restrictions we want we concede are not mandated by the Constitution, at least as the current Supreme Court has interpreted it.

Senator HUDDLESTON. Now on the question of foreign positive collection, is it your position that there should be no collection undertaken for positive foreign intelligence—even a limited inquiry?

Mr. HALPERIN. I think we would not object to a limited inquiry. And I think, again, if we're talking about a different standard at home and abroad that we would concede that some greater leeway should be required abroad. But as we read the bill there are no limits and no standards.

Senator HUDDLESTON. You don't accept the fact that the President has to make the finding that he is seeking something essential to the security of the country?

Mr. HALPERIN. Mr. Chairman, we read that only for fourth amendment techniques.

Mr. BERMAN. Abroad.

Mr. HALPERIN. Abroad. That for any technique short of a fourth amendment technique—that is, for example, putting an informant in

a political organization—there is no requirement of Presidential approval. There's no requirement of Attorney General approval. There's no requirement of essential information.

Senator HUDDLESTON. And you don't think we ought to be able to put an informant in an organization abroad?

Mr. HALPERIN. But you can do it at home. The bill permits—again, if you're talking about the standard abroad, we would say that that probably should be different than at home.

Senator HUDDLESTON. And you want to restrict intelligence agencies, then, beyond restrictions on ordinary citizens. A citizen can become a member of an organization if he qualifies, can't he?

Mr. HALPERIN. Yes, but I don't think the Government has the right to direct somebody to join a lawful political organization for the purpose of gathering intelligence information for the Government from that organization. We think that opens it up to total abuse and the gathering of information about lawful political activity. We think that infiltration of an organization does raise serious fourth amendment issues. The Supreme Court has never addressed that question except in the context of an illegal activity. It has said that you don't have the constitutional right of privacy if you engage in a conversation about a crime. But we think there is a constitutional right to engage in secret political associations, that the Government does not have the right to be present there, simply because you know something about a foreign individual or a foreign government that the Government wants to gather. And so we think that——

Senator HUDDLESTON. Do you make any distinction at all between an action by the Government to simply collect information and an action by the Government that's designed to lead to a possible criminal prosecution or something?

Mr. BERMAN. No, for two reasons. I cannot see a distinction—the attempt to look at intelligence as benign versus a prosecutorial purpose.

First of all, you may not be the citizen who they just simply collect information on. They may use the authority—and they are perfectly entitled to use the authority—to infiltrate for positive foreign intelligence, then to see a crime occur, and then to carry it to prosecution. So the citizen doesn't know whether he's the person who won't be prosecuted.

Second, the privacy interest at stake, I think, is separate and apart from the prosecutorial. Some citizens would prefer to face a trespass charge or a minor criminal charge than to know that their political associations, there plans, their activities, and their associates, are subjects of Government surveillance. This is a serious corruption of the political process and has created enormous paranoia. In the past, the revelation of it and the extent of it has created enormous distrust. The authorization of it will not restore trust in this country. If it is going to be authorized it has to be absolutely essential to some function and we just don't think that collecting positive intelligence from Americans that don't want to give it to you, who are totally innocent, is essential.

Senator BIDEN. Is it unconstitutional?

Mr. BERMAN. Not clear.

Mr. HALPERIN. We think it is. We're not confident we would win that in the Supreme Court.

Senator HUDDLESTON. It could be. I don't see why an agent of the Federal Government would be denied the opportunity to join a Rotary Club if he qualifies in every sense.

Mr. HALPERIN. He or she could join on their private——

Senator HUDDLESTON. But he can't report. He's denied his right there, isn't he? You can report to your associates. You can tell them anything you want to, can't you?

Mr. HALPERIN. I think the issue goes to directed collection and payment. That is, it is one thing for an employee of the Federal Government who wants to join an organization to do it. And then if that person discovers something that they want to pass on I don't think that we would deny him the right to do that. That is very different than—take the antiwar movement. Many people in the antiwar movement were in contact with the Hanoi government and the National Liberation Front. Under the authority of this bill, the CIA clearly had legitimate interest in finding out what the explanation was that Hanoi and the NLF were giving to Americans about what was going on. That is, under this bill, foreign intelligence information. I think it is legitimate foreign intelligence information. I think the CIA should have been trying to find out what Hanoi was saying and what the NLF was saying to people about what they were up to.

Under the authority of this bill, the CIA could hire somebody or the FBI, direct them to join an antiwar organization or an existing organization which was in contact with Hanoi and had an antiwar stand, and that person would then infiltrate the organization and report information to the Government not only about what Hanoi was saying but about what the organization was doing, because those things are inevitably mixed together. You can't separate them out. Now I think, first of all, that has a chilling effect. People worry about joining organizations when they know that somebody from the CIA or the FBI may be there taking down a list of who's there.

Senator HUDDLESTON. I don't see how you can ever preclude that situation.

Mr. HALPERIN. You can't preclude it, but you don't have to authorize it. I think there's a real difference.

It can be drafted so that it doesn't restrict the right of the individual to join on his own.

Second, the Government can use that information. You asked about whether we were only concerned if it was a criminal prosecution. The ability of the Government to use information about the political plans and activities of its opponents, without indicting them criminally is, I think, clear. The Nixon administration, for example, was very interested in finding out what the antiwar movement was up to. So was the Johnson administration. Not because they were planning to put anybody in jail. Lyndon Johnson wanted to know what U.S. Senators were saying to foreign embassies about the Vietnam war, not because he was planning to indict any U.S. Senators but because he wanted to be able to answer their arguments in speeches. And I don't think he has a right to do that.

Senator BIDEN. May I ask a question?

Senator HUDDLESTON. Sure, go ahead.

Senator BIDEN. I presented a similar argument to a constituent, and he made the following respouse. He said obviously having someone—an agent—join an organization simply for the purpose of collecting information, whether they'd be reporting the minutes of the meeting and who was about to be elected president of the organization or whether they'd be reporting a conversation from Hanoi, would have a chilling effect. But no less of a chilling effect is produced by a State trooper's hiding behind a billboard on a highway. If the State trooper were riding in a car with you and said let's speed and then you speed and he arrested you, that would be entrapment. But the State trooper sitting on the highway watching the fellow going by has a chilling effect, yet no one argues that this practice even though it has a chilling effect, is unconstitutional or bad.

Mr. HALPERIN. I think the short answer is we want to have a chilling effect on speeding. We don't want to have a chilling effect on lawful first amendment political activities.

Senator BIDEN. That's a good answer.

Mr. BERMAN. Well said, Morton.

Senator HUDDLESTON. Are you impressed at all by the minimization procedures that are required?

Mr. BERMAN. We are impressed with the requirement that minimization procedures be developed. In fact, the whole set of criteria that are in sections 211 and 212 of the charter are very similar to those in the FBI charter, which we endorse. It is principles on which you would build minimization criteria. We are prepared to say that to try to put more detail than this in the charter would be wrong or counterproductive. Guidelines make sense here.

We like the criteria. But what the result will be, Senator, how could we possibly know what they will come forward with? That is up to the give-and-take between the Congress and the administration.

Senator HUDDLESTON. You believe that is the right approach?

Mr. HALPERIN. We think that part of the bill is by-and-large very well done and we endorse most of it. But we think it needs to be combined with more precise standards for the surveillance of Americans using techniques which intrude upon areas of privacy or secret political association.

Senator HUDDLESTON. You have concern about counterintelligence operations, too. What circumstances, if any, do you conceive of that the FBI can move to counter or protect against clandestine intelligence activities in this country?

Mr. BERMAN. Well, as I said in my testimony, certainly not under circumstances where you are merely suspecting someone may be engaging in their activities or appears to be the case under the standard of 214. We would say that if you know that X is a conscientious agent of the KGB and is engaged in espionage, that would be a circumstance in which disinformation might be legitimate. Or if an imminent act of terrorism was planned and you knew about it and you wanted to take certain measures where arrest would not be appropriate that would be—that could be authorized, too.

In the domestic FBI investigatory charter, the administration has tried to spell out certain criteria for that—what can and cannot be done. It is still in need of further refinement.

What I think we are objecting to is that there is no definition here and the targets can be anyone who may be——

Mr. HALPERIN. I think this question illustrates the difficulty with a single standard. This bill purports to have a single standard under which the CIA could follow an American who is living in the Middle East for a secret meeting with a known KGB agent. It is the same standard for which the FBI can conduct a disruptive activity against an American in the United States who may have had a meeting with an official of a friendly foreign government in circumstances where it looks like he may be trying to conceal the nature of that meeting. And you just can't have, in a bill that is going to have effective standards, the same criteria for authorizing both of those activities. There are limited circumstances in which we would concede there needs to be a counterintelligence activity authorization.

Senator BIDEN. How far does the flag follow an American citizen? I mean, how the heck can you make a distinction in terms of rights of Americans whether they are sitting in the Middle East or sitting in Washington, D.C.?

Mr. HALPERIN. I think the rights are the same. I think the question is what gives rise to suspicion and should authorize an inquiry in the one case and an activity directed at neutralizing him in the other. And it would be the same in the United States.

Senator BIDEN. Let's assume that the same guy having a meeting in the United States is thought to be meeting with one of the KGB agents in the Soviet Embassy.

Mr. HALPERIN. Then I would say that should also trigger an inquiry. And if the evidence increases you could then have an investigation. And if you were dealing with a specific issue you might well be able to engage in counterintelligence.

Senator BIDEN. What's an inquiry? What techniques can be used in an inquiry? Your buddy goes and meets at the Embassy with what—with one of the officers—and there are a number of dual roles I suspect may be served there—who our agency is virtually certain is also a KGB agent in addition to being—I don't want to even pick an area, I might hit it right. And, now what inquiry can be undertaken, in your opinion, and who can undertake it?

Mr. HALPERIN. Well, I think in the United States it basically ought to be the FBI and the CIA abroad. And I think it should be an inquiry for the purpose of determining whether the person is in fact a clandestine intelligence——

Senator BIDEN. Well, how do you do that?

Mr. HALPERIN. Well, I think you follow the person to determine who he is. I think you do it by checking existing Government records. You do it by checking existing informants. And whether you go beyond that, I think, would depend on the specific circumstances.

Mr. BERMAN. You also check with your sources in that Embassy, because one of the things that is forgotten when talking about Americans is that they somehow exist in a vacuum and if the intelligence agency is only moving on one side of a connection, that everything he learns he has to learn by targeting that American. When, in fact, if an intelligence service is doing its job right, as I understand it, it would know a great deal from the other side of the connection—

that the American is making contact with someone who is under surveillance a great deal, because he is a KGB agent. And so you would follow the connection. That would be the basis for your inquiry there. You're watching the foreign connection.

Senator HUDDLESTON. I think you're making a good argument for the case.

Mr. BERMAN. For an inquiry, not for a——

Senator HUDDLESTON. If the inquiry is available to the agency, the agency would appear ridiculous to engage in a much more involved and much more intrusive investigation. An inquiry, would seem to me, would be a natural first step.

Mr. HALPERIN. That's what we want them to do.

Senator HUDDLESTON. Consult their own sources and facilities.

Mr. BERMAN. But the charter does not require more to take the next step. Everything is built with the discretion to go from A to——

Senator HUDDLESTON. I can't believe the FBI would see an American citizen come out of the Soviet Embassy or some other Embassy and say, "Ah, ha. You know, he's come out of there, let's bug his telephone tonight and see what he says."

Mr. HALPERIN. Or give him false information.

Senator HUDDLESTON. I don't think that would happen.

Mr. HALPERIN. I don't either. I think most of what we would recommend is consistent with current practices of the agencies. I think the problem is they have drafted these provisions based on all the worst cases that they can think of, just as we come in and say we will invent scenarios under which abuses could be conducted under this. I think they have drafted this saying let's try to think of one instance where we might want to do this let's put the authority in and then we'll write our own regulations to prohibit it. And I think Congress has got to take the responsibility to say if you normally proceed through an inquiry and then to a full investigation and then to disruptive or neutralizing activity only in more extreme circumstances, we're going to write those provisions in and make you live with them. And then consider some exigent circumstances—exceptions to it—I think they would say well, that's the way we function. And if we have to live with those in the legislation——

Mr. BERMAN. Senator Biden, the charter does do that. There is a breakdown of this investigative act versus countering activity stage. You require probable cause in order to get a wiretap. It's got to be a higher standard such as knowing a person is an agent of a foreign power in order to justify deception techniques. But you have authorized deception on less than reasonable suspicion.

Now, I don't think that the FBI today would engage in those activities. I don't think that they would. But they have been under pressure before to do just that. And one of the protections of the charter is not just simply to protect the American citizen or give him or her a sense of what the standards are but to allow the FBI, as times change and administrations change, to say we are standing on the charter. And we can't do COINTELPRO.

Senator HUDDLESTON. We have relied on, to some degree, in the charters, and that is, we require that standards be set and that we be advised of them. We require the Attorney General to sign off on most

of these types of operations and, again, that the committee to be notified. Does this, in your judgment, provide any reasonable protection at all?

Mr. BERMAN. It's a reasonable protection, but I still think we would like to see whether we can't reach some demarcation between inquiries and investigations and tighten the standards and focus of investigations and other activities. The high-level procedures can work as part of that scheme. But I can think of a number of officials from President Johnson to Richard Nixon to Attorney General Kennedy where you could have had all of those procedures and it would still have resulted in information being considered essential and the activity being conducted. In time of crisis, there would be no standard unless the charter provides one.

Senator HUDDLESTON. Neither President Johnson nor President Nixon had the Select Committees on Intelligence.

Mr. HALPERIN. There were some reporting committees and they lost interest and were not informed. And while we have every confidence that this committee over the next years is not going to lose interest, we are thinking about where we are 20 years from now when everybody has forgotten these abuses or the country may be in turmoil again in another controversy about a foreign war or a domestic crisis. And the President calls up the Attorney General and says you go do this, and they look in the charter and they say even in the period right after the abuses Congress said this was OK to do if we thought it was OK. And we think it is OK. So I don't think that is sufficient protection. I think it is important, but it depends on there being clear standards so that when the President calls the Attorney General he says well, the law doesn't permit me to do that or the Director of the FBI can say the law doesn't permit me to do that.

Senator HUDDLESTON. Well now a technical matter. The term "covert techniques" is used in the charter to refer to wiretapping, bugging, mail opening, physical searches, and anything else the President might designate. What other techniques do you feel should be considered covert techniques?

Mr. BERMAN. Well I think you spell them out yourself in section 214 in terms of a necessity finding under a noncriminal standard, which you've listed. They were also listed in the Church committee's recommendation 58. But they're in section 214. Let me quote them. "Counterintelligence and counterterrorism intelligence may be collected through the use against the United States person of mail covers, physical surveillance for purposes other than identification, recruitment of persons to engage in directed collection, access to records of financial institutions," and so on and so forth. But those are—we've been operating under this special langange of intelligence for a long time, but that is what we meant by covert techniques. Everyone has agreed that they are covert techniques. You've got them designated here in this section, but in other sections it's up to the President and we think it ought to be in the statute.

Senator HUDDLESTON. Specifically in the statute. And you think those techniques pretty well cover the covert field?

Mr. BERMAN. Yes.

Senator HUDDLESTON. Now on the question of the use of journalists, clerics, and academics. We are going to have representatives of their professions before us and I think we can accept what you say in your written statement on that and move on.

You also recommend a civil remedy applying to any Federal official or anyone who violates the law.

Mr. BERMAN. We are back to the discussion which we continue to have intensly with the FBI charter as well. That, for example, this charter would bar, under section 111, disruption of activities—I mean engaging in activities for the purpose of disrupting lawful political activity. But as I understand it from the staff, this is intended as a statement of a COINTELPRO ban in the charter. Except that the charter carries no enforceable remedy for a citizen who is aggrieved by the agency who violated that ban.

We do not have, and I think many people operate under the misperception that we do have, a Federal civil rights statute which applies to our Federal law enforcement agencies like 1983 applies to law enforcement agencies in States and localities. We do not. So citizens have been suing under the Constitution, and the ACLU represents many of them in cases trying to develop a constitutional tort doctrine to cover this range of activities.

But the Supreme Court has only recognized two constitutional torts. The Justice Department argues vigorously that none of these COINTELPRO tactics amount to constitutional torts. So there's no clear remedy under law. We hope to work that out within the tort claims bill, but that seems moribund.

We think that an effort should be made to give a remedy. If you are going to prohibit and restrict activities, the charter should, in circumstances where there are substantial violations of those restrictions, provide a civil remedy as an enforcement mechanism.

Senator HUDDLESTON. Would this be against an individual employee or just the Government?

Mr. BERMAN. I think it ought to be—I think the Government ought to be liable for the acts of its agents. That the effort to hold individual agents responsible may have a deterrent effect, I think that in the context of a charter legislation with a range of other enforcement schemes to hold agents accountable, including disciplinary mechanisms mandated by the charter, the governmental liability would be appropriate.

Senator HUDDLESTON. Would you agree to a restriction in the Freedom of Information Act on foreigners requesting information?

Mr. HALPERIN. I don't think we have any principled objection to that. The problem is that since a person who is requesting information under the Freedom of Information Act need not have a need for the information or explain his need for it, if Congress said that any U.S. person, as we have come to use that phrase, can make a request under the Freedom of Information Act, you know that somebody would open an office and make requests on behalf of anybody who wanted a request made for them. So I don't think you would accomplish——

Senator HUDDLESTON. But you would object to the other restriction we have where persons may ask for only information about themselves.

Mr. HALPERIN. That's right. We think that if a foreign intelligence agency made a request which the CIA identified as being after sensitive information they would simply deny the request. And I think the courts would clearly sustain that.

Senator HUDDLESTON. But they would have to go to court, wouldn't they?

Mr. HALPERIN. They would have to go to court only if a suit was filed. I find it a little hard to believe that the Polish intelligence service would file a lawsuit. But we would not object, I think, to an amendment that said that these requests could not be made by foreign intelligence services. And I think one has to remember that some of the research that has been very useful has been done by, for example, British journalists. And I would hate to get us into a position where British journalists who wanted to write a book, as William Shawcross did on Cambodia, would have to go through the subterfuge of getting an American to make the request for him. That's what would happen.

We think there are other ways to deal with the problem that the Agency has available to it—simply to deny those requests and not be required to release information which would cause injury.

Mr. BERMAN. With regard to the Freedom of Information Act, we have a long memorandum which we will submit in the next couple of days on the Freedom of Information Act issue pointing out that you cannot get classified information. You cannot get source information. That you cannot get the secrets of the Agency.

[American Civil Liberties Union memorandum follows:]

THE CIA AND THE FOIA—A REPORT ANALYZING CIA PROPOSALS TO EXEMPT MOST AGENCY FILES FROM THE FREEDOM OF INFORMATION ACT

(Prepared by the Center for National Security Studies)

PREFACE

In testimony before the Administrative Practice and Procedures Subcommittee of the Senate Judiciary Committee in 1978 John Blake, the career CIA official in charge of FOIA requests, in a prepared statement said the following about the CIA and the FOIA:

"But, as you gentlemen well know, there is an inherent tension between the needs of an open society and the requirements of a secret intelligence organization. I fell very strongly that these two opposing needs must be reconciled. Let me be frank. The 1974 amendments to the FOIA and the ensuing public interest constituted a somewhat traumatic experience for a national intelligence officer who had been trained and indoctrinated to conduct his work in secrecy. These amendments required a considerable adjustment in attitude and practice.

"As chairman of the Agency Information Review Committee, I am responsible for the implementation of the act in the Agency. I am proud to say that my colleagues have worked very hard during these past 30 months to make the act work according to the letter and spirit. We have been able to make the necessary adjustments. I am pleased to report, that, in fact, I think the Agency is better off for it."

Freedom of Information Act Hearings before the Administrative Practice and Procedures Subcommittee, Senate Judiciary Committee, 95th Cong. 1st Sess. (1978), p. 69.

Since then Mr. Blake has retired and the CIA has changed its view. This report seeks to demonstrate that Mr. Blake was correct in 1978 and what he said remains true today. Congress in 1974 created the means for citizen review of the CIA and other national security agencies. These amendments were fully in the spirit of the First Amendment's commitment to open and robust debate. They have amply demonstrated their value and should not be abandoned now.

INTRODUCTION AND SUMMARY

The CIA is asking the Congress to grant it and other intelligence components designated by the Director of Central Intelligence an almost total exemption from the disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, (FOIA or Act). Legislation drafted by the CIA which would create such an exemption has been introduced in both houses of the Congress (S. 2216 and H.R. 6316). An exemption just for the CIA is included in S. 2284, (The National Intelligence Act).

The CIA has not demonstrated a need for the broad exemption it seeks or shown that the "relief" it requests will in any way remedy the problems it ascribes to the working of the FOIA. The measure will, however, increase secrecy, reduce public accountability of the CIA, and drastically curtail the flow of valuable, non-sensitive information concerning agency policy and operations that is so essential to informed public debate.

This report demonstrates that the CIA has not made a convincing case for changing the disclosure requirements for the CIA and other intelligence units under the FOIA. As the memorandum makes clear:

> The intelligence community has ample authority under the current FOIA to protect classified information and intelligence sources and methods. Indeed the CIA has used the Act effectively and as of March 1980, not one sentence has been released to the public under a court order in circumstances where the CIA has argued that release would injure the national security.
>
> The problem as the CIA candidly admits is really one of "perception" or "misperception" on the part of foreign intelligence officers and foreign sources of information that secrets are not protectable under the FOIA. But this misperception cannot be solved by amending the FOIA since the perception is also based on fears of leaks, congressional oversight, the publication of CIA memoirs (censored and uncensored), civil lawsuits, CIA abandonment of its agents and allies in Vietnam and elsewhere, and other factors having nothing to do with the FOIA.
>
> The CIA overstates the administrative costs and burdens that the new exemption would save or reduce. The Deputy Director of the CIA, Mr. Frank Carlucci recently testified before the House that only 15 to 20 percent of current requests for information from the Agency would be affected by the exemption.
>
> More important, the CIA understates the adverse impact of the exemption on the public's right to know. Considerable amounts of information regarding CIA and other intelligence operations has been released by the CIA under the FOIA. Through the FOIA, the public has learned more about the Bay of Pigs invasion, mind-drug experiments, CIA spying on Americans. Much of the information was not included in congressional investigations of the CIA and some of it makes it clear that CIA operations were more extensive than official investigations had indicated.
>
> Congressional oversight is no substitute for public accountability of the CIA under FOIA. The CIA says it is willing to give all information to the Congress for purposes of oversight and that this is further reason for granting the exemption. Yet disclosures under the FOIA have shown that the CIA did not turn over all information about past operations to the Congress and congressional committees have not always made relevant information available to the public. The FOIA has independently added to the public record of the agencies. Moreover, the CIA, while arguing for congressional oversight as a substitute for the Act, is resisting legislation that would insure that the Congress is fully and currently informed about all CIA operations.

The Current State of the Law

The CIA must now respond to requests under the FOIA from any "person" by searching its files for the requested documents, reviewing them to remove sentences and paragraphs which are exempt from disclosure, and releasing the remainder. It is free to charge search and copying fees unless "furnishing the information can be considered as primarily benefiting the general public."[1]

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[1] 5 U.S.C. 552(a)(4)(b). The CIA often declines to waive fees and has twice been ordered to do so by district courts. See *Eudey* v. *CIA*, 478 F. Supp. 1175, (D.D.C. 1978), and *Fitzgibbon* v. *CIA*, No. 26-700 (D.D.C. Oct. 29, 1976) reprinted in Freedom of Information Act hearings before the Subcommittee on Administrative Practice and Procedure, Senate Judiciary Committee, 95th Congress, first session (1978), p. 822.

Although the Act requires the CIA and all agencies to respond to requests in 10 days and to appeals in 20 the CIA almost always takes considerably longer.[2]

The CIA can rely on all of the first seven exemptions to the FOIA, but in practice most of its withholding is based on the first exemption for national security information, on two so-called (b)(3) statutes which apply to the Agency, and on exemption 6 which protects personal privacy.[3]

The first exemption to the FOIA provides that the agency may withhold information which is properly exempt under the Executive Order on Classification.[4] Under the cases interpreting the (b)(1) exemption the CIA, to withhold information, must determine that the release of the requested information could reasonably be expected to cause "identifiable damage to the national security." If a suit is filed for the requested documents the court must determine for itself that the documents are properly classified, i.e., that release could reasonably be expected to cause identifiable damage and that the procedures of the Executive Order have been followed. The CIA can seek to persuade the court that the documents are properly classified by submitting public affidavits. If that effort is not successful the CIA can submit secret affidavits to be examined by the court alone or the court can examine the documents itself to determine if they are properly classified.[5]

In only one case has the CIA been ordered to release information which it asserted was classified.[6] Some three or four lines were ordered released. Since that case, *Holy Spirit Assoc. v. CIA*, Civ. No. 79–0151 (D.D.C. July 21, 1979) is on appeal it remains true (as of April 1, 1980) that not a single sentence from a CIA classified document has been released under a court order in an FOIA case.[7] The government would, of course be free to seek Supreme Court review were the Court of Appeals to sustain the District Court decision.

Wholly apart from the first exemption, the CIA can withhold material under the third exemption which permits the withholding of information if Congress has passed a statute which authorizes such withholding. That exemption, as amended by Congress in 1976 reads as follows:

"Specifically exempted from disclosure by statute, provided that such statute (A) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

Two CIA statutes have been held to fit these criteria and to be (b)(3) statutes that permit withholding. One of these, 50 U.S.C. 403(d)(3) reads as follows:

"the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The Court of Appeals for the D.C. Circuit has held that the section is a (b)(3) statute but that its scope is limited to the withholding of information whose 546 F. 2d 1009, 1015 n. 14 (D.C. Cir. 1976). In such cases the court noted that the release would lead to the disclosure of CIA sources and methods. *Phillippi v. CIA*, information would also be properly classified and hence that the two CIA exemptions usually merge.

One difference is that when the CIA relies on 403(d)(3) it need not follow the procedural requirements of the Executive Order. Another is that the CIA has successfully invoked this exemption to withhold domestic sources whose identity is not properly classified under the Executive Order. While courts have upheld this use one court has ordered the release of information said by the CIA to be covered by this statute. Since that case, *Sims v. CIA*, Civ. No. 78–2551 (D.D.C. order Aug. 7, 1978), is also under appeal there has been no court ordered release

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[2] CIA 1978 Annual Report on FOIA Administration, Apr. 2, 1979, p. 5, cited as CIA 1978 Report.

[3] Id. at p. 1. In 1978 the CIA invoked exemption (1) 280 times, exemption (3) 408 times, exemption (6) 93 times and exemptions (2), (4), (5), and (7) a combined total of 31 times.

[4] The order now in effect is E.O. 12065, 43 Fed. Reg. 28949 (July 3, 1978). The President could at any time change the criteria for withholding for all agencies or just for the CIA by amending the Executive Order.

[5] *Ray v. Turner*, 587 F.2d at 1194–95. See generally "Exemption (b)(1)" in Marwick (ed.), the 1980 Edition of Litigation Under the Federal Freedom of Information Act and Privacy Act (Washington, D.C.: CNSS 1979).

[6] In one other case a court ordered material released which the CIA asserted related to sources and methods but was not classified. (See p. 5.)

[7] As we explain below that does not mean that no important documents have been released as a result of FOIA requests or litigation but only that when the CIA held firmly to its view that information has been properly classified the courts have been reluctant, to say the least, to second guess such determinations.

of information whose release the CIA claimed would reveal intelligence sources or methods.

This statutory authority to withhold information is repeated in S. 2284, Sec. 412(e)(4), without change. Since the CIA is not seeking expansion of its authority under this provision and critics are not proposing to cut it back, there does not appear to be any controversy about this provision as it relates to the FOIA.[8]

The other statute on which the CIA relies for withholding information is 50 U.S.C. 403(g). That statute reads as follows:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5, June 20, 1949, c. 227, § 7, 63 Stat. 211."

That statute has been construed to fit within the criteria for a withholding statute under the FOIA and the CIA need not prove that release of identifying information about its personnel would adversely affect its activities or reveal sources and methods. *Baker* v. *CIA*, 580 F. 2d (D.C. Cir. 1978). However, the Court of Appeals has also held that the statute is limited to information about CIA personnel and structure and does not extend to its activities. *Phillippi* v. *CIA*, 546 F. 2d at 1015 n. 14.

To summarize: the CIA can now withhold any information which is properly classified, any information which would reveal intelligence sources or methods and any information relating to its personnel, and any information whose release constitutes an unwarranted invasion of personal privacy. These exemptions are sufficient to have enabled the Agency to withstand all but a small number of challenges in court. At the same time, much important information has been released.

The CIA Proposal

The CIA proposal for amending the FOIA is included in bills introduced in both houses of Congress (S. 2216 and H.R. 6316). A similar provision is included in the comprehensive charter proposal (S. 2284).[9] (See Appendix A for the texts of these proposals.) The main difference is that S. 2284 limits the new procedure to the CIA while the other bills permit the Director of Central Intelligence (DCI) to designate other intelligence components which require this authority.

The CIA proposal would constitute a fundamental departure from the principles of the FOIA. It does not seek to change the standard for withholding particular documents. Rather it seeks to exempt most of the files of the CIA from all of the procedures of the FOIA for all time.

Under the proposal the DCI could designate files of the CIA and other intelligence agencies related to such matters as covert collection, special activities, counterintelligence, or technical collection. Files so designated would be totally exempt. The Agency would not be obliged to search its files for relevant documents; it would not be required to review documents line by line or to release non-exempt segregable portions: it would not be subject to court orders requiring a detailed indexing of the withheld material.

The CIA could simply respond to a request by asserting that the requested information, if it existed, would be in the exempt files. It will be free of the obligation to search or to review files.

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[8] Since the Supreme Court has interpreted that provision to authorize secrecy agreements, *U.S.* v. *Snepp*, 48 U.S.L.W. 3527 (dec. Feb. 19, 1980), there may be debate about its reenactment.

[9] S. 2284 contains several additional provisions which would expand the right to withhold information requested under the FOIA. The first part of Sec. 421(d), for example, would greatly expand the existing Sec. 403(g) and could be read to exempt all information about CIA activity. It has apparently been modeled on PL 86–38 which has been interpreted to grant such authority to NSA. See *Hayden* v. *NSA*, 608 F. 2d 1381 (D.C. Cir. 1979). This report does not discuss these additional proposals.

Moreover, the section is written so as to insure the CIA's continued exemption from any new requirements Congress might add to the FOIA. For example, in 1976 Congress amended the third exemption to the FOIA and thereby established more stringent criteria for other statutes which authorized withholding information. That amendment affected the CIA as well as other agencies. The proposed CIA amendment would exempt the CIA from the standards of the 1976 amendment and from any limitations contained in any future amendment to the FOIA.

The only exception to the exclusion of all CIA operational files from the FOIA is that Americans could ask the CIA for files pertaining to themselves. The CIA could continue to withhold information from personal files under its existing exemptions but it would at least be required to search for, to review, and, in a lawsuit, to itemize what material it has. However, the scope of this personal files exception would be relatively narrow. An individual might get his or her own file but not the general files of the program under which the surveillance was conducted. Thus, for example, under the proposed section an individual who was the target of Operation CHAOS (the CIA surveillance of the anti-war movement) could get some of his or her own files but not the general files on the CHAOS program or the files on a particular organization in which the individual was active and which was a target of CHAOS. Moreover, CIA regulations relating to surveillance of Americans would also be exempt.

The only CIA documents which would remain fully subject to the FOIA would be what the Agency refers to as "finished intelligence." These are studies or reports on such topics as oil supplies. Such reports are generally written in the "overt" or "analytic" side of the Agency, formerly known as the Deputy Directorate for Intelligence (DI), and now known as the National Foreign Analysis Center (NFAC). Such studies draw on information from human and technical sources but are generally written to disguise the sources of the information. These reports are useful to learn the CIA's views about the world but they reveal little about the operational activities of the Agency.

The CIA Case for Its Proposal

In testimony before the Subcommittee on Individual Rights of the House Government Operations Committee, former Ambassador Frank Carlucci, now the Deputy Director of Central Intelligence, spelled out the CIA case for these sweeping proposals.

In that testimony Ambassador Carlucci emphasized that "the problem can best be examined as a matter of perception:" CIA sources believe that is a result of the FOIA the CIA cannot protect its agents.[10]

He argued that an intelligence service cannot function if it is subject to the disclosure rules that apply to the rest of the government.

The CIA position can best be understood by quoting from the February 20th testimony:

"My theme today, therefore, is that the current application to the CIA of public disclosure statutes like the Freedom of Information seriously damage the Agency's ability to do its job. * * *

"Under the current Freedom of Information Act, national security exemptions do exist to protect the most vital intelligence information. The key point, however, is that those sources upon whom we depend for that information have an entirely different perception. Admittedly, this perception arises from more than the FOIA. * * *

"The Freedom of Information Act, however, has emerged as a focal point of the often-heard allegation that the CIA cannot keep a secret, that is, cannot properly protect its information from public disclosure. It has, therefore, assumed a larger than life role as a symbol of this nation's difficulty in keeping confidences inviolate. The perception held by those who would only enter into arrangements with us on a confidential basis is something we cannot ignore. * * *

"It is virtually impossible for most of our agents and sources in such societies to understand the law itself, much less why an organization such as the Central Intelligence Agency, wherein reposes their identities and the information they have provided, should be subject to the Act. We constantly witness sensational news articles describing CIA information detained under FOIA. It is difficult,

[10] Statement of Frank Carlucci, Deputy Director of Central Intelligence, before the Subcommittee on Individual Rights of the House Government Operations Committee, Feb. 20, 1980, p. 3. See also "Impact of the Freedom of Information Act and the Privacy Act on Intelligence Activity", hearings before the Subcommittee on Legislation, House Permanent Select Committee on Intelligence, 96th Congress, 1st session, Apr. 5, 1979.

therefore, to convince one who is secretly cooperating with us that someday he will not awaken to find in a U.S. newspaper or magazine information which he has furnished to the Agency which can be traced back to him. * * *

"Although we assure these individuals that their information is and will continue to be well protected, we have on record numerous cases where our assurances have not sufficed. Foreign agents, some very important, have either refused to accept or have terminated a relationship on the grounds that, in their minds—and it is important whether they are right or not—but in their minds the CIA is no longer able to absolutely guarantee that information which they provide the U.S. government is sacrosanct. Again, we believe we can keep it so, but it is, in the final analysis, their perception—not ours—which counts. * * *

"The FOIA also has had a negative effect on our relationships with foreign intelligence services. As I noted in my testimony last April, the chief of a major foreign intelligence service sat in my office and flatly stated that he could no longer fully cooperate as long as CIA is subject to the Freedom of Information Act. Likewise, a major foreign intelligence service dispatched to Washington a high ranking official for the specific purpose of registering concern over the impact of the FOIA on our relationship. I strongly argued that we had adequate national security exemptions. While admitting awareness of these exemptions, this representative correctly noted that even information denied under the exemptions was subject to later review and possible release by a U.S. Court. * * *

"Finally, it is not only foreign sources of intelligence information that feel threatened by the FOIA's applicability to the Central Intelligence Agency. The FOIA has impacted adversely on our domestic contacts as well. * * *

"While the vast majority of CIA information is properly secret, efforts to excise these secrets from documents in response to FOIA requests produces fragmented information which is often out of context, and therefore misleading. Often such fragmentary information released under FOIA has been embellished with conjecture to produce sensational but misleading or fallacious stories."

The Case Against Sweeping Amendment

The CIA concedes one part of the case against amendment.

It agrees that the exemptions now in effect provide ample authority to withhold any information which needs protection in the interests of national security. The CIA argues, however, that it needs a new exemption in order to be able to assure other intelligence services and potential foreign sources that it will be able to protect information provided in confidence. The CIA also argues that the Act is an administrative nightmare which produces no benefit for the public, despite all of the hours spent by CIA employees, because nothing of value is ever released. These arguments are considered in turn.

REASSURING INTELLIGENCE SERVICES AND SOURCES

There is no reason to doubt the CIA claim that some friendly intelligence services and sources are somewhat leery about cooperation with the CIA because so much information has been made public about the agency in the past few years—in some cases without the consent of the Agency. It is also possible that some of these sources have referred to the FOIA as the problem. However, as the CIA admits, the FOIA is not the sole or even leading cause of the problem. The solution as it relates to the FOIA is to explain to potential sources that the FOIA has not been the source of the disclosures to which they may object and that the CIA has every reason to be confident that it will be able to continue to withhold such information.

The CIA may be reluctant to explain to its sources and cooperating intelligence services that there are other procedures not entirely under its control which have and might well in the future lead to the disclosure of information over the objections of the CIA. Although the CIA is attempting to deal with some of these problems others will remain intractable.

The various means by which information about the CIA has become public over the objections or without the consent of the agency include the following:

Leaks.—The press is much more willing than it was 10 years ago to publish information about the CIA. Officials in the intelligence community and elsewhere in the administration continue to leak such information.

Damage Actions.—Individuals whose rights are damaged by actions of CIA officials can bring suit against the United States under the Tort Claims Act or

against individual officials under the Constitution. Such actions against the CIA have been sustained and have led to the release of information about CIA programs as well as information in individual files of Americans.[11] The CIA has not sought exemption from such suits.

Former Officials.—More than 100 former officials are now writing their memoirs. Some may do so without clearing the manuscripts with the Agency,[12] others will submit for clearance but even so information may be inadvertently released.[13] Moreover, many CIA officials have given interviews without Agency clearance to those writing books about the Agency revealing information that the CIA would not clear for publication.[14] None of this is likely to stop.

Spies.—The CIA appears to have a better record at preventing the penetration of the Agency by spies at high or low levels than most if not all of the intelligence services said to be complaining about its security. Nonetheless as the recent Kampiles and Boyce cases demonstrate the Agency is not entirely immune to penetration by hostile intelligence services and can give no guarantees.

CIA Disavowal of Its Agents.—Several times in the past few years the CIA has gotten into relations with groups or individuals and then pulled out leaving the individuals exposed. The most notorious case was the exodus from Vietnam. The CIA not only failed to take those Vietnamese who had cooperated with the Agency out of the country as it had promised but it left behind records which identified them to Hanoi as CIA collaborators.[15] Other such episodes occurred with the Meo Tribes in Laos and the Kurds in the Middle East.[16]

An agency that behaves in this way whether under orders from above or on its own might well expect others to hesitate about cooperating with the agency.

Congress.—The Senate and Housing Intelligence Committees now operate under procedures which lead them to be briefed in great detail about current CIA operations. The committee rules provide that either house can make information public even if the President objects. All of these provisions are incorporated into S. 2284. While neither house has yet even considered exercising this power its presence would stand in the way of an iron-clad CIA guarantee to its sources.

Moreover, even the sweeping amendment proposed by the CIA would not solve the perception problem such as it is. The CIA could still not give any absolute assurance that no information would be ordered released by a court which would expose a secret source or reveal a relationship with a foreign intelligence service. Such information might be included in the personal file of an American which would still be subjected to the current procedures of the FOIA or it might be deduced from information in a finshed intelligence report which would likewise remain subject to the Act.[17] Even information which the CIA said was in files now exempt from search and review would be subject to court review to determine if the designation was correct. Thus the CIA could not give a flat assurance to potential agents nor could it withstand a challenge from lawyers from friendly intelligence services who would argue that the CIA still could not give the absolute assurance that the Agency says they seek.

If the CIA is to solve what it says is the problem, it would require a complete and absolute exemption from the Act in all respects. That it is not seeking.

NOTHING OF IMPORTANCE IS RELEASED

The CIA assertion that no information of any importance is ever released as a result of FOIA requests is simply false. Many important books and articles

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[11] See e.g., in regard to the CIA mail opening program *Birnbaum* v. *U.S.*, 588 F.2d 319 (1978) (tort claim) and *Driver* v. *Helms*, 577 F.2d 147 (1st Cir. 1979) (constitutional claim), and with regard to Operation CHAOS, the surveillance of the anti-war movement, *Halkin* v. *Helms*, Civ. No. 75–1773 (D.D.C.).

[12] See e.g., Frank Snepp, "Decent Interval," (New York: Random House, 1978) and Joseph B. Smith, "Portrait of a Cold Warrior," (Putnam, 1976).

[13] Compare the French edition of William Colby's memoirs, "Honorable Men," (New York: Simon & Shuster, 1978) with the American. The former contains information deleted from the latter as a result of the CIA clearance process. See C. Marwick, "The Growing Power to Censor," First Principles, June 1979, p. 3.

[14] See e.g., Thomas Powers, "The Man Who Kept Secrets," (New York: Knopf, 1979).

[15] See generally Frank Snepp, "Decent Interval," op. cit.

[16] Report of the House Select Committee on Intelligence printed in Village Voice, Feb. 16, 1976, p. 85.

[17] One of the few leaks on record which might have exposed a CIA agent was a report relating to Indian plans during the Bangladesh crisis. A finished intelligence report was leaked to a reporter who published the information. When the story was retold in the Powers' book, "The Man Who Kept Secrets," op. cit., pp. 206–7, it was revealed that the source of the information could only have been a member of the Indian cabinet touching off debate and speculation in India about who the spy might have been.

have made use of varying degrees of information released by the CIA under the FOIA. (See Appendix B) Many important documents have been released under the Act. (See Appendix C)

The more refined version of the CIA argument, apparently developed in response to the circulation of such books and documents lists, is that all of the information of value that was released was made public only because it simply confirmed information that was in the Church Committee Report and other congressional studies. That also is not the case. Even where documents released related to subjects touched on in the Church Committee Report the new releases have thrown additional light on such important subjects as CIA drug testing, spy operations against Americans labeled "Merrimac" and "Resistance," CIA covert actions in Chile, CIA relationships with journalists and academics and with local police departments.[18] In some cases they have contradicted the congressional reports. Moreover, historians find it useful and even necessary to have access to the actual documents and such documents can be a very valuable tool for bringing home to students and others the reality of past abuses.[19]

Moreover the CIA to its credit has made public many documents relating to subjects simply not covered by the congressional investigations. These include: The CIA's delimitation in agreement with the FBI concerning activities in the U.S.; the purported legal basis for the Agency's covert propaganda, sabotage and paramilitary operations; internal discussions of CIA activities in Laos in 1969; use of satellite photography to spy on domestic demonstrations; attempts to keep the story of the Glomar Explorer out of the press.

Those seeking to perpetuate public debate about the role of the CIA use the Act regularly and are fighting its amendment not because they want to tie up a very small percentage of the CIA staff in dealing with their requests but because they have secured and expect to continue to secure the release of documents of great value to that public debate.[20]

The CIA also argues that the FOIA was useful in the past when the Agency was not under effective monitoring by Congress and internal mechanisms. It suggests that public oversight via the FOIA is no longer necessary. Senator Huddleston in introducing S. 2284 indicated that he would be opposed to any CIA relief from the FOIA except in the context of a comprehensive charter. However, even if Congress enacted such a charter and it was shown to be operating effectively for a number of years citizens should still be entitled to secure the release of documents under the FOIA. Perhaps at some future time a narrowly tailored change would be appropriate.

HOW THE FOIA OPERATES

The apparent paradox—that information has never been ordered released by a court yet the FOIA has nonetheless led to the publication of much information about the agency which would not otherwise have been made public—can be explained by examining the process which a request undergoes.

When a request is made for a file, it is pulled and examined to determine if there is any information in the file which either must be released because it is not exempt or should be released as a matter of policy. Often this is the first time that anyone has looked at the file, even if it is many years old, to determine if any of it can be made public.

Some material is often then released. If the requester is not satisfied he or she can appeal. In that case the documents are examined by another group of more senior officials including lawyers familiar with the requirements of the Act. Often there are then substantial additional releases.[21]

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[18] See "Operation CHAOS," Comparison of Documents Released in *Halkin* v. *Helms* With the Final Report of the Church Committee, CNSS Report No. 104 (Washington, D.C.: CNSS. 1979). See Appendix D.

[19] See Christy Macy and Susan Kaplan, "Documents," (New York: Penguin, 1980), which reproduces many documents. Some of these are from the CIA and were requested for the book even though most of the content of the document had already been made public. See Appendix E for an illustration.

[20] See joint letter from 150 national groups and others at Appendix F. Is the CIA seeking sweeping amendments precisely because of this use? Is the agency in a clearly discernable slowdown in responding to requests from those it identifies as its critics for the same reason and in the hope that the passage of the proposed amendments will nullify the pending requests?

[21] See "Using the Freedom of Information Act: A Step by Step Guide," (Washington, D.C.: CNSS. 1979).

If the requester is still not satisfied and has the resources to pursue the matter, a lawsuit is filed. A new review then takes place. Others look at the documents including lawyers in the Department of Justice or the U.S. Attorney's office. As a result additional releases are often made; still more material is often released when a detailed index of the withheld material is prepared. Other releases occur before and even after district court, and even Court of Appeals arguments and decisions.

A request for documents relating to the CIA effort to suppress the Glomar Explorer story illustrates this process in graphic form. The CIA initially maintained that it could not even admit that it had any such documents. Although the district court accepted this argument, the Court of Appeals sent the case back after expressing skepticism. After reconsidering the government made public a set of documents shedding important light on the relationship between the CIA and the press.[22]

ADMINISTRATIVE BURDEN

In his testimony Ambassador Carlucci devotes many pages to complaining about the administrative burden posed by the Act and suggesting that relief is necessary for that reason as well as the others presented.[23] The CIA argument on administrative burdens is wide of the mark on two grounds:

"The CIA burden is not greater than many other agencies which are not seeking relief."

"Despite the wide scope of the exemption songht by the CIA, it would not reduce the burden of the Agency very substantially."

The CIA according to Ambassador Carlucci has received over the past four years an average of 4,744 FOIA, Privacy Act and Executive Order declassification requests per year. It currently has a backlog of over 2,700 unanswered requests and the figure he says is increasing.[24]

By contrast in 1977 (the last year for which comparable data are available) the Department of Defense received 47,000 requests, the Department of Justice 19,000 and the Treasury Department, 16,000.

The CIA estimated its incremental cost for processing FOIA requests in 1977 at $1 million (and $1.36€ million in 1978). The Defense Department spent more than $5 million in 1977 as did HEW and Treasury. Even the Department of Transportation spent more than the CIA.[25]

Since the CIA declines to make its total budget public it is impossible to tell if the proportion spent on FOIA is any higher. However, the figures do not appear to be out of line. Nor is there any reason to believe that comparative figures for later years would be any different.

The CIA also objects to having to respond to requests from the KGB and from those out to abolish the Agency such as Philip Agee. The KGB argument is theoretical since there is no evidence that the CIA has received any requests from a hostile intelligence service. There would be little objection to permitting the CIA to summarily deny such requests. The problem is that a foreign intelligence service could easily arrange with any American to make its requests.

As for Agee, the complaint is clearly misplaced. Certainly the CIA should not be able to turn aside requests because it objects to the political views of the requester. The CIA asserts that Agee intends to use the information released to hurt the CIA. The Agency can, of course, withhold any information which is properly classified or which would reveal sources and methods. Agee, like any other citizen, is free to use whatever is released. Moreover since Agee has requested only his personal file the CIA would still have to answer his request even if its proposed amendment were passed.[26]

If the CIA burden is not overwhelming the CIA proposal would have little effect on it.

The CIA Annual Report for 1978 under the FOIA indicates that only some 20–30 percent of requests to the CIA would be covered by the proposed amendment. More than 50 percent of the requests to the CIA in 1978 were for personal files and would not be affected. Another 10 percent are requests under the

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[22] The documents are on file in the CNSS library.
[23] See CIA 1978 Report, op. cit.
[24] Carlucci, p. 22. See also CIA 1978 Report.
[25] Harold Relyea, "The Administration of the Freedom of Information Act: A Brief Overview of Executive Branch Annual Reports for 1977." Congressional Research Service Report No. 78–195 Gov., Nov. 15, 1978.
[26] CIA 1978 Report, op. cit.

mandatory review positions of the Executive Order on Classification.[27] Some 10 percent, according to Ambassador Carlucci's testimony, are for the finished intelligence product. Thus the CIA administrative burden would not be greatly reduced but the public would be denied access to important information. Most of the important information which is released falls within this 20–30 percent. If the proposed CIA amendments were adopted the perception problem would remain and the administrative burden would remain but the public would learn much less about the CIA.

APPENDIX A

S. 2216, 96TH CONGRESS, 2D SESSION

SEC. 3. Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g), is amended to read as follows:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of any law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or number of personnel employed by the Agency. In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information; special activities and foreign intelligence or counterintelligence operations; investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services: *Provided*, That requests by American citizens and permanent resident aliens for information concerning themselves, made pursuant to sections 552 and 552a of title 5, shall be processed in accordance with those sections. The provisions of this section shall not be superseded except by a provision of law which is enacted after the date of this amendment and which specifically repeals or modifies the provisions of this section.".

S. 2284, 96TH CONGRESS, 2D SESSION

Section 421. (d) No provision of law shall be construed to require the Director of the Agency or any other officer or employee of the United States to disclose information concerning the organization or functions of the Agency, including the name, official title, salary, or affiliation with the Agency of any person employed by, or otherwise associated with the Agency, or the number of persons employed by the Agency. In addition, the Agency shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, of information in files specifically designated to be concerned with the design, function, deployment, exploitation, or utilization of scientific or technical systems for the collection of intelligence; special activities and intelligence operations; investigations conducted to determine the suitability of potential intelligence sources; intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; except that requests by United States citizens and permanent resident aliens for information concerning themselves, made pursuant to sections 552 and 552a of title 5, shall be processed in accordance with those sections.

[27] Sec. 3-501 of Executive Order 12065 provides that each agency shall establish a procedure for a mandatory review for declassification of any report that reasonably describes the information. Requests previously made under the FOIA could be made under the Executive order procedures if the CIA amendments have passed. This would necessitate the same search and review but the requester could not appeal an adverse decision to the courts.

APPENDIX B

CENTER FOR NATIONAL SECURITY STUDIES—MEMORANDUM

(Subject: List of books and articles based entirely or partially on CIA documents declassified through the Freedom of Information Act.)

CIA ACTIVITIES WITHIN THE UNITED STATES

Donner, Frank. *The Age of Surveillance.* New York: Alfred A. Knopf, Inc., 1980. (forthcoming)

Halperin, Morton H. et al. *The Lawless State.* New York: Penguin Books, 1976.

Wise, David. *The American Police State.* New York: Random House, 1976.

Horrock, Nicholas M. "New Law is Dislodging C.I.A.'s Secrets," *New York Times,* 5/14/75. (dellmitation agreements between FBI and CIA: CIA file on Socialist Workers Party; CIA study of U.S. youth movement, *Restless Youth*)

Kihss, Peter. "Rosenberg Files of C.I.A. Released," *New York Times,* 12/5/75.

———, "30 Accused in Suit of Opening Mails," *New York Times,* 7/23/75. (request for personal file reveals requester was target of CIA mail opening)

Knight, Althea and Bonner, Alice. "Fairfax, Montgomery List Aid Received From CIA," *Washington Post,* 1/14/76. (aid to police departments)

———, "C.I.A. Documents Reveal Presence of Agents on 'Problem' Campuses," *New York Times,* 12/18/77.

Thomas, Jo. "C.I.A. Reporting on Student Group After Cutting Off Financial Help," *New York Times,* 12/18/77.

———, "Cable Sought to Discredit Critics of Warren Report," *New York Times,* 12/26/77.

Richards, Bill. "CIA Infiltrated Black Groups Here in the '60s," *Washington Post,* 3/30/78.

Sommer, Andrew and Cheshire, Marc, "The Spy Who Came in From the Campus," *New York Times,* 10/30/78.

Hersh, Seymour M. "C.I.A. Papers Indicate Broader Surveillance Than Was Admitted," *New York Times,* 3/9/79.

———, C.I.A "Used Satellites for Spying on Anti War Protesters in U.S.," *New York Times,* 7/17/79.

Volkman, Ernest. "Spies on Campus," *Penthouse,* October 1979.

FOREIGN POLICY

Cook, Blanche Wiesen. *Mission of Peace and Political Warfare: Eisenhower's Cold War.* New York: Doubleday, 1981. (forthcoming)

Morgan, Dan. *Merchants of Grain.* New York: Viking Press, 1979.

Shawcross, William. *Sideshow: Kissinger, Nixon and the Destruction of Cambodia.* New York: Simon and Schuster, 1979.

Wittner, Lawrence S. *The Americans in Greece: 1943–1949.* New York: Columbia University Press, 1981. (forthcoming)

Wyden, Peter. *Bay of Pigs: The Untold Story.* New York: Simon and Schuster, 1979.

Bernstein, Barton J. "Courage and Commitment: The Missiles of October," *Foreign Service Journal,* December 1975, Vol. 52, no. 12.

Bernstein, Barton J. "The Week We Went to War," *Bulletin of the Atomic Scientists,* February 1976, Vol. 32, no. 2.

Bernstein, Barton J. "The Week We Went to War: American Intervention in Korea," *Foreign Service Journal,* January and February 1977, Vol. 54, nos. 1 and 2.

Bernstein, Barton J. "The Policy of Risk: Crossing the 38th Parallel and Marching to the Yalu," *Foreign Service Journal,* March 1977, Vol. 54, no. 3.

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APPENDIX C—DOCUMENTS RELEASED THROUGH THE FREEDOM OF INFORMATION ACT

C. CENTRAL INTELLIGENCE AGENCY

C–1. Colby Report; December 24, 1974; 64 pages. A letter from Colby to the President regarding a December 22, 1974 *New York Times* article revealing CIA domestic intelligence activities. Nine annexes are attached to the letter, which include discussions of the Huston Plan, interagency programs, a counterintelligence office, Schlesinger's request asking employees to report non-chartered CIA activities [may be ordered as C–5(e)], and a March 5, 1974 memo terminating Operation CHAOS. ($6.40/copy)

C–5. This series of documents (through C–5e) were referred to in a report on CIA domestic activities presented by Director Colby to the Senate Appropriations Committee on January 15, 1975:

C–5(a). Organization and Functions, Domestic Operations Division and Station (DODS); February 11, 1963; 1 page. The mission of the DODS is described as directing, supporting and coordinating "clandestine operational activities . . . within the United States against foreign targets . . ." ($.10/copy)

C–5(b). Redesignation of Component; January 28, 1972; 1 page. An intra-agency memo from Thomas Karamessines, Deputy Director for Plans, announcing the change in the name of the Domestic Operations Division (DO) to Foreign Resources Division (FR). ($.10/copy)

C–5(c). Correspondence Between David Ginsburg, Executive Director of the National Advisory Commission on Civil Disorders, and Richard Helms, Director of the CIA; August 29, 1967 and September 1, 1967; 3 pages. Contains a request by Ginsburg for information on any civil disorder intelligence the CIA may have, and Helms' reply. ($.30/copy)

C–5(d). Restless Youth; September 1968, No. 0613/68; 41 pages. The report analyzes the international youth movement of the late 1960s, studies its sociological base, and attempts to understand its structure, purposes, goals, and possible ramifications. The report cites the Civil Rights Movement of the early 1960s as proving to dissidents later in the decade that confrontational politics is the only means of accomplishing political change. See also C–12(b) ($4.10/copy)

C–5(e). Memorandum for all CIA Employees from James R. Schlesinger, Director; May 9, 1973; 2 pages. The Director requests that all CIA personnel report to him any past or present activities which lie outside the Agency's charter, and directs that if an order is given to a CIA employee which is inconsistent with the Agency's charter, the employee should report the incident to the Director. See also C–1. ($.20/copy)

C–6. Delimitation Agreement of 1948; September and October 1948; 7 pages. The documents constitute an agreement between the FBI and the CIA permitting CIA contacts with émigré groups and individuals in the United States. ($.70/copy)

C–8. "Potential Flap Activities." Memo to William Colby from William V. Broe, Inspector General; May 21, 1973; 26 pages. The first portion of the Memo discusses CIA contacts with Watergate figures, and CIA participation in the Intelligence Evaluation Committee and Staff, established to evaluate domestic intelligence studies. The second portion of the Memo covers Support, Real Estate, Procurement, Cover, Activities Directed Against U.S. Citizens, and Collection Activities. ($2.60/copy)

C–10. Formal Memorandum on Respective Responsibilities of the FBI and CIA in the United States; February 7, 1966; 2 pages. This memo referred to on page 57 of the Rockefeller Commission Report. The memo contains no information not included in that Report. ($.20/copy)

C–12(a). Family Jewels—Activities Construed to be Outside the CIA Charter; May 1970–May 1973; 65 pages. DCI James Schlesinger's directive of May 9, 1973 [see C–5(e)] requested CIA employees to report activities which could be considered outside the charter of the Agency. The request released this partial file of questionable activities, including domestic surveillance operations, arrangements with American firms, assistance to local police departments, and Office of Security support to the Bureau of Narcotics and Dangerous Drugs. ($6.50/copy)

C–12(b). Restless Youth; 1968; 245 pages. A version of the CIA's 1968 study of worldwide student dissidence which includes a 199-page section reporting on student movements in 19 foreign countries. Part I is identical to C–5(d) except that it includes some photographs and one paragraph deleted from that version. ($24.50/copy)

C–12(c). "Family Jewels" Memoranda; 1968 and 1973; 18 pages. Memorandum to the DCI from various offices responding to his request that CIA activities which may be outside the Agency's charter be reported. The memorandum show that the agency examined satellite photographs in analyzing domestic civil disturbances, that the Domestic Contact Service collects information on foreign students studying in the U.S., and that in 1969 and 1970 several studies were prepared on black radical movements in the Caribbean, one of which focused on possible links to the U.S. black power movement. ($1.80/copy)

C–13/15. CIA/Documents on Projects Resistance and Merrimac; 1966–1975; 1987 pages. Documents in this file, released to CNSS through the FOIA, contain a number of discrepancies from, or additions to, the account of the projects in the Rockefeller and Church Reports. These relate to the use of informants in Resistance; the scope of Resistance; the use of Army counterintelligence information in Resistance reports; a proposed expansion of Merrimac in 1968; and Merrimac operations outside the Washington, D.C. area ($150.00; selected documents $3.50)

C–16. Restrictions on Operational Use of Academics; 1970 and 1973; 8 pages. Tom Huston's 1970 memo informing DCI Helms that restrictions on domestic use of several intelligence gathering techniques had been lifted; and guidelines reprinted in 1973 prohibiting the Agency from covert funding of U.S. Educational or private voluntary organizations. ($.80/copy)

C–19. Files on Che Guevara; 1958–1976; 184 pages. A request to the CIA for all files on Che Guevara and others produced responses from the State Dept., FBI, DIA, and Navy. The file includes accounts of Che's alleged activities in Cuba, Latin America, Africa and Vietnam; numerous false reports of his death; and several accounts of his capture and execution in Bolivia in 1967. ($18.40/copy)

C–21. Two memoranda From CIA General Counsel to CIA Director; up to January 1962-April 1962; 8 pages. The three memoranda from CIA General Counsel Lawrence Houston to the Director discuss the legality of subversion and sabotage, and paramilitary cold-war activities. These memoranda argue that covert operations are legal despite the lack of congressional authorization in the 1947 NSC Act. ($0.80/copy)

C–22. National Intelligence Estimates Relating to the Cuban Missile Crisis; October 19 and 20, 1962; 30 pages. These papers concern the problem of assessing the strategic and political implications of the Soviet military buildup in Cuba. They provide a history of the military buildup, discuss its implications, and note that the possibilities exist for an expansion of the buildup. The reports conclude that the Soviet objective is to prove that the U.S. can no longer prevent a Soviet presence in the hemisphere, and discuss the probable effect of a warning. $3.00/copy).

C–24. CIA Relationships With the University of California; 1958–1977; 914 pages. Nathan Gardels received these files through requests and litigation under the FOIA. They document CIA relationships and contracts with UC for research in political science. Chinese and Slavic studies, physics, and other fields; CIA use of academic cover; and covert recruiting.

C–25. CIA Relationships With Domestic Firms; 1975–1976; 67 pages. These documents, released in *Halperin* v. *CIA*, provide a limited look at the Agency's relationships with the Arnold & Porter law firm, hired to represent it during the 1975–1976 Senate investigation, and with Robert R. Mullen and Co. The CIA used Mullen Co., a public relations firm which hired E. Howard Hunt in 1970, for cover and other purposes. ($6.70/copy).

C–26. Oswald and the Cuban Connection; April and May, 1975; 27 pages. This report represents a review of items in the CIA's Lee Harvey Oswald File "regarding allegations of Castro Cuban involvement in the John F. Kennedy assassination." The analysis was requested by the Rockefeller Commission. The report seeks, in part, to explain Oswald's "feelings toward and relations with Castro's Cuba." ($2.70/copy).

C–27. CIA Drug Experiments; up to July 25, 1975; 146 pages. A collection of 59 documents detailing various CIA projects relating to drug and behavioral experiments. The file includes some documents from the Frank Olson case (see C–35), as well as documents describing MKULTRA, the CIA's top-secret project to investigate "the manipulation of human behavior." The research is said to be "considered by many in medicine and related fields to be professionally unethical. A final phase of the testing of MKULTRA products places the rights and interests of U.S. citizens in jeopardy." ($14.60/copy) [The entire 40,000-page release of CIA behavior control documents is available by appointment for inspection at the CNSS Library.]

C–29. CIA Activities in Laos: Memo From CIA General Counsel to Director; October 30, 1969; 2 pages. The memo resulted from Senator Fulbright's assertion that the CIA is "waging war" in Laos. The General Counsel proceeded to inform

the Director of CIA operations in Laos (which he characterized as assisting the native population to prevent a military takeover) and of the Agency's authority to carry out such operations. ($.20/copy)

C–30. Project Mudhen—Government Investigations of Jack Anderson; 1972; 39 pages. This file includes a copy of the complaint Anderson filed against Nixon, Kissinger, Helms and several others. Also included is a paper, "Chronology of a Conspiracy," which summarizes the government's investigation of Anderson, and a series of five memos detailing certain aspects of Project Mudhen including operations, logs, and photos. ($3.90/copy)

C–31. Documents Referred to in "Covert Action in Chile 1963–1973"; September 1970 and undated; 11 pages. This file contains three CIA documents released to CNSS through the FOIA which describe events in Chile during September 1970. The reports concern alleged attempts by the Chilean Communist Party to take over media outlets, splits within the Christian Democratic Party, the growth of "Patria y Libertad," and Allende's character and career. ($1.10)

C–32. Director of Central Intelligence Directives; 1946–1976; 285 pages. The directives are procedural memos from DCIs over a period of twenty years. They cover intelligence-related issues, including procedures for the Intelligence Advisory Committee, control of dissemination of foreign intelligence, security policy guidelines on liaison relationships with foreign intelligence organizations, recognition of exceptional service to the Agency, and exploitation of foreign language publication. Also included are directives relating to coordination of overt collection abroad, domestic exploitation of non-governmental organizations, and production of atomic energy intelligence. ($28.50/copy)

C–33. CIA Documents on the Disappearance of Professor Riha; April 1969–August 1975; 230 pages. The disappearance in April 1969 of Dr. Thomas Riha, a naturalized U.S. citizen born in Czechoslavakia who was a professor of Russian history at the University of Colorado, caused considerable publicity, and prompted a CIA investigation. The documents concern the unexplained disappearance and the subsequent involvement of University of Colorado President Joseph Smiley, local news reporters, and the CIA in investigations of the matter. Correspondence from William Colby to the Senate Intelligence Committee explains the limited role of the CIA in an affair that "was a domestic concern and beyond the jurisdiction and responsibility" of the Agency. News coverage concerning the disappearance is included. ($23.00/copy)

C–36. CIA Mail Openings; 1971–1973; 8 pages. The documents include two meetings conducted by CIA Director Helms on HTLINGUAL, the Agency's mail opening project, as well as a 1973 statement by Director Colby concerning termination of the project. The Helms memoranda explain the Agency's collaboration with the Postal Service and the FBI; participants in the meeting decided to continue the program despite reservations over possible adverse publicity and embarrassment should the mail opening scheme surface. The "memorandum for the record" signed by Colby expresses his desire to transfer the operation to the FBI and directs that "the project be suspended until appropriate resolution of the problems involved." ($.80/copy)

C–37. CIA-Justice Department Agreement Regarding Investigation of Possible Criminal Activities Arising Out of CIA Activities; 1954–1975; 19 pages. The memorandum from Justice Department Counsel L. S. Houston to the Director of Central Intelligence explains the "balancing of interest between the duty to enforce the law . . . and the Director's responsibility for protecting intelligence sources and methods." Included is a brief summary of twenty cases in which violations of criminal statutes were reported to the Department of Justice between 1954 and 1975. A detailed examination of circumstances involved in the drug prosecution of Mr. Puttaporn Khramkhruan, former CIA employee, is also included. ($1.90/copy)

C–38. Director of Central Intelligence Report to the President Concerning Domestic Operations; August 1967–July 1975; 70 pages. The Director of Central Intelligence, with the approval of the President, released "the Director's Report of 24 December 1974 to the President, including the annexes, covering matters related to the New York Times article of 22 December alleging CIA involvement in a massive illegal domestic intelligence effort. This release is a followup to the decision to release the Rockefeller Commission report in view of the public interest in this matter." The breadth of the CHAOS operation is disclosed in the series of memoranda and briefing papers included in these documents. ($7.00/copy)

C–39. CIA Contracts With the University of California-San Diego; 1966–1976; 121 pages. Copies of a negotiated contract between the CIA and U. of Cal. San Diego, describing completion dates, scope of work, location where research will he conducted, deliverable items and costs. The CIA contracts were for research in the field of image processing, a review of Soviet Geochemical Literature, and a study of agriculture in Communist China. ($12.10/copy)

C–40. The CIA and Local Police; 1967–1973; 177 pages. A series of memos and letters concerning direct CIA assistance to 12 municipal and/or county police departments including those of New York, Los Angeles, Boston, and Washington. The documents trace the history of CIA training seminars in photo and audio surveillance, narcotics, and "radical terrorist" control. ($17.70/copy)

C–42. Secret Legislative History of the CIA; 1947–1948; 143 pages. These documents reveal the secret congressional testimony of the first two Directors of Central Inteiligence, Lt. Generai Hoyt S. Vandenberg and Rear Admiral R. H. Hillenkoetter. Director Hillenkoetter's April 1948 testimony before the House Armed Services Committee describes the problems which the fledgling intelligence agency faced in its first two years. The Vandenberg testimony was presented to the Senate Armed Services Committee in Aprii 1947 in support of the National Security Act of 1947 which provided for unification of the armed services and establishment of the CIA. ($14.30/copy)

C–44. CIA/Resistance/Black Student Unions; 1968–1971; 33 pages. This file was released to researcher Murv Glass following a request for CIA files on the Black Student Union at the University of California at Santa Barbars. The documents show that Project Resistance and other CIA programs regularly used informants. [The Church Report stated that Resistance did not run unilateral informal operations.—Ed.] ($3.30)

C–45. CIA File on University of Michigan and Center for Chinese Studies; 1965–1976: 279 pages. This file was requested under FOIA by the editors of *Michigan Daily*. It documents confidential contacts between various CIA research offices and China scholars at the University of Michigan. It also shows the Agency's attempt to maintain academic contacts in a period when the propriety of classified government research was increasingiy called into question. A 1966 CIA memo in the file states: "If a university wishes to stipulate provisos or qualifications we will be glad to consider them. The university need only say what they are." ($27.90/copy)

C–46. CIA/Resistance/Peace and Freedom Party; 1968–1974: 85 pages. This file was obtained by the Peace and Freedom Party under FOIA. The Party was an object of CIA domestic surveiliance under Project Resistance. This file shows that more than 50,000 names of PFP members from a single state (California) were indexed hy Resistance; the figure given by the Church Committee was 12–16,000 names nationwide. These indexes were retained at least as late as May 1974. ($8.50/copy).

C–47. CIA/Policy on Relationships With Journalists/Material Sent to Inteiligence Committees; 1973–1976; 47 pages. After litigation under FOIA, these documents were released to journaiists Judith Milier in response to a request for ali material on CIA use of journalists which had been sent to the House and Senate Intelligence Committees and the Rockefeller Commission. The file contains little factuai information, but does inciude statements of CIA policy. Certain comments in the file raise the possibility that CIA contacts with journalists were more extensive than reported to the Committees. ($4.70/copy).

C–54. Correspondence of Victor Reuther Intercepted by the CIA; 1968; 11 rages. Five items of Victor Reuther's correspondence intercepted in 1968. At that time an official of the United Auto Workers (UAW), Reuther's name was also on HTLINGUAL's "watch list" for mail intercepts from 1969–1971. ($1.10/copy).

C–55. CIA Distributions to Academics: 1976: 11 pages. Lists of more than 40 colleges and universities to which the CIA sent unciassified publications prodnced by its overt research branch on Soviet government personnei, international terrorism, and other subjects. ($1.10/copy).

C–58. International Terrorism in 1976; July 1977: 22 pages. An analysis of trends in international terrorism which finds, among other things, that while the number of terrorist incidents increased in 1976, the number of acts involving kidnaping and hostages, and the proportion of acts directed against US citizens and property, declined. Cuban exile formations emerged as "among the most active and most disruptive terrorist groups." ($2.20/copy).

C–61. DCI Turner's Statement on Harvard Guidelines; August 1977; 3 pages. Turner states that the CIA will ignore Harvard's requirement that university officials be informed of all CIA contracts with university personnel, and dodges the issue of covert recruitment on campus. ($.30/copy).

C–63. Studies in Intelligence: 1972–1975; 297 pages. Seventeen previously classified articles and 33 book reviews written for circulation within the Intelligence Community. Subjects range from a post-mortem of U.S. involvement in Vietnam, to the use of logic in intelligence analysis, to a review of Agee's *Inside the Company*.

C–64. CIA Assassination Plots: Memos on Trujillo, Castro, South Vietnamese Leaders, Belgian Congo Leaders, Messages Concerning Trujillo; 1960–1970, 127 pages. CIA discussions and planning of assassination plots concerning Trujillo, Castro, and S. Vietnamese and Belgian Congo leaders. CIA agents discuss eventual outcomes of such assassinations, and what effect the assassinations would have in those countries. ($12.70/copy).

C–65. CIA Use of Academics; 1967–1975; 148 pages. Released through litigation under the FOIA, these documents contain information on open and covert CIA-university relationships for purposes of research, recruitment, and surveillance of student dissent. ($14.80/copy).

C–66. Glomar Explorer Story; January 1974–March 1975; 221 pages. Agency documents showing DCI Colby's vigorous efforts to keep the *Glomar Explorer* story out of the papers by briefing reporters and editors on its importance to the national security. The story was held for more than a year through the cooperation of the *New York Times, Los Angeles Times, Washington Post, Parade Magazine, Times, Newsweek*, CBS, AP, UP, and other news organizations. The file contains the incidental statement by Colby that the Agency uses prostitutes to obtain information. ($22.10/copy).

APPENDIX D—ILLUSTRATING THE VALUE OF READING THE FULL DOCUMENT EVEN IF DOCUMENT WAS DISCUSSED IN CONGRESSIONAL REPORT

Recent congressional committees have reported on a number of improper or questionable CIA activities. But even acknowledging the accuracy of these reports, the release of CIA documents through the Freedom of Information Act has made valuable contributions to public understanding of those activities and of important issues which they raise.

These primary documents often contain a richness of detail that cannot be conveyed in summary form. They allow once secret activities to be placed in context and their implications better understood. Even when they contain no new factual information they may illustrate official attitudes and assumptions in important ways. One example is former CIA General Counsel Lawrence R. Houston's 1969 memorandum concerning the constitutionality of CIA paramilitary operations in Laos.

According to the Church Committee, the CIA in Laos, beginning in 1962, "implemented air supply and paramilitary training programs, which gradually developed into full-scale management of a ground war." [1] This operation "eventually became the largest paramilitary efforts in post-war history," [2] until in 1971 the burden of expenses in Laos was turned over to the Defense Department.

The Committee referred to the operation in Laos—and to Houston's memo—in discussing whether large paramilitary actions based solely on Executive authority are an infringement of Congress power to declare war.[3] Referring to the memorandum in a footnote, the Church Committee wrote:

"And, in 1969, the CIA General Counsel wrote that the 1947 Act provided 'rather doubtful statutory authority for at least those covert actions—such as para-military operations—which were not related to intelligence gathering."

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[1] "Final Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities," United States Senate, 94th Congress, 2d session, Report No 94–755, Government Printing Office, 1976 (hereinafter "Church Report"). Book IV, p. 68.
[2] Church report, Book I, pp. 147–48.
[3] Church report, Book I, pp. 35–38.

Houston's memorandum was prepared in 1969 in response to Senator William Fulbright, who raised the issue of whether largescale covert paramilitary operations are constitutional. It illustrates the lack of seriousness with which the CIA treated the problem. Houston begins by playing a game with definitions and ends by begging the question with an appeal to Presidential authority. "If Senator, Fulbright were right in saying that we are 'waging war' in Laos," Houston writes,

"We would indeed have a constitutional question. A formal declaration of war requires action by the Congress. I know of no definition, however, which would consider our activities in Laos as 'waging war' except Senator Fulbright's. We have no combatants as such, although the Air Force pilots doing the bombing come close, and indeed our people on the ground would probably not be entitled to the technical protection of the Geneva Convention for prisoners of war * * *.

* * * It is obviously futile to argue with Senator Fulbright along these lines as his quarrel is with the Presidency, not with this Agency." (The full text of Houston's memorandum is attached.)

DOC. 9A

OCTOBER 30, 1969.

Memorandum for: Director of Central Intelligence.
Subject: Symington Subcommittee Hearings.

1. This memorandum is for information.

2. If Senator Fulbright were right in saying that we are "waging war" in Laos, we would indeed have a constitutional question. A formal declaration of war requires action by the Congress. I know of no definition, however, which would consider our activities in Laos as "waging war" except Senator Fulbright's. We have no combatants as such, although the Air Force pilots doing the bombing come close, and indeed our people on the ground would probably not be entitled to the technical protection of the Geneva Convention for prisoners of war. We are assisting with materiel, advice, and a fair number of bombs in the efforts of a native population to prevent a military takeover to which it objects. There are any number of precedents throughout history for doing this—by executive action without any formal declaration of war or execution of a formal treaty.

3. As for the authority of this Agency to engage in such activities, I think you were probably exactly right to stick to the language of the National Security Act of 1947, as amended, particularly that portion which says that the Agency shall "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Actually, from 1947 on my position has been that this is a rather doubtful statutory authority on which to hang our paramilitary activities . . . opinions, we have the necessary statutory administrative capabilities to do the job, and if we get the proper directive from the executive branch and the funds from the Congress to carry out that directive, these two together are the true authorization. We have had such directives from the NSC 10/2 series on, and the Congress has provided the funds for the purposes indicated. This position is consistent with the opinion the Department of Justice rendered for use while Nick Katzenbach was Attorney General in connection with the questions about the Bay of Pigs. The President can do what he determines has to be done in the national interest, using such assets as are available.

6. In essence, the question is not a legal one. It is the perpetual political power struggle between the executive with its responsibility for the conduct of foreign affairs and its authority over the armed forces and other executive branch assets on the one hand, and the responsibility of the Congress for the provision of funds and appropriate authorizations on the other. It is obviously futile to argue with Senator Fulbright along these lines, as his quarrel is with the Presidency, not with this Agency.

LAWRENCE R. HOUSTON,
General Counsel.

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[4] Macy, Christy and Kaplan, Susan. "Documents: A Shocking Collection of Memoranda, Letters, and Telexes from the Secret Files of the American Intelligence Community," (New York: Penguin Books, 1980).

Appendix E—Illustrates That Documents Released Under the FOIA Can Reveal Errors in Official Reports

In many cases CIA documents released through the Freedom of Information Act not only enrich or expand government reports of improper CIA activities, but flatly contradict them. The resources of government committees are finite; their investigations have often identified issues which could be examined in greater detail by the public using the FOIA as an oversight tool.

One case in which the FOIA has fundamentally altered public understanding of CIA activities is that of Project Resistance. Resistance was a nationwide study of U.S. protest movements conducted between 1967–1973. (The FOIA has been informative about many aspects of Resistance, but this appendix examines only the question of whether Resistance information was gathered from open sources or through infiltration of political groups in the U.S.)

Project Resistance was first disclosed in the final reports of the Rockefeller Commission and the Church Committee.

The Rockefeller Commission found that information collected for Resistance was primarily based on open sources such as newspapers and pamphlets and that the Project "used no infiltrators, penetrators, or monitors." Occasionally Resistance received assistance from local police departments or campus security forces.[1]

The Church Committee reiterated these conclusions, stating that "the files indicate no use of infiltrations by CIA in connection with this program. The overwhelming bulk of the information continued to be press clippings passed on to headquarters." [2]

But Project Resistance files released under the FOIA contain numerous reports from unilateral CIA informants who infiltrated and monitored protest groups in Texas, Los Angeles, Washington, D.C. and elsewhere. The use of informants was a matter of policy and not a departure from policy, as indicated by printed "(Confidential Information" forms attached to informant reports. (Examples of Project Resistance informant report cover sheets are attached.)

Confidential Informant Identification

Synopsis

Confidential Informant, R–1, provided information concerning local Project Resistance movements in the North Central Texas area, indicating that most of the activities concerning the peace movement, including the activities of the Students For A Democratic Society and the Dallas Committee For A Peaceful Solution To The War In Viet Nam, have established a center at 4915 Swiss Avenue in Dallas, which they call the Peace House. He additionally advised that it has become increasingly evident in recent weeks that the leaders of these groups are associating with narcotics addicts and pushers in the Dallas area and that the Dallas Police Department hope to collect sufficient evidence to establish a definite relationship between local peace movement leaders and the narcotics trade and ultimately discredit these leaders as the result of publication of such information through a cooperative effort with the local news media. R–1 additionally advised that a Black Power Conference is scheduled for Dallas, to take place sometime in the next two or three months. Additionally it appears that there are some noteworthy activities on the Bishop College campus and it appears the Student Non-Violent Coordinating Committee might be becoming more active in the Dallas area and "peaceniks" are still holding their weekly vigils in Dealy Plaza. The January 17 to 31, 1968 edition of Notes To The Underground was obtained and attached to the report.

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[1] "Report to the President by the Commission on CIA Activities Within the United States," June 6, 1975 ("Rockefeller Report") p. 155–56.
[2] Church Report, Book III, p. 722.

APPENDIX F

Senator BIRCH BAYH,
Chair, Senate Select Committee on Intelligence.

Senator EDWARD KENNEDY,
Chair, Senate Judiciary Committee.

Senator JOHN CULVER,
Chair, Subcommittee on Administrative Practice and Procedure, Senate Judiciary Committee.

Representative EDWARD BOLAND,
Chair, House Permanent Select Committee on Intelligence.

Representative JACK BROOKS,
Chair, House Government Operations Committee.

Representative RICHARDSON PREYER,
Chair, Subcommittee on Government Information and Individual Rights, House Government Operations Committee.

DEAR MEMBERS OF CONGRESS: We are writing to express our opposition to Section 421(d) of S. 2284/H.R. 6588, "The National Intelligence Act of 1980," which would substantially exempt the CIA from the Freedom of Information Act, and to Section 3 of S. 2216/H.R. 6316, "The Intelligence Reform Act of 1980," which would extend that exemption to all U.S. Intelligence agencies.[1] These provisions represent a radical change in government policy and would severely limit the disclosure of information to the public. They would damage serious historical and journalistic research and the conduct of informed public debate.

Because of the major role the Central Intelligence Agency has played in this country's foreign relations since World War II, its files are an invaluable resource for historians, political scientists and others. CIA documents released under the FOIA have contributed to a substantial and growing body of historical and journalistic works.

The FOIA has also resulted in the public disclosure of:

CIA spying on the Reverend Martin Luther King, Jr.;
CIA infiltration of lawful political groups in the United States;
CIA secret behavior control and drug-testing programs;
CIA attempts to keep the Glomar Explorer incident out of the press; and
CIA failure to fully disclose information in response to authorized Congressional requests.

Indeed, the FOIA provides an independent check on the CIA's activities. Under the proposed revision, that important check would be eliminated.

The Freedom of Information Act in its present form provides ample protection for information that is properly classified or which reveals intelligence sources or methods. CIA officials admit that the Agency can protect legitimate secrets under the Act. Testifying before the House Permanent Select Committee on Intelligence last year, Deputy Director of the CIA Frank C. Carlucci said, "It is undeniable that under the current FOIA, national security exemptions exist to protect our most vital information." Mr. Carlucci reiterated this position as recently as February 20, 1980 in testimony before the Subcommittee on Government Information and Individual Rights of the House Government Operations Committee.

Furthermore, John Blake, who as Deputy Director for Administration was responsible for the administration of the FOIA at the Central Intelligence Agency, told the Senate Judiciary Committee in 1977 that, with respect to the FOIA, "We have been able to make the necessary adjustments. I am pleased to report that, in fact, I think that the Agency is better off for it."

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[1] Please note that, while this letter addresses our concerns about provisions affecting the Freedom of Information Act, it is not intended to imply support for any other provision of the proposed legislation.

Given the record of substantial public benefit from the use of the Act and the CIA's continued ability to protect legitimate secrets, there's no justification for virtually exempting the CIA from the Freedom of Information Act. Any concerns about the FOIA should be reviewed carefully through public hearings at which historians, journalists and other users of the Act are given the opportunity to testify.

It is imperative that the Freedom of Information Act not be sacrificed as part of a hasty or ill-considered reaction to current international tensions. We urge you to reject Section 241(d) of S 2284/HR 6588, Section 3 of S 2216/HR 6316, and any similar provision which would undercut the FOIA.

Attached: List of Books and Articles Based Wholly or in Part on Documents Released by the CIA as a Result of the Freedom of Information Act.

NATIONAL ORGANIZATIONS

American Baptist Churches, USA, Office of Governmental Relations, June Totten, Director.
American Civil Liberties Union, John Shattuck, Legislative Director.
American Ethical Union, Raymond Nathan, Director, Washington Ethical Action Office.
American Friends Service Committee, John A. Sullivan, Associate Executive Secretary.
American Historical Association, Mack Thompson, Executive Director.
American Privacy Foundation, David Watters, Washington Representative.
Americans for Democratic Action, Leon Shull, Executive Director.
Association of American Publishers, Townsend Hoopes, President.
Association of Arab American University Graduates, Mujid S. Kazimi, President, Abdeen Jabara, Member of the Board.
Campaign for a Nuclear Free Philippines, John Miller.
Center for Constitutional Rights, Robert Boehm, Chairperson, Board of Directors, Frank Deale, Staff Attorney.
Center for International Policy, Donald I. Ranard, Consul General (Ret.), Director.
Center for National Security Studies, Morton H. Halperin, Director.
Christian Church (Disciples of Christ), Department of Church and Society of the Division of Homeland Ministries, Roland G. Pfile, Executive Secretary.
Church of the Brethren, Washington Office, Ronald P. Hanft, Director.
Church of Scientology, National Commission on Law Enforcement and Social Justice, Kevin O'Donnell, Associate Director.
Citizens Energy Project, Ken Bossong, Scott Denman, Jan Simpson, Staff Associates.
Clergy and Laity Concerned, John Collins, Barbara Lupo, Co-Directors, David Coolidge, Washington Area CALC.
Committee for Public Justice, Inc., Nancy Kramer, Executive Director.
Common Cause, David Cohen, President.
Congress Watch, Howard Symons, Staff Attorney.
Covert Action Information Bulletin, Ellen Ray, William Schaap, Louis Wolf, Co-editors.
Environmental Action Foundation, Claudia Comins, Director.
Environmental Policy Center, Robert Alvarez.
Federation of American Scientists.
Feminist Resources on Energy and Ecology, Donna Warnock, Coordinator.
Freedom of Information Clearinghouse, Katherine A. Meyer.
Freedom to Write Committee, PEN American Center, Dore Ashton, Chair.
Friends Committee on National Legislation, Edward F. Snyder, Executive Secretary.
Friends of the Filipino People, D. Boone Schirmer, National Coordinator.
Fund for Constitutional Government, Robert R. Carr, Executive Director.
Fund for New Priorities in America, Jack Sangster, National Director.
Fund for Open Information and Accountability, Inc., Dorothy Steffens, Executive Director.
Grove Press, Barney Rosset, President.
Historians for Freedom of Information, Harold Fruchtbaum, Secretary.
Indian Law Resource Center, Pim Coulter, Executive Director.
Institution Educational Services, Prison Law Monitor, Joseph Lykins, Assistant Director.
Interreligious Foundation for Community Organization, Inc., Lucius Walker, Executive Director.
Jesuit Social Ministers, National Office, Ted Zern, S.J., Associate Director.
La Raza Unida Party, Frank Shaffer Corona, Washington Ambassador.

NATIONAL ORGANIZATIONS—Continued

Maryknoll Fathers and Brothers, Washington Office on Justice and Peace, Edward R. Killackey, Director.
Mennonite Central Committee, Peace Section, Washington Office, Delton Franz, Director.
Middle East Research and Information Project, Joe Stork, Staff.
Mobilization for Survival, Rev. Bob Moore, National Secretary.
The Nation, Victor Navasky, Editor.
National Alliance Against Racist and Political Repression, Charlene Mitchell, Executive Secretary.
National Association of Negro Business and Professional Women's Clubs, Yvonne Price, Coordinator, Governmental Affairs.
National Bar Association, Robert I. Harris, President.
National Committee Against Repressive Legislation, Esther Herst, Director.
National Conference of Black Lawyers, Victor Goode, National Director.
National Emergency Civil Liberties Committee, Edith Tiger, Director.
National Indian Youth Council, Gerald Wilkinson, Eexutive Director.
National Women's Political Caucus, Iris Mitgang, National Chair.
Network, Nancy Sylvester, Lobbyist.
New American Movement, Halli Lehrer, Organizational Secretary.
New Democratic Coalition, Fran Bennick, National Chairperson.
Non-Intervention in Chile, Bob High, National Coordinator.
Organization of American Historians, Carl Degler, President, Professor of History, Stanford University; William Appleman Williams, President-Elect, Professor of History, Oregon State University; Richard Kirkendall, Executive Secretary, Professor of History, University of Indiana.
Palestine Human Rights Campaign, Jim Zogby, Chairman.
The Progressive, Erwin Knoll, Editor.
Project for Open Government, Theodore Jacobs, Director.
Public Citizen Litigation Group, Alan B. Morrison, Director, Diane B. Cohn, Staff Attorney.
Public Eye, Chip Berlet, Co-Editor.
SANE, David Cortright, Executive Director.
Unitarian Universalist Association, Robert Z. Alpern, Director, Washington Office.
Unitarian Universalist Service Committee, National Moratorium on Prison Construction, Michael Krnil, Coordinator.
United Church of Christ, Commission for Racial Justice, Larry Rand, Director of Special Programs, New York Office.
United Church of Christ, Office for Church in Society, Rev. Barry Lynn, Legislative Counsel.
United Methodist Church; Department of Law, Justice and Community Relations of the Board of Church and Society, Rev. John P. Adams, Director.
United States Catholic Mission Council, Father Anthony Bellagamba, I.M.C., Executive Secretary.
United States Student Association, Frank Jackalone, President.
Women Strike for Peace, Ethel Taylor, National Coordinator.
Women's Institute for Freedom of the Press, Donna Allen, Director.
Women's International League for Peace and Freedom, Evelyn Haas, Co-Chair, Program and Action.

LOCAL AND REGIONAL ORGANIZATIONS

Anti-Repression Resource Team, Jackson, Mississippi, Ken Lawrence, Director.
Chicago Committee to Defend the Bill of Rights, Rachel Rosen DeGolia, Executive Director.
Chicago Political Surveillance Litigation and Educational Project, Richard Gutman, Director.
Citizens Commission on Police Repression, Los Angeles, Linda Valentino, Jeff Cohen.
Committee to Reinvolve Ex-Offenders, Washington Chapter, Linda Purdne, Director.
D.C. Committee for the Rill of Rights, Abe Bloom, John Wilson, Co-Chairs.
Freedom of Information Center, University of Missouri School of Journalism, Columbia, Missouri, Paul Fisher, Director.
Madison Coalition to Stop S-1, Robert E. McKay.
New Hampshire Research Project, Kevin Hopkins.
New York State New Democratic Coalition, Helen Polansky, Chairwoman.
Seattle Coalition on Government Spying, Kathleen Taylor, Coordinator.

LOCAL AND REGIONAL ORGANIZATIONS—Continued

South Jersey Coalition to Defend the Bill of Rights, Rose Paull, Coordinator.
Southern Regional Council, Steve Suitts, Director.
Texas Democrats, Ed Cogburn, Co-Chair, Billie Carr, Co-Chair and Democratic National Committeewomen.
Washington Center for the Study of Services, Washington, D.C., Bonnie Goldstein, Research Director.
Washington Peace Center, Washington, D.C., Donna Cooper, Co-Director.
Westchester People's Action Coalition, Connie Hogarth, Director.

INDIVIDUALS

(Organizations and other affiliates listed for identification purposes only)

Eqbal Ahmad, Fellow, The Transnational Institute.
Robert Artisst, Advisory Neighborhood Commissioner, Washington, D.C.
Edward Asner, Actor.
Rev. Charles V. Bergstrom, Executive Director, Office for Governmental Affairs, Lutheran Council in the U.S.A.
Barton Bernstein, Associate Professor of History, Stanford University.
Norman Birnbaum, Amherst College, Visiting Professor, Georgetown University Law Center.
Robert Borosage, Director, Institute for Policy Studies.
Perry Bullard, State Representative, Ann Arbor, Michigan.
Louis Clark, Director; Tom Devine, Assistant Director, Government Accountability Project.
Blanche Wiesen Cook, Professor of History, John Jay College, City University of New York.
Emile de Antonio, Filmmaker.
Thomas I. Emerson, Lines Professor of Law Emeritus, Yale Law School.
James Farmer, Executive Director, Coalition of American Public Employees.
Eric Foner, Professor of History, City University of New York.
Lloyd Gardner, Professor of History, Rutgers University.
Hugh D. Graham, Professor of History, University of Maryland.
Robert Griffith, Professor of History, University of Massachusetts.
Herbert Gutman, Professor of History, City University of New York.
Jim Hougan, Author.
Stanley Katz, Professor of History, Princeton University.
Linda Kerber, Professor of History, University of Iowa.
Arthur Kinoy, Professor of Law, Rutgers University.
Bruce Kuklick, Chair, Department of History, University of Pennsylvania.
Walter Lafeber, Professor of History, Cornell University.
Sanford Levinson, Professor of Law, University of Texas.
David Randall Luce, Professor of Philosophy, University of Wisconsin, Milwaukee.
Hilda H. N. Mason, Council Member-at-Large, City Council of the District of Columbia.
Edna McCallion, Director of United Nations Affairs, Church Women United.
Dan Moldea, Author.
Carroll Moody, Chair, Department of History, Northern Illinois University.
Gary Ostrower, Alfred University, Visiting Professor of History, University of Pennsylvania.
Otis A. Pease, Professor of History, University of Washington, Vice President for the Profession, American Historical Association.
Sidney Peck, Professor of Sociology, Clark University.
Stephen Pelz, University of Massachusetts, Research Fellow, East Asian Institute, Columbia University.
David Pletcher, Professor of History, University of Indiana, President, Society of Historians of American Foreign Relations.
William Preston, Chair, Department of History, John Jay College, City University of New York.
Joseph L. Rauh, Jr., Attorney.
Robin Read, Sea Coast New Hampshire Clamshell Alliance.
Leo P. Ribuffo, Associate Professor of History, George Washington University.
Eugene Rice, Professor of History, Columbia University, Vice President for Research, American Historical Association.
Ron Ridenhour, Author.
Paul Roheson, Jr., Author.
John Rosenberg, Director, The Nation Institute, Advisory Committee on Freedom of Information, Organization of American Historians.
Natalie Schmitt, Associate Professor of Communications and Theatre, University of Illinois, Chicago Circle.

INDIVIDUALS—Continued

M. B. Schnapper, Public Affairs Press.
Daniel Schorr, Syndicated Columnist Radio and TV Commentator.
Martin Sherwin, Visiting Professor of History, University of Pennsylvania.
Ira Silverman, Director of Special Programs, American Jewish Committee.
Gaddis Smith, Chair. Department of History, Yale University.
Betsy Taylor, Director, Nuclear Information and Resource Service.
Athan Theoharis, Professor of History, Marquette University.
Ken Tilsen, Attorney.
Paul Varg, Professor of History, Michigan State University, Past President, Society of Historians of American Foreign Relations.
George Wald, Professor of Biology, Emeritus, Harvard University.
William Winpisinger, President, International Association of Machinists and Aerospace Workers.
David Wise, Author.
Lawrence Wittner, Associate Professor of History, State University of New York, Albany.

Senator HUDDLESTON. You don't object to that?

Mr. BERMAN. They are already in there. They are in the act. The Agency will have to admit that it works for the Agency. The public learns through a process of just what other lawyers and what other citizens have gotten under the act what the limits are. They want to change the FOIA just about the time when it's clear they could correct the perception problem by saying we have and can protect everything under this act today. I think they add to the problem by raising the Freedom of Information Act as the problem, when in fact it is not.

Mr. HALPERIN. Let me just add to that. I think we have not ruled out and indicated we would oppose any effort to clarify and make explicit the CIA's right to withhold certain kinds of information. The problem I think one has now with coming forward with alternative language is that, first of all, while the Agency is asking for a total exemption, if we start a negotiation with them asking for the Moon and the stars and the Sun and we propose what we think is a reasonable position, that is not a very useful way to begin.

Second, they are in a position where they feel obliged to attack that and say that it won't in fact accomplish the purpose. And since we are dealing here, they admit, entirely with perceptions I think it's important that if there is to be a compromise here, it's one that the Agency accepts so that they don't get in a position of saying no that won't accomplish the purpose and later find out that that is all they can get. I think language that clarified and made explicit their ability to withhold information that they received in confidence from confidential sources would not change the reality of the act but might change the perception. And since the Agency says that's what they're worried about I think language that clarified that reality might help them without reducing what we can get access to.

Senator HUDDLESTON. Senator Biden?

Senator BIDEN. I have a couple of questions. Gentlemen, in the responses to the questions that have been asked thus far there has been difficulty of distinguishing, at least in my opinion, between inquiry and investigation—even covert activities—or in defining hostile powers. What is a hostile power? And one of the things that strikes me is that I am not sure we can draw definitions that protect what we would agree to be the legitimate interests of the intelligence community and at the same time will not be subject to abuse by the agencies.

I thought that one of the purposes of the prioritizing of concerns by the chairman of the committee, beginning with prior notice and notification to this committee, was to design a framework within which we could deal with this inevitable and everlasting inability to make definitions that would, in all cases, serve as appropriate bases for both prohibitions and authorizations.

I, for one, think it might be better for us to concentrate on the specific areas that we think or believe are constitutional violations, if not absolutely, then arguably so. Apart from these areas we should rely upon the access to information that this committee would have as a consequence of the charters to see to it that we work out some of those other problems. For example, Johnson's decision to put someone in an organization that is visiting Hanoi would be more cautiously made if it were reported to the committee. I have great faith in the way the political process works if it gets an opportunity.

I have great faith that individual politicians, regardless of their persuasion and in what country they are located, operate from the same basic instincts. I am satisfied that if such a disclosure had to be made to a committee made up of people ranging from Joe Biden to Barry Goldwater and from Dee Huddleston to Jake Garn that it would have a very, very beneficial effect on the tendency of any President or director of an intelligence agency to initiate abusive projects. I am afraid that as we focus on the things that I would, in my pure sense, like us to write into the charter that we might lose it all. We really are faced, it seems to me, with the question of whether or not we are better off with a charter. I happen to take some exception to this particular charter proposal that I will mention later, but if we go the direction of the Aspin bill I think we may get possibly my vote, the two of yours if you run for Congress immediately and win, and Mr. Aspin's and a few others.

Let me tell you something, fellows, folks don't care. You keep talking about the people. The people sitting behind you are not the people. They are not—they do not represent the average American who couldn't care less right now about any of this. I mean there are few other than political activists or those involved in the area that have any inclination to impose greater restrictions on the intelligence agencies. There's not much of a base out there to go and appeal to. So, it seems to me that we really ought to prioritize these concerns and try to protect the highest ranking ones. You make the ideal case—and you should make it in order to push people like me and others to the best position from your perspective. But prioritize how you view, literally in order of priority, the concerns—the major concerns—you have.

Mr. BERMAN. Well, let me just suggest we are aware of where the people are.

Senator BIDEN. Well, obviously you're not. You keep talking about public concern. There ain't none.

Mr. HALPERIN. We think there's some.

Senator BIDEN. No, there's not, fellows. I wish there were.

Mr. HALPERIN. We think there is. It is clear that this is not an issue that rises to the level of inflation or even the draft.

Senator BIDEN. The draft is not much of a concern either, by the way. I just visited 17 college campuses—17 of them, from Yale to the

University of the Pacific—and in spite of the people who are marching out here, not 20 percent of the people on the campus cared about it. I mean, just so you know. If there were a referendum in my State or on the ballot nationally in this Presidential election that said should we unleash the CIA, more than half the people in America, without even knowing what unleashing meant, would say yes.

Mr. HALPERIN. There is an alternative possibility which I think ought to be given serious consideration, in response to what you have said; namely, what you ought to try to legislate in this Congress are the procedures and reporting requirements and oversight mechanisms, without legislating any standards for rights of Americans at all. Simply leave the designation of rights of Americans where they are in the Executive order and say let's put into place these reporting and oversight mechanisms. There are some provisions buried in the rights of Americans about notifying the Attorney General if political information is going to be gathered that we want to pull out and put there. I think that is a serious option that ought to be looked at. I think it would be a substantial step forward to get those in place. But we would prefer to do that and have no standards in the bill for rights of Americans rather than authorize standards which we think aren't permissible.

Senator BIDEN. Thank you very much, sir. That answers my question.

Senator HUDDLESTON. Thank you very much, gentlemen. You've been very generous with your time and we welcome any further comment or submission that you care to make as we proceed with these deliberations.

Mr. BERMAN. Thank you.

Mr. HALPERIN. Thank you very much.

Senator HUDDLESTON. The next witness is John F. Blake, president of the Association of Former Intelligence Officers. He will be accompanied by his legal adviser, John S. Warner.

Mr. Blake, if you have a statement you may proceed.

Mr. BLAKE. I do, Mr. Chairman.

TESTIMONY OF JOHN F. BLAKE, PRESIDENT OF THE ASSOCIATION OF FORMER INTELLIGENCE OFFICERS, ACCOMPANIED BY JOHN S. WARNER, LEGAL ADVISER

Mr. BLAKE. It is both a privilege and a responsibility for me, as president of the Association of Former Intelligence Officers—AFIO—to appear before this committee today to testify concerning the proposed National Intelligence Act of 1980. AFIO, as most of you know, is an organization composed of over 3,000 individuals whose collective experience encompasses all facets of the intelligence field and who have seen service in all elements of the intelligence community. Our membership is dedicated to the principle that an effective and responsible American intelligence service is vital to the security of the Nation. I say it is a privilege to testify before this committee as it addresses itself to one of the most significant governmental functions. This is so because this proposed legislation may indeed represent one of the most important undertakings to be dealt with by this committee during the decade of the 1980's.

Allow me first to make two general observations. AFIO fully agrees with the concept of statutory charters for intelligence agencies. Ours is a government of laws. The essentiality of the intelligence function to the preservation and survival of our Republic warrants its continuing statutory basis.

Second, I believe it most important that we have a shared understanding of the matter that is now before us. We have read, with some amusement, in recent days some descriptions in the press as to what this legislation would allegedly accomplish. Critics of U.S. intelligence claim that the bill would unleash or unshackle the CIA. We respectfully suggest that the bill as a whole would have quite the opposite effect on our intelligence institutions. We should like to point out that this bill contains a whole series of restrictions and proscriptions. A number of these limitations are currently contained in Executive orders, but we believe that carving all of them into the statutory granite of legislative enactment would shackle the intelligence effort as opposed to unleash it.

REPEAL AND REENACTMENT

We believe that today the intelligence activities of the U.S. Government are reasonably well defined by existing law and monitored under the watchful eyes of the two Select Intelligence Committees of the Congress. There have been statements by members of both committees to this effect. Where improvement and changes of the existing charters seem desirable, we strongly urge that we build on the past by amending those charters. In our judgment it would be a serious mistake to undertake a wholesale repeal of the major laws pertaining to the establishment, functions and authorities of the Central Intelligence Agency.

It is estimated that the bill before us reenacts some 80 percent of the wording of existing law but not always in precisely the same language. Our courts have had on many occasions to rule upon and interpret the existing statutory language and we stand not only to lose the benefit of this judicial guidance if the original language is not preserved, but also inherit the need to require new judicial determinations on what the new language means.

To say, as in section 411, that "There is established in the executive branch of the Government an independent establishment to be known as the Central Intelligence Agency" is to ignore 32 years of history, disregard facts, and create the opportunity for errors, mistakes and redundancies. Section 441(a) provides that all positions in CIA and personnel employed by CIA are transferred to the CIA. Section 442(a) provides that "no provision of this act shall be construed to limit or deny to the Agency any authority which may be exercised by the Agency under any other provision of applicable law existing on the date of the enactment of this act." These, and many other provisions, are clearly not necessary and accomplish nothing except to repeal current valid laws. We believe this to be an inappropriate approach, inconsistent with need and reality, and requiring a substantial volume of technical perfecting language which contributes nothing to clarifying intelligence charters, but opens the way to great risk of introducing ambiguities which do not now exist.

As further illustration of the opportunity for error in this wholesale repeal and reenactment approach, we point to the duplication occurring in subsections (12) and (13) of section 414(b) and (13) and (14) of 421(a). Section 414(b) provides that the Agency shall at 12 "perform inspection, audit, public affairs, legal, legislative, and other administrative functions" and at (13) "perform such additional functions as are otherwise authorized by this act to be performed by each entity of the intelligence community." In section 421(a) the Agency is authorized at subsections (13) and (14) the identical provisions, word-for-word, of subsections (12) and (13) of section 414(b). It is not necessary that this be said twice, and in fact a careful reading of these subsections leads to the conclusion that they are unnecessary in the first instance.

Let me now address myself to the two concepts of central intelligence and the concept developed in the bill of a Director of National Intelligence. In establishing a centralized foreign intelligence capability within our Government, the key concept always has been to structure an institution which transcends the competence of one or more departments and is independent of policy bias. Only by fostering this concept can our Government be assured of unvarnished collection, analysis, and dissemination of foreign intelligence information which is so critical to our national welfare. It is our belief that one of the major proposals in this bill presents a clear and present danger of undermining this concept.

This leads me to the provisions of title III of this bill which create, as an "independent establishment" over and above, and separate from, the other entities of the intelligence community, an Office of the Director of National Intelligence, as well as the positions of Director and Deputy Director of National Intelligence, a General Counsel, and up to five Assistant Directors of National Intelligence. The first three positions are subject to Senate confirmation; the latter five are simply Presidential appointments.

Two thoughts immediately come to mind. The first is that this unneeded superstructure, with predictable burgeoning staffs and its obvious bureaucratic layering, presents an inviting target for politicizing these appointments. Nothing could do more harm to this country's intelligence services and their morale. The second is the unclear and unstated purpose behind creating the Office of the DNI as an independent establishment.

The DNI concept was first put forward legislatively in S. 2525 and H.R. 11246 in 1978. In various forms, it had been considered by several DCI's for a long time, and was always rejected as impractical—largely because of the separation of the DCI from his CIA troops. Indeed, the bill itself demonstrates the unworkability of this concept. A number of provisions call for CIA to serve as the agent of the ODNI and for CIA offices and components to perform this function for the ODNI, as well as for CIA. Nowhere, in support of the present proposals, have we seen or heard any real support or rationale for this major restructuring of the intelligence organization which directly supports the President. Nowhere has there been any public explanation of how this change will enhance the capabilities of intelligence or improve its effectiveness. No administration witness has described its purported virtues. No administration witness has explicitly endorsed

it, except for the, at best, lukewarm comments by Adm. Daniel Murphy, Deputy Under Secretary of Defense. In testifying before this committee on February 28, 1980, and again in his testimony before the House Intelligence Committee on March 19, Admiral Murphy stated that the Defense Department found the formulation of DNI missions and functions "generally acceptable" and not "significant departures from the status quo." We do not agree with his view that it is acceptable, and his assertion that it is not a significant departure is highly inaccurate.

We note that in their testimony before the Senate Intelligence Committee on S. 2525 in 1978, former DCI's Helms, Colby and Bush strongly opposed the DNI concept. Similar opposition was voiced in the same forum by Mr. McGeorge Bundy, former Assistant for National Security Affairs to Presidents Kennedy and Johnson. In subscribing to Mr. Bush's position. Mr. Bundy noted that, if the DNI Office were created the DNI would find it necessary to build a new and considerable bureaucracy for himself and probably a new building in which to house it. We feel that creation of another organizational entity is redundant, inefficient and wasteful of taxpayer dollars. AFIO continues to recommend rejecting the DNI concept for which there has been no real justification from the administration or elsewhere.

One further point should be made in opposition to the DNI concept. Most of the key responsibilities assigned to the DNI under this bill are now assigned, by the National Security Act of 1947, to the Central Intelligence Agency—not to the DCI. Responsibilities of the awesome magnitude contained in title III should be placed within an institution rather than in the personal hands of a czar. The intelligence disaster of Pearl Harbor, which was the principal rationale which led to the passage of the intelligence provisions of the National Security Act of 1947, taught the American people the vital necessity for a central organization for intelligence—a concept as basically sound today as when President Roosevelt was considering similar plans for a peacetime intelligence system a week before his death in April 1945. An institution with no policy or parochial bias, and with access to all foreign intelligence available to our Government, serving a Director of Central Intelligence as the principal foreign intelligence advisor to the President—that was the concept, and that is CIA. While CIA and the intelligence community have had some growing pains, no wave of a magic legislative wand will create perfection. Certainly a DNI—an intelligence czar—is not the answer.

Thus we continue to recommend that the duties assigned to a DNI by title III be placed in title IV, with most of those functions assigned to CIA where they now are. Throughout the bill, all references to a DNI or his "office" should be eliminated.

Let me turn to guidelines and accountability. Guidelines for the authorities of intelligence agencies and the restrictions upon their activities should not be so detailed and precise as to foreclose prudent flexibility in meeting unforeseen future situations. A good example is the request of the Directors of Central Intelligence and the Federal Bureau of Investigation for two amendments to the Foreign Intelligence Surveillance Act of 1978. Even though that act deals only with a relatively narrow field, in the less than 2 years since enactment the DCI

states that "significant inadequacies in the act have become apparent." This point was made in the DCI's testimony before this committee on Februray 21, 1980. Director of the FBI, Judge William Webster, supported this request for amendments in his testimony before your committee on February 28. These deficiencies were not foreseen even by administration witnesses at the time the legislation was considered in committee.

Furthermore, in the last 3 years, a strong system of oversight and accountability has been established and is functioning effectively. All agree that this committee and its counterpart in the other House are key elements in that system. Executive Order 12036 and the Attorney General guidelines which have been issued pursuant to it, set forth rigorous standards of conduct for intelligence activities. The proper adherence to the Executive order and the Attorney General's guidelines is subject to congressional oversight. In addition, there is the President's Intelligence Oversight Board and the required external reporting by agency Inspectors General and General Counsels of any intelligence activities that raise questions of legality or propriety.

In the area of enhacing capabilities of intelligence, proposed legislation dealing with the intelligence community of the United States should set as its first priority those matters which will enhance the capabilities of intelligence. The bill contains three items which we strongly support: Modification of the Hughes-Ryan amendment; protection of agent identities; partial relief from the Freedom of Information Act. The administration in its testimony has presented a strong and compelling justification for these legislative proposals, and we do not propose here to repeat that testimony—but we do endorse its concepts. We do, however, wish to underscore the following points.

Concerning the Hughes-Ryan amendment, repeal of the requirement to brief seven or eight committees of the Congress on covert action is long overdue. Notification only to the two Intelligence Committees is clearly appropriate, but it should be limited to those two. A flat requirement for prior notification raises the constitutional question of Presidential prerogatives. We believe that the "timely fashion" standard found in current law is a reasonable reporting threshold, responsive to the constitutional requirements of both the legislative and executive branches.

Partial relief from the Freedom of Information Act is clearly warranted. We endorse the language proposed by Director Turner in his testimony before this committee on February 21, 1980. It would afford partial relief to all intelligence entities while preserving the rights of an individual to seek records pertaining to himself as well as access to finished intelligence.

Questions have been raised whether the de novo court review position should be changed. This provision was unconstitutional when proposed, and we still believe it is. President Ford vetoed this legislation on this specific point, stating in his message of October 17, 1974:

> The courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise. Such a provision would violate constitutional principles, and give less weight before the courts to an executive determination involving the protection of our most vital national defense secrets than is accorded determination involving routine regulatory matters.

We concur in that statement and recommend that the de novo review provision be amended to provide only for a court review as to arbitrary or capricious action, that is, an abuse of discretion.

We fully support the strong case which has been made to provide criminal sanctions for the disclosure of identities of agents, sources, and informants. In particular, we support H.R. 5615 which was developed by the House Permanent Select Committee on Intelligence after intensive study and review. There are always those who will view such a bill with alarm and seek modifications to pull its teeth and render it less effective. Such alarmists will draw technical and strained hypothetical examples rather than forcefully deal with the realities of those who willfully disclose identities.

In addition, sadly there are those who deliberately disclose identities with the avowed purpose of destroying U.S. intelligence or rendering the activities of such agents less effective, with complete disregard for the personal safety and potential hazard to those they identify. In our judgment, the identities provision both in this bill and in the version proposed by Director Turner before the Senate committee here on February 21 is most inadequate. For example, the damaging identities disclosures by publications like Covert Action Information Bulletin would not be proscribed and made a crime by the provision of this bill because there would have to be a determination whether any of those in the disclosure chain had authorized access to classified information, or whether the disclosure itself is based on classified information. We all know that press publication of classified information cannot be, and has not been, effectively investigated. This is so because of the great political risk to any administration to use compulsory process against the press. To use formulations, as does this bill, that depend upon the elements of authorized access or knowledge based on classified information simply pass the buck to the Department of Justice as an investigative problem. We have seen over recent years that publication of classified information has not been effectively investigated. We believe the issue should be faced head on as the House Intelligence Committee has done in proposing H.R. 5615.

There are other, perhaps less significant, provisions in this bill which we would like to touch on briefly.

(a) The death gratuities provision at section 431(b)(4)(A) has been justified on the basis that CIA employees abroad are in a similar situation to Foreign Service officers abroad, and that death in the performance of duty fully warrants the provision of a death gratuity for the surviving family. We support this provision but note that payment for CIA cases is conditioned upon a determination by the Director that death "resulted from hostile or terrorist activity" or "occurred in connection with an intelligence activity having a substantial element of risk." That condition does not apply to the Foreign Service, and we believe it unwarranted. We would recommend its deletion.

Section 424, which authorizes the Agency to request other intelligence entities to undertake authorized intelligence activities, to receive assistance from Federal, State, and local law enforcement agencies, and to provide and receive technical guidance, training, and equipment is a most useful clarifying authority which we support.

The clarification in section 421(h) of the authority of CIA personnel to carry firearms while in the performance of their official duties will be most helpful to the Agency, and we support this provision.

Authorization for the Director of CIA to accept and utilize gifts and bequests for artistic or general employee or dependent welfare or education could be most helpful, and we support it.

The provisions in section 421(i)(3) and in section 621(g)(3) that a CIA or NSA employee who has been terminated from Agency service may seek employment in the competitive service if declared eligible by the Office of Personnel Management and that OPM consider such employee in the same manner as if transferring between two positions in the competitive service. These provisions could be of material assistance to separated employees and we so support them.

Let me now speak on disclosure of information. The wording in section 142(a) provides that the two Intelligence Committees shall be kept fully and currently informed of all intelligence activities. Does this mean that when an agent is recruited, there shall be a report? We don't think that is what is intended, but the word "all" is there. We question whether it is wise to put into law that which is not intended. We would suggest reference to programs and major activities, but drop the word "all."

Additionally, section 142(a)(2) provides that the intelligence entities upon request will furnish "any information or material" in the possession, custody, or control of intelligence entities or "of any person paid by such entity." The mere fact of payment to a person—who is not even necessarily a U.S. citizen—doesn't mean that an intelligence entity necessarily can mandate turnover of information or material by such person to the two committees. Why, in this proposed law, put on intelligence a requirement it manfestly cannot meet? Furthermore, let us look for a minute at the requirement of furnish "any information or material."

A committee could request a list of all agents, a list of employees under cover and the specifics of that cover, a list of all American corporations cooperating with intelligence, or a compilation of drawings and specifications of all technical equipment used to collect intelligence. Some will say no committee would ever ask for such things—but if a request were made, the law requires compliance. We believe that in all likelihood no such unreasonable requests would be made. But why, again, cast in statutory concrete a requirement that would force a confrontation in response to an unreasonable request? We recommend that section 142(a)(2) be redrafted accordingly.

We now turn to section 143, which provides that the two Select Intelligence Committees have the authority, first, to give any such information to any other member under certain security safeguards; and, second, to disclose such information publicly, subject to existing Senate and House resolutions which require a vote by the Senate or House, as the case may be, on the issue of disclosure by the Senate or House Intelligence Committees. This law in effect says to intelligence: Report everything and furnish whatever is requested, and the select committees may publicly disclose it, subject to their governing charter resolution, or allow any other member or committee to see it. There

is a U.S. Constitution, and, as the Supreme Court has interpreted its provisions, there are reserved to the President certain prerogatives and responsibilities—and one of these is the right, in certain areas, to protect from forced disclosure, information which he determines must remain secret in the interest of national security; nor does the Supreme Court assert the authority to override such a Presidential determination. Section 143 strikes us as both unconstitutional and unwise.

It may be said that the two Intelligence Committees will not be unreasonable in asserting their proposed rights to all and any, and that they will act cautiously and wisely in exercising their proposed right to pass on sensitive information or to disclose it publicly. But there comes to mind most vividly the incident of the Pike Committee on Intelligence in September 1975, asserting the right unilaterally under the House rules to publish certain classified information, and over the vigorous objection of the Director of Central Intelligence and the President, in fact publishing some of it. What happened? The President personally directed that no more classified information be passed to the committee until some understanding was reached. An agreement was reached which, in effect, provided that any item which the committee wished to release over the security objections of intelligence would go to the President for his personal approval to publish, or certification that it was not in the public interest to publish. Later, using the specious argument that such agreement applied only to executive branch documents, the Pike committee sought full House approval to publish its report which contained substantial quantities of classified information. The full House rejected this ploy, saying that it would honor its understanding with the President.

Today, as we understand it, the two Select Intelligence Committees are getting the information from intelligence they need to accomplish their oversight responsibilities. Why attempt to put into law that which is not needed, and that which may be unconstitutional?

A few comments on the Foreign Intelligence Surveillance Act of 1978 amendments. Let me now discuss the question of extraordinary techniques, which are defined in section 202(b)(5) of title II of this bill to mean electronic surveillance and physical searches directed against a U.S. person abroad. Title II states that such techniques shall be prohibited except pursuant to court order. Elaborate procedures and guidelines are provided dealing with the circumstances of applications for an order from the court established under the Foreign Intelligence Surveillance Act of 1978. These procedures, in at least one instance, require that the approval of the collection of foreign intelligence by covert techniques directed against a U.S. person be based on a Presidential finding—with no provision for delegation to a lower official.

The laws of most countries prohibit electronic surveillance and physical search under penalty of criminal sanctions, and here we have the most startling proposal: that the Congress convey authority upon our judiciary to approve acts by the Executive in violation of those foreign criminal laws. I am sure many countries of the world would consider this the supreme arrogance. We are fully aware that the Congress approved in 1947 the conduct of espionage abroad by CIA, but the words were not specific, and the judiciary was not involved.

The next consideration is whether it is appropriate for the judiciary to approve or disapprove the collection of such foreign intelligence by an agent of the Executive. This is an area appropriately within the powers of the Executive under our Constitution. The purpose of the judiciary is to resolve controversies, not to monitor or grant approval to the Executive in carrying out its intelligence responsibilities. A far more accountable procedure would be to leave such authority with the President within the framework of reporting to the two Intelligence Committees. Accountability is thus accomplished, where under the proposed procedure it is left entirely in the hands of the judiciary with no accountability. The occurrence of such cases is so rare that the burden on the Presidency would be insignificant.

As stated earlier, Director Turner and Director Webster in their testimony recommended amendments to the Foreign Intelligence Surveillance Act to assist intelligence more effectively to fulfill its mission. There are two other provisions of this act—FISA—which in our opinion should be modified.

Under the banner of protecting the rights of Americans, two extraordinary provisions were included in FISA which improperly insert the judiciary in the very conduct of clandestine intelligence collection activities of the Executive. These are the requirements that there be judicial approval of a warrant prior to instituting electronic surveillance targeted in the United States against a foreign embassy or a foreigner who is an agent of a foreign power. Such requirements are a clear unconstitutional invasion of the powers vested in the President by the Constitution. The courts have repeatedly held that the conduct of foreign intelligence activities is a matter with which they are ill equipped to deal and is reserved to the executive branch.

FISA authorizes judges to approve such warrants—but by the same token they are granted the authority to disapprove. To give a judge the authority to disapprove a request by the President to wiretap the Soviet Embassy is mind-boggling and a clear distortion of powers granted by the Constitution. No one has yet proposed, and there are no statutory restrictions on the authority of the Executive to conduct these types of activities abroad. What is the difference whether the target embassy or foreign agent of a foreign power is abroad or is in the United States? We submit there is none and should be none.

To those few who might argue that there may be inadvertent overhearing of an American, the answer is that the rights of Americans in such a situation are adequately protected by the minimization procedures discussed in the bill.

There are those who might assert that the Executive would target an American under the pretext of wiretapping a foreign embassy. A court-approved warrant would not prevent this, but in any event such an assertion is not worthy of countering.

It was improper to have pushed the judiciary into the role of what some have called the "Imperial Judiciary." We believe FISA should be amended to remove these errant provisions. We see no diminution of the rights of Americans by doing so. The improved security of this most sensitive type of intelligence activity will bolster the overall effectiveness.

Yet another area in which we propose an amendment to FISA is to authorize applications for court-approved warrants for wiretaps

and physical searches targeted against Americans in the United States. Present FISA provisions do not permit such action to collect positive foreign intelligence as now authorized by FISA for collection of counterintelligence. If vital intelligence can be secured only in this fashion, such a target should not be denied by law.

There are, Mr. Chairman, just a few miscellaneous provisions on which we would like to comment.

Section 232 creates a new cause of action for civil relief against intelligence personnel. We strongly oppose this section on the grounds that the criminal penalties are sufficient. Intelligence employees should not be subject to many of the frivolous civil suits constantly being filed, and certainly an invitation should not be extended by creating a new cause of action. This section serves no constructive purpose, contributes nothing to the capability of intelligence, tends to encourage harassment of intelligence employees, and we strongly urge it be deleted.

Sections 134 and 135 address themselves to individuals or entities either doing business with, or acting in support of, an element of the intelligence community. We believe that that part of section 134 which states that the Attorney General must approve procedures which conceal from a purveyor of goods or services that the purchaser is an element of the intelligence community is a usurpation of the responsibilities of the Director of Central Intelligence for the necessary security of operations, and an imposition of unnecessary bureaucratic procedures. We recommend that it be deleted.

As to section 135, it could be read to imply that, if any contemplated act by an intelligence community entity cannot be legally accomplished by such entity, then that element for all practical purposes, cannot even hear discussions of the matter from anyone else, including foreign governments. We cannot insist that foreign organizations conform to U.S. legal standards, and we are apprehensive over the possibility of placing intelligence employees in a position where they must so insist to the detriment of their assigned responsibilities. It is recommended that section 135 be deleted.

Section 423 and section 507(b) are good examples of proposing laws that are not needed and creating reporting requirements that serve to fill no need. For example, one would permit establishment and operation of proprietaries. These provisions are not required as a legal matter. The provision that funds in excess of operational needs be deposited as miscellaneous receipts into the Treasury is basically a repetition of existing law, supplementing an appropriations statute. To require reports on liquidation of proprietaries to the two Select Intelligence Committees deals with no known problem.

Section 132 is another example of undesirable statutory inflexibility. It would prohibit the use for cover of intelligence employees of any U.S. religious, media, or educational organizations or exchange programs. Relationship in this area are governed by Executive order and internal regulations and are generally prohibited, but provision is made for waiver under special circumstances. It is our view that there should be no such blanket prohibition in statute. While such cover use should be kept to an absolute minimum, circumstances are conceivable in which such cover would be the only means available to the Govern-

ment in a situation of the highest urgency and national importance. The appropriate way to deal with such situations is through internal guidelines which would be available to the select committees. Thus, we oppose this section.

Section 145 provides that all funds appropriated to entities of the intelligence community, including all activities, shall be subject to financial and program management audit and review by the Comptroller General of the United States. This amounts to a repeal of confidential funds authority which provides for accounting solely on the signature of the Director of Central Intelligence. This authority has been available to Presidents beginning with George Washington. It is this authority which lies at the core of the ability of intelligence, and particularly CIA, to mount and conduct espionage, counterintelligence covert action and other sophisticated technical collection operations. To permit massive intrusion of the GAO into the very heart of clandestine programs in order to conduct financial and program management audit and review would be a serious mistake. Furthermore, there have been no demonstrated deficiencies which this proposal is designed to correct.

We support section 443 which provides assistance in the area of security by providing criminal sanctions with respect to misuse of the name or initials of CIA. This raises a matter, however, of much greater significance. There is no law on the books today which effectively provides criminal sanctions for the unauthorized disclosure of intelligence source and methods. It is ironic that there are at least 30 provisions of law which provide criminal penalties for the unauthorized disclosure of information in the hands of the Government.

Some examples are: insecticide formulas, agricultural marketing agreements, crop information, confidential business information, bank loan information, income tax information, shipping information, selective service information, and numerous others. In the absence of such a law as to sources and methods, current employees and former employees and others in a position of trust can reveal such information with impunity. After many years of research and drafting, such a proposed law was sent to the Congress by the President on February 18, 1976. That law would apply only to persons who have had access to information concerning sources and methods as a result of their being in a position of trust by virtue of being a Government employee or an employee of a contractor with the Government. All media personnel would be excluded. We believe your responsibility to protect intelligence and make it more effective is just as great as your responsibility to assure that intelligence is properly accountable.

We believe it is unwise, in another area, to authorize entities of the intelligence community to conduct counterterrorism activities as defined to include "activity undertaken to counter or protect against international terrorist activity"—section 103(5)(B). Collection and analysis of intelligence concerning international terrorist activity is one thing. Active countering of such activity is another. The former is an inherent part of intelligence and counterintelligence collection and analysis and need not be singled out in legislation, despite its current importance in world affairs.

The latter involves aspects of law enforcement, internal security and physical security of the public. As in the narcotics area, entities of the intelligence community should collect and analyze intelligence, but their roles end there. The action to be taken, be it apprehension of terrorist or physical security measures, is for other than intelligence collection and analysis entities. Counteraction against international terrorism in the United States would be a proper role for the non-intelligence elements of the FBI, the local police, and the military, as appropriate; and abroad the responsibility rests with the authorities of the nation involved. All references in this bill should be adjusted accordingly.

AFIO believes there is a need for authority for wartime waiver of many of the provisions of this bill in time of war or under circumstances covered by the War Powers Resolution. To this extent, we support the testimony of Director Turner to this committee on February 21, 1980, on this subject. His position in this matter also received the support of the Defense Department as represented by the statement of Admiral Murphy in the same forum on February 28.

Title VI, which provides a statutory basis for the National Security Agency, would also by law extend to it certain administrative authorities which are now, or by provisions of this act, available to certain other elements of the intelligence community. We support the granting of these authorities to the National Security Agency, but suggest that it may be possible in some cases to accomplish this hy a delegation from the Secretary of Defense.

Mr. Chairman, AFIO has developed its recommendations to you today only after considerable thought and extensive work. Our goal is to present you the most carefully thought-through recommendations, based on our considerable experience in the field of intelligence. Above all, we have a deep reverence for the law. Under our political system, the policies, concepts, words and phrases that become law result from a most arduous process. When circumstances require, changes are, of course, in order. But a similar arduous process should take place when amendments are made. A wholesale repeal is repugnant where detailed deliberation has not been given to provisions suhject to repeal. We particularly can see no rationale for repealing everything and theoretically starting with a new slate, while trying to reenact much of the repealed legislation, rather than amending existing legislation as needed, the more usual approach.

In addition, the several years of effort to develop new legislation has not produced any evidence that such legislation alone, with its rearranging of the intelligence organizational structure, will produce better intelligence for the Nation.

Our study and analysis, then, leads us to three firm conclusions: (a) The intelligence function of the U.S. Government today is hased on a firm foundation of control and oversight by both the executive and legislative hranches of government. The existence and active participation of oversight committees in both Houses of Congress; the issuance of Executive orders specifically defining responsihilities and authorities by two successive Presidents; the active participation of the Attorney General as a point of approval for many intelligence procedures; the establishment of special Federal Courts as approval

authorities before certain selected techniques may be utilized are accomplished facts. I would suggest, Mr. Chairman, that the perimeters established by the executive and legislative branches for the discharge of the intelligence function are perhaps more tightly drawn today than those existing for certain other governmental functions.

(b) There are problems in existence today calling for solution. While some of these solutions are found in the act we address today, that act is so complex, so lengthy and to a degree so controversial in some of its content, that early passage is difficult to forsee. Yet there are urgent problems here which demand solution now.

We then believe the logical course of action is to meet the urgent problems of today and leave to another time the drafting of additional legislation which, while perhaps desirable, will only impede the passage now of that which is demonstrably necessary. It is our considered judgment that this can be most efficiently and expeditiously accomplished by the passage of amendments to the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. It is that course of action that is recommended to you.

That completes my statement, Mr. Chairman. We're available for your questions, sir.

Senator HUDDLESTON. Thank you very much, Mr. Blake. Your view of the present act certainly conflicts with that of Mr. Colby and others who feel that we passed an act in 1947 when we didn't have any clear idea of what intelligence operations in this country ought to be and that perhaps now we are better able to grant the proper authorities with the appropriate scope than we were at that time.

Mr. BLAKE. I had an opportunity last evening to read Mr. Colby's statement that was given yesterday. I am not so sure, really, that there are major differences of opinion. We address ourselves in this statement to certain things that in fact have not been brought up by previous witnesses before. But like Mr. Colby, who as I mentioned in my statement testified against the DNI concept in 1978, we testified against it today. Like Mr. Colby, we believe in charters. I think in the main we probably have more in agreement than we have in disagreement.

Senator HUDDLESTON. Well, we don't do in this charter what Mr. Colby objected to in the DNI concept; we don't split the Director of Central Intelligence or the Director of National Intelligence away from the CIA, which was Mr. Colby's major concern. We make it permissible as a reorganizational plan somewhere down the road if the President considers it to be necessary, but we don't do it here.

Mr. BLAKE. Mr. Chairman, as I understand the appropriate title, the bill first reads—and it's a little confusing quite frankly. It says the President shall appoint the DNI as the executive head of the CIA and it goes on with the next following sentence. At the pleasure of the President, the executive head of the CIA can be either the DDNI or one of the five assistant DNI's. That's my understanding of the bill, sir.

Senator HUDDLESTON. Yes; we give the President the authority to reorganize.

Mr. BLAKE. Or it could be the DNI or one of six individuals.

Senator HUDDLESTON. He can set up a separate Office of DNI.

Mr. BLAKE. Yes, sir.

Senator HUDDLESTON. In our early considerations there was a considerable amount of interest in the concept of a DNI who was not head of CIA. But we didn't embrace it totally. We just left it as a possibility. We might have a DNI who is not tied to any one of the elements of the intelligence community and presumably, then, would be much freer to have an independent, unbiased viewpoint of what intelligence analysis ought to be. Several pages of your testimony—if you'll excuse me—seem to be rather nitpicking. Those dealing with the organization of the Director of National Intelligence, his positions, the appointment procedures, and whatever are included at the executive's request.

Mr. BLAKE. You are referring to our comments on the establishment of the Office of DNI?

Senator HUDDLESTON. Yes, yes. Essentially about the first four pages of your testimony.

Mr. BLAKE. Well, sir, whether they are nitpicks or not I suppose is a matter of judgment. I would point out to you under the situation that exists today the DCI is authorized three deputies to him as DCI and there are four deputy directors of the Central Intelligence Agency.

Now I do not know nor does the bill show, nor have I heard witnesses testify what is the role of these new five Assistant Directors of National Intelligence. Do they replace? Do they supplement? What are they responsible for? I would consider these, sir, observations of substance and not particularly made in a nitpicking fashion, which I assure you they were not. We've heard no testimony to date whatsoever, with the exception of the brief testimony of Dan Murphy, who said in general, you know, it's acceptable to DOD. I have not heard the case developed as to what the efficiencies will be, what the increased quality in the intelligence product will be, by developing an independent establishment—which is a legal entity by the United States Code. I do not understand what is going to be brought about by it. And I would point out in title I, the second finding in your bill, "the collection and production of intelligence shall be conducted in a manner that avoids waste and unnecessary duplication of effort within the intelligence community." I, for one, find it hard to find a decent judgment for the DNI until I hear it developed.

Senator HUDDLESTON. Well, what we are looking for is better organization and better authority and the Director of Central Intelligence has, presumahly, had the mandate and the authority to coordinate all the intelligence activities of the Government. They've not, in fact, had that authority.

Mr. BLAKE. That authority is found in the National Security Act of 1947. That is correct.

Senator HUDDLESTON. But it has not been an effective kind of authority. And what we were looking for was giving greater authority of coordination to the Director of National Intelligence. He would continue to be head of CIA unless the President decides to the contrary, but in any case, he would have tasking authority. He would have some authority dealing with the budgets for the various elements, which he has not previously had. And consequently, without that authority, has not in fact been able to be a coordinator of our national intelligence.

Mr. BLAKE. He has not had that authority by statute and tasking of budget control, sir. He—whoever has been the DCI has had that au-

thority since the first Executive order was issued in 1976—11905—which gave budget authority. And the current Executive order—12036—issued by the current President gives the tasking authority. But what you would do, I assume then, is reflect it in statute.

Senator HUDDLESTON. You know, we came to the conclusion that there were probably ways to improve both the effectiveness and the organizational structure of our intelligence community.

Now one of our big problems, of course, as you know, is the question of congressional oversight. You laid great stress in the intelligence committees as the means of assuring that we have accountability and whatever. And I think we have an important role to play in that. Our present position is that we need to be fully and currently informed, that we need to receive notice prior to the initiation of covert activities. What is your position on that?

Mr. BLAKE. We've given that matter a great amount of thought, Mr. Chairman, and I would like to take a couple of minutes to raise a proposal today, if that is appropriate.

Senator HUDDLESTON. All right.

Mr. BLAKE. From what testimony—statements—I have read and from the press reports I have read, it's obvious a point of some difference between the administration and this committee and the House committee and that is the matter of prior, as opposed to timely, notification. I noticed with great interest the sentence contained in the statement given by Admiral Turner before the House Committee on Intelligence on March 18, 1980, on this very issue. I'll quote this sentence, but as I read the sentence two or three times I also thought of a provision that is found in S. 2284. I wondered if you might perhaps have the seeds of a resolution of that problem.

Testifying on the issue of prior versus timely notification, Director Turner said:

> The Administration would have no objection to making clear in legislative history that in practice notification would almost always be given before implementation.

Now that strikes me as rather a strong statement and also strikes me as being based on a reciprocal amount of good faith between the two elements of government. But as I read it I was mindful of a provision in S. 2284 which is somewhat of an analogous situation and it's found on page 34 of the Senate bill. And it is in that provision that suggests GAO should be authorized under committee guidance—sponsorship—to run program and financial audits.

But, after developing the case, the bill states:

> Notwithstanding the foregoing provisions of this subsection, the Director may exempt from any such audit and review any funds expended for a particular intelligence activity and the activity for which such funds are expended, if the Director (a) determines such exemption to be essential to protect the security of the United States and (2) notifies the House Permanent Select Committee on Intelligence and the Senate Select Committee.

Now here in the bill itself—2284—you are mandating a cause of action to put GAO in, but yet on the basis of some exception you give the Director a bit of latitude. And I have no idea what Admiral Turner had in mind when this language was formulated. But it seems to me, again, it's rather powerful language. The administration would have no

objection in making clear in legislative history that in practice notification would almost always—almost always—be given before implementation.

Now I would respectfully suggest that some pursuit of those two points may lead to a resolution of what could appear at the moment to be an impasse.

Senator HUDDLESTON. Would you agree that most covert activities would be revealed to the committee in advance?

Mr. BLAKE. I would agree to that—that most, not all.

Senator HUDDLESTON. Can you give us any idea of what kind of circumstances would cause a delay?

Mr. BLAKE. I'm not sure, sir, that it would be appropriate to do that in this forum. I'm just not sure it would be, and I'm sure you understand my point. I certainly think, in this day and age, all of us can conjure up in our minds a set of circumstances where it might be better to allow the matter to proceed and, on the basis of understanding, as I understand it, since the committees were established, for timely notification. The basic position we take is that we believe the system to date has worked well, which, as I understand it, has been on a timely notification basis—not prior.

Senator HUDDLESTON. It's been prior, I would say, generally in every case.

Mr. BLAKE. But I believe the determinations that have led the executive branch—and perhaps there have been differences there with the legislative branch—has been timely notification. At least that is what I understand was the position taken by the Department of Justice.

Senator HUDDLESTON. Hughes-Ryan calls for timely.

Mr. BLAKE. That is correct.

Senator HUDDLESTON. Executive Order 12036 and Senate Resolution 400 call for prior and as a matter of practice, they have advised us in advance except for one exception.

Mr. BLAKE. Well, it seems to me that enhances the position taken by Director Turner in his testimony before the House (and perhaps I'm more impressed by my background, sir, than you are by your legislative) with he appealing to the legislative history whence, as I understand what legislative history means, I have always been taught that if you go to the hearings and see what was the intent of things then you have a better understanding of the law itself.

Senator HUDDLESTON. I might point out, too, that in the law itself we refer to the President's constitutional rights to act——

Mr. BLAKE. I am aware of that.

Senator HUDDLESTON. Without any prenotification or anything else in case of emergency such as an attack on the United States. I presume that would require him to make some findings that it was indeed an emergency and I can see situations that might be considered something less than a national emergency that it might cause some concern. We do recognize the constitutional rights of the President and so state in the bill. So we have taken the position up till now that the prior notice does not, in fact, infringe on the President's constitutional right, because we specifically say in that section, in that sentence, that his constitutional rights are protected.

Do you see any advantage at all, as some other members who have been closely involved with the intelligence community have indicated,

that the idea of having legislative charters, offers some advantage to the intelligence community by taking it out of the limelight, by letting it get on with its job of collecting intelligence without every action being questioned?

Mr. BLAKE. Yes; first of all, as we said in the statement, we believe charters are very much in order, indeed necessary. We believe we started with a charter in 1947. You may have now, Mr. Chairman, identified a point of difference between me and my good friend Bill Colby. I think Bill took the position: Let's get charter legislation passed and get it behind us. I hope I faithfully reflect what he said in his statement, but I believe that was the intent of it—let's do it and get it over with.

I would add the old saying, let's not make haste and, you know, repent at our leisure. I would have to agree with our colleagues who preceded us at this table from the ACLU that there may be more discussion in this bill so all concerned could understand some of the provisions of it may be a contribution to the ultimate—to the passage of what the real world will allow as the best bill. I was impressed with the words of your colleague, Senator Biden, that there may be some real problems with passing charter legislation at this time, et cetera. But, you know, as we mentioned in the statement, Mr. Chairman, whatever the abuses, real or perceived, may have been that came out in 1975—and I would have to say in all fairness most of them were delivered on a silver platter to the Church committee and not developed. They were delivered by the Agency. They went through a great self-examination. Great progress has been made since then—the existence of your committee and the counterpart committee, the position and the role of the Attorney General, the establishment of two Executive orders—the second being more severe than the first, I might hasten to add. I think it would be foolish to rush into charters "just to get it behind us." And I would stand on the recommendation that we in AFIO make, and perhaps others will, that if there are instant problems today that should be solved today. We would urge you gentlemen to give consideration to amending the laws that are on the books—the acts of 1947 and 1949—and do it that way and not try to take care of other problems by pushing through a piece of charter legislation without the most thorough deliberations.

Senator HUDDLESTON. Well, you would have a hard time selling some of us that this has been a hasty decision or a hasty process.

Mr. BLAKE. Sir, I understand that quite well, Senator Huddleston. I have great respect for the way you have applied yourself. But S. 2284 did come up over the horizon a little bit more rapidly than S. 2525 did. I believe.

Senator HUDDLESTON. Well, not really. Negotiations on S. 2284 started right after S. 2525 was introduced and have been going ever since.

Mr. BLAKE. But the noise level then came up.

Senator HUDDLESTON. The noise level, you're right. Which brings up an interesting situation. Now, as we receive public comments, as we are doing now, I think you can see the difficulty that we are going to have and any charter legislation is going to be very difficult. And any legislation dealing with the specific types of operations. There is a wide divergence of viewpoints.

This bill represents a pretty thorough distillation of opinion. On the one hand, we had S. 2525, which was almost a purist standpoint. Certainly looking at it from your perspective and from the perspective of the operatives within the Agency, it was about as far as you could possibly dream of going. And we purposefully put everything but the kitchen sink in it to get it all out on the table. But then you look at where we are now and this has come about by very intensive meetings with the people who are actually operating the intelligence community.

And we have tried to take their objections and accommodate them—that is a bad word to use, I know, because there are those who think we've done too much accommodating—accommodate them to the reality of operating in the world as it is. And I don't know how you could ever, even with another year or 2 more years, resolve these problems much further.

Mr. BLAKE. I don't know much either, but I am intrigued by your use of the word "accommodating." I am not so sure that accommodating is necessarily a bad thing, if it is an acceptable accommodation to both people. And if you take the issue that we just had our dialog on a few moments ago—you know, prior as opposed to timely notification—it would simplify it. It would seem to me the essence—what would be best for this country—if all parties to the issue would find an acceptable accommodation and avoid a confrontation. It seems to me that is the way progress is made.

Senator HUDDLESTON. That is what we have tried to do, and we've gotten that far.

Mr. BLAKE. Well, there's much that's good in the bill and much we've favorably commented on in our statement.

Senator HUDDLESTON. Let me ask you this. In looking at this bill, what legitimate intelligence objective would be foreclosed by this legislation?

Mr. BLAKE. I would have to put in two or three elements to be able to answer your question—some positive and some negative. If some accommodation on the use of the word "all" cannot be reached, if some relief on the matter of FOIA cannot be extended, if some changes to the Hughes-Ryan amendment—the Foreign Assistance Act of 1974—cannot be made, the furtherance of the successful discharge of the intelligence mission will be prejudiced.

Now, much was said by the previous witnesses——

Senator HUDDLESTON. Of course that is all in the bill.

Mr. BLAKE. Yes, sir. But the point is it is in both a positive and a negative point of view. From a positive point of view you do have in the bill, I think, legitimate relief from the provisions of the amendment to the Freedom of Information Act and—forgetting the prior or timely notification discussion—proper changes to the Hughes-Ryan amendment. But from the other point of view you have in the bill the use of the word "all" and "any" in reporting information to the intelligence committees. So you have, if I may use the words, two positive things—relief from FOIA and some relief from the current strictures of Hughes-Ryan—positive development. The use of the word "all"—and as I have read the discussions and the testimony—I think it is a negative thing because it is going again to enhance that perception that the previous witnesses talked about.

Senator HUDDLESTON. What is the real problem with that?

Mr. BLAKE. The real problem is the word "all." Perceptions mean many things to many people and I think one has had to be on the firing line. One has had to have had contact with citizens of other countries who are willing to be helpful to this country but want the utmost possible guarantee that their participation in this cooperative arrangement will be held to the absolute minimum number of people subjected to that intelligence person or discipline. And that is the perception. And sometimes the perception, you know, is worse than reality.

I don't know why it's necessary. I'm sure you have your reasons, sir, and I respect that. But I don't know why it is necessary that the word "all" be in the edict that says everything must come to the committee. It would seem to me—again in the essence of things—there can be some understandings. But, you know, these are public laws.

Senator HUDDLESTON. We do have, as a matter of fact. And we've never asked for all.

Mr. BLAKE. Sir, I understand that.

Senator HUDDLESTON. But not to have that authority to ask for all would, in my judgment, really diminish the oversight capability of the committee. There may be times when there is an infraction that would require us to ask for all information. And we have done that in an instance or two.

Mr. BLAKE. But the word "all" has not appeared in legislation, I believe. Am I correct in that, sir?

Senator HUDDLESTON. I'm not certain of it.

Mr. BLAKE. And members of both committees, sir, the Senate and the House committees, have addressed themselves as to how well the oversight responsibility is being discharged. And maybe the solution to the problem is to wait until the reality of a problem presents itself.

Senator HUDDLESTON. Well, that has been a consideration. We have such good relations that we can handle these things generally as they come up. But if you are trying to put into law accountability and oversight responsibility it seems to me you can't afford to leave a big loophole that would allow the agencies or the administration to determine what we need to know to carry out our oversight responsibility. That is the determination that is inherent to the body that has to carry out the oversight responsibility.

Mr. BLAKE. I understand that and I don't disagree. The only suggestion I make is that in the absence of the problem maybe one could be manufactured. If one came up with a solution to a problem that has not as yet existed how long would it take to pass the law if the confrontation came out? I know you know much better than I do. But a subsequent piece of legislation could button that up, it seems to me.

Senator HUDDLESTON. It seems to me that your concern about this law being unduly inhibitive is not on what it restricts them from doing, but the perception that it may give to cooperating agents or cooperating countries. Is that fairly accurate?

Mr. BLAKE. Not necessarily. First of all, I would have to start from the premise, Mr. Chairman, that the perception problem is a real problem. And I do not believe that you can educate people away from that problem. I just do not agree with that philosophy that I heard espoused here earlier this morning. There's a real perception problem.

No. 2, within the law itself I think there are—within the draft legislation, I think there are two or three real problems. We had talked earlier in our dialog about—on the matter of constitutionality and who is responsible for them. I grant you the words appear in the law. In the final analysis, I suppose, if a confrontation came between the Executive and either body here it would be up to the Federal judiciary to make the determination. I think there are two different points of view on this whole matter of the powers reserved to the President.

The matter of "all" is a real fact of reality. It is not necessarily a perception. From the entire point of the law itself we obviously have disagreements with the establishment of something called an Office of the Director of National Intelligence and an "independent entity," which as I mentioned earlier is a legal entity defined in the United States Code—it's a separate office, a separate element, a separate establishment. We do not understand what greater efficiencies will flow from and all that great qualitative work would come out of the intelligence community by breaking the system that has been in existence since 1947 and received great thought—some 2 years of thought—before the National Security Act was enacted. We have not heard the case developed.

Senator HUDDLESTON. Would you simplify or relax the requirement for collecting positive intelligence, for instance, against Americans abroad beyond what we've done?

Mr. BLAKE. Let me ask Mr. Warner, our legal counsel, to answer that question.

Mr. WARNER. As we stated in our testimony, the question of collecting positive foreign intelligence from Americans abroad is a difficult problem. But I don't believe that it is cured by providing for a court procedure. I think this creates an unwarranted problem and complication. If, under certain circumstances, it is determined at the highest level by the President, if you will, that there is a necessity to collect foreign intelligence and one source is an American, let the President so direct and let him report—I notice there are provisions in the bill—to the two committees. So there is accountability and sitting a court and having it approve it provides no accountability.

Senator HUDDLESTON. Well, they still have to report to the committee, so that is just one more step.

Mr. WARNER. But the committees cannot say, hey, Mr. Judiciary, we don't like the way you did and we're going to chastise you.

Senator HUDDLESTON. No; we say it to the President.

Mr. WARNER. Well, I think they would, I think they would if there was a gross usurpation of power. And I think it is proper.

Senator HUDDLESTON. You see, what we have done, we admittedly have made some kinds of activities much more difficult to carry out. And it's that mechanism, plus the oversight, that we hope will substitute for what our previous witnesses want to be very explicit about prohibiting. I think all of us when we undertook this recognized that we were dealing with something of an anathema, when you are trying to establish secret operations within a free, open, and democratic government.

Mr. WARNER. There's a dilemma.

Mr. BLAKE. That is a problem.

Senator HUDDLESON. That's been an overriding difficulty and one we have tried to approach by maybe establishing the Intelligence Committees as proxies, so to speak, for the people and for the Congress in being able to observe these things and being able to see that intelligence activities stay within reasonable and acceptable bounds. It has not been easy, you know.

Mr. BLAKE. For all parties concerned.

Senator HUDDLESTON. I'd hate to think we'd have to go through another 2 years of it. Do you have any suggestion on whether the President ought to seek the advice and counsel of outside experts by establishing a body similar to the President's Foreign Intelligence Advisory Board?

Mr. BLAKE. Yes, sir. We have not discussed this matter of establishing the old PFIAB—the President's Foreign Intelligence Advisory Board. We have not discussed that as an institutional matter. I will discuss that in my own name, if I may.

I think it would be a fine contribution to the onwardness of the intelligence community if the President would establish the Foreign Intelligence Advisory Board. I believe it was Mr. Colby who addressed himself to that matter yesterday. Again, as I say, we have many points of agreement. For reasons not clear to me at all, a President disbanded that Board in creating the Intelligence Oversight Board, which really has two responsibilities—matters of legality and matters of propriety.

The Foreign Intelligence Advisory Board was staffed by citizens of extreme accomplishments in more than one field. They involved themselves substantively in the programs of the agencies. To my own personal and certain knowledge, they have made some very valuable constructive advice. And I think there is a gap that has been created because of the lack of it.

Senator HUDDLESTON. What about the CIA conducting clandestine operations within the United States? Should that authority be granted?

Mr. BLAKE. Could you be more specific in your question, sir?

Senator HUDDLESTON. The question is whether the CIA should be precluded from any activity within this country, by having the FBI conducting domestic operations and the CIA acting only abroad.

Mr. BLAKE. No, sir. We think the configuration put together by the bill that any such clandestine work conducted within the United States has to be done under the aegis of the Federal Bureau of Investigation is appropriate.

Senator HUDDLESTON. Gentlemen, I believe our time is running out here and we would like, I think, to have your further comments on some specifics of the bill that we would like to submit to you from time to time.

Mr. BLAKE. We'd be pleased to respond, Mr. Chairman.

Senator HUDDLESTON. And if we could, maybe in a classified way, get your further comments on some of the types of covert activities that we were discussing a minute ago?

Mr. BLAKE. We'll be responsive to your requests, sir.

Senator HUDDLESTON. We would like to do that.

So at this time we will stand in adjournment till 2 p.m. Thank you very much.

[Whereupon, at 1:08 p.m., the hearing was recessed, to reconvene at 2 p.m. of the same day.]

AFTERNOON SESSION

Senator HUDDLESTON. The committee will come to order. We will resume our hearings on S. 2284, the National Intelligence Act of 1980. We have a distinguished panel of witnesses at this time including Mr. Richard Kirkendall, who is the Executive Secretary of OAH and an historian of 20th Century America, representing the Organization of American Historians. We have Mr. Kirkpatrick Sale, representing PEN American Center and Association of Writers, Poets and Playwrights, Essayists, and Editors. And we have Athan Theoharis, professor of history at Marquette University, former consultant to the Church committee and author of "Spying on Americans."

Gentlemen, I've left somebody out?

Mr. KAUFMAN. I'm Joshua Kaufman. I'm legal counsel to PEN American Center.

Senator HUDDLESTON. We might proceed then, if you have statements at this time, in the order that I listed your names, if that's agreeable to you.

TESTIMONY OF RICHARD S. KIRKENDALL, PROFESSOR OF HISTORY AT INDIANA UNIVERSITY, BLOOMINGTON, EXECUTIVE SECRETARY OF THE ORGANIZATION OF AMERICAN HISTORIANS AND MEMRER OF TRE AMERICAN HISTORICAL ASSOCIATION

Mr. KIRKENDALL. My name is Richard S. Kirkendall. I am professor of history at Indiana University, Bloomington, and executive secretary of the Organization of American Historians. I am also a member of the American Historical Association. I appear today on behalf of both of these national historical groups. And I am pleased to say that just before I came up here Al Sumberg, of the American Association of University Professors, said that the AAUP wishes to be associated with this statement.

Representatives of both the Organization of American Historians and the American Historical Association joined with approximately 150 groups in a letter to Senator Bayh dated March 21. It's a letter pertaining to sections of S. 2284 and S. 2216 affecting the Freedom of Information Act. I would like to add that letter to the record of this hearing, if I may.

Senator BAYH. Can we put that in the record?

Senator HUDDLESTON. Without objection it will be part of the record.

[The information referred to follows:]

MARCH 21, 1980.

Senator BIRCH BAYH,
Chair, Senate Select Committee on Intelligence,
Washington, D.C.

DEAR SENATOR BAYH: We are writing to express our opposition to Section 421 (d) of S. 2284/H.R. 6588, "The National Intelligence Act of 1980," which would substantially exempt the CIA from the Freedom of Information Act, and to Section 3 of S. 2216/H.R. 6316, "The Intelligence Reform Act of 1980," which would extend that exemption to all U.S. Intelligence agencies.[1] These provisions repre-

[1] Please note that, while this letter addresses our concerns about provisions affecting the Freedom of Information Act, it is not intended to imply support for any other provision of the proposed legislation.

sent a radical change in government policy and would severely limit the disclosure of information to the public. They would damage serious historical and journalistic research and the conduct of informed public debate.

Because of the major role the Central Intelligence Agency has played in this country's foreign relations since World War II, its files are an invaluable resource for historians, political scientists and others. CIA documents released under the FOIA have contributed to a substantial and growing body of historical and journalistic works.

The FOIA has also resulted in the public disclosure of:

CIA spying on the Reverend Martin Luther King, Jr.;

CIA infiltration of lawful political groups in the United States;

CIA secret behavior control and drug-testing programs;

CIA attempts to keep the Glomar Explorer incident out of the press; and

CIA failure to fully disclose information in response to authorized Congressional requests.

Indeed, the FOIA provides an independent check on the CIA's activities. Under the proposed revision, that important check could be eliminated.

The Freedom of Information Act in its present form provides ample protection for information that is properly classified or which reveals intelligence sources or methods. CIA officials admit that the Agency can protect legitimate secrets under the Act. Testifying before the House Permanent Select Committee on Intelligence last year, Deputy Director of the CIA Frank C. Carlucci said, "It is undeniable that under the current FOIA, national security exemptions exist to protect our most vital information." Mr. Carlucci reiterated this position as recently as February 20, 1980 in testimony before the Subcommittee on Government Information and Individual Rights of the House Government Operations Committee.

Furthermore, John Blake, who as Deputy Director for Administration was responsible for the administration of the FOIA at the Central Intelligence Agency, told the Senate Judiciary Committee in 1977 that, with respect to the FOIA, "We have been able to make the necessary adjustments. I am pleased to report that, in fact, I think that the Agency is better off for it."

Given the record of substantial public benefit from the use of the Act and the CIA's continued ability to protect legitimate secrets, there is no justification for virtually exempting the CIA from the Freedom of Information Act. Any concerns about the FOIA should be reviewed carefully through public hearings at which historians, journalists and other users of the Act are given the opportunity to testify.

It is imperative that the Freedom of Information Act not be sacrificed as part of a hasty or ill-considered reaction to current international tensions. We urge you to reject Section 241(d) of S. 2284/H.R.6588, Section 3 of S. 2216/H.R. 6316, and any similar provision which would undercut the FOIA.

List of signatories is attached.

NATIONAL ORGANIZATIONS

American Baptist Churches, USA, Office of Government Relations, June Totten, Director.

American Civil Liberties Union, John Shattuck, Legislative Director.

American Ethical Union, Raymond Nathan, Director, Washington Ethical Action Office.

American Friends Service Committee, John A. Sullivan, Associate Executive Secretary.

American Historical Association, Mack Thompson, Executive Director.

American Privacy Foundation, David Watters, Washington Representative.

Americans for Democratic Action, Leon Shull, Executive Director.

Association of American Publishers, Townsend Hoopes, President.

Association of Arab American University Graduates, Mujid S. Kaziml, President, Abdeen Jabara, Member of the Board.

Campaign for a Nuclear Free Philippines, John Miller.

Center for Constitutional Rights, Robert Boehm, Chairperson, Board of Directors, Frank Deale, Staff Attorney.

Center for International Policy, Donald L. Ranard, Consul General (Ret.), Director.

Center for National Security Studies, Morton H. Halperin, Director.
Christian Church (Disciples of Christ), Department of Church and Society of the Division of Homeland Ministries, Rolland G. Pfile, Executive Secretary.
Church of the Brethren, Washington Office, Ronald P. Hanft, Director.
Church of Scientology, National Commission on Law Enforcement and Social Justice, Kevin O'Donnell, Associate Director.
Citizens Energy Project, Ken Bossong, Scott Denman, Jan Simpson, Staff Associates.
Clergy and Laity Concerned, John Collins, Barbara Lupo, Codirectors; David Coolidge, Washington Area CALC.
Committee for Public Justice, Inc., Nancy Kramer, Executive Director.
Common Cause, David Cohen, President.
Congress Watch, Howard Symons, Staff Attorney.
CovertAction Information Bulletin, Ellen Ray, William Schaap, Louis Wolf, Coeditors.
Environmental Action Foundation, Claudia Comins, Director
Environmental Policy Center, Robert Alvarez.
Federation of American Scientists.
Feminist Resources on Energy and Ecology, Donna Warnock, Coordinator.
Freedom of Information Clearinghouse, Katherine A. Meyer.
Freedom to Write Committee, PEN American Center, Dore Ashton, Chair.
Friends Committee on National Legislation, Edward F. Snyder, Executive Secretary.
Friends of the Filipino People, D. Boone Schirmer, National Coordinator.
Fund for Constitutional Government, Robert R. Carr, Executive Director.
Fund for New Priorities in America, Jack Sangster, National Director.
Fund for Open Information and Accountability, Inc., Dorothy Steffens, Executive Director.
Grove Press, Barney Rosset, President.
Historians for Freedom of Information, Harold Fruchtbaum, Secretary.
Indian Law Resource Center, Tim Coulter, Executive Director.
Institution Educational Services, Prison Law Monitor, Joseph Lykins, Assistant Director.
Interreligious Foundation for Community Organization, Inc., Lucius Walker, Executive Director.
Jesuit Social Ministries, National Office, Ted Zern, S.J., Associate Director.
La Raza Unida Party, Frank Shaffer Corona, Washington Ambassador.
Maryknoll Fathers and Brothers, Washington Office on Justice and Peace, Edward R. Killackey, Director.
Mennonite Central Committee, Peace Section, Washington Office, Delton Franz, Director.
Middle East Research and Information Project, Joe Stork, Staff.
Mobilization for Survival, Rev. Bob Moore, National Secretary.
The Nation, Victor Navasky, Editor.
National Alliance Against Racist and Political Repression, Charlene Mitchell, Executive Secretary.
National Association of Negro Business and Professional Women's Clubs, Yvonne Price, Coordinator, Governmental Affairs.
National Bar Association, Robert L. Harris, President.
National Committee Against Repressive Legislation, Esther Herst, Director.
National Conference of Black Lawyers, Victor Goode, National Director.
National Emergency Civil Liberties Committee, Edith Tiger, Director.
National Indian Youth Council, Gerald Wilkinson, Executive Director.
National Women's Political Caucus, Iris Mitgang, National Chair.
Network, Nancy Sylvester, Lobbyist.
New American Movement, Halli Lehrer, Organizational Secretary.
Thomas I. Emerson, Lines Professor of Law Emeritus, Yale Law School.
James Farmer, Executive Director, Coalition of American Public Employees.
Eric Foner, Professor of History, City University of New York.
Lloyd Gardner, Professor of History, Rutgers University.
Hugh D. Graham, Professor of History, University of Maryland.
Robert Griffith, Professor of History, University of Massachusetts.
Herbert Gutman, Professor of History, City University of New York.
Jim Hougan, Author.

Stanley Katz, Professor of History, Princeton University.
Linda Kerber, Professor of History, University of Iowa.
Arthur Kinoy, Professor of Law, Rutgers University.
Bruce Kuklick, Chair, Department of History, University of Pennsylvania.
Walter Lafeber, Professor of History, Cornell University.
Sanford Levinson, Professor of Law, University of Texas.
David Randall Luce, Professor of Philosophy, University of Wisconsin, Milwaukee.
Hilda H. N. Mason, Council Members-at-Large, City Council of the District of Columbia.
Edna McCallion, Director of United Nations Affairs, Church Women United.
Dan Moldea, Anthor.
Carroll Moody, Chair, Department of History, Northern Illinois University.
Gary Ostrower, Alfred University, Visiting Professor of History, University of Pennsylvania.
Otis A. Pease, Professor of History, University of Washington. Vice President for the Profession, American Historical Association.
Sidney Peck, Professor of Sociology, Clark University.
Stephen Pelz, University of Massachusetts, Research Fellow, East Asian Institute, Columbia University.
David Pletcher, Professor of History, University of Indiana, President, Society of Historians of American Foreign Relations.
William Preston, Chair, Department of History, John Jay College, City University of New York.
Joseph L. Rauh, Jr., Attorney.
Robin Read, Sea Coast New Hampshire Clamshell Alliance.
Leo P. Ribuffo, Associate Professor of History, George Washington University.
Eugene Rice, Professor of History, Columbia University, Vice President for Research, American Historical Association.
Ron Ridenhour, Author.
Paul Robeson, Jr., Author.
John Rosenberg, Director, The Nation Institute, Advisory Committee on Freedom of Information, Organization of American Historians.
Natalie Schmitt, Associate Professor of Communications and Theatre, University of Illinois, Chicago Circle.
M. B. Schnapper, Public Affairs Press.
Daniel Schorr, Syndicated Columnist/Radio and TV Commentator.
Martin Sherwin, Visiting Professor of History, University of Pennsylvania.
Ira Silverman, Director of Special Programs, American Jewish Committee.
Gaddis Smith, Chair, Department of History, Yale University.
Betsy Taylor, Director, Nuclear Information and Resource Service.
Athan Theoharis, Professor of History, Marquette University.
Ken Tilsen, Attorney.
Paul Varg, Professor of History, Michigan State University, Past President, Society of Historians of American Foreign Relations.
George Wald, Professor of Biology, Emeritus, Harvard University.
William Winpisinger, President, International Association of Machinists and Aerospace Workers.
David Wise, Author.
Lawrence Wittner, Associate Professor of History, State University of New York, Albany.
New Democratic Coalition, Fran Bennick, National Chairperson.
Non-Intervention in Chile, Bob High, National Coordinator.
Organization of American Historians, Carl Degler, President, Professor of History, Stanford University; William Appleman Williams, President-Elect, Professor of History, Oregon State University; Richard Kirkendall, Executive Secretary, Professor of History, University of Indiana.
Palestine Human Rights Campaign, Jim Zogby, Chairman.
The Progressive, Erwin Knoll, Editor.
Project for Open Government, Theodore Jacobs, Director.
Public Citizen Litigation Group, Alan B. Morrison, Director, Diane B. Cohn, Staff Attorney.
Public Eye, Chip Berlet, Co-Editor.
SANE, David Cortright, Executive Director.

Unitarian Universalist Association, Robert Z. Alpern, Director, Washington Office.
Unitarian Universalist Service Committee, National Moratorium on Prison Construction, Michael Kroll, Coordinator.
United Church of Christ, Commission for Racial Justice, Larry Rand, Director of Special Programs, New York Office.
United Church of Christ, Office for Church in Society, Rev. Harry Lynn, Legislative Counsel.
United Methodist Church; Department of Law, Justice and Community Relations of the Board of Church and Society, Rev. John P. Adams, Director.
United States Catholic Mission Council, Father Anthony Bellagamba, I.M.C., Executive Secretary.
United States Student Association, Frank Jackalone, President.
Women Strike for Peace, Ethel Taylor, National Coordinator.
Women's Institute for Freedom of the Press, Donna Allen, Director.
Women's International League for Peace and Freedom, Evelyn Haas, Co-Chair, Program and Action.

LOCAL AND REGIONAL ORGANIZATIONS

Anti-Repression Resource Team, Jackson, Mississippi, Ken Lawrence, Director.
Chicago Committee to Defend the Bill of Rights, Rachel Rosen DeGolia, Executive Director.
Chicago Political Surveillance Litigation and Education Project, Richard Gutman, Director.
Citizens Commission on Police Repression, Los Angeles, Linda Valentino, Jeff Cohen.
Committee to Reinvolve Ex-Offenders, Washington Chapter, Linda Purdue, Director.
D.C. Committee for the Bill of Rights, Abe Bloom, John Wilson, Co-Chairs.
Freedom of Information Center, University of Missouri School of Journalism, Columbia, Missouri, Paul Fisher, Director.
Madison Coalition to Stop S–1, Robert E. McKay.
New Hampshire Research Project, Kevin Hopkins.
New York State New Democratic Coalition, Helen Polansky, Chairwoman.
Seattle Coalition on Government Spying, Kathleen Taylor, Coordinator.
South Jersey Coalition to Defend the Bill of Rights, Rose Paull, Coordinator.
Southern Regional Council, Steve Sultts, Director.
Texas Democrats, Ed Cogburn, Co-Chair; Billie Carr, Co-Chair and Democratic National Committeewomen.
Washington Center for the Study of Services, Washington, D.C., Bonnie Goldstein, Research Director.
Washington Peace Center, Washington, D.C., Donna Cooper, Co-Director.
Westchester People's Action Coalition, Connie Hogarth, Director.

INDIVIDUALS

[Organizations and other affiliations listed for identification purposes only]

Eqbal Ahmad, Fellow, The Transnational Institute.
Robert Artisst, Advisory Neighborhood Commissioner, Washington, D.C.
Edward Asner, Actor.
Rev. Charles V. Bergstrom, Executive Director, Office for Governmental Affairs, Lutheran Council in the U.S.A.
Barton Bernstein, Associate Professor of History, Stanford University.
Norman Birnbaub, Amherst College, Visiting Professor, Georgetown University Law Center.
Robert Borosage, Director, Institute for Policy Studies.
Perry Bullard, State Representative, Ann Arbor, Michigan.
Louis Clark, Director, Tom Devine, Assistant Director, Government Accountability Project.
Blanche Wiesen Cook, Professor of History, John Jay College, City University of New York.
Emile de Antonio, Filmmaker.

ADDITIONAL SIGNERS

National Organizations

Authors League of America, Inc., John Hersey, President.
Chile Legislative Center, Rev. Charles Briody, Director.
Committee on History in the Classroom, John Anthony Scott, Secretary.
National Lawyers Guild, David Rudovsky, Vice-President.

Local and Regional Organizations

Federal City Alumnae Chapter, Delta Sigma Theta, Inc.

Individuals (Organizations and other affiliations listed for identification purposes only.)

Janet Larson, Ph. D., Department of English, Rutgers University.

Mr. KIRKENDALL. I will be brief, but I have a longer statement and I would like to submit that for the record. I'll just hit the main features of it here.

Senator HUDDLESTON. Without objection that will be printed in the record in its entirety.

[The prepared statement of Richard S. Kirkendall follows:]

PREPARED STATEMENT OF RICHARD S. KIRKENDALL

My name is Richard S. Kirkendall. I am Professor of History at Indiana University, Bloomington, and Executive Secretary of the Organization of American Historians. I am also a member of the American Historical Association. I appear today on behalf of both of these national historical groups.

American historians are deeply worried about provisions in measures recently introduced by Senator Walter D. Huddleston (S. 2284) and Senator Daniel P. Moynihan (S. 2216).[1] We are concerned that if either of these bills is passed intact, historians and others, now and in the future, would no longer be able to obtain access to information in Central Intelligence Agency files either through the Freedom of Information Act or any other law even though such information might be unclassified and would not reveal intelligence sources or methods. Thus, an extremely important resource for historians and other scholars studying American foreign relations would be cut off.

Furthermore, if the CIA is successful in this effort, it is entirely likely that other government agencies such as the Department of Defense, the Department of Justice, the Federal Trade Commission, and the State Department will also attempt to gain similar exemption from the FOIA thereby further denying scholars public records indispensable to their scholarly research.

Most, if not all, historians of the Organization of American Historians and American Historical Association recognize the need for some restrictions on access to records of federal agencies and public officials in the interests of protecting national security and private rights. Traditionally historians have been less inclined than journalists or political scientists to demand immediate access to all records. Historians tend to recognize that they have a responsibility to make certain that a historical record is created, that once it is created it is preserved, and that once preserved it is made available for scholarly research after a reasonable period of time. We have found little evidence that the FOIA as applied to the CIA or other agencies seeking exemption from the law has harmed national security or impaired legitimate private rights of individuals. We do have evidence, however, that the act has already been used by historians to produce scholarly works of lasting value.

Historians have used the Freedom of Information Act in a variety of ways and while a few of them have been critical of the FOIA, a great many have found the act to be an invaluable tool aiding scholarly research. This observation is especially true for historians working in recent United States history, particularly in the years since 1945 and the end of World War II, a period

[1] Historians are concerned about any restrictions that would limit serious scholarly research, but in particular we are concerned about Section 421(d) of the Huddleston bill (S. 2284), "Part C—Authorities of the Agency." We are also especially worried about a similar provision which appears in the Moynihan bill (S. 2216) on pp. 3 and 4.

that is now attracting an increasing number of historians. This development has taken place at least in part because we live in an age of rapid social change, a time when many of our problems seem new or at least increasingly complex. History, the study of the past, while it may be but a "smoky pine that lights the path but one step ahead," is one of the very few guides we have to help us meet wisely the problems of the present and the future. It offers us an opportunity to gain a sense of perspective, to rise above what Reinhold Neibuhr called the "temporal flux," which is so essential if we are to survive as a free society.

Although the Freedom of Information Act as amended in 1974 has been in existence not quite six years, historians have already used it to produce works that meet high scholarly standards. For example, Professor Athan Theoharis of Marquette University, who will address you later, has recently published a significant book entitled, "Spying on Americans," which is a history of the American domestic intelligence system from 1936 until 1970 and examine political surveillance from J. Edgar Hoover to the Huston Plan. Theoharis utilized the FOIA in writing this book and a portion of it appeared as an article in the Journal of American History, the publication of the Organization of American Historians. The article examined the decline of civil liberties during the Truman administration and focused on the FBI's success in obtaining authorization for a preventive detention program. It won the Binkley-Stephenson Award for 1979 as the best article to appear in the JAH during the previous year.[2]

Theoharis' work is a thought-provoking treatment of some highly important questions. Theoharis is concerned that the Cold War may have altered fundamentally American institutions and values. His book centers on three questions. First, he is interested in the nature of the relationship between the intelligence community and the presidency and how well presidents and attorneys general have controlled the internal security bureaucracy. Second, he wanted to find out if the executive branch set up limits within which internal security bureaucrats operated and if steps were taken to make certain that guidelines were followed. Finally, he wished to learn what factors contributed to the expansion of presidential power and the increased authority and the independent initiative of intelligence agencies. He feels strongly that CIA and FBI documents help us to understand the major institutional changes in government during the Cold War years and "the breakdown of a constitutional system of checks and balances." In his view, other historical research based on the FOIA can be described as, "Outstanding, Significant, Major," and it is his contention that "the historian researching FBI and CIA documents through the FOIA need not be brilliant to make a major contribution."[3]

Another historian who has made good use of the FOIA is Burton I. Kaufman of Kansas State University. His article, "Mideast Multinational Oil, U.S. Foreign Policy, and Antitrust: the 1950s," was a winner of the Binkley-Stephenson Award for 1978. In it Kaufman shows that both the Truman and Eisenhower administrations used American controlled multinational corporations operating in the Middle East as instruments of foreign policy.

Earlier presidents, dating back to the 1920s, had tried to use these companies to break up Europe's regional monopoly on oil, but particularly after the Second World War, American officials sought five policy objectives through the oil companies. "They were to provide financial assistance to the Arab governments, to assure America's control of the world's oil trade, to secure at reasonable prices a reliable source of crude oil for the United States and its allies, to enhance the United States' economic and political presence in the Mideast, and to prevent the southward spread of Soviet influence toward the Mediterranean and Persian Gulf." While this policy worked well in the 1950s, it did not, in Kaufman's view, work well during the 1970s. The relevance of this work for problems facing us today is obvious.

Kaufman's research "establishes clearly the role of the Korean War in terms of crystallizing developing ideas and programs with respect to third world nations, both as bastions of democracy against communist expansion and as essential sources of raw materials for national security and defense purposes." It helps to clarify the relation between business and government in the conduct of

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[2] Athan Theoharis, "The Truman Administration and the Decline of Civil Liberties: The FBI's Success in Securing Authorization for a Preventive Detention Program," Journal of American History, LXIV (March 1978), 110–30; and Athan Theoharis, "Spying on Americans: Political Surveillance from Hoover to the Huston Plan" (Philadelphia, 1978).

[3] Letter, Athan Theoharis to Stephen Vaughn (Organization of American Historians), Feb. 28, 1980.

foreign policy and it shows that the government as much as business sought and promoted such cooperation. Finally, Kaufman's work shows that the Truman-Eisenhower foreign oil policy affected this country's antitrust program.[4] He has also used the Freedom of Information Act to produce a documentary study of antitrust activity during the Cold War in a work entitled, *The Oil Cartel Case.* That book used relevant Justice Department files.[5]

Other works that depend in part on the FOIA have been recognized for their contribution to historical knowledge. Gary May's China Scapegoat: The Diplomatic Ordeal of John Carter Vincent was a winner of the Allan Nevins Prize. May used the FOIA to reveal government efforts to cast doubt on Vincent's loyalty. An investigation conducted by the FBI concluded that Vincent was a "fine representative of an American citizen who cherishes his country and all it stands for," but J. Edgar Hoover ordered that the investigation go farther. General Albert Wedemeyer, after being assured anonymity, told an FBI interviewer that Vincent was "favorably disposed towards Communism." Vincent was cleared by the State Department Loyalty Board four times before a "reasonable doubt" of his loyalty was uncovered: his contribution to John Service's defense fund.

Scholars have used the FOIA for a range of studies both on domestic history and on United States foreign relations. Several focused on the activities of the FBI and CIA. Accountability is an essential feature of democracy and access by historians to FBI and CIA records is one of the best ways of assuring that such agencies will be accountable for their actions. An example of research into this area is the work of David Garrow, who is now at the Institute for Advanced Study at Princeton and is studying the FBI's monitoring of the Civil Rights Movement in the 1960s. He suggests that electronic surveillance of Martin Luther King, Jr. may have been far less important than information gained through paid informants, and he argues that it is important for historians to be able to identify informants and that a history of their role in the 1960s will significantly change our understanding of that decade. The Freedom of Information Act plays an important role in this work.

Sigmund Diamond of Columbia University is currently working on the FBI's relations with the labor movement and universities. His research indicates that the FBI was far more heavily involved in these institutions than previously thought and that the FBI established close relations with labor unions and universities before the rise of McCarthyism and that the close cooperation between the Bureau and its contacts endured well after the demise of McCarthy.

The FBI and CIA are not the only objects of study by those using the FOIA. Recently, two famous court cases of the late 1940s and early 1950s have attracted serious attention from historians. Allen Weinstein, currently a Fellow at the Wilson Center, who has written extensively on the FOIA, studied the Alger Hiss-Whittaker Chambers' case in Perjury. Weinstein's massive research effort extended to records obtained through the Freedom of Information Act and led to the conclusion that Hiss "did in fact perjure himself when describing his secret dealings with Chambers." Weinstein finds some validity in criticism that the FOIA has hindered law enforcement, has placed a chill on intelligence gathering, and has been used to embarrass the United States abroad. But he also observes that the act has been used by the press, independent researchers, congressional committees, and public interest groups to uncover negligence and abuse by government officials.

Another case coming under renewed study involves Julius and Ethel Rosenberg. Ronald Radosh, professor of history at Queensborough Community College, has coauthored an article which appeared in the New Republic (June 23, 1979). It concludes that Julius Rosenberg "was indeed at the hub of an espionage network that continued to operate until his arrest in 1950," but that Ethel Rosenberg was not involved. Radosh and Sol Stern (former editor of Ramparts Magazine) are now preparing a book on this subject for Holt, Rinehart & Winston.

Students of American foreign relations have made wide use of the Freedom of Information Act. Although some have noted problems, most diplomatic his-

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[4] Burton I. Kaufman, "Mideast Multinational Oil, U.S. Foreign Policy, and Antitrust: the 1950s," Journal of American History, LXII (March 1977), quotations 937, 938 respectively.

[5] Burton I. Kaufman, "The Oil Cartel Case: A Documentary Study of Antitrust Activity in the Cold War Era" (Westport, Conn., 1978). For example, see p. 115.

torians who have used it are enthusiastic about its helpfulness. One complaint—a complaint shared by historians generally and not only by diplomatic historians—is the unevenness with which government departments respond to requests for information. Some agencies are much more helpful than others. The Pentagon seems to have one of the better records; the State Department and CIA appear to have some of the worst. Several topics have been popular in recent years with diplomatic historians using the FOIA. There has been particular interest in matters relating to oil policy—as evidenced, for example, by Kaufman's work—and also questions regarding coordination of policy decisions between the military and the State Department. But other topics have interested diplomatic historians as well.

Recently, the OAH supported a case involving Elizabeth Eudey of the University of California, who had requested documents from the Central Intelligence Agency under the FOIA "for a study of relationships between the trade unions and Government of the United States and unions in France and Italy since the end of World War II." This was a topic in American diplomatic history that no one had treated in a "substantial scholarly way." [6] The CIA informed Eudey that a minimum of $3,000 would be charged for search fees. Eudey asked the CIA to waive this fee and eventually obtained the services of Mark Lynch, Counsel for the American Civil Liberties Union Project on National Security and Civil Liberties, who filed a lawsuit on her behalf. The Organization of American Historians endorsed Eudey's appeal. A letter signed by the current OAH president as well as by four past presidents said in part:

"In addition to the significance of the subject, we are impressed by the reasonableness of the request. Eudey is not asking for documents that were generated yesterday. Only two of the requests concern documents less than ten years old; most concern documents more than twenty-five years old. Scholars should have virtually automatic access to documents of this vintage and do so in most parts of government. The Central Intelligence Agency should not have the deplorable record that is implied by the initial decision in this case—the agency is too important in the operations of the American government."

Last fall Eudey was successful as a judicial decision waived the search fee.[7]

It should be mentioned that the Eudey case is not only an example of an area that has interested FOIA researchers, but is also illustrative of another problem confronting scholars who wish to use the act. That problem involves search and processing fees that are often prohibitively expensive. Spokesmen for the OAH have concluded that tariffs of this kind deny both "the public's right to know and the role of scholars in serving that right." Excessive fees restrict "legitimate historical work." [8] Again, as with the problem of the time involved in locating materials, fees seem to vary from department to department. The fee charged in the Eudey case does not appear uncommon. There is the case of Michael Belknap, who attempted to use the FOIA for his study of the Smith Act and was informed by the FBI that to receive the relevant files he would have to pay $300,000.[9] Many historians favor uniform regulations regarding processing and search fees that would govern all federal departments.

Other diplomatic historians who have used FOIA include Walter LaFeber of Cornell University. LaFeber utilized the act to obtain documents in the presidential libraries. In writing his book, Panama Canal, he used it to gain access to materials in the Lyndon B. Johnson Library. He has also used FOIA to obtain Latin American material. At least two of LaFeber's doctoral students are also using the act for dissertations on United States-Pakistan relations and American-Malaya relations.[10]

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[6] Quotation from letter by Eugene D. Genovese, Carl N. Degler, Kenneth M. Stampp, Richard W. Leopold, Frank Freidel, and Richard S. Kirkendall to Information Review Committee, Central Intelligence Agency, June 13, 1978.

[7] Quotation from ibid.

In this case, *Elizabeth Eudey* v. *Central Intelligence Agency* (United States District Court for the District of Columbia), U.S. District Judge Aubrey E. Robinson, Jr.'s opinion of Oct. 26, 1979, read in part: ". . . the Central Intelligence Agency's determination not to waive fees was based on its assessment that few documents will be released in response to Plaintiff's request. That determination was arbitrary and capricious because it was based on a factor that is not controlling under the terms of the statute."

[8] Quotation from letter by Genevese, Degler, Stampp, Leopold, Freidel, and Kirkendall to Information Review Committee, CIA, June 13, 1978.

[9] Letter, Theoharis to Vaughn, Feb. 26, 1980.

[10] Walter LeFeber has written recently about the dangers inherent in both the Moynihan and Huddleston proposals. If Huddleston's recommendations are accepted, he writes, then "journalists and historians will no longer be able to obtain information about intelligence activities, even if they are illegal." Walter LeFeber, "The Politics of Deja Vu," Nation (Mar. 15, 1980), 307.

Another prominent historian of American diplomacy, John Lewis Gaddis of Ohio University, maintains that the FOIA has been of great help to historical research. He has worked extensively in the presidential libraries of recent presidents and has been impressed with the amount of primary material available because of FOIA appeals. Much of Gaddis' experience with FOIA documents has come from the work of other historians. Materials they were able to get released helped him, but he has himself made thirty or forty requests for particular documents and gained access to all but a few. Now writing a study of the containment policy from George Kennan to Henry Kissinger, he is certain that the work would be quite different if the Freedom of Information Act did not exist. Gaddis believes that research on the National Security Council, indeed in the entire area of national security affairs, has been greatly assisted by the FOIA.

Also, we know much more about the Eisenhower administration in general than if historians were limited merely to the declassification process of the State Department.

Scholars interested in understanding American involvement in Asia since the end of World War II have been able to secure important information through the FOIA. Howard Schonberger of the University of Maine has been studying the American occupation of Japan. Most of the records he has used have been declassified by normal procedures but he and others working in the area used FOIA to examine classified documents. Material Schonberger has gained through the Freedom of Information Act has revealed that the analysis made of the Dodge Plan by the State Department and the Army differed significantly. Before now only the Army material has been available. Army studies asserted that Japan was progressing both politically and economically just before the outbreak of the Korean War and that Japanese society was becoming increasingly stable. However, State Department research done at the same time—research unknown to scholars until very recently—showed that the Dodge Plan was generating opposition from a wide spectrum in Japanese society and that it was actually working to destabilize that country.

Barton Bernstein of Stanford University has made use of the Freedom of Information Act to study American policy toward Korea. In January, 1977, Bernstein published an article in the Foreign Service Journal entitled, "American Intervention in the Korean Civil War." His analysis adds new information on several points. First, American military advisors in Korea before the outbreak of hostilities estimated that thirty percent of the South Korean forces were involved in trying to put down an internal rebellion in late 1949. This fact plus the defeat of President Rhee's party in the elections of May, 1950, and the decision by American officials to leave Korea out of their strategic defense plans may have led North Korean leaders to conclude that an invasion would be followed by internal rebellion and no action by the United States. Second, declassified records of the Blair House meeting of advisors upon Truman's return from Independence show that only three of them spoke of the possibility of sending American ground troops to Korea and that each of them opposed sending troops at that time. Finally, Bernstein shows that Truman's decision to send ground troops to Korea came on the advice of General Douglas MacArthur and without a protracted or wide-ranging discussion with advisors of the implications of sending such troops. Further, when Truman met with congressional leaders on June 30th, he reported that troops had been sent to secure Pusan, while in fact, orders to MacArthur had approved the use of two divisions in combat to slow the advance of the North Koreans.

In a subsequent article on the "Origins of America's Commitments in Korea," Bernstein showed that during the negotiations to end the Korean War, South Korean President Syngman Rhee proved such a troublesome ally that American military leaders proposed taking him into "protective custody" if he took any action that might endanger the chances for peace. While President Dwight Eisenhower wanted no part of such a coup, American leaders continued to worry about Rhee's desire to reunite Korea even if this required the South to renew fighting.

Bernstein has written on other aspects of American post-World War II diplomacy. In "'Courage and Commitment: The Missiles of October,'" he examined the Cuban missile crisis. His research indicates that President John F. Kennedy rejected private diplomatic negotiations with Premier Nikita Khrushchev out of concern over domestic political considerations and a desire to show his personal courage to the Premier and American allies. Kennedy had received

CIA reports that several missiles were operational soon after the crisis started and intelligence reports had already concluded that Khrushchev suspected Kennedy knew of the missiles before the crisis became public. This research alters previous accounts of the crisis which contended that Kennedy chose public confrontation over quiet diplomacy because there was not enough time for such diplomacy and because the United States desired to take the initiative. Bernstein concludes that the American victory in the missile crisis may have led Americans to believe that negotiations signify weakness and may also have increased Soviet efforts to catch up with the United States in strategic weapons. The result was an intensified arms race.[11]

Other studies deal with even more recent events. William Shawcross' "Sideshow: Kissinger, Nixon and the Destruction of Cambodia" provides an account of American involvement in Cambodia that was hidden from the view of both the public and Congress. Shawcross used the FOIA to gather evidence that by broadening the war effort in Vietnam to Cambodia, the United States undermined Cambodian neutrality. As the North Vietnamese went further into Cambodia, American bombing followed them. The Cambodian people faced a choice of being caught in the struggle between two warring countries or fleeing to the city. When Lon Nol replaced Prince Sihanouk in March, 1970, Cambodia became less neutral and more of a symbol of the American commitment to Indochina. Even after United States troops were removed from Vietnam, American bombing continued. Shawcross's research sheds new light on American involvement in Indochina because it shows, as did the Pentagon Papers, that much of the decision-making process was carried on without the knowledge of either Congress or the public.

Still other fine historians have made use of the Freedom of Information Act. Joan Hoff Wilson of Arizona State University has used FOIA to follow up Shawcross's research. David Culbert of Louisiana State University has used the act to obtain FBI records relating to the use of film in World War II propaganda. David Alan Rosenberg, the author of a JAH article on "American Atomic Strategy and the Hydrogen Bomb Decision" did not use the act himself, but is convinced that some material he did see was made available only because of the knowledge that the Freedom of Information Act existed as a recourse if documents were denied.[12] Wayne Cole of the University of Maryland has used the act to get records from the Criminal Division of the Justice Department and from the FBI.

Cole has graduate students who are using the act for research on topics in diplomatic history. There have also been instances of historians using the FOIA to gain material for the period before World War II. For example, the biographer of Jane Addams (1860–1935) used the act to uncover a substantial file on that early twentieth-century reformer.

Other historians offer strong testimony in support of the usefulness of the Freedom of Information Act to historical research. Martin Sherwin, the author of the award-winning World Destroyed, is currently using FOIA to get information from FBI files for his study on J. Robert Oppenheimer. Sherwin has also used the act to gain access to presidential papers in the Truman and Eisenhower presidential libraries. He is convinced that the FOIA is "absolutely critical to writing good history of the period from the late 1940s to the present. He maintains that there is a qualitative difference between those histories which use the act and those which do not. In Sherwin's opinion, the act is important not only to historians but to society in general for it plays an important part in the system of checks and balances that make up our government. Lloyd Gardner of Rutgers University defends the FOIA because he has found that it is sometimes the only way to gain access to essential documents for the early 1950s, documents that were created not yesterday but nearly three decades ago! It might be noted too that Gardner is very worried about current efforts to limit access to foreign originated materials. And other distinguished historians, such as William Leuchtenburg of Columbia University, believe that the real value of the act lies in its potential for producing future historical scholarship. In Leuchtenburg's opinion, better things can be expected in the future.

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[11] Barton Bernstein's articles include: "The Week We Went to War: American Intervention in the Korean Civil War," Foreign Service Journal (January 1977) and February 1977); "The Origins of America's Commitments in Korea," ibid. (March 1978); and "'Courage and Commitment: The Missiles of October,'" ibid. (December 1975).

[12] David Alan Rosenberg's article appeared in the Journal of American History, LXVI (June 1979), 62–87.

Some historians of major rank, such as David Trask, Director of the Historical Office, Department of State, and Ernest May of Harvard University, are critical of certain aspects of the FOIA's record. Trask is not opposed to the FOIA's objectives but believes that ironically some individuals have used it to frustrate the act's purposes. He contends that the FOIA works against the early, systematic release of records and thus, while good for the individual researcher, it has not been good for the scholarly community as a whole. He believes that it would be better to have the earliest possible systematic release of records, but frequently the FOIA is used by those who oppose such release as they argue that such systematic declassification is unnecessary since the FOIA is available. Trask thinks that the FOIA does not compromise either the CIA's sources or methods. He favors the earliest possible systematic release of records coupled with an effective Freedom of Information Act. May believes that the Act is better designed for lawyers and journalists than for historians and that the needs of historians would be better met by the automatic declassification of a large volume of documents. He also believes that the act puts a real burden on the government in terms of time, paperwork, and money. He contends that on really important matters, such as energy and the CIA, the act actually makes it easier for the Government to resist declassification than to comply. It is worth noting that despite their criticism, neither Trask nor May is calling for exempting CIA records from study by historians.

Historians realize that the imperatives of law enforcement and intelligence gathering make immediate access to all government records impractical and that strong arguments have been made for some restrictions. But arguments for restrictions always rest on certain assumptions and we must constantly be willing to recognize and test those assumptions. We believe that the imperatives of a free society require that records of such important agencies as the CIA be maintained and that at an appropriate time be made available for scholarly research so that historians can play their essential roles as servants of the people's right to know about the workings of their Government and reviewers of the historical conceptions and interpretations that figure crucially in the shaping of policy. In the past we have supported a ten-year time limit on presidential papers after which period "documents should be made available to all researchers on an equal basis." [13] Such a period of exemption may be appropriate for the CIA. What is required are not more restrictive measures but rather better guidelines for the earliest possible declassification of government records. I personally doubt that FOIA is the ideal system. Early, systematic, wide-scale declassification seems superior, for it would be less costly in time, a precious commodity for scholars, and would encourage harmonious, cooperative relations between researchers and archivists, a condition that facilitates research. But the FOIA is an essential part of the system that exists, and no part of government is so important or unimportant as to be free from examination by historians.

Mr. KIRKENDALL. American historians are deeply worried about measures recently introduced that would deny historians access to the major Central Intelligence Agency files if they become law. An extremely important resource for historians studying American foreign relations would be cut off. Furthermore, if the CIA is successful in this effort it seems likely that other Government agencies such as the Department of Defense, the Department of Justice, the Federal Trade Commission, and the Department of State will gain similar exemption from the Freedom of Information Act, thereby further denying scholars public records indispensable to their research.

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[13] Quotation from Alonzo L. Hamby and Edward Weldon, eds., *Access to the Papers of Recent Public Figures: The New Harmony Conference* (Bloomington, Indiana, 1977), 12. The resolution of the New Harmony Conference on presidential papers reads as follows: "Presidential Papers should be closed for a period not to exceed ten years after the conclusion of the official's public life. During the closure period the official should be granted exclusive access and photocopying privileges to the papers but not control over them. At the conclusion of the closure period the documents should be made available to all researchers on an equal basis."

The results of the New Harmony Conference were published by the Organization of American Historians for the American Historical Association—Organization of American Historians—Society of American Archivists Committee on Historians and Archivists.

Most, if not all, historians in the Organization of American Historians and the American Historical Association recognize the need for some restrictions on access to records of Federal agencies and public officials in the interest of protecting national security and private rights.

Historians are interested in the creation and preservation of records as well as access to them and do not want access policies that would discourage creation or encourage destruction of records. We have found little evidence, however, that the Freedom of Information Act, as applied to the CIA or other agencies seeking exemptions from the law, has harmed national security, impaired legitimate rights of individuals, or impoverished the record. We do have evidence, however, that the act has already been used by historians to produce scholarly works of substantial value.

Historians who have used the Freedom of Information Act have found it to be a valuable tool. This is especially true of historians working in recent American history, particularly in the years since World War II, a period that is attracting an increasing number of historians largely because we live in an age of rapid change, a time when many of our problems seem new or at least increasingly complex. History—the study of the past—while it may be but "a smokey pine that lights the past but one step ahead," is one of the very few guides we have to help us meet wisely the problems of the present and the future. It offers us an opportunity to gain a sense of perspective, to rise above what Reinhold Neibuhr called the "temporal flux," to understand the dynamic quality of human affairs.

Although the Freedom of Information Act, as amended in 1974, has been in existence not quite 6 years, historians have already used it to produce works that meet high scholarly standards. For example, Prof. Athan Theoharis of Marquette University, who will speak in a few moments, has recently published a significant book, "Spying on Americans," which is a history of the American domestic intelligence system from the 1930's to the 1970's. He utilized the FOIA in writing this book and the portion of it that appeared in an article in the "Journal of American History," a publication of the Organization of American Historians. The article examined the decline of civil liberties during the Truman administration and focused on the FBI's success in obtaining authorization for a preventive detention program. It won the Binkley-Stephenson Award for 1979 as the best article to appear in the "Journal of American History" during the previous year.

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Work that has already appeared in print and other work that is underway testify to the value of the Freedom of Information Act as a solution to the historians' problem of access, a great problem for

specialists in recent history. Gary May's "China Scapegoat: the Diplomatic Ordeal of John Carter Vincent," which won the Allan Nevins Prize, used the measure to reveal Government efforts to cast doubts on Vincent's loyalty.

David Garrow, who is now at the Institute for Advanced Study at Princeton, has drawn significantly on the act in his study of the FBI's monitoring of the civil rights movement in the 1960's. Allen Weinstein, currently a fellow at the Wilson Center, studied the *Alger Hiss-Whittaker Chambers'* case in "Perjury." His massive research effort extended to records obtained through the Act and led to the conclusion that Hiss did in fact perjure himself when describing his secret dealings with Chambers.

The FOIA is helping Ronald Radosh, a professor of history at Queensborough College, in his work on the *Rosenberg* case, which is scheduled for publication by Holt, Rinehart & Winston. The act contributes to the work of Sigmund Diamond, of Columbia University, Walter LeFeber, of Cornell University, John Lewis Gaddis, of Ohio University, Howard Schoenberger, of the University of Maine, Barton Bernstein, of Stanford University, Joan Hoff Wilson, of Arizona State University, David Culbert, of Louisiana State University, and David Alan Rosenberg, of the University of Chicago, among others. These are serious scholars who are engaged in important research. Their work ranges widely covering the FBI's relations with unions and universities, the Panama Canal, Russian-American relations, the American occupation of Japan, Korean-American relations, the missile crisis, Nixon-Kissinger policies in Cambodia and elsewhere, the use of film in World War II propaganda, the hydrogen bomb decision. And the Act facilitates research by graduate students as well as established scholars.

Recently the OAH supported a case involving Elibabeth Eudey, of the University of California, who had requested documents from the Central Intelligence Agency under the FOIA for a study of relationships between the trade unions and the Government of the United States and unions in France and Italy since the end of World War II. This was a topic in American diplomatic history that no one had treated in a substantial scholarly way.

The CIA informed Eudey that a minimum of $3,000 would be charged for search fees. Eudey asked the CIA to waive this fee and eventually obtained the services of Mark Lynch, counsel for the American Civil Liberties Union Project on National Security and Civil Liberties, who filed a lawsuit on her behalf. The Organization of American Historians endorsed Eudey's appeal. A letter signed by the current OAH president as well as by four past presidents said, in part:

> In addition to the significance of the subject, we are impressed by the reasonableness of the request. Eudey is not asking for documents that were generated yesterday. Only two of the requests concern documents less than 10 years old; most concern documents more than 25 years old. Scholars should have virtually automatic access to documents of this vintage and do so in most parts of Government. The Central Intelligence Agency should not have the deplorable record that is implied by the initial decision in this case—the agency is too important in the operations of the American Government.

Last fall Eudey was successful as a judicial decision waived the search fee.

It should be mentioned that the Eudey case is not only an example of an area that has interested FOIA researchers, but is also illustrative of another problem confronting scholars who wish to use the act. That problem involves search and processing fees that are often prohibitively expensive. Spokesmen for the OAH have concluded that tariffs of this kind deny both the public's right to know and the role of scholars in serving that right. Excessive fees restrict legitimate historical work.

Several historians offer strong testimony in support of the usefulness of the Freedom of Information Act to historical research. Martin Sherwin, author of the award-winning "World Destroyed," is currently using FOIA to get information from FBI files for his study of J. Robert Oppenheimer. He is convinced that the act is absolutely critical for writing good history of the period from the late 1940's to the present. He maintains that there is a qualitative difference between those histories which use the act and those which do not.

Lloyd Gardner, of Rutgers University, has found that FOIA is sometimes the only way to gain access to essential documents for the early 1950's—documents that were created nearly three decades ago. And other distinguished historians, such as William Leuchtenberg, of Columbia University, believe that the real value of the act lies in its potential for producing future historical scholarship. As more and more historians become aware of its value and ways of using it, they will turn to it for help.

Some historians of major rank, such as David Trask, of the State Department's Historical Office, and Ernest May, of Harvard University, are critical of certain aspects of the FOIA's record. Trask believes that it would be better to have the earliest possible systematic release of records, but suggests that frequently the FOIA is used by those who oppose such release as they argue that such systematic declassification is unnecessary since the act is available. He favors the earliest possible systematic release of records coupled with an effective Freedom of Information Act.

May believes that the act is better designed for lawyers and journalists than for historians and that the needs of historians would be better met by the automatic declassification of a large volume of documents. It is worth noting that neither Trask nor May is calling for exempting CIA records from study by historians.

Historians realize that the imperatives of law enforcement and intelligence gathering make immediate access to all Government records impractical and that strong arguments have been made for some restrictions. But arguments for restrictions always rest on certain assumptions and we must recognize and test those assumptions. The OAH and the AHA believe that the imperatives of a free society require that records of such important agencies as the CIA be maintained and that at an appropriate time be made available for scholarly research so that historians can play their essential roles as servants of the people's right to know about the workings of their Government and reviewers of the historical conceptions and interpretations that figure crucially in the shaping of policy. In the past we have supported a 10-year time limit on Presidential papers, after which period documents should be made available to all researchers on an equal basis. Such a period of exemption may be appropriate for the CIA.

What is required are not more restrictive measures but rather better guidelines for the earliest possible declassification of government records. I personally doubt that the FOIA is the ideal system. Early, systematic, wide-scale declassification seems superior, for it would be less costly in time, a precious commodity for scholars, and would encourage harmonious, cooperative relations between researchers and archivists, a condition that facilitates research. But the FOIA is an essential part of the system that exists, and must be preserved until something better is put in its place. And no part of government is so important or unimportant as to be free from examination by historians.

Thank you very mucb.

Senator HUDDLESTON. Tbank you, Mr. Kirkendall. Mr. Sale.

[The prepared statement of Kirkpatrick Sale follows:]

PREPARED STATEMENT OF KIRKPATRICK SALE, VICE PRESIDENT, PEN AMERICAN CENTER

My name Is Kirkpatrick Sale, and I live in New York City. For the past twenty years I have been a writer and editor. I am the author of four books and innumerable magazine and newspaper articles. For the past three years I have also been a vice-president of the PEN American Center, the U.S. affiliate of International PEN, which was established in 1922 and, for more than fifty years now, has been in the forefront of the battles for cultural freedom and the unfettered expression of ideas everywhere in the world. And it is in that capacity, representing our membership of more than 1,700 poets, playwrights, essayists, editors, and novelists, the acknowledged elite of the American literary community, that I appear before you today.

PEN's purpose here can be simply stated: we wish to put before you the strongest objections of the literary community to any legislation which would alter and emasculate the provisions for free access to vital information and documents as embodied in the Freedom of Information Act; particularly, of course, are we opposed to those parts of Senate bills 2284 and 2216 which threaten to limit or deny entirely such access, and to remove such agencies as the CIA from public and scholarly scrutiny.

Before I present the elementa of the PEN position, permit me first to analyze the case which has previously been put before you by the CIA itself in its attempts to draw the mantle of darkness unalterably around its every deed. The CIA, as you know, does not argue that the FOIA has in fact been misused or that information released through its provisions has in fact done any damage whatsoever to any CIA operations, actnal or intended; indeed, Deputy Director Carlucci has testified that "under the current FOIA, national security exemptions exist to protect our most vitsl information," and John Blake, the CIA's deputy director for administration, has gone so far as to say, "I am pleased to report that, in fact, I think the Agency is better off for it." It seems clear, in short, that the provisions of Section 552(b) of Title 5, excluding vital information relating to privacy and national security interests, and of Executive Order 12065, protecting and classifying all matters concerning genuinely sensitive intelligence activities, have in fact worked to guarantee that the CIA is able to function as it wishes and to keep secret anything it believes would harm our national interests.

Moreover, certain what we might call "extra-legislative" conditions—such as bureaucratic delay and inefficiency, sometimes onerous fees for research or processing, inexplicably lost or misrouted reqnests, and expensive and complicated litigation for access to information—have worked to assure additional protection for the CIA. May I note in that connection PEN's own experience in the past year when onr Freedom-to-Write office, compiling a report on government influence in American cultural life, used the FOIA to gather material on the relationship between the CIA and the Congress for Cultural Freedom. Despite the fact that this connection is well known, has been repeatedly reported in the public prints, and has even been acknowledged by various participants, the Information and Privacy Coordinator of the CIA actually claimed, in a series of conversations with our Freedom-to-Write office last year, that the Agency was "unable to locate" any material at all on the Congress for Cultural Freedom.

No, it is not because the Agency has been threatened or because the FOIA has harmed the Agency in any way—as I'm afraid some of its more zealous partisans here and elsewhere do not realize—that the CIA wishes to be granted exemption from the act's provisions. No, its case is far more ethereal than that.

First, it argues that disclosure requirements "tied up hundreds of their employees in search and analysis and cost millions of dollars a year." (New York Times, March 1, 1980).

Apart from the fact that evidence of such hureaucratic concern has not been all that noticeable—in fact many sources tell of long delays at all stages of the disclosure process—and that Congress has regularly provided the CIA with any budget requesta it has snbmitted, this argument misses one fundamental fact—in the words of the Fourth Circuit Court of Appeals, "The Freedom of Information Act was not designed to increase administrative efficiency, but to guarantee the public's right to know how the Government is discharging its dnty to protect the public interest." That is what matters: the public's right to know, next to which the agency's purported inconvenience is inconseqnental.

Second, the CIA argues that the esplonage services of America's allies might be reluctant to cooperate with the CIA for fear that their own secrets will be exposed by FOIA access. Yet this flies directly in the face of Deputy Director Carlucci's own admission, in a letter to the Office of Management and the Budget last year, that "the information furnished is almost always fragmentary and is often misleading," and "therefore the information is more often than not of little use to the recipient." It flies also in the face of the agency's proven ability to nse the aforementioned protections of Title 5 and Execntive Order 12065 to secure whatever it deems necessary to secure. And it has not been supported by any evidence whatsoever to snggest that any allied agency has in fact refused to aid any legitimate CIA operation for fear of disclosnre.

Finally, the CIA maintains that, again in Carlucci's words, "the loss to the public from the removal of these CIA files from the FOIA process would be minimal." Minimal—well, perhaps, if it is "minimal" that the public has come to learn abont the CIA's involvement in events surronnding the Kennedy assassination, in attempts to invade Cuha and assassinate Castro, in overthrowing the Chilean Government of Salvador Allende, in drug trafficking in Southeast Asia, in illegal domestic spying operations on legitimate private organizations, in the use of mind-altering chemicals on American citizens, in the secret manipulation of organizations, corporations, and universities to serve hidden CIA pnrposes—all information which has come to light in the past six years only becanse of the existence of the FOIA. This, we argue, is nothing minimai: this is the stnff that an informed citizenry absolutely must know if it is in any real sense to be a citizenry, to protect its very integrity and to participate intelligently in affairs of the state.

Which brings me to the case I wish to lay before you representing PEN's own position on these matters. For it is not only the negative that we wish to argue here—that the CIA's argnments are insnbstantiai and largely spnrious—but the positive—that the FOIA has been an important instrument in improving both the political and cultural life of this nation in the last decade.

First, we at PEN believe—and we are in a special position to observe this—that public iguorance is public impotence, and only through the free and open access to ideas and information can a public gather to itself the power to make a representative government operate effectively. The works that have been produced as a resnlt of FOIA access have been absolutely essential, we believe, in giving the American people a better idea of the true nature of its government and enabling them to assess its foreign and domestic policies. I am submitting for the record a list of those works which have been published so far, bnt just mentioning a few of the more important of them will suggest, I am sure, their invaluable roie: William Shawcross, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia;* David Wise, *The American Police State;* John Marks, *The Search for the "Manchurian Candidate";* Edward Jay Epstein, *Legend: The Secret World of Lee Harvey Oswald,* and Allen Weinstein, *Perjury: The Hiss-Chambers Case.*

Second, PEN believes that access to information is essential for the production of accnrate scholarship, for compiling and writing contemporary history. It is with speciai meaning that the charter of International PEN declares itself boldly for "the principle of unhampered transmission of thought within each nation," for writers have always known that those who are ignorant of their past ure con-

demned to repeat it. To remove from the writer's scrutiny *any* agency of this pervasive government of ours would be pernicious to historical scholarship, but to remove *this* particular agency, whose tentacles reach not only into every aspect of foreign policy but many areas of domestic affairs, would be tantamount to denying our people their own history. And that, we know, could only be disastrous.

Third, PEN sees in the attempts to undermine FOIA operations a threat to the very stature of the American writer. A writer has an unalterable responsibility to tell the truth as well as it can possibly be determined. But no writer could dare to set pen to paper with a free conscience knowing that there is valuable information in the files of government which is simply unavailable and forever shrouded; any writer who did so would be instantly mocked and scorned, or attacked as a foolish partisan. To make the CIA exempt from FOIA access would in effect mean the end of any serious writing whatsoever about that most vital agency.

Finally, we of PEN are deeply concerned about the possible chilling effect on the intellectual and cultural life of this country should such agencies as the CIA be allowed to operate in total and unchecked secrecy. We remember only too well the cultural havoc—I cannot think of a milder word for it—wrought by the CIA during the 1950s and 1960s when it shamelessly manipulated both American and foreign cultural institutions for its own ulterior and surreptitious ends.

I am speaking not only of the use of witting and unwitting writers and intellectuals, the creation and support of beholden magazines and newspapers, and the undercover exploitation of publishers to disseminate information and (as the agency liked to say) "disinformation" serving the agency's own private political policies; I am also speaking of such programs as the notorious MKULTRA, whose promotion of hallucinogenic drugs in the 1950s and '60s actually helped to create the drug culture of the 1960s and '70s. (And may I point out that we know about MKULTRA through the very instrument whose existence has in fact helped to prevent a recurrence of such abuses, the instrument that we seek today to preserve and protect, the Freedom of Information Act.) All of this nation suffered during those days of CIA cultural manipulation, but those of us in the literary community especially so, and we are particularly adamant that nothing that even hints at a restoration of those days—as these two proposed bills certainly do—be allowed to come to pass.

That, then, is the substance of the PEN position. It is, as you can see, quite simple and quite straightforward: we believe that the FOIA has served an invaluable purpose in America's political and cultural life and that the CIA's current attempt to shut itself off from public scrutiny as embodied in these bills is unwise, unwarranted, and unnecessary. And we trust it may have special weight within these halls presented as it is by those who, in Shelley's phrase, are "the unacknowledged legislators of the world" to you, the acknowledged ones.

PEN American Center,
New York, N.Y., March 25, 1980.

Following is a list of books and articles based entirely or partially on CIA documents declassified through the Freedom of Information Act. This list was compiled and provided by the Center for National Security Studies.

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NOTE: This is a representative listing of books and articles based on CIA documents released through the FOIA, and is not intended to be exhaustive.

Some releases to historians were made in response to declassification requests. Documents released in this manner are also available through the FOIA.

TESTIMONY OF KIRKPATRICK SALE, VICE PRESIDENT, PEN AMERICAN CENTER

Mr. SALE. Thank you, Mr. Chairman. My name is Kirkpatrick Sale and I live in New York City. For the past 20 years I have been a writer and editor. I am the author of four books—one of which, I might say, on the perils of big government, should be available this spring and may have some interest to some Members of this Chamber—and innumerable magazine and newspaper articles. For the past 3 years I have also been a vice president of the PEN American Center, the U.S. affiliate of International PEN, which was established in 1922 and, for more than 50 years now, has been in the forefront of the battles for cultural freedom and the unfettered expression of ideas everywhere in the world. It is in that capacity, representing our membership of more than 1,700 poets, playwrights, essayists, editors, and novelists—and it is from the initials of those that we derive our acronym, PEN—those 1,700 writers, the acknowledged elite of America's literary community, that I appear before you today.

PEN's purpose here can be simply stated: We wish to put before you the strongest objections of the literary community to any legislation which would alter and emasculate the provisions for free access to vital information and documents as embodied in tbe Freedom of Information Act. Particularly, of course, are we opposed to those parts of Senato bills 2284 and 2216 which threaten to limit or deny entirely such access, and remove such agencies as the CIA from public and scholarly scrutiny.

We are also among the 150 organizations and individuals who have signed a joint letter to Congress opposing the exemption of the CIA from the provisions of the Freedom of Information Act which I have here and I would like to submit for the record.

Senator HUDDLESTON. Without objection, we will include that in the record.[1]

Mr. SALE. Before I present the elements of the PEN position, permit me first to analyze the case which has previously been put before you by the CIA itself in its attempts to draw the mantle of darkness unalterably around its every deed. The CIA, as you know, does not argue that the FOIA has, in fact, been misused or that information released through its provisions has, in fact, done any damage whatsoever to any CIA operations, actual or intended. Indeed, Deputy Director Carlucci has testified that "under the current FOIA, national security exemptions exist to protect our most vital information," and John Blake, the CIA's former Deputy Director for Administration, has gone so far as to say, "I am pleased to report that, in fact, I think the Agency is better off for it." It seems clear, in short, that the provisions of section 552(b) of title 5, excluding vital information relating to privacy and national security interests, and of Executive Order 12065, protecting and classifying all matters concerning genuinely sensitive intelligence activities, have, in fact, worked to guarantee that the CIA is able to function as it wishes and to keep secret anything it believes would harm our national interests.

Moreover, certain what we might call extra-legislative conditions—such as bureaucratic delay and inefficiency, sometimes onerous fees for research and processing, inexplicably lost or misrouted requests, and expensive and complicated litigation for access to information—these have worked to assure additional protection for the CIA. And may I note in that connection PEN's own experience in the past year when our Freedom-to-Write office, compiling a report on Government influence in American cultural life, used the FOIA to gather material on the relationship between the CIA and the Congress for Cultural Freedom. Despite the fact that this connection is well known, has been repeatedly reported in the public prints, and has even been acknowledged by various participants, the Information and Privacy Coordinator of the CIA actually claimed, in a series of conversations with our Freedom-to-Write office last year, that the Agency was unable to locate any material at all on the Congress for Cultural Freedom.

No, it is not because the Agency has been threatened or because the FOIA has harmed the Agency in any way—as I'm afraid some of its more zealous partisans here and elsewhere do not realize—that the CIA wishes to be granted exemption from the Act's provisions. Its case is far more ethereal than that.

First: It argues that disclosure requirements as the New York Times reported on March 1 of this year, "tied up hundreds of their employees in search and analysis and cost millions of dollars a year." Apart from the fact that evidence of such bureaucratic concern has not been all that noticeable—in fact, many sources tell of long delays at all stages of the disclosure process—and that Congress has regularly pro-

[1] Letter appears on p. 226.

vided the CIA with any budget requests it has submitted, this argument misses one fundamental fact. In the words of the Fourth Circuit Court of Appeals,

> The Freedom of Information Act was not designed to increase administrative efficiency, but to guarantee the public's right to know how the Government is discharging its duty to protect the public interest.

That is what matters: the public's right to know, next to which the Agency's purported inconvenience is inconsequential.

Second: The CIA argues that the espionage services of America's allies might be reluctant to cooperate with the CIA for fear that their own secrets will be exposed by FOIA access. Yet this flies directly in the face of Deputy Director Carlucci's own admission, in a letter to the OMB last year, that—

> The information furnished is almost always fragmentary and is often misleading, * * * therefore the information is more often than not of little use to the recipient.

It flies also in the face of the Agency's proven ability to use the aforementioned protections of title 5 and Executive Order 12065 to secure whatever it deems necessary to secure. And it has not been supported by any evidence whatsoever to suggest that any allied agency has, in fact, refused to aid any legitimate CIA operation for fear of disclosure.

Finally: The CIA maintains that, again in Mr. Carlucci's words,

> The loss to the public from the removal of these CIA files from the FOIA process would be minimal.

Minimal? Well, perhaps, if it is minimal that the public has come to learn about the CIA's involvement in events surrounding the Kennedy assassination, in attempts to invade Cuba and assassinate Castro, in overthrowing the Chilean government of Salvador Allende, in drug trafficking in southeast Asia, in illegal domestic spying operations on legitimate private organizations, in the use of mind-altering chemicals on American citizens, in the secret manipulation or organizations, corporations, and universities to serve hidden CIA purposes—all information which has come to light in the past 6 years only because of the existence of the FOIA. This, we argue, is nothing minimal. This is the stuff that an informed citizenry absolutely must know if it is in any real sense to be a citizenry, to protect its very integrity and to participate intelligently in affairs of the state.

Which brings me to the case I wish to lay before you representing PEN's own position on these matters. For it is not only the negative that we wish to argue here—that the CIA's arguments are insubstantial and largely spurious—but the positive—that the FOIA has been an important instrument in improving both the political and cultural life of this Nation in the past decade.

First: We at PEN believe—and we are in a special position to observe this—that public ignorance is public impotence.

Senator HUDDLESTON. Excuse me. If I can interrupt at that point. We have a vote that's down to the last 5 minutes and I think there'll be another vote immediately behind it. It'll be necessary for us to adjourn and recess until we can get over and vote and get back. It should be about 15 minutes or 20 minutes.

Mr. SALE. We'll be happy to continue then.

[A brief recess was taken.]

Senator HUDDLESTON. The committee will come to order again.

Mr. Sale, I believe we were somewhere toward the middle of your testimony, I take it.

Mr. SALE. Yes, sir.

Senator HUDDLESTON. I would like for you to continue.

Mr. SALE. Thank you.

May I say that we writers are always happy to step aside for the effective prosecution of the Nation's business.

Senator HUDDLESTON. It is mighty generous of you. We are not happy about it up here but we have to do it.

Mr. SALE. I was about to put the positive PEN case before you, the four reasons that we believe are essential to keep the FOIA in its present form.

The first is that we believe that public ignorance is public impotence, and only through the free and open access to ideas and information can a public gather to itself the power to make a representative government operate effectively. The works that have been produced as a result of FOIA access have been absolutely essential, we believe, in giving the American people a better idea of the true nature of its government and enabling them to assess its foreign and domestic policies. I am submitting for the record a list of those works which have have been published so far, but just mentioning a few of the more important of them will suggest, I am sure, their invaluable role: William Shawcross, "Sideshow"; Kissinger, "Nixon and the Destruction of Cambodia"; David Wise, "The American Police State"; John Marks, "The Search for the 'Manchurian Candidate' "; Edward Jay Epstein, "Legend: The Secret World of Lee Harvey Oswald," and Allen Weinstein, "Perjury: The Hiss-Chambers Case."

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Finally: We of PEN are deeply concerned about the possible chilling effect on the intellectual and cultural life of this country should such agencies as the CIA be allowed to operate in total and unchecked secrecy. We remember only too well the cultural havoc—I cannot think of a milder word for it—wrought by the CIA during the fifties and sixties when it shamelessly manipulated both American and foreign cultural institutions for its own ulterior and surreptitious ends.

I am speaking not only of the use of witting and unwitting writers and intellectuals, the creation and support of beholden magazines and newspapers, and the undercover exploitation of publishers to disseminate information and—as the agency liked to say—"disinformation" serving the agency's own private political policies; I am also speaking of such programs as the notorious MKULTRA, whose promotion of hallucinogenic drugs in the fifties and sixties actually helped to create the drug culture of the sixties and seventies. And may I point out that we know about MKULTRA through the very instrument whose existence has in fact helped to prevent a recurrence of such abuses, the instrument that we seek today to preserve and protect, the Freedom of Information Act. All of this Nation suffered during those days of CIA cultural manipulation, but those of us in the literary community especially so, and we are particularly adamant that nothing that even hints at a restoration of those days—as these two proposed bills certainly do—be allowed to come to pass.

That, then, is the substance of the PEN position. It is, as you can see, quite simple and quite straightforward: We believe that the FOIA has served an invaluable purpose in America's political and cultural life and that the CIA's current attempt to shut itself off from public scrutiny as embodied in these bills is unwise, unwarranted, and unnecessary. And we trust it may have special weight within these halls presented as it is by those who, in Shelley's phrase, are "the unacknowledged legislators of the world" to you, the acknowledged ones.

Thank you.

Senator HUDDLESTON. Thank you.

Our next witness is Athan Theoharis.

TESTIMONY OF ATHAN G. THEOHARIS, PROFESSOR OF AMERICAN HISTORY, MARQUETTE UNIVERSITY, MILWAUKEE, WIS.

Mr. THEOHARIS. Mr. Chairman, I have a prepared statement which I ask your indulgence to read and that the written statement be printed in the record since there are notes on sources that I will not read. The notes may be of interest to the committee itself.

Senator HUDDLESTON. The statement in its entirety will be included in the record and you may summarize it in any way you see fit.

[The prepared statement of Athan G. Theoharis follows:]

PREPARED STATEMENT OF ATHAN G. THEOHARIS

My name is Athan G. Theoharis. I am a professor of American history at Marquette University, Milwaukee, Wisconsin, specializing in federal surveillance policy during the Cold War years. I thank the Committee for inviting my

testimony on those provisions of S. 2284, the National Intelligence Act of 1980, and of S. 2216, the Intelligence Reform Act of 1980, exempting the Central Intelligence Agency (CIA) from the mandatory search and disclosure provisions of the Freedom of Information Act (FOIA) of 1966, as amended. The relevant sections are 234, lines 18–20 (p. 62) and 421, 14(d), lines 8–9 and 13–23 (p. 89) of S. 2284 and 3, lines 22–35 (p. 2) and lines 1–12 (p. 3) of S. 2216. Insights I have gained from my research experiences as a historian of federal surveillance policy and formerly as a consultant to the Senate Select Committee on Intelligence Activities (the so-called Church Committee) might prove profitable to this Committee and its staff during deliberations on these important legislative provisions.

At the outset, I should express my deep concern that the proposed legislative charters for the intelligence agencies—whether the legislation currently before this Committee, S. 2216 and S. 2284, or that before the Senate and House Judiciary Committees, S. 1612/H.R. 5030, the Federal Bureau of Investigation Charter Act of 1979—would exempt the CIA (S. 2284 and S. 2216, although S. 2216 could be read as exempting all the intelligence agencies) and the FBI (S. 1612/H.R. 5030)[1] from FOIA provisions. There is no record that the FOIA has compromised legitimate national security programs. These proposals, moreover, would effectively preempt scholarly research into the past history of the CIA and the FBI at a time when such research can only now be initiated. Furthermore, I question why only the FBI and the CIA have sought exemption from the mandatory search and disclosure provisions of the FOIA. Thus, while files of other federal agencies and departments having national security responsibilities are equally sensitive, neither the Departments of Defense, State, and Justice nor the Defense Intelligence Agency, the National Security Agency, the National Security Resources Board, and the National Security Council have sought similar exemption. Nor can the case be made that all FBI and CIA files, or all CIA "special activities" files, are properly withdrawn on national security grounds.

Until the mid-1970s, because CIA and FBI files were absolutely classified, scholarly research into the history of these agencies was virtually impossible. Unlike journalists, historians and political scientists need to have access to primary source material—interviews, press conferences, public testimony, and selectively leaked documents clearly do not meet the exacting standards of scholarly research. Yet, for example, all FBI files dating from the World War I period were classified, including those documenting the FBI's August 1923 investigation of the fraudulent Zinoviev Instructions. In addition, in the early 1960s FBI officials successfully pressured the National Archives to withdraw from Department of Justice and American Protective League files deposited at the Archives all documents and copies of documents pertaining to FBI investigations of the World War I period.[2]

Nor is the problem simply over- and indiscriminate-classification. Were that the case, then these proposed amendments to the FOIA would not cripple historical research. Under executive order 12065 (and formerly 11652), historians can submit mandatory review requests to secure declassification either of improperly or no longer justifiably classified documents. Yet, to employ the mandatory review procedure, the researcher must be able to identify specific classified documents and be generally aware of particular programs and activities. As a result of the Church Committee hearings and reports, however, we now know how limited, even irrelevant, our knowledge of past FBI and CIA activities had been. Experts of the Cold War years might have been generally aware of the preventive detention program instituted under the McCarran (Internal Security) Act of 1950 and lasting until congressional repeal in September 1971. We now know that absent statutory authority the FBI and the Department of Justice instituted a preventive detention program in 1939, that this program was formally revised in 1948, and that FBI and Department of Justice officials in the 1950–1952 period decided to ignore the preventive detention standards mandated under the McCarran Act and after September 1971 to ignore Congress' decision to repeal the preventive detention section of that Act. Similarly, academic specialists

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[1] For a fuller discussion of these provisions of S. 1612, see my article "Why the Proposed FBI Charter Is a Threat to Our Civil Liberties," The Judges' Journal (Fall 1979), p. 55.

[2] Paul Blackstock, "Agents of Deceit" (Chicago: Quadrangle, 1966), pp. 96–97. Joan Jensen, "The Price of Vigilance" (Chicago: Rand McNally, 1968), p. 314. Melvyn Dubofsky, "We Shall Be All" (Chicago: Quadrangle, 1969), p. 539.

might have been generally knowledgeable about the CIA's resort to covert operations during the Eisenhower years and after. We did not know that CIA covert operations dated from 1947 and were authorized and reviewed under procedures instituted pursuant to NSC 4A and NSC 10/2 of December 1947 and June 1948. In sum, then, the FBI's and the CIA's earlier policies of classifying the totality of their files not only precluded scholarly research in the very recent past but also insured that historians cannot presently employ the mandatory review provisions of executive order 12065 to obtain files needed for their research.

There is a further dimension, and one which in effect has meant that only through employing the FOIA can scholarly research into relevant files of the intelligence agencies be conducted. That dimension relates directly to the separate filing procedures of both these intelligence agencies—procedures not employed, to my knowledge, by the Departments of Defense and State.

Thus, FBI officials devised in 1942 the "Do Not File" procedure for "clearly illegal" break-ins; in 1949–1951 the "June mail" procedure for "sources illegal in nature" and "for the most secretive sources, such as Governors, secretaries to high officials who may be discussing such officials and their attitude; in 1949 the "Administrative page" procedure for "facts and information which . . . would cause embarrassment to the Bureau, if distributed;" and in 1940–1944 the "Administrative Matter" procedure for documents which could disclose either FBI leaks to "friendly" reporters and congressmen or other politically sensitive activities. Such "sensitive" FBI documents were not filed with other national security documents in the Bureau's central files but either in former FBI Director J. Edgar Hoover's Official and Confidential files, in the closely-held 66 file, or "in a limited across area referred to as the special file room." [3]

Similarly, the CIA has "soft files," which Acting CIA Director John Blake characterized as "files of convenience or working files" which were "not official records and thus are not indexed as such." Describing the CIA's filing procedures, Blake observed that "Within the Agency, there is no single centralized records system. For reasons of security and need to know, there are a number of records systems designed to accomplish the information retrieval needs of the various Agency components and the Agency's clients." I am aware of at least two such CIA separate filing procedures. Thus, in December 1971 when confronting the delicate political problem of how to handle copies of the mail of "Elected or Appointed Federal and Senior State Officials (e.g. Governors, Lt. Governors, etc.)" which had been intercepted under the Agency's New York City mail program, HTLINGUAL, CIA officials stipulated that these "special category items" were not to be "carded" for inclusion in HTLINGUAL's highly classified files but were to be "filed in a separate file titled 'Special Category Items.'" In addition, all cables and dispatches pertaining to the CIA's illegal domestic surveillance program, CHAOS, were to be "specially handled" by the

[3] The "Do Not File" procedure document is reprinted in U.S. Senate, Select Committee to Study Governmental Operations with respect to Intelligence Activities, Hearings of Intelligence Activities, Vol. 6, Federal Bureau of Investigation, 94th Cong., 1st sess., 1975, pp. 357–359. The "June mail" procedure documents are Letter, FBI Director to All SACs, June 29, 1949; Memo, Tolson to FBI Director, December 7, 1949; No Number SAC Letter, December 22, 1949; Memo, Hoover to Ladd, Clegg, Fletcher, Nichols, and Rosen, December 28, 1949; Memo, F. W. Waikart to Nichols, January 20, 1950; Memo, Tolson to FBI Director, February 3, 1950; Memo, FBI Director to SAC Dallas, December 21, 1950; Memo, W. A. Branigan to A. H. Belmont, May 28, 1954; Memo, SAC New York to FBI Director, August 3, 1954; Memo, W. R. Wannall to W. C. Sullivan, January 17, 1969; all in FBI 66–1372 file. The "Administrative page" procedure is described in Memo, FBI Director to SAC Boston, October 13, 1949, FBI 4062, Alger Hiss Papers, Harvard University (presently accessible at the offices of the National Emergency Civil Liberties Committee). The "Administrative Matter" documents are reprinted in U.S. House, Committee on Government Operations, Subcommittee on Government Information and Individual Rights, Hearings on Inquiry into the Destruction of Former FBI Director Hoover's Files and FBI Record Keeping, 94th Cong., 1st sess., 1975, pp. 96–99, 103–104, 116–118, 123–146, 154–170, 173. The source confirming that FBI break-in documents were filed in the "66" file is Motion, Alan Baron *et al* (attorneys for former Acting FBI Director L. Patrick Gray), May 22, 1978, *U.S. v. Gray, Felt, and Miller*, Cr 78–000179, pp. 4, 13. The citations confirming that sensitive FBI documents were stored in special files include the above listed June mail documents and, for copies of letters that the FBI obtained from the CIA's mail intercept operation, U.S. Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Final Report, Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, 94th Cong., 2d sess., 1976, pp. 562, 628, 632, 658–659, 675–676. The FBI document referring to the special file room is reprinted in U.S. Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Hearings on FBI Statutory Charter, Part 3, Appendix, 95th Cong., 2d sess., 1978, p. 201.

Agency's counterintelligence staff. Such documents were to be "slugged" CHAOS to limit distribution to the counterintelligence staff and to high level CIA officials on an "eyes only basis." [4]

These separate filing procedures necessarily complicate historical research—for the decision not to include these documents with even highly classified national security files means that declassification of central files will not insure access to the full record of these agencies' past practices. The needs of the scholar can only be met through the FOIA's mandatory search and disclosure provisions. Acting CIA Director John Blake conceded as much during his September 1977 testimony:

"The CIA's principal business is the collection and production of intelligence. The Agency's files are set up to accomplish this purpose. Since much of the Agency's business is, by necessity, secret, and FOIA requestors on a certain subject cannot describe these records with precision. Thus, the very first step in processing FOIA requests, that of searching for and identifying records, is often complicated and difficult." [5]

This is particularly highlighted, moreover, by the CIA's failure to produce full documentation concerning its drug-testing programs of the 1950s and 1960s. During September 1975 testimony before the Church Committee, former CIA Director William Colby maintained that the Agency's past recordkeeping procedures made it impossible to reconstruct fully CIA programs either because "a very limited documentation" took place or in the case of the drug-testing program because relevant documents had been destroyed in January 1973. In July 1977, however, CIA Director Stansfield Turner effectively repudiated Colby's assertion that a fuller record of the drug-testing program could not be provided. Testifying before this Committee, Turner conceded that CIA documents provided to the Congress in 1975 had been "sparse in part because it was the practice of the CIA at that time not to keep detailed records in this drug-testing category." After an "extraordinary and extensive search," Turner continued, additional CIA documents pertaining to the Agency's drug programs had been located in retired CIA archives filed under financial accounts.[6]

I do not challenge Turner's explanation, or Acting CIA Director John Blake's further elaboration in September 1977 testimony before the Senate Subcommittee on Administrative Practice and Procedure.[7] My only point is that although the CIA had every reason to provide Congress with a full record of the drug program in 1975, it did not do so. Significantly, the additional documents were uncovered in response to an FOIA suit brought by John Marks when the CIA conducted the records search mandated by the FOIA. My point, then, is that the FOIA's mandatory search and disclosure provisions alone can insure that researchers will receive the full record of past CIA practices.

Is, then, the basic issue the convenience of conducting historical research? The premise of these exemptive sections of S. 2284 (and of S. 2216), pointedly affirmed by Deputy CIA Director Frank Carlucci in recent testimony before the House Subcommittee on Government Information and Individual Rights,[8]

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[4] John Blake's testimony is from U.S. Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Hearings on Oversight of the Freedom of Information Act, 95th Congress, 1st session, 1977, p. 68; see also, pp. 73–85, 93, 525–532. The CIA documents on "special category items" and the special handling of CHAOS documents are reprinted in Christy Macy and Susan Kaplan (Eds.), Documents (New York: Penguin, 1980), pp. 213–215, 223.

[5] U.S. Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Hearings on Oversight of the Freedom of Information Act, 95th Congress, 1st session, 1977, p. 69.

[6] U.S. Senate, Select Committee to Study Governmental Operations with respect to Intelligence Activities, Hearings on Intelligence Activities, vol. 1 Unauthorized Storage of Toxic Agents, 94th Congress, 1st session, 1975, pp. 6, 11, 21–23, 245 and Final Report, "Foreign and Military Intelligence," Book I, 94th Congress, 2d session, 1976, pp. 390, 394, 402–406, 408, 408n90. U.S. Senate, Select Committee on Intelligence and Committee on Human Resources, Subcommittee on Health and Scientific Research, Joint Hearings on Project MKULTRA, the CIA's Program of Research in Behavioral Modification, 95th Congress, 1st session, 1977, pp. 2–5, 8–10, 14–15, 21–23, 25, 38, 45–55, 65n2, 65–66, 70–71, 74, 82–88, 84n75, 84n76, 84n77, 88n90, 103–107, 134, 137. Milwaukee Journal, July 16, 1977, pp. 1, 3; July 21, 1977, p. 2; Jan. 7, 1979, Accent p. 2; Jan. 9, 1979, Accent p. 5.

[7] U.S. Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Hearings on Oversight of the Freedom of Information Act, 95th Congress, 1st session, 1977, pp. 80–85, 93; see also, pp. 526–531.

[8] "C.I.A. Symbolism," The Nation (Mar. 15, 1980), pp. 292–293.

is that this Committee, and its House counterpart, can provide the needed oversight to insure against the recurrence of abuses of power.

Yet, I question whether this Committee, and the Congress in general, can fulfill its crucial oversight responsibility without relying on the research of historians, political scientists, and journalists. Surely at a time when it is considerng legislative charters for the intelligence agencies, and in the future when assessing the adequacy of enacted legislation, Congress's judgments should be based on a full understanding of past policies and procedures. I do not think I am impugning the impressive research effort performed by the staff of this Committee, and its predecessor committee, if I suggest that many of their findings are incomplete and that future research will provide a fuller understanding of the intelligence agencies' practices and procedures. Indeed, that fuller research could very well call into question the wisdom of S. 2284, particularly those sections based on the premise of administrative discretion and the implicit faith in internal oversight and accountability.

In my initial remarks, I alluded to the limited knowledge of presumably expert academic specialists about past FBI and CIA practices. Let me recount my own personal experience. When I was appointed a consultant to the Church Committee in July 1975, I naively thought that my expertise would be of great value to the Committee. As a result of my consultantship, and then my further research into the published hearings and reports of the Committee, I now recognize the limits of my former knowledge and the inadequacy of the research I subsequently conducted on behalf of Committee staff. I do not mean to imply that I did not contribute to the Committee's work, but only that because of my ignorance of the FBI's secret programs my contribution was necessarily a limited one. Profiting now from the reports of this Committee, the Church Committee, and other congressional committees, and my subsequent use of the FOIA to secure additional FBI documents, I would no longer disparage my knowledge and expertise. In short, I now think that I would justly earn a consultantship salary.

Because of our training and research methods, historians approach and research questions in ways which are fundamentally distinctive from lawyers—the specific academic background and training of the vast majority of congressional staff. Let me illustrate this by a personal example—emphasizing, at the outset, that I am not disparaging the excellent research and analytical talents of the legal scholars on staff. My specific responsibility as a consultant to the Church Committee was to research relevant files at the presidential libraries concerning the FBI/White House relationship. In October 1975, prior to a planned research trip to the Lyndon Baines Johnson presidential library, I came to Washington both to organize files I had accessioned from earlier trips to the Harry S Truman and Dwight D. Eisenhower presidential libraries and to discuss with staff counsel the particular questions I should research at the Johnson Library. Staff counsel then suggested that that afternoon I might profitably peruse certain FBI files made available to Committee staff at the J. Edgar Hoover Building. These files summarized reports from FBI Director Hoover to the Johnson White House for the period 1964–1969. I did so that afternoon and again another afternoon during a November 1975 trip to Washington, the purpose of which was to organize the files I had accessioned during research trips to the Johnson and John F. Kennedy presidential libraries and to select particular documents directly relevant to the Committee's public hearings on the FBI to be held the next week. At this time I learned, as did senior Committee staff John Elliff and Mark Gitenstein, that the only effective use made of this collection of files was that which I undertook during my admittedly abbreviated research trips to the J. Edgar Hoover Building. In these two brief trips, I had discovered, for example, that in response to Johnson White House requests the FBI had conducted name checks on prominent newsmen David Brinkley, Joseph Kraft, Richard Stolley, Ben Gilbert, Peter Arnett, and Peter Lisagor.[2]

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[2] U.S. Senate, Select Committee to Study Governmental Operations with respect to Intelligence Activities, Final Report, "Intelligence Activities and the Rights of Americans," Book II, 94th Congress, 2d session, 1976, pp. 65n266, 105 and Final Report, "Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans," Book III, 94th Congress, 2d session, 1976, pp. 323, 339, 340. See also, Athan Theoharis, "Spying on Americans: Political Surveillance from Hoover to the Huston Plan" (Philadelphia: Temple University Press, 1978), pp. 175–186.

Although Committee staff counsel had ready and daily access to these FBI files, he had only cursorily reviewed them; 3x5 onionskin summaries, these files numbered, I would guess, around 5,000 pages. These FBI summaries documented the extent of the Johnson Administration's interest in dissident activities and its political uses of the FBI. Nonetheless, the vast majority of the documents were in themselves "non-sensational." Committee staff counsel had seemingly, but erroneously concluded that they were not worth researching. We historians, because seeking to discern patterns and the context of decisions (and I might add far less talented than lawyers in analyzing the language of particular documents), adopt a broader research method—and the result is both a superior ability to understand the context and thrust of particular issues and a patience which enables us to find that one "sensational" document squirreled amidst thousands of pages of "non-sensational" documents.

Let me provide a second example of the supplementary research contribution of historians—one which refines the Church Committee report on Operation SHAMROCK.

Responding to the Church Committees request for relevant documents, in 1975 National Security Agency (NSA) officials presumably forwarded all the documents they held pertaining to SHAMROCK. On March 25, 1976, however, NSA officials informed the Committee of their "discovery" of another file containing additional SHAMROCK documents. The NSA's explanation was that these documents had been held by a lower-level NSA employee who had brought them to his superior's attention on March 1, 1976. This was not the sole discovery of additional documents pertaining to SHAMROCK. In the fall of 1975, the House Subcommittee on Government Information and Individual Rights was conducting a simultaneous investigation of SHAMROCK. In addition to requesting relevant documents from the NSA and the international telegraph companies, the House Subcommittee also requested the National Archives to search its holdings for any documents pertaining to SHAMROCK. In the course of this search, National Archives staff located an additional nine documents in the classified records of the Office of the Secretary of Defense (James Forrestal). These documents detailed the Truman Administration's abortive attempt in 1948 to secure enactment of legislation which, if enacted, would have legalized SHAMROCK.

Significantly, the Church Committee staff had not originally requested a National Archives search. In this instance, these classified documents were obtained in response to a request of another congressional committee. Nonetheless, when researching this program, historians would have employed the FOIA to secure this fuller record. There is, moreover, another dimension to SHAMROCK which has not yet been addressed by any congressional committee.

In its report on SHAMROCK, the Church Committee noted that officials of the three international telegraph companies, because fearing prosecution, had expressed reservations in 1945 and again in 1947 about their companies' participation in this illegal activity. Assurances by Secretary of Defense Forrestal in 1947 and his successor, Louis Johnson, in 1949 that the Truman Administration would not prosecute the companies allayed these fears. These assurances were obviously not binding on succeeding administrations and thus the unsuccessful 1948 effort to secure enactment of remedial legislation. Yet, the Committee uncovered no record that any president, secretary of defense, or attorney general after Truman's Presidency had been briefed about SHAMROCK and had then provided similar non-prosecution assurances. I think I can explain why, although I concede that further research into yet-classified files is needed into the legislative history of this particular measure.

On October 31, 1951, President Truman signed H.R. 3899, Amending Certain Titles of the U.S. Code. One of the amended titles (Section 24a) of this conglomerate measure criminalized the unauthorized transmission or publication of information pertaining to cryptographic systems and methods and to communication intelligence activities. While not legalizing SHAMROCK, Section 24a did provide the protection against prosecution insisted upon by company officials (who feared that their employees might report this illegal interception of cable traffic to the FCC or to their union). Significantly, this 1951 measure had not been the subject of public hearings, was publicly characterized as non-substan-

tive, and was included with other title changes which indeed were non-substantive.[10]

The particular method employed to criminalize disclosure of communications interception activities raises a number of questions. Were executive session hearings held? Did Truman Administration officials concert with the congressional leadership to devise this legislative strategy? Why was unauthorized disclosure criminalized rather than interception legalized? Was this measure drafted by military intelligence officials and, if so, was the President briefed and did he approve the decision to enact this far-reaching measure—the only "Official Secrets Act" in our history?

Since H.R. 3899 in effect immunized NSA actions from public discovery, we now know that NSA officials did not need to fear disclourse in the late 1960s when initiating another illegal interception program, Operation MINARET. A review of the legislative history of H.R. 3899, as such, has direct contemporary relevance since this Committee is currently formulating legislation to authorize non-criminal NSA investigations based on the premise of administrative discretion.

Let me conclude my testimony by citing two instances of the breakdown of congressional oversight. In 1955, Senator Mike Mansfield introduced a resolution to create a joint congressional oversight committee on the CIA. Although favorably reported by the Senate Rules Committee, Mansfield's resolution was defeated on April 9, 1956. A special oversight committee was not needed, opponents of the Mansfield resolution argued, owing to the effective oversight provided by the appropriations and armed services committees. The Senate should allow the CIA to continue with its work, Senator Carl Hayden pointedly warned, "without being watchdogged to death." [11] Ironically, at the time when key congressmen were affirming the effectiveness of existing oversight, and that same year, the CIA shifted the thrust of its New York City mail program from a mail cover to a mail intercept program. Then, in February 1958 the CIA began to forward copies of letters intercepted under this program to the FBI. If this program ever had an exclusive "foreign intelligence" purpose, by the late 1950s it had evolved into an illegal "internal security" investigation—in violation of the National Security Act of 1947. Nonetheless, the oversight committees did not discover, or dissuade CIA officials from continuing, either this illegal program or the equally illegal domestic surveillance program, Operation CHAOS.

A second example of the breakdown of congressional oversight involves the Senate Subcommittee on Administrative Practice and Procedure's (the so-called Long Committee) investigation into the intelligence agencies' invasions of privacy. In preparing for scheduled 1965 hearings, the Long Committee sent a questionnaire to the various intelligence agencies requesting detailed information about their investigative techniques and filing procedures. Concerned about this

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[10] U.S. Senate, Select Committee to Study Governmental Operations with respect to Intelligence Activities, Hearings on Intelligence Activities, vol. 5, The National Security Agency and Fourth Amendment Rights, 94th Congress, 1st session, 1975, pp. 57–60 and Final Report, Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, 94th Congress, 2d session, 1976, pp. 767–771, see particularly 767 and 769. U.S. House, Committee on Government Operations, Subcommittee on Government Information and Individual Rights, Hearings on Interception of Nonverbal Comunications by Federal Intelligence Agencies, 94th Congress, 1st and 2d sessions, 1975–1976, pp. 209–210, 323–324. See also, U.S. Senate, Select Committee on Intelligence, Subcommittee on Intelligence and the Rights of Americans, Hearings on Foreign Intelligence Surveillance Act of 1978, 95th Congress, 2d session, 1978, p. 164n64.

There was no public debate on H.R. 3899. Moreover, the Senate report on H.R. 3899 characterized the purpose of the proposed title changes as "to make a few improvements of a minor character in certain titles of the United States Code, which titles have been previously enacted into law, in the interest of clarity, uniformity, and accuracy." Both the House and Senate reports blandly described the unauthorized disclosure section (24a) as: "Section 24(a) adds, at the end of such chapter, new section 798 which, with changes in phraseology and arrangement, but with no change in substance, incorporates the provisions of the 1950 act." See, U.S. Congressional Record, 82d Congress, 1st session, 1951, vol. 97, pts. 4 and 10, pp. 5390, 5533–5540 (particularly 5536), 13211, 13549, 13747–13748, 13783, 13784, 13786. U.S. House, Committee on the Judiciary, Report No. 462, "Amending Certain Titles of the United States Code, and for Other Purposes," May 15, 1951, pp. 7–8, 30–31. U.S. Senate, Committee on the Judiciary, Report No. 1020, "Amending Certain Titles of the United States Code, and for Other Purposes," October 16, 1951, pp. 3, 9, 32–33.

[11] Harry Howe Ransom, "The Intelligence Establishment" (Cambridge: Harvard University Press, 1970), pp. 163–172.

investigation's possible impact, in February 1965 FBI officials in conjunction with Johnson Administration officials convinced the Committee to exclude the FBI from this investigation, arguing that "national security" programs might otherwise be compromised. One result of this self-containment was that the Long Committee did not learn about the scope of the FBI's illegal activities and methods—uncovered one decade later by the Church Committee. These included the Do Not File procedure for break-ins, the June mail procedure for sources illegal in nature, the FBI's mail cover/intercept programs, the extent and nature of FBI wiretapping, bugging, and break-in activities—to cite representative examples. The Committee's public hearings into the Post Office Department's mail cover operations and procedures, moreover, highlighted one ironic result of the Long Committee's self-containment.

Having obtained copies of Postal Forms 2008 (used by agencies to request mail covers) and 2009 (used by the Post Office to forward information obtained through mail covers), the Long Committee became apprised of a Post Office record destruction procedure. The following notation was printed at the bottom of Form 2008: "Under no circumstances should the addressee or any unauthorized person be permitted to become aware of this action [mail cover]. Destroy this form [2008] at the end of period specified [two years]. Do not retain any copies of form 2009." Stressing that such record destruction effectively denied to defense attorneys the opportunity to ascertain through discovery motions that their clients had been subject to mail covers, Committee counsel Bernard Fensterwald queried whether Chief Postal Inspector Henry Montague knew whether any other agency resorted to such practices. As a counterexample of an agency which maintained a full record of its investigative activities, Fensterwald cited the FBI.[12] Because intentionally refraining from investigating FBI filing procedures, the Long Committee could not know that Fensterwald's commendation of FBI record retention practices was unfounded—the Bureau's Do Not File procedure for break-ins could very well have provided the model for Postal Forms 2008 and 2009.

I apologize for this admittedly lengthy statement. I am deeply concerned that sections 234, lines 18–20 and 421, 14(d), lines 8–9 and 13–23, because lacking the obvious controversial qualities of other sections of S. 2284, might be enacted without a full consideration by the Committee of their important policy consequences and their effect on scholarly research. I urge the Committee to delete these sections. The FOIA has not yet resulted in the disclosure of any properly classified national secrets. Because a lower court ruling rejecting a CIA national security exemption claim is currently on appeal, I urge this Committee to wait for the final resolution. The Committee could then decide, if the lower court ruling is upheld, whether release of this CIA document would adversely affect the national security. I am confident that such a review will result in the conclusion that no changes in the FOIA will be needed.

I again thank the Committee for the opportunity to testify and, in view of the length of my prepared statement, for its patience.

Mr. THEOHARIS. My name is Athan Theoharis. I am a professor of American history at Marquette University, Milwaukee, Wis., specializing in Federal surveillance policy during the cold war years. I thank the committee for inviting my testimony on those provisions of S. 2284, the National Intelligence Act of 1980, and of S. 2216, the Intelligence

[12] The relevant documents of the Long Committee hearings are U.S. Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Hearings on Administrative Procedure Act, 89th Congress, 1st session, 1965, pp. 195, 198–199, 202–203, 206; S. Rept. No. 119, Mar. 10, 1965, p. 7; S. Rept. No. 1053, Mar. 4, 1966, p. 4; S. Rept. No. 21, Feb. 1, 1965, p. 4; S. Rept. No. 518, July 28, 1965, pp. 2–3; Hearings on Invasion of Privacy (Government Agencies), 89th Congress, 1st session, 1965, pp. 1–3, 5, 8–12, 90–91, 97–99, 110, 211–212, 217–218; and Hearings on Invasion of Privacy (Government Agencies), pt. 3, 89th Congress, 1st session, 1965, pp. 1163, 1641. The documents pertaining to FBI and Johnson Administration efforts to contain the Long Committee investigation are cited in U.S. Senate, Select Committee to Study Governmental Operations with respect to Intelligence Activities, Hearings on Intelligence Activities, vol. 6, Federal Bureau of Investigation, 94th Congress, 1st session, 1975, pp. 830–835; Final Rept., "Intelligence Activities and the Rights of Americans," Book II, 94th Congress, 1st session, 1976, pp. 278, 286, 286n.80; and Final Rept., Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, 94th Congress, 2d session, 1976, pp. 307–310, 588, 595, 609, 637–638, 661, 665–668, 676–677. The exchange between Fensterwald and Montague is from U.S. Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Hearings on Invasion of Privacy (Government Agencies), 89th Congress, 1st session, 1965, pp. 90–91.

Reform Act of 1980, exempting the Central Intelligence Agency—CIA—from the mandatory search and disclosure provisions of the Freedom of Information Act—FOIA—of 1966, as amended. The relevant sections are 234, lines 18–20, page 62—I concede that is the reference to the Administrative Procedures Act but I think there is certain relevance in that exemption as this pertains to the rules and procedures involving recordkeeping that I will want to address later on in my statement—and 421, 14(d), lines 8–9 and 13–23, page 89 of S. 2284 and 3, lines 22–35, page 2, and lines 1–12, page 3 of S. 2216. Insights I have gained from my research experiences as a historian of Federal surveillance policy and formerly as a consultant to the Senate Select Committee on Intelligence Activities—the so-called Church Committee—might prove profitable to this committee and its staff during deliberations on these important legislative provisions.

At the outset, I should express my deep concern that the proposed legislative charters for the intelligence agencies—whether the legislation currently before this committee, S. 2216 and S. 2284, or that before the Senate and House Judiciary Committees, S. 1612/H.R. 5030, the Federal Bureau of Investigation Charter Act of 1979—would exempt the CIA—S. 2284 and S. 2216, although I think S. 2216 could be read as exempting all the intelligence agencies—and the FBI—S. 1612/H.R. 5030—from FOIA provisions. There is no record that the FOIA has compromised legitimate national security programs. These proposals, moreover, would effectively preempt scholarly research into the past history of the CIA and the FBI at a time when such research can only now be initiated.

Furthermore, I question why only the FBI and the CIA have sought exemption from the mandatory search and disclosure provisions of the FOIA. Thus, while files of other Federal agencies and departments having national security responsibilities are equally sensitive, neither the Departments of Defense, State, and Justice nor the Defense Intelligence Agency, the National Security Agency, the National Security Resources Board, and the National Security Council have sought similar exemption. Nor can the case be made that all FBI and CIA files, or all CIA "special activities" files, are properly withdrawn on national security grounds.

Until the mid-1970's, because CIA and FBI files were absolutely classified, scholarly research into the history of these agencies was virtually impossible. Unlike journalists, historians and political scientists need to have access to primary source material—interviews, press conferences, public testimony, and selectively leaked documents clearly do not meet the exacting standards of scholarly research. Yet, for example, all FBI files dating from the World War I period were classified, including those documenting the FBI's August 1923 investigation of the fraudulent Zinoviev Instructions. In addition, in the early 1960's FBI officials successfully pressured the National Archives to withdraw from Department of Justice and American Protective League files deposited at the Archives all documents and copies of documents pertaining to FBI investigations of the World War I period.

Nor is the problem simply over- and indiscriminate-classification. Were that the case, then these proposed amendments to the FOIA would not cripple historical research. Under Executive Order 12065—

and formerly 11652—historians can submit mandatory review requests to secure declassification either of improperly or no longer justifiably classified documents. Yet, to employ the mandatory review procedure, the researcher must be able to identify specific classified documents and be generally aware of particular programs and activities.

As a result of the Church committee hearings and reports, however, we know how limited, even irrelevant, our knowledge of past FBI and CIA activities had been. Experts of the cold war years might have been generally aware of the preventive detention program instituted under the McCarran—Internal Security—Act of 1950 and lasting until congressional repeal in September 1971. We now know that absent statutory authority the FBI and the Department of Justice instituted a preventive detention program in 1939, that this program was formally revised in 1948, and that FBI and Department of Justice officials in the 1950–52 period decided to ignore the preventive detention standards mandated under the McCarran Act and after September 1971 to ignore Congress' decision to repeal the preventive detention section of that Act.

Similarly, academic specialists might have been generally knowledgeable about the CIA's resort to covert operations during the Eisenhower years and after. We did not know that CIA covert operations dated from 1947 and were authorized and reviewed under procedures instituted pursuant to NSC 4A and NSC 10/2 of December 1947 and June 1948. In sum, then, the FBI's and CIA's earlier policies of classifying the totality of their files not only precluded scholarly research in the very recent past but also insure that historians cannot presently employ the mandatory review provisions of Executive Order 12065 to obtain files needed for their research.

There is a further dimension, and one which in effect has meant that only through employing the FOIA can scholarly research into relevant files of the intelligence agencies be conducted. That dimension relates directly to the separate filing procedures of both these intelligence agencies—procedures not employed, to my knowledge, by the Departments of Defense and State.

Thus, FBI officials devised in 1942 the "Do Not File" procedure for "clearly illegal" break-ins; in 1949–51 the "June mail" procedure for "sources illegal in nature" and "for the most secretive sources, such as Governors, secretaries to high officials who may be discussing such officials and their attitude;" in 1949 the "Administrative page" procedure for "facts and information which * * * would cause embarrassment to the Bureau, if distributed;" and in 1940–44 the "Administrative Matter" procedure for documents which could disclose either FBI leaks to "friendly" reporters and Congressmen or other politically sensitive activities. Such "sensitive" FBI documents were not filed with other national security documents in the Bureau's central files but either in former FBI Director J. Edgar Hoover's Official and Confidential files, in the closely held 66 file, or "in a limited access area referred to as the special file room."

Similarly, the CIA has "soft files," which Acting CIA Director John Blake characterized as "files of convenience or working files" which were "not official records and thus are not indexed as such." Describing the CIA's filing procedures, Blake observed that "Within

the Agency, there is no single centralized records system. For reasons of security and need to know, there are a number of records systems designed to accomplish the information retrieval needs of the various Agency components and the Agency's clients." I am aware of at least two such CIA separate filing procedures.

Thus, in December 1971 when confronting the delicate political problem of how to handle copies of the mail of "Elected or Appointed Federal and Senior State Officials—for example, Governors, Lieutenant Governors et cetera" which had been intercepted under the Agency's New York City mail program, HTLINGUAL, CIA officials stipulated that these "special category items" were not to be "carded" for inclusion in HTLINGUAL's highly classified files but were to be "filed in a separate file titled 'special category items.'" In addition, all cables and dispatches pertaining to the CIA's illegal domestic surveillance program, CHAOS, were to be "specially handled" by the Agency's counterintelligence staff. Such documents were to be "slugged" CHAOS to limit distribution to the counterintelligence staff and to high-level CIA officials on an "eyes only basis."

These separate filing procedures necessarily complicate historical research—for the decision not to include these documents with even highly classified national security files means that declassification of central files will not insure access to the full record of these agencies' past practices. The needs of the scholar can only be met through the FOIA's mandatory search and disclosure provisions. Acting CIA Director John Blake conceded as much during his September 1977 testimony:

> **The CIA's principal business is the collection and production of intelligence. The Agency's files are set up to accomplish this purpose. Since much of the Agency's business is, by necessity, secret, and FOIA requesters on a certain subject cannot describe these records with precision. Thus, the very first step in processing FOIA requests, that of searching for and identifying records, is often complicated and difficult.**

This is particularly highlighted, moreover, by the CIA's failure to produce full documentation concerning its drug-testing programs of the 1950's and 1960's. During September 1975 testimony before the Church committee, former CIA Director William Colby maintained that the Agency's past recordkeeping procedures made it impossible to reconstruct fully CIA programs either because "a very limited documentation" took place or in the case of the drug-testing program because relevant documents had been destroyed in January 1973. In July 1977, however, CIA Director Stansfield Turner effectively repudiated Colby's assertion that a fuller record of the drug-testing program could not be provided. Testifying before this committee, Turner conceded that CIA documents provided to the Congress in 1975 had been "sparse in part because it was the practice of the CIA at that time not to keep detailed records in this drug-testing category." After an "extraordinary and extensive search," Turner continued, additional CIA documents pertaining to the Agency's drug programs had been located in retired CIA archives filed under financial accounts.

I do not challenge Turner's explanation, or Acting CIA Director John Blake's further elaboration in September 1977 testimony before the Senate Subcommittee on Administrative Practice and Procedure.

My only point is that although the CIA had every reason to provide Congress with a full record of the drug program in 1975, it did not do so. Significantly, the additional documents were uncovered in response to an FOIA suit brought by John Marks when the CIA conducted the records search mandated by the FOIA. My point, then, is that the FOIA's mandatory search and disclosure provisions alone can insure that researchers will receive the full record of past CIA practices.

Is, then, the basic issue the convenience of conducting historical research? The premise of these exemptive sections of S. 2284—and of S. 2216—pointedly affirmed by Deputy CIA Director Frank Carlucci in recent testimony before the House Subcommittee on Government Information and Individual Rights, is that this committee, and its House counterpart, can provide the needed oversight to insure against the recurrence of abuses of power.

Yet, I question whether this committee, and the Congress in general, can fulfill its crucial oversight responsibility without relying on the research of historians, political scientists, and journalists. Surely at a time when it is considering legislative charters for the intelligence agencies, and in the future when assessing the adequacy of enacted legislation Congress judgments should be based on a full understanding of past policies and procedures. I do not think I am impugning the impressive research effort performed by the staff of this committee, and its predecessor committee, if I suggest that many of their findings are incomplete and that future research will provide a fuller understanding of the intelligence agencies' practices and procedures. Indeed, that fuller research could very well call into question the wisdom of S. 2284, particularly those sections based on the premise of administrative discretion and the implicit faith in internal oversight and accountability.

In my initial remarks, I alluded to the limited knowledge of presumably expert academic specialists about past FBI and CIA practices. Let me recount my own personal experience. When I was appointed a consultant to the Church committee in July 1975, I naively thought that my expertise would be of great value to the committee. As a result of my consultantship, and then my further research into the published hearings and reports of the committee, I now recognize the limits of my former knowledge and the inadequacy of the research I subsequently conducted on behalf of committee staff. I do not mean to imply that I did not contribute to the committee's work, but only that because of my ignorance of the FBI's secret programs my contribution was necessarily a limited one. Profiting now from the reports of this committee, the Church committee, and other congressional committees, and my subsequent use of the FOIA to secure additional FBI documents, I would no longer disparage my knowledge and expertise. In short, I now think that I would justly earn a consultantship salary.

Because of our training and research methods, historians approach and research questions in ways which are fundamentally distinctive from lawyers—the specific academic background and training of the vast majority of congressional staff. Let me illustrate this by a personal example—emphasizing, at the outset, that I am not disparaging the excellent research and analytical talents of the legal scholars on

staff. My specific responsibility as a consultant to the Church committee was to research relevant files at the Presidential libraries concerning the FBI-White House relationship. In October 1975, prior to a planned research trip to the Lyndon Baines Johnson Presidential Library, I came to Washington both to organize files I had accessioned from earlier trips to the Harry S. Truman and Dwight D. Eisenhower Presidential Libraries and to discuss with staff counsel the particular questions I should research at the Johnson Library.

Staff counsel then suggested that that afternoon I might profitably peruse certain FBI files made available to committee staff at the J. Eddgar Hoover Building. These files summarized reports from FBI Director Hoover to the Johnson White House for the period 1964–69. I did so that afternoon and again another afternoon during a November 1975 trip to Washington, the purpose of which was to organize the files I had accessioned during research trips to the Johnson and John F. Kennedy Presidential Libraries and to select particular documents directly relevant to the committee's public hearings on the FBI to be held the next week.

At this time I learned, as did senior committee staff John Elliff and Mark Gitenstein, that the only effective use made of this collection of files was that which I undertook during my admittedly abbreviated research trips to the J. Edgar Hoover Building. In these two brief, trips, I had discovered, for example, that in response to Johnson White House requests the FBI had conducted name checks on prominent newsmen David Brinkley, Joseph Kraft, Richard Stolley, Ben Gilbert, Peter Arnett, and Peter Lisagor.

Although committee staff counsel had ready and daily access to these FBI files, he had only cursorily reviewed them; 3 by 5 onionskin summaries, these files numbered, I would guess, around 5,000 pages. These FBI summaries documented the extent of the Johnson administration's interest in dissident activities and its political uses of the FBI. Nonetheless, the vast majority of the documents were in themselves nonsensational. Committee staff counsel had seemingly, but erroneously, concluded that they were not worth researching. We historians, because seeking to discern patterns and the context of decisions—and I might add far less talented than lawyers in analyzing the language of particular documents—adopt a broader research method—and the result is both a superior ability to understand the context and thrust of particular issues and a patience which enables us to find that one sensational document squirreled amidst thousands of pages of nonsensational documents.

Let me provide a second example of the supplementary research contribution of historians—one which refines the Church committee report on Operation SHAMROCK.

Responding to the Church committee's request for relevant documents, in 1975 National Security Agency—NSA—officials presumably forwarded all the documents they held pertaining to SHAMROCK. On March 25, 1976, however, NSA officials informed the committee of their "discovery" of another file containing additional SHAMROCK documents. The NSA's explanation was that these documents had been held by a lower level NSA employee who had brought them to his superiors' attention on March 1, 1976. This was not the sole discovery of additional documents pertaining to SHAMROCK.

In the fall of 1975, the House Subcommittee on Government Information and Individual Rigbts was conducting a simultaneous investigation of SHAMROCK. In addition to requesting relevant documents from the NSA and the international telegraph companies, the House subcommittee also requested the National Archives to search its holdings for any documents pertaining to SHAMROCK. In the course of this search, National Archives staff located an additional nine documents in the classified records of the Office of the Secretary of Defense James Forrestal. These documents detailed the Truman administration's abortive attempt in 1948 to secure enactment of legislation which, if enacted, would have legalized SHAMROCK.

Significantly, the Church committee staff had not originally requested a National Archives search. In this instance, these classified documents were obtained in response to a request of another congressional committee. Nonetheless, when researching this program, historians would have employed the FOIA to secure this fuller record. There is, moreover, another dimension to SHAMROCK which has not yet been addressed by any congressional committee.

In its report on SHAMROCK, the Church committee noted that officials of the three international telegraph companies, because fearing prosecution, had expressed reservations in 1945 and again in 1947 about their companies' participation in this illegal acting. Assurances by Secretary of Defense Forrestal in 1947 and his successor, Louis Johnson, in 1949 that the Truman administration would not prosecute the companies allayed these fears. These assurances were obviously not binding on succeeding administrations and thus the unsuccessful 1948 effort to secure enactment of remedial legislation. Yet, the committee uncovered no record that any President, Secretary of Defense, or Attorney General after Truman's Presidency had been briefed about SHAMROCK and had then provided similar nonprosecution assurances. I think I can explain why, although I concede that further research into yet classified files is needed into the legislative bistory of this particular measure.

On October 31, 1951, President Truman signed H.R. 3899, amending certain titles of the United States Code. One of the amended titles—section 24a—of this conglomerate measure criminalized the unauthorized transmission or publication of information pertaining to cryptographic systems and methods and to communication intelligence activities. While not legalizing SHAMROCK, section 24a did provide the protection against prosecution insisted upon by company officials—who feared that their employees might report this illegal interception of cable traffic to the FCC or to their union. Significantly, this 1951 measure had not been the subject of public hearings, was publicly characterized as nonsubstantive, and was included with other title changes which indeed were nonsubstantive.

The particular method employed to criminalize disclosure of communications interception activities raises a number of questions. Were executive session hearings held? Did Truman administration officials concert with the congressional leadership to devise this legislative strategy? Why was unauthorized disclosure criminalized rather than interception legalized? Was this measure drafted by military intelligence officials and, if so, was the President briefed and did he ap-

prove the decision to enact this far-reaching measure—the only "Official Secrets Act" in our history?

Since H.R. 3899 in effect immunized NSA actions from public discovery, we now know that NSA officials did not need to fear disclosure in the late 1960's when initiating another illegal interception program, Operation MINARET. A review of the legislative history of H.R. 3899, as such, has direct contemporary relevance since this committee is currently formulating legislation to authorize noncriminal NSA investigations based on the premise of administrative discretion.

Let me conclude my testimony by citing two instances of the breakdown of congressional oversight. In 1955, Senator Mike Mansfield introduced a resolution to create a joint congressional oversight committee on the CIA. Although favorably reported by the Senate Rules Committee, Mansfield's resolution was defeated on April 9, 1956. A special oversight committee was not needed, opponents of the Mansfield resolution argued, owing to the effective oversight provided by the Appropriations and Armed Services Committees. The Senate should allow the CIA to continue with its work, Senator Carl Hayden pointedly warned, "without being watchdogged to death."

Ironically, at the time when key Congressmen were affirming the effectiveness of existing oversight, and that same year, the CIA shifted the thrust of its New York City mail program from a mail cover to a mail intercept program. Then, in February 1958 the CIA began to forward copies of letters intercepted under this program to the FBI. If this program ever had an exclusive "foreign intelligence" purpose, by the late 1950's it had evolved into an illegal "internal security" investigation—in violation of the National Security Act of 1947. Nonetheless, the oversight committees did not discover, or dissuade CIA officials from continuing, either this illegal program or the equally illegal domestic surveillance program, Operation CHAOS.

A second example of the breakdown of congressional oversight involves the Senate Subcommittee on Administrative Practice and Procedure's—the so-called Long committee—investigation into the intelligence agencies requesting detailed information about their 1965 hearings, the Long committee sent a questionnaire to the various intelligence agencies requesting detailed information about their investigative techniques and filing procedures. Concerned about this investigation's possible impact, in February 1965 FBI officials in conjunction with Johnson administration officials convinced the committee to exclude the FBI from this investigation, arguing that "national security" programs might otherwise be compromised.

One result of this self-containment was that the Long committee did not learn about the scope of the FBI's illegal activities and methods—uncovered one decade later by the Church committee. These included the "do not file" procedure for break-ins, the June mail procedure for sources illegal in nature, the FBI's mail cover/intercept programs, the extent and nature of FBI wiretapping, bugging, and break-in activities—to cite representative examples. The committee's public hearings into the Post Office Department's mail cover operations and procedures, moreover, highlighted one ironic result of the Long committee's self-containment.

Having obtained copies of postal forms 2008—used by agencies to request mail covers—and 2009—used by the Post Office to forward

information obtained through mail covers—the Long committee became apprised of a Post Office record destruction procedure. The following notation was printed at the bottom of form 2008:

> Under no circumstances should the addressee or any unauthorized person be permitted to become aware of this action [mail cover]. Destroy this form [2008] at the end of period specified [two years]. Do not retain any copies of form 2009.

Stressing that such record destruction effectively denied to defense attorneys the opportunity to ascertain through discovery motions that their clients had been subject to mail covers, committee counsel Bernard Fensterwald queried whether Chief Postal Inspector Henry Montague knew whether any other agency resorted to such practices. As a counterexample of an agency which maintained a full record of its investigative activities, Fensterwald cited the FBI. Because intentionally refraining from investigating FBI filing procedures, the Long committee could not know that Fensterwald's commendation of FBI record retention practices was unfounded—the Bureau's "do not file" procedure for break-ins could very well have provided the model for postal forms 2008 and 2009.

I apologize for this admittedly lengthy statement. I am deeply concerned that sections 234, lines 18–20 and 421, 14(d), lines 8–9 and 13–23, because lacking the obvious controversial qualities of other sections of S. 2284, might be enacted without a full consideration by the committee of their important policy consequences and their effect on scholarly research. I urge the committee to delete these sections. The FOIA has not yet resulted in the disclosure of any properly classified national secrets. Because a lower court ruling rejecting a CIA national security exemption claim is currently on appeal, I urge this committee to wait for the final resolution of this matter. The committee could then decide, if the lower court ruling is upheld, whether release of this CIA document would adversely affect the national security. I am confident that such a review will result in the conclusion that no changes in the FOIA will be needed.

I again thank the committee for the opportunity to testify and, in view of the length of my prepared statement, for its patience.

Senator HUDDLESTON. I thank each of you gentlemen.

Is it your judgment that the legislation as written does sufficiently impair your ability for research as to virtually make it meaningless?

Mr. SALE. Is that not what it would suggest to you, sir?

Senator HUDDLESTON. You're the witness.

Mr. SALE. I believe it says in lines 13 and 14 "the agency shall also be exempted from the provisions of any law" which I take it to be directly aimed at FOIA and thereby exempted from FOIA provisions of disclosure. It would be PEN's position, though we are not lawyers, that this does indeed preclude any serious scholarship.

Senator HUDDLESTON. It exempts only certain types of information. The act would still apply to requests by U.S. citizens and resident aliens for information regarding themselves as well as for finished foreign intelligence analysis.

Mr. SALE. I read in the bill as I have it here the former part of that. Have I missed something about "finished" operations?

Senator HUDDLESTON. Well, it is not included among those files which are exempt.

Mr. SALE. That may be something that in yonr wisdom ougbt to be implicit rather than explicit. It is quite true, as you say, that private individuals may find information about themselves and about certain operations which are said to be closed. That does not, however, provide the kind of full access that we feel has been necessary and would be necessary.

Senator HUDDLESTON. Mr. Theoharis?

Mr. THEOHARIS. I would not accept the characterization of meaningless, let me begin by stating. I do think, though, that there are two important problems of the provisions of S. 2284. By the way I think S. 2284 is far superior to S. 2216.

Senator HUDDLESTON. Thank you.

Mr. THEOHARIS. I hope we start addressing those problems because I think S. 2216 exempts all the files of the intelligence agencies. All the programs which were identified by the Church committee as abuses of power programs certainly would fall underneath the very vague provisions of S. 2216. There are two problems though I think with S. 2284. (1) the special activities and intelligence operation section and (2) my reference to the mandatory search problems given the fact that the Agency in the past devised the separate filing procedures. It seems to me that these exemptions would reduce the value of historical research and that since the CIA has played such an important policy-making role in the recent past, if historians could only research files of the Department of State, they would not be researching what seems to me to be the very important policy decisions that were engaged in by past administrations.

My second point, if I can elaborate again on that, is that if we don't have the mandatory search provisions as we found out in the case of John Mark's FOIA search, then how can we be assured of a full record when certain documents are released? The FOIA mandates tbat a full search be conducted. As John Blake testified, and I regret be is not here for the afternoon session because I would like to recall the testimony he provided in 1977 since he is now saying that we should repeal the FOIA as it applies to the CIA, how can we be assured of those files that are held separately that only CIA officials are aware of, and that he describes are so complicated and so difficult to retrieve given the fact that these officials on board say they are distributed throughout the Agency itself.

I think it is a very difficult problem and I don't know bow it can be dealt with except by preserving the FOIA intact.

Senator HUDDLESTON. What if the restrictions were only on foreign requests and that CIA would be relieved from having to comply with any request from a foreign source?

Mr. SALE. There was an answer given to you this morning on that relating to Mr. Shawcross and it would seem to be a mistake to have such provisions as would deny him that kind of access. But could you not say in general that the provisions of the laws already on the books allow the CIA to remove for national security reasons any information that they don't want to give to anyone, foreign or domestic?

Senator HUDDLESTON. Any information? Now it is only classified information or sources and methods and that type thing.

Mr. SALE. Yes; what it deems to be appropriate.

Senator HUDDLESTON. I think they would be happy with that. They would just black it all out.

Mr. SALE. This is substantially the provision that they are already operating under at present. And in the case, you see, where they are able to make a case that a foreign requester was a dangerous source and that they could not reveal to him certain things, then that would seem to be the power that they have at this moment and nothing need threaten that particular power.

Senator HUDDLESTON. That is one of the areas they are apparently most concerned about. It is difficult to decide whether you restrict it on the basis of who asks for it or you restrict it on the basis of what the information is, which would apply to everybody.

Mr. THEOHARIS. The crucial question is what the information is, not the requester. If the Soviet Union wants to know about information, I am sure the CIA does not mind releasing nonsensitive information—it would not release, what we would agree are national secrets. I wonder, does not the FOIA already provide for that exemption? What we now have in the FOIA is the ability to challenge the national security exemption claim.

Senator HUDDLESTON. Right.

Mr. THEOHARIS. That makes it very valuable. My other point is that we have the requirement that they search their files for all relevant documents and from the point of view of an historian I think that provision is the most valuable one for these intelligence agencies, maybe not for the FTC. Maybe the FTC has separate filing procedures as well and so it applies to the historian interested in Federal regulatory policy as well.

I think I come at it from the other side. I don't think the FOIA is sufficiently protective of legitimate scholarly research needs but it is the best we have and I think it is very valuable to preserving it in the way that it——

Senator HUDDLESTON. We are not unaccustomed to having people coming from different sides on these issues.

What the intelligence community will say, of course, as you probably know, is that it is very difficult for them to know which information they give out would be very helpful to some foreign intelligence service and conversely very harmful to ours. If it is part of a large piece of information that is being sought, perhaps the foreign service might get the missing piece to the puzzle.

Mr. SALE. Obviously one way for them to deal with it is not to allow any information at all. But that is not what we are about. There is no way for them to achieve that total kind of protection and clearly Congress in its wisdom and the Fourth Circuit Court in its wisdom have decided that the weight is on access to this information rather than allowing the CIA to operate in total secrecy.

Senator HUDDLESTON. If restrictions are put on or exemptions are granted to the agencies, should there be a time limit to those exemptions or a certain period of time after which the information would be available?

Mr. KIRKENDALL. Of course there is a time limit now. Most of these security classified materials are not available to us until the passage of a very lengthy period of time. The advantage of the Freedom of Information Act is that it enables us to move in and to challenge the

classification that had been given to a particular document. It does seem to me necessary to have those kinds of time periods. That is not the ideal world from the scholar's point of view but we recognize that there are other interests that have to be respected as well as our own interests and that some kinds of compromises have to be worked out in order to maximize the interests that are protected.

Mr. THEOHARIS. We concede that because a document was created 25 years ago does not mean that it should be released nor because a document was created yesterday means it should be classified. The time factor does not seem to be the crucial issue so much as the relevant information in that document itself. The Presidential Records Act of 1978 provides for an exemption of a set period of the papers of a President in addition to national security records which would not fall under the 10-year exemption provided by the legislation.

What I see in the FOIA is the opportunity to challenge the unfounded national security claim and the requirement on the Agency to justify that exemption claim. I think that is valuable and——

Senator HUDDLESTON. From their standpoint it may also be damaging.

Mr. THEOHARIS. If you look at it from the point of view of the Department of State, and they do publish the Foreign Relations series, and I am a historian researching these files, that would provide insights that would be valuable to a foreign power. I think I see no reason why we cannot live with what is now for the first time the opportunity to know what the CIA was doing in the past. I think the CIA's history needs to be researched because it has not been researched and it plays a very important policy role.

Senator HUDDLESTON. Apparently they are bogged down with requests that are not from journalists or historians. Do you see any legitimate way to narrow the scope of this that would not preclude journalists or historians but would relieve them of some of the load that they have?

Mr. KIRKENDALL. I don't want to give away other people's opportunities and so I don't know how to deal with that question. I just feel compelled to insist upon the importance of the historian's role and consequently the importance of the Freedom of Information Act from that point of view. Agreeing with what has been said by my colleagues here, the Central Intelligence Agency is too important to the country for scholars to be restricted to what is called finished intelligence. We need to see how that institution has functioned, what its impact has been. We need more than simply the products of its activities in order to understand its significance. It is unfortunate that this process of searching the files and responding to us is costly but it does seem to me that the results of historical research are more important than those costs.

Mr. SALE. If I may just interject, I think that this is, it seems to me, largely a smokescreen and that we don't have evidence that it is such an onerous bureaucratic burden on these people except their mentioning that four people have been assigned to one particular unpleasant case—which, if so, would seem to be a mistake on the Agency's part. What we do have evidence of is long delays and many documents that come with great sections blanked out of them. In fact, I have a feeling that if they spend less time blanking out sections of the documents,

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mostly innocuous documents, that they send out, they would process a lot more information a lot quicker.

Mr. THEOHARIS. Could I respond? I think it is inevitable that the first use of the FOIA would be made by activities, that is no surprise to me. It is also the case and here I refer to the *Eudey* case the CIA has been very reluctant to release documents and further has charged very high search fees. We historians don't have the financial resources for using the FOIA. If I have to pay $3,000 for search fees, I will decide to research other questions. Now if I have access to legal counsel, whether it is provided through an organization such as the ACLU or the Center for National Security Studies, then I can take advantage of the FOIA.

Let me give an example of a historian who was researching the Smith Act cases of the 1940's and 1950's. At my suggestion I said: "Look, the Church committee's hearings are directly relevant to your research project. I think you should read those hearings, I think you should also take advantage of the FOIA." He said, "It isn't possible." He received a letter from FBI Director Kelly that he needed $300,000 to receive those files and that terminated his interest.

To answer your question then, it is no surprise to me that historians, as opposed to activists, have not made effective use of the FOIA. Now the door is being closed shut.

Senator HUDDLESTON. Gentlemen, I don't think this issue is totally settled yet as far as this particular legislation is concerned and your comments will be very helpful to us. We had you here a long time today. I appreciate your patience and perseverance. Thank you very much for your time.

Representative of the American Association of University Professors, Prof. Douglas Rendleman, professor of law at William & Mary.

The panel representing the clergy will follow Professor Rendleman.

You may proceed, sir.

TESTIMONY OF DOUGLAS RENDLEMAN, PROFESSOR OF LAW, WYTHE SCROOL OF LAW, COLLEGE OF WILLIAM & MARY, ON BEHALF OF THE AMERICAN ASSOCIATION OF UNIVEBSITY PROFESSORS

Mr. RENDLEMAN. May it please the committee, I am Doug Rendleman, as you said, professor of law at William & Mary. I am here for the AAUP.

We have a prepared statement which I would like to lay in the record.

Senator HUDDLESTON. Very well.

[The prepared statement of Prof. Douglas Rendleman and accompanying material on behalf of the American Association of University Professors follows:]

PREPARED STATEMENT BY PROF. DOUGLAS RENDLEMAN, PROFESSOR OF LAW, WYTHE SCHOOL OF LAW, COLLEGE OF WILLIAM & MARY, ON BEHALF OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Senator Bayh and members of the committee, I am Douglas Rendleman, professor of law at the Wythe School of Law of the College of William & Mary. I am testifying today as a representative of the American Association of Univer-

sity Professors and as a member of the Association's Committee on Intelligence Law.

In speaking on behalf of college and university professors, I wish to give you our thoughts about the legislation which is under considecation. In the background lies a history of four yesrs of concern, uncertainty, and debate beginning with the revelations of the Church Committee in 1976 and continning thrnugh today. The Church Committee report sent shock waves thcough the academic community not only becanse it revealed nnethical activities but also because it demonstrated how pervasive those activities were. The concerns we expressed then, and again in 1978, are the same concerns we have today. Nothing has occurred in the intervening yenca to change our minds about the need for legisiation to constcain the intelligence agencies in their relationships with the academic community. Indeed, the need for iegislation has taken on a new urgency as the result of the decision of CIA Director Stansfield Turner to reject the authority of Harvard University to enforce its own gnideilnes on the relationships between the Harvard community and the Intelligence agencies, as well as the announcement by the CIA that in three sepacate instances it had decided, contrary to its own guidelines, to use journalists for covert intelligence purposes.

We recognize the iegitimate role which the intelligence agencies play in promoting our country's national interests. In carrying out their proper functions, the intelligence agencies should benefit from the intellectual resources found in the nation's colleges and universities. Congress should make it clear, however, that access by the inteiligence agencies to the academic community must not compromise the independence of our educationai institutions and the free search for truth which is the hallmark of academic inquiry in a free society.

As we review S. 2284, we are acutely aware of the serious deficiencies of those sections of the biii, primarily Part D of Title I, which may apply to the academic community. The bill lacks ciarity. We are told that the sections affecting the academic community were prepared hastily. Unfortunately, they also reflect the shortcomings of drafting iegisiation without full considecation of its impact on the academic commnnity.

We suggest that the following sections are examples of the deficiencies of the proposed iegislation:

1. *Section 132(a).*—It is not sufficient to leave to the President the issuance of guideiines. The guidelines which presently exist, Executive Order 12036 (January 24, 1978) and the CIA Regulation for Contacts with Academics (October 3, 1977) are sevecaly limited. The Executive Order includes no restrictions on the use of individual academics hy the inteiligence agencies, except as determined by the agencies themselves, and the CIA Regulation permits covert prsctices by members of the academic community inconsistent with their professional obligations.

2. *Section 132(a).*—The reference to private institutions requires ciarification in order to include public and private institntions of higher education, as defined by section 1201(a) of the Higher Education Act of 1965, as well as indlvidual academics.

3. *Section 132(c).*—Thls section is concerned not with the intelligence agencies but speaks rather to the legislation itself. Under Section 132(a), the President shaii establish public guidelines for the intelligence agencies. But whatever the President's disposition to promuigate guideiines which respect professionai and institutional integrity, he could not, under Section 132(c), propose guidelines which prohibit "voiuntary contacts or the voluntary exchange of information between any person and any entity of the intelligence community." It is, however, preciseiy these "contacts" and "exchanges" between the intelligence agencies and members of the academic commnnity which require urgent attention through legislation.

We have similar concerns about language, scope of application, and pnrpose with respect to Sections 133 and 134.

On the basis of our review, we do not beiieve that in its present form S. 2284 shonld be approved by the committee. It requires major redrafting, and we intend to snbmit specific recommendations for revision.

It is onr opinion that Part D should speak specifically to the concerns of the academic community. The legislation should incorporate the following: (1) an affirmative statement indicating that it is the purpose of Congress to protect the integrity and independence of institutions of higher education in accordance with constitutional principies; (2) a prohibition on certain activities of the intelligenca agencies which violate the pcofessional and ethical standards of the

academic profession and interfere with the legal autonomy of institutions of higher education; (3) a prohibition on the intelligence agencies from not only using academic institutions as a cover but also using members of academic communities for covert intelligence activities and for covert recruitment; (4) an acknowledgement found in the CIA Regulation that the intelligence agencies are not authorized to violate the Family Educational Rights and Privacy Act (i.e. the Buckley Amendment); (5) a prohibition on the intelligence agencies from subsidizing the publication or distribution of scholarly books, articles, and materials prepared by scholars at institutions of higher education for the purpose of influencing public opinion within the United States or in foreign countries; and (6) a requirement that if intelligence agencies enter into contracts with academic institutions, research institutes, centers, and other entities affiliated with academic institutions, or individual academics, the sponsorship of such contracts shall be fully disclosed in a manner consistent with institutional regulations governing contracts with outside sponsors.

The Church Committee revealed the extent to which intelligence agencies, primarily the Central Intelligence Agency, were involved in clandestine and covert relationships with both academic institutions and individual academics. In 1976 we said that the report confirmed that "the CIA has for years covertly used academic institutions and employed academic persons in ways which compromise institutional and professional integrity. Universities and scholars have been paid to lie about the sources of their support, to mislead others, to induce betrayed confidences, to misstate the true objects of their interest, and to misrepresent the actual objectives of their work." At that time we asked the CIA to end its covert use of academic institutions and individual academics and to provide the same guarantee to the academic community which it had given to the religious community and to journalists. That guarantee has not been forthcoming.

The Church Committee recommended the enactment of legislation prohibiting the operational use of academics who are funded under government-sponsored programs. It recommended against a legislative prohibition on the operational use of individuals by the intelligence agencies. It believed that such legislation would be unenforceable and an intrusion into the privacy and integrity of the American academic community. "It is the responsibility of . . . the American academic community," the committee said, "to set the professional and ethical standards of its members."

Long before the Church Committee report was issued, the academic community had set the "professional and ethical standards" for its members. Far from respecting these standards, however, the intelligence agencies have abused them. The agencies encouraged, for example, the covert use of academics to collect intelligence in foreign countries, covert consultation, covert recruitment, and the subsidization of research, publication, and distribution of materials for propaganda purposes.

The professional and ethical standards in the academic community derive from the principles of academic freedom, professional ethics, and institutional autonomy. These standards and principles are widely accepted in the academic community.

The "Statement of Principles on Academic Freedom and Tenure" (1940), which was issued jointly by our Association and the Association of American Colleges and which has been endorsed by over 100 professional and learned societies, recognized the principle of academic freedom in teaching and research as fundamental to the free search for truth and its free exposition. As a researcher, the professor is entitled to "full freedom in research and in the publication of the results" but "research for pecuniary return should be based upon an understanding with the authorities of the institution." As a classroom teacher, the professor is entitled to "freedom in the classroom in discussing his subject." As a citizen, the professor is entitled to speak or write "free from institutional censorship or discipline" but the professor's "special position in the community imposes special obligations." Since the public may "judge his profession and his institution by his utterances," the professor should "at all times be accurate," exercise appropriate restraint, show respect for the opinions of others, and "make every effort to indicate that he is not an institutional spokesman."

Covert and clandestine practices by the intelligence agencies in their relationships with the academic community distort these rights and responsibilities and thus undermine academic freedom to the detriment of society.

The Association's "Statement on Professional Ethics" (1966) reflects the ethical standards traditionally observed in the academic profession. Professors

assume obligations to their disciplines, students, colleagues, as members of the academic community, and as citizens. They should practice "intellectual honesty," and although they may have subsidiary interests those interests should never "seriously hamper or compromise" the freedom of inquiry. They should protect the academic freedom of students and respect "the confidential nature of the relationship between professor and student." They should respect and defend "the free inquiry" of their colleagues. They should observe "the stated regulations of the institution, provided they do not contravene academic freedom." As citizens engaged in a profession that depends upon freedom for its health and integrity, they should "promote conditions of free inquiry and to further public understanding of academic freedom."

Within the academic community, the institution assumes responsibility for enforcing standards of professional ethics, which, set forth in whatever details, call upon members of the academic community to take no actions in conflict with their primary professional duties.

The "Statement on Government of Colleges and Universities" (1966), which was formulated by our Association jointly with the American Council on Education and the Association of Governing Boards of Universities and Colleges, serves to foster joint action by governing boards, administrators, faculty, and students in protection of institutional integrity against improper intrusions. The Statement rests on the premise that rules adopted by colleges and universities to protect their essential activities and thus preserve their autonomy, established by state constitutions, state statutes, or charters, are to be respected by outside agencies. The Statement describes the primary responsibilities of the governing board, the president, the faculty, and the students in carrying out the functions of an academic institution. It demonstrates that the academic community is capable of self-government and self-regulation.

The purpose of our exposition of these statements of principles and standards is to suggest again that the professional and ethical standards of the academic community as well as the mechanisms and procedures for their implementation were well established during the period described by the Church Committee Report. The legislation we request is directed towards the intelligence agencies, not the academic community. Whatever problems there may be in the internal enforcement of the standards of the academic community, we believe that Congress has a strong obligation to approve legislation which prohibits the intelligence agencies from violating those standards.

It is not our intent to analyze again, as we did in 1976 and 1978, the reasons for the differences which exist between the academic community and the intelligence agencies. The resolution of our Annual Meeting of 1976 summarizes the dangers we believe continue to exist:

"The standing and reputation of academics have always depended on their dedication to the free search for truth and its free exposition; the exploitation by these [intelligence] agencies of academics and their research has risked undermining the credibility of published research and risked compromising the position of academics."

That same concern has led several institutions to add to their internal regulations new guidelines on the relationships of their institutions and faculties to the intelligence agencies. They are meant to implement principles of academic freedom, professional ethics, and institutional autonomy, and they deserve the same recognition and respect as the principles themselves.

Instead of a detailed analysis of differences, it may be more helpful to recognize the imperatives which confront all of us now. We do not dispute the legitimate roles of intelligence agencies in a free society, but there is a fundamental imperative that the government which creates and fosters intelligence agencies should also guarantee that those agencies do not violate the freedom of American higher education. The covert activity encouraged by the intelligence agencies within the academic community should be terminated. It is necessary to create a more productive and open relationship based on mutual trust, improved communications, and high standards of scholarship. National security obviously benefits from encouraging open, intellectually honest scholarship by teachers and researchers who enjoy the respect and confidence of their academic colleagues here and abroad.

Accordingly, there is the imperative to redraft S. 2284 in order to address the continuing concerns expressed by the academic community since 1976.

We appreciate your invitation to testify before the Committee and the opportunity to submit more detailed recommendations for the revision of Part D of S. 2284.

Reprinted from
1977 Redbook

Academic Freedom and Tenure

1940 Statement of Principles and Interpretive Comments

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.

The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges during 1969.

The following organizations officially endorsed the 1940 Statement in the years indicated.

Association of American Colleges....1941
American Association of University Professors....1941
American Library Association (adapted for librarians)....1946
Association of American Law Schools....1946
American Political Science Association....1947
American Association of Colleges for Teacher Education....1950
American Association for Higher Education....1950
Eastern Psychological Association....1950
Southern Society for Philosophy and Psychology....1953
American Psychological Association....1961
American Historical Association....1961
Modern Language Association of America....1961
American Economic Association....1962
American Farm Economic Association....1962
Midwest Sociological Society....1963
Organization of American Historians....1963
American Philological Association....1963
American Council of Learned Societies....1963
Speech Association of America....1963
American Sociological Association....1963
Southern Historical Association....1963
American Studies Association....1963
Association of American Geographers....1963
Southern Economic Association....1963
Classical Association of the Middle West and South....1964
Southwestern Social Science Association....1964
Archaeological Institute of America....1964
Southern Management Association....1964
American Educational Theatre Association....1964
South Central Modern Language Association....1964
Southwestern Philosophical Society....1964
Council for the Advancement of Small Colleges....1965
Mathematical Association of America....1965
Arizona Academy of Science....1965
American Risk and Insurance Association....1965
Academy of Management....1965
American Catholic Historical Association....1966
American Catholic Philosophical Association....1966
Association for Education in Journalism....1966
Western History Association....1966
Mountain-Plains Philosophical Conference....1966
Society of American Archivists....1966
Southeastern Psychological Association....1966
Southern Speech Association....1966
American Association for the Advancement of Slavic Studies....1967
American Mathematical Society....1967
College Theology Society....1967
Council on Social Work Education....1967
American Association of Colleges of Pharmacy....1967
American Academy of Religion....1967
American Catholic Sociological Society....1967
American Society of Journalism School Administrators....1967
John Dewey Society for the Study of Education and Culture....1967
South Atlantic Modern Language Association....1967
American Finance Association....1967
Catholic Economic Association....1967
United Chapters of Phi Beta Kappa....1968
American Society of Christian Ethics....1968
American Association of Teachers of French....1968
Appalachian Finance Association....1968
Association of Teachers of Chinese Language and Culture....1968
American Society of Plant Physiologists....1968
University Film Association....1968
American Dialect Society....1968
American Speech and Hearing Association....1968
Association of Social and Behavioral Scientists....1968
College English Association....1968
National College Physical Education Association for Men....1969
American Real Estate and Urban Economics Association....1969
History of Education Society....1969
Council for Philosophical Studies....1969
American Physicists Association....1969
American Musicological Society....1969
American Association of Teachers of Spanish and Portuguese....1969
Texas Junior College Teachers Association....1970
College Art Association of America....1970
Society of Professors of Education....1970
American Anthropological Association....1970
Association of Theological Schools....1970
American Association of Schools and Departments of Journalism....1971
American Business Law Association....1971
American Council for the Arts in Education....1972
New York State Mathematics Association of Two-Year Colleges....1972
College Language Association....1973
Pennsylvania Historical Association....1973
Massachusetts Regional Community College Faculty Association....1973
American Philosophical Association[1]....1974
American Classical League....1974
American Comparative Literature Association....1974
Rocky Mountain Modern Language Association....1974
Society of Architectural Historians....1975
American Statistical Association....1975
American Folklore Society....1975

[1] Endorsed by Association's Western Division in 1952, Eastern Division in 1953, and Pacific Division in 1962.

Association of Asian Studies 1975
Linguistic Society of America 1975
African Studies Association 1975
American Institute of Biological Sciences 1975
Conference on British Studies 1975
Texas Association of College Teachers 1976
Society for Spanish and Portuguese Historical Studies 1976

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher[1] or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights. [1][2]

Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. [2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment. [3]

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman. [4]

[1] The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

[2] Bold-face numbers in brackets refer to Interpretive Comments which follow.

Academic Tenure

(a) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

(2) Beginning with appointment to the rank of full-time instructor or a higher rank, [5] the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. [6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period. [7]

(3) During the probationary period a teacher should have the academic freedom that all other members of the faculty have. [8]

(4) Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution. [9]

(5) Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

1940 Interpretations

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 *Statement of Princi-*

ples on Academic Freedom and Tenure were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.
3. If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on *Academic Freedom* and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a) (4) of the section on *Academic Tenure*. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

1970 Interpretive Comments

Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure *with leading educational associations and with individual faculty members and administrators, a Joint Committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the Joint Committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.*

The Committee submitted to the two Associations for their consideration the following "Interpretive Comments." These interpretations were approved by the Council of the American Association of University Professors in April, 1970, and endorsed by the Fifty-sixth Annual Meeting as Association policy.

In the thirty years since their promulgation, the principles of the 1940 *Statement of Principles on Academic Freedom and Tenure* have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that Association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 Statement, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 Statement is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 Statement; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian* v. *Board of Regents* 385 U.S. 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 Statement on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both Associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to the institution and students, and in his conduct when resigning from his institution or when undertaking government-sponsored research. Of particular relevance is the *Statement on Professional Ethics*, adopted by the Fifty-second Annual Meeting of the AAUP as Association policy and published in the *AAUP Bulletin* (Autumn, 1966, pp. 290-291).

2. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for the teacher to avoid persistently intruding material which has no relation to his subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.

4. This paragraph is the subject of an Interpretation adopted by the sponsors of the 1940 Statement immediately following its endorsement which reads as follows:

> If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a) (4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (e) of the 1940 Statement should also be

interpreted in keeping with the 1964 *"Committee A Statement on Extramural Utterances" (AAUP Bulletin*, Spring, 1965, p. 29) which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his position. Extramural utterances rarely bear upon the faculty member's fitness for his position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph V of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

> As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary as well as to the tenured teacher, but also to all others, such as part-time and teaching assistants, who exercise teaching responsibilities.

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of his specific title.*

6. In calling for an agreement "in writing" on the amount of credit for a faculty member's prior service at other institutions, the Statement furthers the general policy of full understanding by the professor of the terms and conditions of his appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution.

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 Statement with respect to the termination of services of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the *Standards for Notice of Nonreappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

(1) *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

(2) *Not later than December 15 of the second academic year of service*, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

(3) At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and individuals, are described in the *Statement on Recruitment and Resignation of Faculty Members*, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during his probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the *Recommended Institutional Regulations on Academic Freedom and Tenure*, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 Statement is silent.

The 1958 Statement provides: "Suspension of the faculty member during the proceedings involving him is justified only if immediate harm to himself or others is threatened by his continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

*For a discussion of this question, see the "Report of the Special Committee on Academic Personnel Ineligible for Tenure," *AAUP Bulletin*, Autumn, 1966, pp. 280-282.

Reprinted from Spring, 1969
AAUP Bulletin

Statement on Professional Ethics

(Endorsed by the Fifty-Second Annual Meeting)

Introduction

From its inception, the American Association of University Professors has recognized that membership in the academic profession carries with it special responsibilities. The Association has consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to students, and in his conduct when resigning from his institution or when undertaking government-sponsored research.[1] The *Statement on Professional Ethics* that follows, necessarily presented in terms of the ideal, sets forth those general standards that serve as a reminder of the variety of obligations assumed by all members of the profession. For the purpose of more detailed guidance, the Association, through its Committee B on Professional Ethics, intends to issue from time to time supplemental statements on specific problems.

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to assure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provides this assurance and so should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group. The Association supports such local action and stands ready, through the General Secretary and Committee B, to counsel with any faculty member or administrator concerning questions of professional ethics and to inquire into complaints when local consideration is impossible or inappropriate. If the alleged offense is deemed sufficiently serious to raise the possibility of dismissal, the procedures should be in accordance with the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

The Statement

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution,

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[1] 1964 Committee A Statement on Extra-Mural Utterances (Clarification of sec. 1c of the 1940 *Statement of Principles on Academic Freedom and Tenure*)
1968 *Joint Statement on Rights and Freedoms of Students*
1961 *Statement on Recruitment and Resignation of Faculty Members*
1964 *On Preventing Conflict of Interest in Government-Sponsored Research*
1966 *Statement on Government of Colleges and Universities*

provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

American Association of University Professors
American Council on Education
Association of Governing Boards of Universities and Colleges

Statement on

Government of Colleges and Universities

Reprinted from AAUP Policy Documents and Reports,
1973 Edition

American Association of University Professors

American Council on Education

Association of Governing Boards of Universities and Colleges

Statement on

Government of Colleges and Universities

Editorial Note. The Statement which follows is directed to governing board members, administrators, faculty members, students, and other persons in the belief that the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among the components of the academic institution. The Statement is intended to foster constructive joint thought and action, both within the institutional structure and in protection of its integrity against improper intrusions.

It is not intended that the Statement serve as a blueprint for government on a specific campus or as a manual for the regulation of conferences among the components of an academic institution, although it is to be hoped that the principles asserted will lead to the correction of existing weaknesses and assist in the establishment of sound structures and procedures. The Statement does not attempt to cover relations with those outside agencies which increasingly are controlling the resources and influencing the patterns of education in our institutions of higher learning; e.g., the United States Government, the state legislatures, state commissions, interstate associations or compacts and other interinstitutional arrangements. However it is hoped that the Statement will be helpful to these agencies in their consideration of educational matters.

Students are referred to in this Statement as an institutional component coordinate in importance with trustees, administrators, and faculty. There is, however, no main section on students. The omission has two causes: (1) the changes now occurring in the status of American students have plainly outdistanced the analysis by the educational community, and an attempt to define the situation without thorough study might prove unfair to student interests, and (2) students do not in fact presently have a significant voice in the government of colleges and universities; it would be unseemly to obscure, by superficial equality of length of statement, what may be a serious lag entitled to separate and full consideration. The concern for student status felt by the organizations issuing this Statement is embodied in a note "On Student Status" intended to stimulate the educational community to turn its attention to an important need.

This Statement, in preparation since 1964, is jointly formulated by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. On October 12, 1966, the Board of Directors of the ACE took action by which the Council "recognizes the Statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the institutions which are members of the Council." On October 29, 1966, the Council of the AAUP approved the Statement, recommended approval by the Fifty-third Annual Meeting in April, 1967,[1] and recognized that "continuing joint effort is desirable, in view of the areas left open in the jointly formulated Statement, and the dynamic changes occurring in higher education." On November 18, 1966, the Executive Committee of the AGB took action by which that organization also "recognizes the Statement as a significant step forward in the clarification of the respective roles of governing boards, faculties and administrations," and "commends it to the governing boards which are members of the Association."

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[1] The Annual Meeting approved the Statement.

I. Introduction

This Statement is a call to mutual understanding regarding the government of colleges and universities. Understanding, based on community of interest, and producing joint effort, is essential for at least three reasons. First, the academic institution, public or private, often has become less autonomous; buildings, research, and student tuition are supported by funds over which the college or university exercises a diminishing control. Legislative and executive governmental authority, at all levels, plays a part in the making of important decisions in academic policy. If these voices and forces are to be successfully heard and integrated, the academic institution must be in a position to meet them with its own generally unified view. Second, regard for the welfare of the institution remains important despite the mobility and interchange of scholars. Third, a college or university in which all the components are aware of the interdependence, of the usefulness of communication among themselves, and of the force of joint action will enjoy increased capacity to solve educational problems.

II. The Academic Institution: Joint Effort

A. Preliminary Considerations

The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.

Joint effort in an academic institution will take a variety of forms appropriate to the kinds of situations encountered. In some instances, an initial exploration or recommendation will be made by the president with consideration by the faculty at a later stage; in other instances, a first and essentially definitive recommendation will be made by the faculty, subject to the endorsement of the president and the governing board. In still others, a substantive contribution can be made when student leaders are responsibly involved in the process. Although the variety of such approaches may be wide, at least two general conclusions regarding joint effort seem clearly warranted: (1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components, and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand, as developed hereinafter.

B. Determination of General Educational Policy

The general educational policy, i.e., the objectives of an institution and the nature, range, and pace of its efforts, is shaped by the institutional charter or by law, by tradition and historical development, by the present needs of the community of the institution, and by the professional aspirations and standards of those directly involved in its work. Every board will wish to go beyond its formal trustee obligation to conserve the accomplishment of the past and to engage seriously with the future; every faculty will seek to conduct an operation worthy of scholarly standards of learning; every administrative officer will strive to meet his charge and to attain the goals of the institution. The interests of all are coordinate and related, and unilateral effort can lead to confusion or conflict. Essential to a solution is a reasonably explicit statement on general educational policy. Operating responsibility and authority, and procedures for continuing review, should be clearly defined in official regulations.

When an educational goal has been established, it becomes the responsibility primarily of the faculty to determine appropriate curriculum and procedures of student instruction.

Special considerations may require particular accommodations: (1) a publicly supported institution may be regulated by statutory provisions, and (2) a church-controlled institution may be limited by its charter or bylaws. When such external requirements influence course content and manner of instruction or research, they impair the educational effectiveness of the institution.

Such matters as major changes in the size or composition of the student body and the relative emphasis to be given to the various elements of the educational and research program should involve participation of governing board, administration, and faculty prior to final decision.

C. Internal Operations of the Institution

The framing and execution of long-range plans, one of the most important aspects of institutional responsibility, should be a central and continuing concern in the academic community.

Effective planning demands that the broadest possible exchange of information and opinion should be the rule for communication among the components of a college or university. The channels of communication should be established and maintained by joint endeavor. Distinction should be observed between the institutional system of communication and the system of responsibility for the making of decisions.

A second area calling for joint effort in internal operations is that of decisions regarding existing or prospective physical resources. The board, president, and faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution.

A third area is budgeting. The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short- and long-range budgetary projections. The function of each component in budgetary matters should be understood by all; the allo-

cation of authority will determine the flow of information and the scope of participation in decisions.

Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested. The president should be equally qualified to serve both as the executive officer of the governing board and as the chief academic officer of the institution and the faculty. His dual role requires that he be able to interpret to board and faculty the educational views and concepts of institutional government of the other. He should have the confidence of the board and the faculty.

The selection of academic deans and other chief academic officers should be the responsibility of the president with the advice of and in consultation with the appropriate faculty.

Determinations of faculty status, normally based on the recommendations of the faculty groups involved, are discussed in Part V of this Statement; but it should here be noted that the building of a strong faculty requires careful joint effort in such actions as staff selection and promotion and the granting of tenure. Joint action should also govern dismissals; the applicable principles and procedures in these matters are well established.[3]

D. External Relations of the Institution

Anyone—a member of the governing board, the president or other member of the administration, a member of the faculty, or a member of the student body or the alumni—affects the institution when he speaks of it in public. An individual who speaks unofficially should so indicate. An official spokesman for the institution, the board, the administration, the faculty, or the student body should be guided by established policy.

It should be noted that only the board speaks legally for the whole institution, although it may delegate responsibility to an agent.

The right of a board member, an administrative officer, a faculty member, or a student to speak on general educational questions or about the administration and operations of his own institution is a part of his right as a citizen and should not be abridged by the institution.[4] There exist, of course, legal bounds relating to defamation of character, and there are questions of propriety.

III. The Academic Institution: The Governing Board

The governing board has a special obligation to assure that the history of the college or university shall serve as a prelude and inspiration to the future. The board helps relate the institution to its chief community: e.g., the community college to serve the educational needs of a defined population area or group, the church-controlled college to be cognizant of the announced position of its denomination, and the comprehensive university to discharge the many duties and to accept the appropriate new challenges which are its concern at the several levels of higher education.

The governing board of an institution of higher education in the United States operates, with few exceptions, as the final institutional authority. Private institutions are established by charters; public institutions are established by constitutional or statutory provisions. In private institutions the board is frequently self-perpetuating; in public colleges and universities the present membership of a board may be asked to suggest candidates for appointment. As a whole and individually when the governing board confronts the problem of succession, serious attention should be given to obtaining properly qualified persons. Where public law calls for election of governing board members, means should be found to insure the nomination of fully suited persons, and the electorate should be informed of the relevant criteria for board membership.

Since the membership of the board may embrace both individual and collective competence of recognized weight, its advice or help may be sought through established channels by other components of the academic community. The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers, the president and the deans, and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation.

One of the governing board's important tasks is to insure the publication of codified statements that define the over-all policies and procedures of the institution under its jurisdiction.

The board plays a central role in relating the likely needs of the future to predictable resources; it has the responsibility for husbanding the endowment; it is responsible for obtaining needed capital and operating funds; and in the broadest sense of the term it should pay attention to personnel policy. In order to fulfill these duties, the board should be aided by, and may insist upon, the development of long-range planning by the administration and faculty.

When ignorance or ill-will threatens the institution or any part of it, the governing board must be available for support. In grave crises it will be expected to serve as a champion. Although the action to be taken by it will usually be on behalf of the president, the faculty, or the

[3] See the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*. These statements have been jointly approved or adopted by the Association of American Colleges and the American Association of University Professors; the 1940 Statement has been endorsed by numerous learned and scientific societies and educational associations.

[4] With respect to faculty members, the 1940 *Statement of Principles on Academic Freedom and Tenure* reads: "The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinion of others, and should make every effort to indicate that he is not an institutional spokesman."

student body, the board should make clear that the protection it offers to an individual or a group is, in fact, a fundamental defense of the vested interests of society in the educational institution.[4]

IV. The Academic Institution: The President

The president, as the chief executive officer of an institution of higher education, is measured largely by his capacity for institutional leadership. He shares responsibility for the definition and attainment of goals, for administrative action, and for operating the communications system which links the components of the academic community. He represents his institution to its many publics. His leadership role is supported by delegated authority from the board and faculty.

As the chief planning officer of an institution, the president has a special obligation to innovate and initiate. The degree to which a president can envision new horizons for his institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of his administration.

The president must at times, with or without support, infuse new life into a department; relatedly, he may at times be required, working within the concept of tenure, to solve problems of obsolescence. The president will necessarily utilize the judgments of the faculty, but in the interest of academic standards he may also seek outside evaluations by scholars of acknowledged competence.

It is the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice. It is also incumbent on the president to insure that faculty views, including dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared. Similarly the faculty should be informed of the views of the board and the administration on like issues.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources; he has ultimate managerial responsibility for a large area of nonacademic activities, he is responsible for public understanding, and by the nature of his office is the chief spokesman of his institution. In these and other areas his work is to plan, to organize, to direct, and to represent. The presidential function should receive the general support of board and faculty.

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[4] The American Association of University Professors, recognizing the growth of autonomous state-wide bodies superordinate to existing Boards of Trustees, regards the objectives and principles recommended in the 1966 *Statement* as requiring equally appropriate guidelines for such bodies. As noted, and more importantly for components of the academic community, they bear particular responsibility for protecting the autonomy of institutional systems under their jurisdiction and for implementing policies of shared responsibility as outlined in Section II when they displace governing boards. [Adopted by the AAUP Council in May, 1967.]

V. The Academic Institution: The Faculty

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, manpower limitations, the time element, and the policies of other groups, bodies and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved.

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The faculty should actively participate in the determination of policies and procedures governing salary increases.

The chairman or head of a department, who serves as the chief representative of his department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chairman or department head should not have tenure in his office; his tenure as a faculty member is a matter of separate right. He should serve for a stated term but without prejudice to re-election or to reappointment by procedures which involve appropriate faculty consultation. Board, administration, and faculty should all bear in mind that the department chairman has a special obligation to build a department strong in scholarship and teaching capacity.

Agencies for faculty participation in the government

of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution. Faculty representatives should be selected by the faculty according to procedures determined by the faculty.

The agencies may consist of meetings of all faculty members of a department, school, college, division, or university system, or may take the form of faculty-elected executive committees in departments and schools and a faculty-elected senate or council for larger divisions or the institution as a whole.

Among the means of communication among the faculty, administration, and governing board now in use are: (1) circulation of memoranda and reports by board committees, the administration, and faculty committees, (2) joint *ad hoc* committees, (3) standing liaison committees, (4) membership of faculty members on administrative bodies, and (5) membership of faculty members on governing boards. Whatever the channels of communication, they should be clearly understood and observed.

On Student Status

When students in American colleges and universities desire to participate responsibly in the government of the institution they attend, their wish should be recognized as a claim to opportunity both for educational experience and for involvement in the affairs of their college or university. Ways should be found to permit significant student participation within the limits of attainable effectiveness. The obstacles to such participation are large and should not be minimized: inexperience, untested capacity, a transitory status which means that present action does not carry with it subsequent responsibility, and the inescapable fact that the other components of the institution are in a position of judgment over the students. It is important to recognize that student needs are strongly related to educational experience, both formal and informal. Students expect, and have a right to expect, that the educational process will be structured, that they will be stimulated by it to become independent adults, and that they will have effectively transmitted to them the cultural heritage of the larger society. If institutional support is to have its fullest possible meaning it should incorporate the strength, freshness of view, and idealism of the student body.

The respect of students for their college or university can be enhanced if they are given at least these opportunities: (1) to be listened to in the classroom without fear of institutional reprisal for the substance of their views, (2) freedom to discuss questions of institutional policy and operation, (3) the right to academic due process when charged with serious violations of institutional regulations, and (4) the same right to hear speakers of their own choice as is enjoyed by other components of the institution.

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Mr. RENDLEMAN. I would like to summarize and speak very briefly to the committee if I may.

Senator HUDDLESTON. All right.

Mr. RENDLEMAN. Thank you for asking us to be here with you today. I speak on behalf of the college and university professors. The AAUP has some 70,000 members on almost every campus in the United States. We are the professional association for faculty members. I will change the focus of the discussion slightly to talk about the relationship between intelligence agencies and higher education institutions and faculty members. I will share with you our views about the legislation that you all are considering.

The AAUP believes in effective national security. Intelligence should benefit from the intellectual resources in our colleges and universities. In 1976, however, the Church committee report sent shock waves through the academic community. That report revealed pervasive, unethical activity—activity which injured the independence of the academic community. The report itself was censored. As censored it told of covertly sponsored research, undisclosed security investigations, secret recruitment, use of academic cover to collect intelligence, and subsidization of secret research and publication.

National security, it seems to us, must observe the values of our open society. The conduct revealed in the Church committee report undermines openness and trust necessary to foster free inquiry. It converts educational institutions into conduits of deceit. We must preserve the integrity, independence and effectiveness of our educational institutions. In the long run, it seems to us, the Nation's security is better served by uninhibited, unruly, free inquiry. Mutual benefit flows from mutual respect. Open research and open consulting benefits everyone, it seems to us, but intelligence, as revealed in the Church committee report, has prostituted academics to serve a perverted version of national security.

The Church committee report said that the academic community should set professional and ethical standards for its members. We think that we have these standards. The 1940 Statement of the Principles of Academic Freedom of Tenure was issued by the AAUP and the Association of American Colleges. Over 100 professional and learned societies have endorsed that statement. It recognizes the principle of academic freedom in teaching and research as fundamental. As a researcher, the professor is entitled to full freedom to research and to publish results; but paid research should be based on an understanding with the authorities of the institution. As a classroom teacher, professors are entitled to freedom in the classroom in discussing their subject. As citizens, professors are entitled to speak or write free from institutional censorship or discipline. Covert clandestine practice by intelligence agencies in their relationships with the academic community distort these rights and responsibilities. These practices undermine academic freedom to the detriment of society.

Second, the association's statement on professional ethics reflects the ethical standards traditionally observed in the academic profession. Professors assume obligations to their disciplines, students and colleagues. They should practice intellectual honesty. They may have subsidiary interests but those interests should never seriously

hamper or compromise their freedom of inquiry. Professors should respect the confidential nature of the relationship between professor and student. They should respect and defend free inquiry of their colleagues. They should observe their institution's appropriate regulations. Citizens engaged in a profession that depends upon freedom for its health and inquiry should promote conditions of free inquiry and further public understanding of academic freedom. Within the academic community the institution itself assumes responsibility for enforcing standards of professional ethics. The practices of the intelligence agencies in their relationships with academics have distorted these rights and responsibilities perverted the ethical standards of the profession.

A third set of standards is the Statement on Government of Colleges and Universities. It was formulated by our association jointly with the American Council on Education and the Association of Governing Boards of Universities and Colleges. It serves to foster joint action by governing boards, administrators, faculty, and students to protect institutional integrity against improper intrusion.

Ethical standards do not enforce themselves. As a dual professional, one of them being a lawyer, I understand that the bar association has to have the force of law behind it to enforce ethical standards. Some people in any profession, regretfully, cannot resist the blandishments, emoluments and prestige that will be forced upon them by outsiders. We are working with our people in higher education. We hope that Congress will constrain the Government agencies' relations with the academic community.

The need for legislation has taken on new urgency. CIA Director Turner decided to reject the authority of Harvard University to enforce its own guidelines on the relationships between the Harvard community and the intelligence agency. Also, the CIA announced that in three separate instances it had decided to use journalists for covert intelligence purposes despite its own guidelines.

The proposed legislation, S. 2284, we perceive to be insufficient. First of all, it is technically deficient. In section 132(a) of the legislation it uses the words "private institutions," then in (b) it uses the words "private institutions" and in (b) itself it uses the phrase "United States educational institutions." It seems to me, from rereading, they intend to refer to the same thing. Now this can be easily cured by changing it a little. This deficiency is not the problem, but it is the lightning that reveals the problem. The problem in this legislation is insufficient consideration of its impact on the academic world. It fails, and this is the second reason it is insufficient—it fails to incorporate the academic community's concerns. It fails to address the problems that the Church committee raised.

Now referring again to section 132, the central part of our relationship between the institutions, sub (a) and sub (b) giveth; sub (c) and sub (d) taketh away. (a) says there shall be Presidential guidelines. (b) says there shall be no institutional coverage. (c) taketh away: it allows voluntary contacts. It seems to indicate that anything uncoerced escapes from the provisions of (a) and (b). Moreover, voluntary contacts need not be disclosed to the institution. This may, it seems to me, violate the individual's terms of employment with the

institution. Then, finally, (d) allows the authorities to suspend the operation even of (b), as limited as it is.

Presidential guidelines, it seems to us, are insufficient. There is no effective restriction in the present executive guidelines on exploitation of individual academics. Again we believe in effective national security, but it seems to us that the urgency of perceived concerns about national security right now cause the more abstract but very basic academic values to be overlooked.

I would like to make an analogy to the urgency of enforcing the criminal law and catching criminals. Law enforcement officials often overlook the abstract basic values in our Constitution, in our Bill of Rights. They conduct illegal searches, they obtain illegal confessions. The courts guard the Constitution and they suppress the illegal evidence.

The analogy works up for intelligence, but only up to a point. There is a conflict between the basic values and urgent needs; but these controversies, these conflicts, never reach the courts. Judges cannot define and enforce the basic values in the national security area. Congress must define these basic values. This committee must define these basic values because there are no other checks in most cases; and Congress must do it in a way that it works.

The legislation should include, it seems to us, first of all an affirmative statement indicating that Congress intends to protect the integrity and independence of institutions of higher education in accordance with constitutional principles. It should prohibit activities of the intelligence agencies which violate the professional and ethical standards of the academic profession or which interfere with the legal autonomy of institutions of higher education. It should forbid intelligence agencies from using academic institutions as a cover, from using members of academic communities for covert intelligence activities and for clandestine recruitment. It should acknowledge that the intelligence agencies are not authorized to violate the Buckley amendment. It should preclude the intelligence agencies from subsidizing the publication or distribution of scholarly books, articles, and materials prepared by scholars at institutions of higher education when this material is prepared to influence public opinion within the United States or in foreign countries. It should require that if intelligence agencies enter into contracts with academic institutions, research institutes and centers, or individual academics, then the sponsorship of such contracts should be fully disclosed, consistently with institutional regulation.

We intend to submit more specific recommendations but I would like to close by repeating the resolution adopted at our 1976 annual meeting: The standing and reputation of academics have always depended on their dedication to the free search for truth and its free exposition. The exploitation by intelligence agencies of academics and their research have risked undermining the credibility of public research and risked compromising the position of academices.

Thank you.

Senator HUDDLESTON. Thank you, Mr. Rendleman.

We have got another vote on so we will try to move as quickly as we can here.

Now it has been suggested, you know, that it may not be the responsibility of Congress or the intelligence community to write in these prohibitions and it is, in fact, the responsibility of the institution itself. You have indicated that positions have been established by the organizations, that you do have some enforcement procedure which may not be perfect but which do exist. Do you see any infringement on the right of a member of your profession in prohibiting him from entering into an understanding or an agreement with the intelligence agencies?

Mr. RENDLEMAN. Well, it seems to me that it must be regulated. It seems to us that there is an aspect of nonvoluntariness in much of this. It seems to us that Congress must address the problem. The institutions with contracts and regulations for employment can address part of the problem, but it is the Government that should control the CIA and define and regulate the relationships.

Senator HUDDLESTON. We set out with the same objective that you mentioned and then provided that regulations will be adopted to carry out those objectives. We do eliminate what was a standard operating procedure and that is dealing with academic institutions in an unwitting manner. In previous investigations we found that the school itself often didn't know who they were dealing with, or CIA would keep it from the administrators of the school.

You are familiar with the current CIA regulations which state it cannot enter into any contractual relationship with you as an academic institution without notifying the senior management officials of the institution. Operational use of U.S. academics on any kind of a unwitting basis is forbidden as is the intelligence use of academic cover.

Now do you disagree with those objectives? Do they go far enough?

Mr. RENDLEMAN. No. We favor full disclosure. We think that the educational institutions can help the national security, that the intelligence agency should, however, respect basic professional ethics and the institution's rules. It would probably be best not to emphasis too much the word "voluntary" when I mean really openness and respect for the integrity of the professor's ethical constraints and employment responsibility. Bear in mind also that we are referring to the people who may very well be all too open to this sort of blandishment or emolument. Does that explain it satisfactorily for you, sir?

Senator HUDDLESTON. I think it does. I think you made a good point, that perhaps a Government agency ought to respect the canon of ethics that are established by legitimate institutions in the country. And there are many of us, I might say, who adhere to that principle. We have come some distance since we started this exercise but at any rate arguments are made on the other side.

Using academics for intelligence purposes can become a practice which does undermine the activities of our scholars abroad. This is a legitimate concern of ours. It has been suggested, however, that most of our adversaries have the impression anyhow that this is what is going on and any law that we pass or any regulation that we put into effect is not going to change that. Do you have any response to that?

Mr. RENDLEMAN. I think that is one of the constraints that we suffer from living in an open and democratic society. We perbaps become too

cynical about it, but certainly people who do not live in societies with open values and academic freedom mistrust the ostensible much more than we do. I guess what we should do is practice by example and hope that the world comes around.

Senator HUDDLESTON. They will say, also, that other countries, our chief adversary countries, take advantage of their educational personnel and their clerics, journalists, and whatever in the intelligence field and naturally they assume that everybody else is too.

Mr. RENDLEMAN. I think that is right and we nevertheless must suffer under the constraints of an open and democratic society. While it is inefficient, it is the best system that we have heretofore developed to operate a government.

Senator HUDDLESTON. I want to thank you very much. I appreciate your testimony. We have another vote on. I will get back just as quickly as I can and I hope to conclude our session if you on our final panel can stay with us a little longer.

Thank you very much.

[Whereupon, the committee recessed.]

Senator HUDDLESTON. The committee will come to order again.

Again we appreciate the patience and perseverance of our witnesses.

We have now a panel representing the clergy. From the Baptist Joint Committee we have Dr. James E. Wood, Jr.; from the National Council of Churches, Rev. Eugene Stockwell; from the Lutheran Council in the United States of America, John R. Houck; from the Ethics and Public Policy Center, Dr. Ernest W. Lefever; and from the United States Catholic Mission Council, the Reverend Anthony Bellagamba.

Gentlemen, I don't know whether the order in which we have listed you is the proper protocol but you may proceed in that order unless there is some objection.

[Pause.]

Senator HUDDLESTON. We will start with Dr. Wood.

TESTIMONY OF JAMES E. WOOD, JR., EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

Mr. WOOD. Thank you, Mr. Chairman. We would defer to you so far as the order.

Senator HUDDLESTON. I am an ecumenical person but I don't want to get involved in this.

Mr. WOOD. Mr. Chairman, I would like for the record to make, if I may, a correction. As far as I know, we are not representatives of the clergy but we are representatives of churches, a substantial majority of the churches of this Nation, both Catholic and Protestant, with a combined membership of probably well over 100 million people. I think the record should so show. I speak here as a representative of the Baptist Joint Committee on Public Affairs. I would like, also to include in the record the written copy which you and other members of the committee have in hand, as the full statement.

Senator HUDDLESTON. Without objection, it will be.

[The prepared statement of James E. Wood, Jr., follows:]

PREPARED STATEMENT OF JAMES E. WOOD, JR., EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

I am James E. Wood, Jr., Executive Director of the Baptist Joint Committee on Public Affairs.

The Baptist Joint Committee on Public Affairs is composed of representatives from eight national cooperating Baptist conventions and conferences in the United States. They are: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. These groups have a current membership of over 27 million.

Through a concerted witness in public affairs, the Baptist Joint Committee seeks to give corporate and visible expression to the voluntariness of religious faith, the free exercise of religion, the interdependence of religious liberty with all human rights, and the relevance of Christian concerns to the life of the nation. Because of the congregational autonomy of individual Baptist churches, we do not purport to speak for all Baptists.

However, on March 2, 1976 the Baptist Joint Committee on Public Affairs expressed opposition to the CIA's use of missionaries. Again, on March 4, 1980, without dissent it adopted a position statement which decried government use of clergy, missionaries, and church workers in "intelligence activities" or "special activities" as defined in S. 2284 or in any other way to help achieve the government's intelligence goals. In part this latter position statement urges:

> (1) that the United States Congress explicitly prohibit both the CIA and the FBI in their respective charters from gathering intelligence information from missionaries, and church workers, or placing clergy, missionaries, and church workers under any obligation to engage in intelligence gathering activity; (2) that public policy legally bar any operational connection between a church and any intelligence and/or law enforcement agency thus guaranteeing the traditional right of confidentiality on the part of clergy, missionaries, and church workers in the practice of their ministries; and (3) that member bodies of the Baptist Joint Committee on Public Affairs adopt policies for themselves which prohibit their personnel from engaging in intelligence gathering activity on behalf of government.

Similarly, mission boards of several of our cooperating conventions during recent years have expressed strong opposition to the use of their personnel for intelligence gathering. Statements of the Foreign Mission Board of the Southern Baptist Convention and its representatives are typical.

> Missionaries go to their fields to share the gospel of Christ and minister to human need. They do not involve themselves in political or commercial affairs. They are recognized as people who are dedicated to the purpose of Christian witness and service. Anything that will make unclear that image will greatly handicap their efforts, and, in some places, make impossible their residence in the country.
>
> Any implication, even indirectly or by rumor, that a missionary might be in some sense a government agent will "make unclear" the proper image of the missionary and will "greatly handicap" his missionary ministries.
>
> We urge that the position of the United States Government be clearly established as forbidding any involvement of missionaries or other religious workers in intelligence gathering, and that this position be so clearly expressed as to remove any suspicions about the matter. For our government to do otherwise, or even to remain silent and leave the question in doubt, will do grave damage to the cause of Christian world missions.

Foreign missions are a primary concern of many Baptists. The Southern Baptist Foreign Mission Board opposition to the use of missionaries in gathering intelligence either on a paid or unpaid basis, or to the solicitation of missionaries to report intelligence information on a paid or unpaid basis, or to the use of agents posing as missionaries in order to gather intelligence is in harmony with the beliefs of an overwhelming majority of these mission-minded Baptists.

As a civil libertarian, I have reservations about a number of aspects of this bill. However, this afternoon I will limit my comments to Baptist concerns about S. 2284.

REASONS FOR BAPTIST OPPOSITION

Among the reasons Baptists are so outspoken in their opposition to governmental solicitation and/or use of clergy, missionaries, or church workers in gathering and reporting intelligence or to government intelligence agents posing as clergy, missionaries, or church workers, three are paramount.

1. *Such activities by government are a blatant affront to the separation of church and state mandated by the religion clauses of the First Amendment.*—Baptists played a major role in securing the addition of the First Amendment to the Constitution, and we view with considerable alarm any governmental intrusion into the field of religion. We believe in the concept of the free church within the free state. By this we mean that the church must be free to be the church and the state must be free to be the state. The state is secular—i.e. it does not have either a direct or indirect role to play in religious matters. Just as the church may not use political means for the accomplishment of religious ends, the state may not use religion or the agents of religion to achieve its secular ends. *See Abington v. Schempp*, 374 U.S. 203 at 225, 226 (1963). If it does so, it flies in the face of the First Amendment, and, as the United States Supreme Court stated in a recent First Amendment case, *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978), "We must not confuse what is 'good,' 'desirable' or 'expedient' with what is constitutionally commanded by the First Amendment."

The United States Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), set down its tests for determining whether a law is compatible with the establishment clause of the First Amendment. "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . finally, the statute must not foster 'an excessive government entanglement with religion'" (at 612, 613, citations omitted).

Even if it is conceded, arguendo, that the legislative purpose stated in S. 2284 is secular, it is clear that any attempt to solicit and/or use clergy, missionaries, and church workers in the gathering of intelligence would constitute excessive government entanglement with religion on a continuing basis. Further, the primary effect of solicitation and/or use of these people by the government for intelligence gathering inevitably would be to inhibit religion. More will be said on this point below.

However, as concerned as Baptists are—and we assume that you on this Committee are—about the separation of church and state and the protection of First Amendment rights, this is not the only problem which we have with S. 2284.

2. *The solicitation and/or use of clergy, missionaries, or church workers in the collection of intelligence perverts the church's mission without accomplishing the state's objective.*—The integrity of religious mission and ministry at home and throughout the world would be compromised by even the possibility that clergy, missionaries, or church workers were arms of the government. For our government to use clergy and missionaries in this manner would totally destroy their religious credibility. Religious workers view themselves—and should be viewed by others—as agents of Jesus Christ, with the primary role of carers for the humanitarian and spiritual needs of the people they serve. It seems readily apparent that these religious workers at home and abroad will find themselves marginalized or ignored if their work is associated with apprehension and suspicion rather than with confidence and trust. Whatever the intelligence agencies might have hoped to gain would be lost, and the mission enterprises of the churches would be left in a shambles.

Furthermore, if the use of clergy, missionaries, or church workers for intelligence gathering is allowed to exist—and there are those in this class of people who out of a myopic sense of patriotism, fear, or greed would serve as intelligence gatherers—the essential relationship of confidentiality between clergy and parishoners, priests and confessors, and missionaries and national coworkers would be eroded. Again neither church nor state would be winners.

3. *The use of clergy, missionaries, or church workers to gather intelligence will be a death sentence for many innocent people.*—The CIA has seen a number of its agents killed when their identities were disclosed by those who oppose our entire intelligence operation. In developing and often unstable countries which have very real reasons to be suspicious of the motives of outsiders within their boundaries, even the slightest hint that some missionary might be an agent of United States intelligence could trigger reprisals against all missionaries. We are

concerned for the very lives of our religious workers. This Committee can help to protect those lives rather than put them at risk.

This concern is mentioned only briefly, but do not equate that brevity with lesser concern. The point should be clear, and this Committee's time limitations on the testimony by religious organizations are severe.

CONCLUSIONS

This bill, S. 2284, and its companion bill, H.R. 6588, cause many problems for the religious community generally and Baptists particularly. Baptists are evangelical and missionary oriented. The Southern Baptist convention, for example, has more than 3,000 persons, many with their families, serving as missionaries in 94 countries throughout the world. We have expressed our concern for them and their work above. Assuming that some charter for the intelligence community is necessary, Baptists strongly urge this Committee to guarantee that these persons will not be put in jeopardy.

We urge that § 132 be reworded to remove ambigulties and to state in as nearly standard English as possible that a United States intelligence agency may not (1) pay or provide other valuable consideration to clergy, missionaries, or church workers to serve as gatherers of intelligence, (2) coerce, intimidate, threaten, or blackmail any clergy, missionary, or church worker into becoming an intelligence gatherer, or (3) solicit any intelligence matters from these people.

Reasoning minds may differ on the meaning of a statute. For example, we differ with Admiral Stansfield Turner in his March 18, 1980 testimony before the House Permanent Select Committee on Intelligence on H.R. 6588 and with Admiral Daniel J. Murphy in his March 19, 1980 testimony before the same Committee. These two leaders read § 132 as limiting very severely the use which can be made of religious workers—they oppose such limitations. The Baptist position is that S. 2284 and H.R. 6588 hardly limit the intelligence agencies at all in their use of religious workers—and we urge a clear spelling out of a guarantee that religious workers will not be used as gatherers of intelligence unless the religious worker wholly voluntarily initiates the contact with the intelligence agency.

The constitution requires a separation of church and state. Common sense shouts out that breaching that seperation to gain some intelligence data is illegal and counterproductive. Concern for ministry and for the lives of fellow Americans demands that clergy, missionaries, and church workers not have the slightest taint of government control. I pray that you hear and heed what the religious community has to say.

Mr. WOOD. Along with that I have also submitted, Mr. Chairman, five official position statements and resolutions from Baptist national bodies and agencies with respect to the use of clergy, missionaries, and church workers for intelligence information. I would like to request also that these be entered into the record.

Senator HUDDLESTON. They will be included in the record.

[The documents mentioned follow:]

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS,
Washington, D.C.

BJC POSITION STATEMENT ON GOVERNMENT USE OF CLERGY, MISSIONARIES AND CHURCH WORKERS FOR INTELLIGENCE INFORMATION

In recent years there have been disclosures and acknowledgments that agencies of the United States government used clergy, missionaries and church workers for purposes of gathering secret intelligence information. These practices must be viewed with alarm and growing concern. Religious bodies of the United States citizenry must be warned and apprised of the following consequences:

1. The use of clergy, missionaries, and church workers for intelligence gathering on behalf of the national state immediately compromises and renders ineffective the primary role of religious workers to be carers for the humanitarian and spiritual needs of the constituents they serve. It should be readily apparent that missionary personnel abroad as well as church workers and clergy at home

will find themselves marginalized or ignored if their work is associated with apprehension and suspicion rather than confidence and trust by the people whom they serve.

2. Moreover, in the case of Christian workers who view themselves and are considered by others primarily to be agents of Jesus Christ they must not be treated as or cast in the appearance of being political agents of any government. The use of clergy, missionaries, and church workers by any country for narrow national interests quickly will result in the suspicion that churches are arms of the state. If this occurs, then the credibility and integrity of both the church and state are abused and profaned.

3. Furthermore, if such present practices are continued and sanctioned by either the churches and/or government then it is probable that increased political and legal pressures will be brought by government agencies on religious workers to intensify clandestine operations and thereby further erode the traditional guarantees of confidentiality between clergy and parishioners, priests and confessors, and missionaries and national coworkers.

In view of this alarming situation, the Baptist Joint Committee on Public Affairs urges: (1) that the United States Congress explicitly prohibit both the CIA and the FBI in their repective charters from gathering intelligence information from missionaries, and church workers, or placing clergy, missionaries, and church workers under any obligation to engage in intelligence gathering activity; (2) that public policy legally bar any operational connection between a church and any intelligence and/or law enforcement agency thus guaranteeing the traditional right of confidentiality on the part of clergy, missionaries, and church workers in the practice of their ministries; and (3) that the member bodies of the Baptist Joint Committee on Public Affairs adopt policies for themselves which prohibit their personnel from engaging in intelligence gathering activity on behalf of government.

Adopted in Plenary Session, March 4, 1980.

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS,
Washington, D.C., March 2, 1976.

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS STATEMENT ON CIA USE OF MISSIONARIES FOR INTELLIGENCE INFORMATION

Whereas, it has been reported that the C.I.A. in recent years has used some American missionaries as participants in C.I.A. activities in foreign countries,

Whereas, such an involvement may represent a violation of the first Amendment, and

Whereas, such involvement and allegations of involvement seriously threaten and jeopardize the mission of all religious bodies, and

Whereas, there have been widespread appeals from religious bodies in the United States for the discontinuance of this practice, and

Whereas, the C.I.A. has announced that there will be "no secret paid or contractual relationships with any American clergymen or missionaries," and that this policy will be continued;

Be it resolved, that the Baptist Joint Committee encourage legislation that would prohibit the C.I.A.'s solicitation or recruitment of American missionaries for involvement in its activities.

Unanimously passed by the Baptist Joint Committee on Public Affairs in Plenary Session March 2, 1976.

POSITION STATEMENTS OF THE SOUTHERN BAPTIST CONVENTION FOREIGN MISSION BOARD ON CIA USE OF MISSIONARIES FOR INTELLIGENCE INFORMATION

That the Foreign Mission Board reassert its stance of political neutrality in nations where its representatives serve, its concern for persons regardless of their political convictions or involvements, its readiness to work for the spiritual and humanitarian welfare of persons on all sides during times of crisis and war, and its request to missionaries to refrain from actions or statements which might endanger other missionaries or national Christians or jeopardize the witness for Christ in any part of the world.

October 9, 1974.

Missionaries go to their fields to share the gospel of Christ and minister to human need. They do not involve themselves in political or commercial affairs. They are recognized as people who are dedicated to the purpose of Christian witness and service. Anything that will make unclear that image will greatly handicap their efforts, and, in some places, make impossible their residence in the country.

January, 1976.

Missionaries are to maintain carefully their role of spiritual ministry, refraining from any relationship with intelligence operations of any nation (including the United States) or with political movements in the nations where they serve. They are to avoid anything that makes unclear their purpose of Christian witness and service and, thus, jeopardize their witness for Christ.

February, 1976.

Mr. Wood. If I may, then, highlight the substance of this testimony you have before you, I would like to begin by affirming that this issue is not a new one for Baptists. Indeed, the Baptist Joint Committee which is comprised of eight national Baptist bodies with a combined membership of 27 million has on various occasions spoken without dissent, as it did on March 2, 1976, in opposition to the CIA's use of missionaries. Again as recently as March 4, 1980, again without dissent, the committee adopted a position statement which decried Government use of clergy, missionaries, and church workers in intelligence activities or special activities as defined in S. 2284, or in any other way, to help achieve the Government's intelligence goals.

In part this latter position statement urges: (1) that the U.S. Congress explicitly prohibit both the CIA and the FBI and their respective charters from gathering intelligence information from missionaries and church workers or placing clergy, missionaries, and church workers under any obligation at any time to engage in intelligence gathering activity, (2) that public policy legally bar any operational connection between a church and any intelligence and/or law enforcement agency thus guaranteeing the traditional right of confidentiality on the part of clergy, missionaries, and church workers in the practice of their ministries.

Similarly, mission boards of several of our national Baptist cooperating conventions during the recent years have expressed strong opposition to government use of their personnel for intelligence gathering. Statements of the Foreign Mission Board of the Southern Baptist Convention—with more than 3,000 personnel around the world—are among the statements I might cite as typical. In February of 1976 the Foreign Mission Board declared:

Missionaries are to maintain carefully their role of spiritual ministry, restraining from any relationship with intelligence operations of any nation, including the United States, or with political movements in the nations where they serve. They are to avoid anything that makes unclear their purpose of Christian witness and service and thus jeopardize their witness for Christ.

As a civil libertarian, I have reservations about a number of aspects of this hill, S. 2284. However, this afternoon I will limit my comments to our Baptist concerns about S. 2284, specifically to be found in sections 132 (b) and (d).

Among the reasons Baptists are so outspoken in their opposition to governmental solicitation and their use of clergy, missionaries, or church workers in gathering and reporting intelligence or to Government intelligence agencies posing as clergy, missionaries, or church workers, three are paramount.

First, such activities by Government are a blatant affront to the institutional separation of church and state mandated by the religion clauses of the first amendment. Baptists played a major role in securing the addition of the first amendment to the Constitution and we view with considerable alarm any governmental intrusion into the field of religion. We believe in the concept of the free church within the free State. Just as the church may not use the State or political means for the accomplishment of religious ends, the State may not use religion or agents of religion for achievement of secular ends. This principle the U.S. Supreme Court has applied on more than one occasion, and was delineated quite well in 1963 in *Abington* v. *Schempp*. Just as the church may not use political means for the accomplishment of religious ends, the state may not use religion on the agents of religion to achieve its secular ends. If it does so it flies in the face of the first amendment. The U.S. Supreme Court stated in a recent first amendment case, *Houchins* v. *KQED, Inc.*,

> We must not confuse what is "good", "desirable" or "expedient" with what is consitutionally commanded by the First Amendment.

As this committee well knows, the U.S. Supreme Court in *Lemon* v. *Kurtzman* set down its tests for determining whether a law or statute or Government act is compatible with the establishment clause of the first amendment. Again I quote the Court,

> First, the statute must have a secular legislative purpose; second, its principle or primary effect must be one that neither advances nor inhibits religion . . . finally, the statute must not foster an excessive government entanglement with religion.

Even if it is conceded, arguendo, that the legislative purpose stated in S. 2284 is secular, it is clear that any attempt to solicit and/or use clergy, missionaries, and church workers in the gathering of intelligence information would constituto excessive Government entanglement with religion on a continuing basis.

Further, the primary effect of solicitation and/or use of these people by the Government for intelligence gathering inevitably would be to inhibit religion. However, as concerned as Baptists are, and we assume that you on this committee also are, about the separation of church and state and the protection of first amendment rights, this is not the only or even the primary problem we have with S. 2284.

Rather it is to be found in the second point of the written testimony which is submitted here; namely, the solicitation and/or use of clergy, missionaries, or church workers in the collection of intelligence profanes the church's mission without accomplishing the State's objective. The integrity of religious mission and ministry at home and throughout the world would be compromised by even the possibility through waiver by Presidential act that clergy, missionaries, or church workers were at any time to be arms of the Government of the United States.

For our Government to use clergy and missionaries in this manner would not only tarnish their religious integrity but would also totally destroy their religious credibility. By using clergy, missionaries, and church workers to serve the national interests of the United States at home and abroad, the church is made an arm of the State and the

prophetic role of religion is profaned. Religious workers view themselves, and should be viewed by others in the Christian community, at least, as agents of Jesus Christ with the primary role of carers for the humanitarian and spiritual needs of the people they serve. They must not be viewed or treated as agents of any government either during times of peace or during times of war.

It seems readily apparent that these religious workers at home and abroad will find themselves marginalized or ignored if their work is associated with apprehension and suspicion rather than with confidence and trust. Whatever the intelligence agencies might have hoped to gain would be lost and the mission enterprises of the churches would be left in shambles.

Furthermore, if the use of clergy, missionaries, or church workers for intelligence gathering is allowed to exist, there are those in this class of people who out of a myopic sense of patriotism, fear, or greed would serve as intelligence gatherers and the essential relationship of confidentiality between clergy and parishioners, priests and confessors, and missionaries and national coworkers would be eroded. Again neither church nor state would be winners.

Finally, the use of clergy, missionaries, or church workers to gather intelligence will be a death sentence for many innocent people. This language we feel is none too strong. The CIA has seen a number of its agents killed when their identities were disclosed by those who oppose our entire intelligence operation. In the developing and often unstable countries which have very real reasons to be suspicious of the motives of outsiders within their boundaries, even the slightest hint that some American missionary might be an agent of the U.S. intelligence is enough to trigger reprisals against all missionaries. This committee can help to protect these lives rather than put them at risk. The revelations in the 1970's of CIA use of missionaries only confirms for many that American missionaries should be regarded as politically suspect.

My final comment is to be found in the conclusions. This bill, S. 2284, and its companion bill, H.R. 6588, which we readily concede to be far superior to any others we have seen, still causes many problems for the religious community in general and Baptists in particular. Baptists are evangelical and missionary oriented. The Southern Baptist Convention, for example, has more than 3,000 persons, many with their families, serving in 94 countries throughout the world. We have expressed our concern for them and their work above. Assuming that some charter for the intelligence communities is necessary, Baptists strongly urge this committee to guarantee that these persons not be put in jeopardy because of this Nation's intelligence activities at home and abroad.

The very possibility of association of missionaries with the government of their nationality, no matter how benevolent the stated purpose of that government may be, inevitably leads to charges against missionaries that they are agents of political imperialism and are politically motivated. We urge, therefore, that section 132 of S. 2284 be reworded to remove ambiguities and to state in as nearly standard English as possible that a United States intelligence agency may not:

1. Pay or provide other valuable consideration to clergy, missionaries, or church workers to serve as gatherers of intelligence;

2. Coerce, intimidate, threaten, or blackmail any clergy, missionary, or church worker into becoming an intelligence gatherer; or

3. Solicit any intelligence matters from these people.

That is to say, this section ought to be without the waiver to be found in section 132(d) on page 20, lines 1 through 11.

Now reasons may differ on the meaning of a statute. For instance, we differ with Adm. Stansfield Turner in his March 1980 testimony before the House Permanent Select Committee on Intelligence on H.R. 6588 and with Adm. Daniel J. Murphy in his March 19, 1980, testimony before the same committee. These two leaders read section 132 as limiting very severely the use which can be made of religious workers. They oppose limitation. Our Baptist position is that S. 2284 and H.R. 6588 hardly limit the intelligence agencies at all in their use of religious workers and we urge a clear spelling out of a guarantee that religious workers will not be used, in terms of operational policy, as gatherers of intelligence unless the religious worker wholly and voluntarily initiates the contact with the intelligence agency.

The Constitution requires a separation of church and state which prohibits the state from using religious means for the accomplishment of secular or political ends.

Commonsense shouts out that breaching that separation to gain some intelligence data is both illegal and counterproductive. Concern for the integrity of the church's mission and ministry and for the lives of fellow Americans demands, we believe, that missionaries, clergy and church workers not have the slightest taint of government control. I pray that you hear and heed what the religious community has to say.

Thank you.

Senator HUDDLESTON. Thank you very much.

Reverend Stockwell.

TESTIMONY OF REV. EUGENE L. STOCKWELL, ASSOCIATE GENERAL SECRETARY FOR OVERSEAS MINISTRIES OF THE NATIONAL COUNCIL OF CHURCHES

Reverend STOCKWELL. Mr. Chairman, thank you very much for this opportunity.

I am Eugene Stockwell. I am the associate general secretary for overseas ministries of the National Council of the Churches of Christ in the U.S.A., an organization which brings together the delegated representatives of 32 Protestant and Orthodox denominations in this country, representing approximately 40 million members. I do not propose to speak for all of the constituent membership of the National Council of Churches, rather I speak on the basis of policy developed by the council's governing board, which is composed of proportional delegations from member communions of the NCC.

I trust that my statement in its entirety will be a part of the record and I will summarize it.

Senator HUDDLESTON. It will be included.

[The prepared statement of Eugene L. Stockwell follows:]

PREPARED STATEMENT ON S. 2284, "NATIONAL INTELLIGENCE ACT OF 1980," BEFORE SENATE SELECT COMMITTEE ON INTELLIGENCE

(By Eugene L. Stockwell)

I

My name is Eugene Stockwell. I am the Associate General Secretary for Overseas Ministries of the National Council of the Churches of Christ in the U.S.A., an organization which brings together the delegated representatives of 32 Protestant and Orthodox denominations in this country, representing approximately 40 million members. I do not purport to speak for all of the constituent membership of the National Council of Churches; rather I speak on the basis of policy developed by the Council's Governing Board, which is composed of proportional delegations from member communions of the NCC.

As further personal background, given the specific nature of this testimony, I was a missionary of the United Methodist Church serving in Uruguay from 1952–1962, Latin America Secretary of that church from 1962–64, and Program Administrator of the World Division of the Board of Mission of that church from 1964–1972, since which time I have occupied my present position. Thus for me the past 28 years have involved virtually daily contact with missionaries, overseas churches and their leaders, and national religious leaders and peoples throughout the world, including frequent direct contact with representatives of many governments worldwide. During the past year and a half I have also been a member of the Presidential Commission on World Hunger appointed by President Carter, in which responsibility I traveled to Bangladesh and also was an Advisor to the U.S. delegation to the Food and Agriculture Organization (FAO) sponsored World Conference on Agrarian Reform and Rural Development held in Rome, Italy, last July. I mention this responsibility because it afforded a new insight for me as to how governmental leaders in many nations view the U.S. churches and their representatives across the world.

The specific subject of this testimony is the use of clergy, missionaries and church workers as informants by the intelligence agencies of the United States. The National Council of Churches has spoken very clearly on this issue through a Resolution of its Executive Committee on February 15, 1980, as follows:

Be it resolved that:

The Executive Committee of the NCCC urge the Congress to include in the charters of all U.S. intelligence gathering and law enforcement agencies explicit prohibitions against:

Recruiting or employing missionaries, members of the clergy or church workers—American or foreign—as informants or agents in any capacity at home or abroad;

Impersonating clergy or church workers;

Establishing proprietaries purporting to be churches, church agenices or religious organizations.

As to the actions referred to in that Resolution, we feel that the law should be explicit and clear to the effect that the U.S. intelligence agencies shall be barred from any such actions—without any exceptions for special permissions by agency senior officers, the President, or the courts. Such a simple succinct and intelligible legal provision is in our view highly desirable, and we do not believe it should impose any significant hindrance on intelligence-gathering. If such a law is not enacted we believe that serious, often irreversible, damage can be done to the churches and their worldwide missionary witness, and the best interests and image of our nation will be tarnished as well.

II

The churches have been concerned for some time about the use of their clergy for intelligence and law-enforcement purposes by federal intelligence agencies. In 1975 they discovered that the Central Intelligence Agency had been using missionaries and clergy abroad as intelligence sources. In a letter by Philip Buchen, President Ford's counsel (released by Senator Mark Hatfield December 12, 1975), the following statement appears:

"The President does not feel it would be wise at present to prohibit the CIA from having any connection with the clergy. . . . Clergymen throughout the

world are often valuable sources of intelligence and many clergymen, motivated solely by patriotism, voluntarily and willingly aid the government in providing information of intelligence value."

(Letter dated November 5, 1975.)

William E. Colby, then Director of the CIA, wrote in a letter dated September 23, 1975:

"In many countries of the world, representatives of the clergy, foreign and local, play a significant role and can be of assistance to the United States through the CIA with no reflection upon their integrity or their mission."

The Churches objected immediately and vehemently. The Executive Committee of the National Council of the Churches of Christ, meeting on December 19, 1975, took action insisting that "such CIA and other U.S. Government agency intelligence-gathering from American missionaries and foreign clergy should stop immediately . . ."

Many of its member denominations wrote into their policies stern prohibitions against their missionaries' serving as agents of national intelligence-gathering:

The 188th General Assembly of the United Presbyterian Church in the U.S.A.:

"Affirms its conviction that it is inconsistent with the understanding of missionary responsibility to the church . . . that any United Presbyterian-related personnel should engage in intelligence gathering activities of the Government of the United States or of any other nation."

Dr. J. Oscar McCloud, Director of the Program Agency of that denomination, which sends and supervises its many missionaries, announced on January 5, 1976:

"Should it come to our attention that any of our missionaries have any relationship to U.S. intelligence agencies, we would feel compelled to terminate the particular missionary for the welfare of our total missionary endeavor and for the sake of the witness of the Christian community to which the missionary is related."

The quadrennial General Conference of the United Methodist Church, meeting in Portland, Oregon, in May 1976, adopted this statement:

"We affirm the action of the leadership of the Board of Global Ministries in December, 1975, who declared that missionaries of the United Methodist Church are servants of Jesus Christ and under the separation of church and state are not agents of any government, repudiated the use by the CIA of missionaries and church personnel of other countries in its intelligence gathering, and declared it inconsistent with our understanding of the universal Church of Christ that the Board of Global Ministries should maintain personnel known to be intentionally engaged in the intelligence gathering activities of the CIA."

The Handbook for Overseas Personnel of the United Church Board for World Ministries (United Church of Christ) states in its 1975 edition on page 12:

"Missionary personnel should be constantly aware that trust and confidence are central to any mission relationship. Any involvement that might lessen the confidence of their Christian partners regarding their integrity, discretion and Christian loyalty should be avoided. Specifically, any connection with espionage agencies, such as the CIA, of any government must be completely avoided."

Several churches which are not members of the National Council of Churches took similar positions. The Missionary Handbook of the Christian and Missionary Alliance (dated September 1976) states:

"Missionaries on furlough or overseas are not permitted to function as sources for any intelligence gathering agency of their own or any other government since such actions could identify them . . . as being intelligence agents rather than missionaries of the Gospel."

The Roman Catholic Mission Committee of the Conference of Major Superiors of Men, along with the Global Ministry Committee of the Leadership Conference of Women Religious, issued the following statement on November 5, 1975:

". . . we deem it necessary to repudiate U.S. Governmental involvement with overseas missionaries for intelligence purposes, be that involvement overt or covert, be it in the host country or in debriefing of furloughed missionaries in the United States. . .

"In addition we would welcome legislation or a stated policy which would prohibit all U.S. Government attempts to utilize overseas missionaries for intelligence purposes."

This history is related because it expresses the churches' concern that there is no prohibition in the use of clergy—at home or abroad, in intelligence-gathering or law enforcement—as informants or agents.

III

It should be readily apparent that a missionary abroad will be useless as a missionary if once suspected of being a covert agent of the CIA. Not only will the missionary's life and security be jeopardized, but the persons to whom he or she hopes to minister will view the missionary with suspicion and aversion rather than with confidence and trust, and the religious mission will thus be rendered futile.

This has nothing to do with whether the missionary is patriotic or concerned for our own nation's interests. The missionary may be the most patriotic person in the world, but cannot functionally be both a missionary and an espionage agent. The two roles are incompatible, if not antithetical. This is not to pass ethical judgment upon the espionage role. It may be justifiable and necessary. But it cannot be performed by missionaries without impairing the mission, not only of the individual missionary involved, but of all missionaries.

That is why it is not sufficient for the various churches to forbid their missionaries to act as spies, but the government itself must forswear the use of any missionaries in its espionage roles, or having its own agents represent themselves as missionaries, lest the entire profession be tainted. Churches and religious missionary enterprises must not only be free of diversion to espionage purposes, but must be seen to be free of such diversion.

Since the late 1975 revelations of the CIA's use of the clergy for intelligence-gathering purposes I have talked with many church leaders around the world about this and uniformly they have been shocked, almost unbelieving, that our nation would permit such a situation to exist. Even those who are exceedingly friendly to the United States repudiate such use of the clergy or missionaries. The old days of missionary dominance in the midst of poorly trained national leaders in newly developing churches has, fortunately, become a thing of the past. It is a tragedy that now, in a time of strong overseas national leadership, when U.S. missionaries have mature and strongly supportive relationships with their national colleagues, the excellence of those relationships is clouded by suspicion because our government has not yet prohibited unequivocally the use of missionaries for intelligence purposes. The result is not only that missionaries have a more difficult time establishing their own credibility, but also our nation is seen to be devious, truculent and deceptive. I clearly recall the case of one missionary, in Latin America, who in many ways was outstanding in his service, whose memory is tainted now since it became known beyond any doubt that he had collaborated with U.S. intelligence-gathering authorities secretly over a number of years. Whether or not the information he provided was of any significant use to those who sought it, the memory of a potentially great career is in ruins, his colleagues came under multiple suspicions, the relationship between a major U.S. church denomination and the sister church in the Latin American nation was vitiated, and our nation was denigrated in the eyes of many.

The same condition holds at home. Clergy and other church workers have their own essential work to do, which depends heavily upon a relationship of confidence and trust between the religious minister and those who need his or her ministrations. If the clergy-person is seen as a potential informant, the necessary relationship of confidence and trust is broken, and the potentially redemptive ministry ended.

As is often asked about such ministries, why should the church or its members have anything to hide? They certainly do not condone crime or wish to frustrate the apprehension of criminals. Why then should they resist doing anything they can to aid the forces of law and order? The churches do indeed uphold law and order—even when government agencies prove themselves to be lawless and disordered—but they are not themselves law-enforcement agencies nor the tools of such agencies. To be such, or even to be thought to be such, would mean the end of their access to all but those who have no sins to confess.

At bottom what is at stake here is the nature of a relationship that requires confidentiality and trust. The "seal of the confessional" or the "priest-penitent privilege" has long been recognized in court. What is referred to as the "cure of souls" at times places clergy in a position where they hear confession of a sin, a confession that might well be of interest to those in government who fight crime, but a confession which is privileged, even at the risk that a particular criminal may not be apprehended. Intelligence-gathering goes far beyond the search for information about crime, to be sure, but the fundamental trust that must exist

between clergy and their people, at home or abroad, is a precious thing that no government, certainly not one that professes the ideals or morality and decency we claim to uphold, should harm or vitiate.

Therefore, Mr. Chairman, we urge that in the proposed legislation you are now considering, this Committee, and the Senate as a whole, will ensure the inclusion of explicit prohibitions against the use of clergy or church workers as agents or informants in any capacity, against the impersonation by intelligence personnel of clergy or church workers, and against the establishment of proprietaries purporting to be churches, church agencies, or religious organizations. Thank you.

Reverend STOCKWELL. First, I would like to say that in general I want to associate myself with what Dr. Wood has just said. I think some of the reasons he has given and the general direction of his testimony are exactly those that I share. I would like to speak just very briefly on behalf of the National Council of Churches in terms of one action that was just taken and do so in relation to my own personal experience as missionary for a good number of years and a person involved in mission administration ever since.

The National Council of Churches in dealing with this subject of the use of clergy, missionaries, and church workers as informants by intelligence agencies spoke very clearly in a resolution of its executive committee taken last month on February 15. It is on page 2 of the testimony and I think this is the heart of what I want to say here. I would like to here read that brief resolution.

Be it resolved that: The Executive Committee of the NCCC urge the Congress to include in the charters of all US intelligence gathering and law enforcement agencies explicit prohibitions against:

Recruiting or employing missionaries, members of the clergy or church workers, American or foreign, as informants or agents in any capacity at home or abroad;

Impersonating clergy or church workers;

Establishing proprietaries purporting to be churches, church agencies or religious organizations.

As to the actions referred to in that resolution, we feel that the law should be explicit and clear to the effect that the U.S. intelligence agencies shall be barred from any such actions—without any exemption for special permissions by agency senior officers or the President or the courts. Such a simple, succinct and intelligible legal provision is in our view highly desirable, and we do not believe it should impose any significant hindrance on intelligence gathering. If such a law is not enacted we believe that serious, often irreversible damage can be done to the churches and their worldwide missionary witness and the best interests and image of our Nation will be tarnished as well.

I will not read the next section of my testimony which provides some background as to the statements made not only by the National Council of Churches but by some of our member denominations and indeed by some of the churches which are not members of the National Council of Churches yet which have taken essentially the same position in recent years.

On page 5, it should be readily apparent that a missionary abroad will be useless as a missionary if once suspected of being a covert agent of the CIA. Not only will the missionary's life and security be jeopardized, but the persons to whom he or she hopes to minister will view the missionary with suspicion and aversion rather than with confidence and trust, and the religious mission will thus be rendered futile.

This has nothing to do with whether the missionary is patriotic or concerned for our own Nation's interests. The missionary may be the most patriotic person in the world, but cannot functionally be both a missionary and an espionage agent. The two roles are incompatible if not antithetical. This is not to pass ethical judgment upon the espionage role. It may be justifiable and necessary but it cannot be performed by missionaries without impairing tbe mission not only of the individual missionary involved but of all missionaries.

That is why it is not sufficient for the various churches to forbid their missionaries to act as spies, but the Government itself must forswear the use of any missionaries in its espionage role, or having its own agents represent themselves as missionaries, lest the entire profession be tainted. Churches and religious missionary enterprises must not only be free of diversion to espionage purposes, hut must be seen to be free of such diversion.

Since the late 1975 revelations of the CIA's use of the clergy for intelligence gathering purposes I have talked with many churcb leaders around the world about this and uniformly they have been shocked, almost unbelieving, that our Nation would permit such a situation to exist. Even those who are exceedingly friendly to the United States repudiate such use of the clergy or missionaries. The old days of missionary dominance in the midst of poorly trained national leaders in newly developing churches has, fortunately, become a thing of the past. It is a tragedy that now, in a time of strong overseas national leadership, when U.S. missionaries have mature and strongly supportive relationships with tbeir national colleagues, the excellence of those relationships is clouded by suspicion because our Government bas not yet prohibited unequivocally the use of missionaries for intelligence purposes. The result is not only that missionaries have a more difficult time establishing their own credibility, but also our Nation is seen to be devious, truculent and deceptive.

I clearly recall the case of one missionary, a friend of mine, in Latin America, who in many ways was outstanding in his service, whose memory is tainted now since it became known beyond any douht that he had collaborated with U.S. intelligence-gathering authorities secretly over a number of years. Whether or not the information he provided was of any significant use to those who sought it, the memory of a potentially great career is in ruins, his colleagues came under multiple suspicions, the relationship between a major U.S. church denomination and the sister church in the Latin American nation was vitiated, and our Nation was denigrated in the eyes of many.

Now to conclude, sir, at bottom what is at stake here is tbe nature of a relationship that requires confidentiality and trust. The "seal of the confessional" or the "priest-penitent privilege" has long been recognized in court. What is referred to as the "cure of souls" at times places clergy in a position where they hear confession of a sin, a confession that might well be of interest to those in government who fight crime, but a confession which is privileged, even at the risk that a particular criminal may not be apprehended. Intelligence-gathering goes far beyond the search for information about crime hut the fundamental trust that must exist between clergy and their people, at home or ahroad, is a precious thing that no government, certainly not one

that professes the ideals or morality and decency we claim to uphold, should harm or vitiate.

Therefore, Mr. Chairman, we urge in the proposed legislation you are now considering, this committee and the Senate as a whole, will insure the inclusion of explicit prohibitions against the use of clergy or church workers as agents or informants in any capacity, against the impersonation by intelligence personnel of clergy or church workers, and against the establishment of proprietaries purporting to be churches, church agencies, or religious organizations.

Thank you very much, sir.

Senator HUDDLESTON. Thank you very much, sir.

John Houck of the Lutheran Council in the U.S.A.

TESTIMONY OF JOHN R. HOUCK, GENERAL SECRETARY, LUTHERAN COUNCIL IN THE U.S.A.

Mr. HOUCK. My name is John R. Houck and I serve as general secretary of the Lutheran Council in the U.S.A. I appreciate this opportunity to testify on S. 2284, the National Intelligence Act of 1980. The testimony which I am presenting is supported by three member church bodies of the Lutheran Council: The American Lutheran Church, the Association of Evangelical Lutheran Churches and the Lutheran Church in America totaling over 5.5 million members. Since I will be summarizing my statement, I would like to request that my written testimony be entered into the record in its entirety.

Senator HUDDLESTON. Without objection, so ordered.

[The prepared statement of John R. Houck follows:]

PREPARED STATEMENT OF JOHN R. HOUCK, LUTHERAN COUNCIL IN THE U.S.A., ON THE NATIONAL INTELLIGENCE ACT OF 1980

MARCH 25, 1980.

My name is John R. Houck and I serve as General Secretary of the Lutheran Council in the U.S.A. I appreciate this opportunity to testify on S. 2284, the National Intelligence Act of 1980. The testimony which I am presenting is supported by three member church bodies of the Lutheran Council:

The American Lutheran Church, headquartered in Minneapolis, Minnesota, composed of 4,800 congregations having approximately 2.4 million U.S. members;

The Lutheran Church in America, headquartered in New York, N.Y., composed of 6,100 congregations having approximately 3.1 million members in the United States and Canada; and

The Association of Evangelical Lutheran Churches, headquartered in St. Louis, Missouri, composed of 260 congregations having approximately 110,000 U.S. members.

The Lutheran churches I represent appreciate the cooperative effort involving this committee, the Carter administration and representatives of the intelligence community which led to the introduction of the National Intelligence Act. Comprehensive legislation is needed to provide the authority for and, of fundamental importance, to establish the proper limits of U.S. intelligence activities. In the wake of recent events in the international arena, the administration and some members of Congress have maintained that restrictions on the Central Intelligence Agency should be eased. However, we would urge this committee to keep firmly in mind the intelligence agency abuses revealed during the last decade and ensure that any charter legislation it finally approves firmly prohibits such activities. It is absolutely essential that the National Intelligence Act fully and completely protect the rights which are guaranteed to individuals and institutions under the First and the Fourth Amendments of the U.S. Con-

stitution and the laws of the land. The National Intelligence Act must also restrain intelligence agencies from engaging in foreign operations which are inconsistent with international law or with the democratic principles the United States espouses.

My testimony today will focus primarily on the following section of S. 2284 which is intended to ensure the integrity of the private institutions of the United States:

> SEC. 132. (a) The President shall establish public guidelines for the intelligence activities of the entities of the intelligence community to protect the integrity and independence of private institutions of the United States in accordance with constitutional principles.
>
> (b) No entity of the intelligence community may use, for the purpose of establishing or maintaining cover for any officer of that entity to engage in foreign intelligence activities or special activities, any affiliation, real or ostensible, with any United States religious organization, United States media organization, United States educational institution, the Peace Corps, or any United States Government program designed to promote education, the arts, humanities, or cultural affairs through international exchanges.
>
> (c) Nothing in this section shall be construed to prohibit voluntary contacts or the voluntary exchange of information between any person and any entity of the intelligence community.
>
> (d) The President may waive any or all of the provisions of this section during any period in which the United States is engaged in war declared by Act of Congress, or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 555), to the extent necessary to carry out the activity that is the subject of that report. . . .

The inclusion of this section reflects the understanding of this committee that certain vital institutions, including religious, media and educational organizations, must receive special consideration in legislation defining the limits of intelligence agency activity. Because of the unique functions and contributions these institutions provide in our society, it is essential that their activities not be impaired in any way nor their credibility compromised because of certain relationships—whether real or perceived—with national intelligence agencies. The Lutheran churches I represent share this perspective and maintain that protections of such institutions should be enacted in law, rather than left to internal regulation or executive order. The disclosure last month by CIA Director Stansfield Turner that, on a number of recent occasions, the current agency policy directives restricting the use of journalists, academics and clergy were waived, illustrates the need for a legislative prohibition of such activities. However, we maintain that Section 132 should be strengthened to more fully protect the integrity of the church and other U.S. based private institutions.

Lutherans in the United States have described the relationship between the church and the federal government in terms of "institutional separation and functional interaction." We recognize that the government may enter into relationships and associations with churches in its efforts to maintain peace, to establish justice, to protect and advance human rights and to promote the general welfare of all persons without compromising the institutional separation of church and government. However, we maintain that government exceeds its authority if it undertakes any actions which would compromise the integrity of the church or inhibit the church as it seeks to carry out its mission—a mission which includes "the proclamation of God's word in worship, in public preaching, in teaching, in administration of the sacraments, in evangelism, in educational ministries, in social service ministries and in being advocates of justice for participants in the social order" (1979 Lutheran Council statement on The Nature of the Church and Its Relationship With Government). The Lutheran churches I represent maintain that intelligence agency use of church personnel as agents of information sources seriously inhibits the church's mission and represents unacceptable government interference in the activities of the church.

U.S. based Lutheran church bodies call and send missionaries and other church workers to countries throughout the world at the request of individual congregations, churches and related agencies in those countries. The allegiance of such persons is first and foremost to Christ as they serve His people and His church in a variety of localities. All other loyalties are subordinate to this vocation as

servants of Christ. Within this context, missionaries and church workers are accountable to the church, institution or agency in their country of service and to their sending church body.

The relationship between U.S. church personnel serving abroad and the receiving community is based on trust—trust that the loyalty of the individual serving there is to the church he/she serves rather than to the interests of the nation from which he/she comes. Missionaries working abroad are involved in all aspects of society; their work is not limited to the chancel. In the full range of their ministry—in social service and advocacy as well as preaching and teaching—the missionary must be able to identify with the people he/she serves and act for their good if his/her service is to be accepted. The receiving community must be certain that confidentiality, which is basic to this service relationship, will be maintained and that the individual working in its midst has no hidden allegiance which would taint that service. Thus, work as an agent or information source for U.S. intelligence agencies is functionally incompatible with the work of persons sent by U.S. churches to serve in mission and ministry abroad. Even the mere perception of linkage between such persons and national intelligence agencies seriously undermines the trust relationship with the receiving community which is absolutely essential if U.S. church personnel are to carry out the full scope of their mission.

The following statement represents the official position of the Lutheran Church in America on missionaries and government intelligence activities:

"In view of disclosures that the United States government, and in particular the Central Intelligence Agency, has regarded missionaries as potential sources of intelligence abroad, the Lutheran Church in America unreservedly repudiates this practice as a violation of the separation of church and state, as negating the integrity of the church, and as compromising the witness and service of the church's servants in the world. The Lutheran Church in America expects missionaries under its jurisdiction to avoid involvements that may be construed as intelligence activity on behalf of their home governments. As stated policy, the Lutheran Church in America/Division for World Mission and Ecumenism instructs its missionaries to reject approaches by intelligence gathering agencies while overseas or upon return to the United States and to refrain from providing information that could be used by such agencies."

The World Mission Handbook of The American Lutheran Church counsels its missionaries similarly:

"By accepting a call from The American Lutheran Church, the missionary thereby agrees not to engage in any form of intelligence activity; or to become involved with or report to any intelligence agency (governmental, quasi-governmental, corporate or private) of the U.S. or of any other country or political grouping."

Anticipating the introduction of legislation governing the activities of intelligence agencies, the Board of Directors of the Association of Evangelical Lutheran Churches issued the following statement in August 1979:

"It is the opinion of the Association of Evangelical Lutheran Churches that we would not want our workers, be they pastors or lay workers, to be coerced or encouraged by the intelligence agencies of this country or any other country to serve as agents or informants for those agencies. It is our opinion that such action, or even the possibility of such action, would undermine and negatively affect the work and ministry of the church. We therefore oppose any legislation that is pending or might be developed which would allow for or encourage any form of government effort to recruit church workers for these tasks."

Thus, the provision of S. 2284 allowing "voluntary contact or the voluntary exchange of information" between individuals and entities of the intelligence community raises serious questions for the Lutheran churches I represent. As I have noted, the policy statements of these Lutheran churches prohibit missionaries from serving as agents or information sources for intelligence, whether in the field or upon return to the United States.

While the fulfillment of these directives is, in the final analysis, a decision which is made by the individual with guidance from his/her church, the very existence of a "voluntary clause" could open the door to direct or subtle solicitation on the part of intelligence agencies. Such solicitation could in certain circumstances even contain elements of coercion. In either event, the result could be the disclosure of confidential information. If the receiving community were to learn of such an opportunity for the exchange of information, it could cast a shadow of suspicion on the work of the churches' personnel overseas. If it is the

intent of Congress to respect the integrity of the church as an institution, national intelligence agencies should not be allowed to request church personnel to engage in activities which are forbidden them by that institution.

The Lutheran churches I represent interact with the federal government on foreign policy issues in a variety of areas, and representatives of the churches have and will likely continue to share insights and experience gained overseas with the government in order to assist in the development of a just national policy. For example, individual and agencies of U.S. Lutheran churches, including the Lutheran Council's Office for Governmental Affairs and Lutheran World Ministries, regularly share information with members of Congress, the Department of State, and others in the federal government. However, the key distinction—a distinction which must be respected by the government if the integrity of the church as an institution is to be upheld—is that these contacts are made within the advocacy function of the churches and, in that context, are considered part of the churches' mission. Those making these contacts are acting on behalf of the church as advocates for the people they serve—not as agents, whether formal or informal, paid or unpaid, of the intelligence community.

For these reasons, the Lutheran churches I represent maintain that S. 2284 should include an explicit prohibition of intelligence agency solicitation or employment of missionaries and church personnel at home or abroad as agents, information sources, or in any other operational capacity. For many of the same reasons, the Lutheran churches oppose the use by U.S. intelligence agencies of any affiliation, whether real or fabricated, with religious organizations and individuals as a means of establishing "cover" for their agents. While we appreciate the prohibition on the use of religious organizations as cover for foreign intelligence or special activities, we would like to see Sec. 132(b) strengthened to prohibit their use as cover for *any and all* intelligence agency activities—including counterintelligence and counterterrorism intelligence activities.

In addition, the category "U.S. religious organization" does not cover the full range of means by which churches carry out their mission abroad. Church affiliation spans national boundaries, and agency use of religious organizations affiliated with but not part of U.S. church bodies poses serious questions. I would like to give an example of this problem from the Lutheran perspective. The three Lutheran church bodies which I am representating today are also members of the Lutheran World Federation, a free association of Lutheran churches around the world. Membership of this international organization, which is based in Geneva, Switzerland, now totals approximately 54 million baptized persons. U.S. citizens, both clergy and lay, are employed by Lutheran World Federation, and the mission of the federation is closely linked with the mission of the U.S. church bodies which support it. Certainly, the credibility of U.S. churches within this enterprise would be undermined by CIA use of Lutheran World Federation personnel or use of the organization itself as cover for agency activities. Other religious organizations to which U.S. church bodies relate, which may not be U.S. based but may be important partners in the churches' mission, should not be used by U.S. intelligence agencies for cover or for any other operational purpose.

We strongly oppose the inclusion in the proposed charter of Section 132(d), which would allow the President to waive restrictions on intelligence agency use of religious, media and academic organizations during a declared war or during times of hostilities relating to the War Powers Resolution. At all times—whether in times of peace or in times of conflict—the church, in faithfulness to the Gospel, must be free to carry out its mission without government interference. The proposed waiver would undermine the integrity and credibility of the church when its work can be of great importance in easing international tensions and in alleviating the hardships of war—activities which the church considers an essential part of its responsibility to the communities it serves. In addition, the suspicion that U.S. church personnel serving overseas could be used for intelligence purposes could place our personnel in a dangerous position during times of hostilities, perhaps making them unwelcome in their receiving community, and would continue to undermine their credibility after hostilities cease. On principle, the Lutheran churches I represent cannot accept such a waiver and strongly oppose its inclusion in this bill.

Thank you for the opportunity to share with this committee the position of The American Lutheran Church, the Lutheran Church in America, and the Association of Evangelical Lutheran Churches on this very important issue.

Mr. HOUCK. Comprehensive legislation is needed to provide the authority for and the fundamental importance to establish the proper limits of U.S. intelligence activities. We would urge this committee to keep firmly in mind the intelligence agency abuses revealed during the last decade and to assure that any charter legislation if finally approved firmly prohibits such activities. Serious concerns about the proposed legislation are being raised by a wide variety of groups testifying here today, concerns about potential intelligence agency surveillance and investigation of U.S. citizens, about the effects on open government of the proposed exemptions from the Freedom of Information Act and about the nature of covert activities abroad just to name a few.

It is essential that the National Intelligence Act fully protect the rights guaranteed under the first and fourth amendments. It must also restrain intelligence agencies from engaging in foreign operations which are inconsistent with the international law or with the democratic principles the United States espouses.

Within this broader context my testimony will focus on section 132 which is intended to protect the integrity of the private institutions of the United States. Because of their unique contributions to society, certain institutions do warrant special consideration in this legislation. Restrictions on agency use of religious media and education organizations need to be enacted in law rather than left to internal regulation or Executive order.

Last month CIA Director Stansfield Turner disclosed that current Agency policy directives restricting the use of these institutions were waived on a number of recent occasions. Such waivers illustrate the need for a legislative prohibition of such Agency activities. However, we would maintain that section 132 should be strengthened to more fully protect the integrity of the church and other U.S. based private institutions.

Lutherans in the United States have described their relationship between church and Government in terms of institutional separation and functional interaction. This was adopted by the Lutheran Council in a meeting in November of last year. The church interacts regularly with Government in cooperative work for the common good. However, Government exceeds its authority when it acts in a way which compromises the integrity of the church or inhibits its mission. CIA use of church personnel does in fact inhibit the church's mission and results in unacceptable Government interference in the activities of the church.

U.S. based Lutherans call and send church personnel to countries throughout the world at the request of the receiving communities. The allegiance of such persons is first and foremost to Christ as they serve in a variety of localities. All other loyalties are subordinate to this vocation as servants of Christ. Within this context church workers are accountable to the church, institution or agency in their country of service and their sending church body.

The relationship between these church workers and the receiving community is based on trust—trust that their primary loyalty is to the church rather than to the interests of the nation from which they come. In the full range of ministry from preaching to social service to advocacy, church workers must identify with the people they serve.

The receiving community must be certain that the confidentiality so basic to this service relationship will be maintained and that the individual working in their midst has no hidden allegiance which would taint their service.

Thus, work as an agent or information source for U.S. intelligence agencies is functionally incompatible with the work of persons sent by U.S. churches to serve in mission and ministry abroad. Even the mere perception of linkage between such persons and the CIA undermines the vital trust relationship with the receiving community.

All of the Lutheran Church bodies I represent have issued statements of counsel regarding the use of church personnel. To quote just one, the Lutheran Church in America unreservedly repudiates CIA use of missionaries as potential sources of intelligence as a violation of the separation of church and state, as negating the integrity of the church and as compromising the witness and service of the church's servants in the world.

The Lutheran Churches instruct their missionaries abroad and in the United States not to provide information to intelligence agents. Thus the provision of S. 2284 allowing voluntary contact or the voluntary exchange of information between individuals and entities of the intelligence community raises serious questions for the Lutheran Churches I represent. In the final analysis a decision which is made by the individual director, subtle agency solicitation of such contacts is inappropriate. If it is the intent of Congress to respect the integrity of the church as an institution, national intelligence agencies should not be allowed to request church personnel to engage in activities which are forbidden them by that institution.

Representatives of Lutheran Churches share insights and experience gained overseas with Members of Congress, the State Department, and the Federal Government to assist in the development of a just national policy. Such interaction is healthy and helpful. However, the key distinction which must be respected by the Government if the integrity of the church is to be upheld is that these contacts are made within the advocacy functions of the church. Those making these contacts are acting on behalf of the church as advocates for the people they serve, not as agents, whether formal or informal, paid or unpaid, of the intelligence community.

For these reasons the National Intelligence Act should explicitly prohibit intelligence agency solicitation or employment of church personnel at home or abroad as agents, information sources or for any other operational purpose. The Lutheran Churches also opposes the use by U.S. intelligence agencies of any affiliation whether real or fabricated witb religious organizations and individuals to establish cover for their agents. While we appreciate the prohibition on the use of religious organizations as cover for foreign intelligence or special activities we would like to see section 132(b) strengthened to prohibit their use as cover for any and all intelligence agency activities.

We also have concern about the category "U.S. religious organizations." Church affiliation spans national boundaries and CIA use of religious organizations affiliated with but not part of U.S. church bodies poses serious questions. I would like to give an example of tbis problem from the Lutheran perspective. The three church bodies which I represent here today are also members of the Lutheran World Fed-

eration, a free association of Lutheran Churches around the world. Membership of this international organization which is based in Geneva, Switzerland, now totals approximately 54 million baptized persons. U.S. citizens, both clergy and lay, are employed by the Lutheran World Federation.

Certainly the credibility and mission of U.S. churches within the enterprise would be undermined by CIA use of Lutheran World Federation personnel or use of the organization itself as cover for intelligence activities. Other organizations to which U.S. religious groups relate which may not be U.S. based but may be important partners in the church's mission should not be used by U.S. intelligence agencies for cover or any other purpose.

We strongly oppose 132(d) which allows a waiver of restrictions on the use of religious, media, and educational organizations during times of war or hostilities. At all times, whether in times of peace or in times of war, the church in faithfulness to the Gospel must be free to carry out its mission. The proposed waiver would undermine the integrity and credibility of the church when its work can be of great importance in easing international tensions and alleviating hardships of war.

In addition, the suspicion that U.S. church personnel serving overseas could be intelligence agents could place our personnel in jeopardy during times of hostilities, perhaps making them unwelcome in their receiving community and would continue to undermine their credibility after hostilities cease. On principle the Lutheran Churches I represent cannot accept such a waiver and strongly oppose its inclusion in the National Intelligence Act.

So we want to thank you for this opportunity to share with this committee our position on this very important piece of legislation.

Senator HUDDLESTON. Thank you, Mr. Houck.

Dr. Lefever.

TESTIMONY OF ERNEST W. LEFEVER, PRESIDENT, ETHICS AND PUBLIC POLICY CENTER

Mr. LEFEVER. Mr. Chairman, I, too, appreciate this privilege of appearing before you and addressing this vital topic. I think you will find that I will be introducing an element of diversity. I am the president of the Washington-based Ethics and Public Policy Center, a nonprofit research institution; ironically I may be speaking for the man in the pew more adequately than some official church spokesman on this subject which involves national security.

I am also a professorial lecturer in international politics at Georgetown University. My field is foreign policy and Christian ethics. I am the coauthor with Roy Godson of a book published by the center in January, "The CIA and the American Ethic: An Unfinished Debate," and I request that summary of that book attached to my written testimony be included in the record along with a one-page fact sheet on the Ethics and Public Policy Center.

Senator HUDDLESTON. Without objection it is so ordered.

[The prepared statement and attachments of Dr. Ernest W. Lefever follow:]

PREPARED STATEMENT OF DR. ERNEST W. LEFEVER, PRESIDENT, ETHICS AND PUBLIC POLICY CENTER

Mr. Chairman: It is a pleasure to appear before your Committee today to address aspects of the vital question of intelligence in an increasingly dangerous world. I am the President of the Washington-based Ethics and Public Policy Center, a nonprofit research institute, but I speak here only for myself. I am also a professorial lecturer in international politics at Georgetown University.

My field of research and writing is foreign policy. I am the coauthor with Roy Godson of a book published by the Center in January, "The CIA and the American Ethic: An Unfinished Debate," and I request that the attached summary of that book be made a part of my testimony.

For forty years I have been an ordained minister and I have been concerned with the inescapable tie between ethics and politics. In your invitation, Mr. Chairman, you asked me to address the question of the relationship between the clergy and U.S. intelligence agencies. This question is both simple and complex. It is made more complex by the criticism—much of it unwarranted—of the intelligence communities, particularly the FBI and the CIA, during the past ten years. I will confine my brief remarks primarily to the CIA.

First of all, I believe that the United States as the leader of the Free World should have a foreign intelligence capability second to none. This means that we need the capacity for clandestine collection, counterintelligence, and covert action abroad, all of which require secrecy and sometimes deception. This capability has in my view been eroded by sensational disclosures in the press and by unnecessary congressional constraints.

In the second place, I believe that foreign intelligence is wholly compatible with the American ethic as long as its objectives are just and legitimate, the means employed are just and appropriate, and the probable consequences will advance the cause of justice, freedom, and peace in the world.

Intelligence activities by definition bear a closer relationship to war than to peace, and in the twilight zone between war and peace in which we live it is both appropriate and necessary to judge intelligence activities by the standards of the Christian doctrine of the just war.

REQUIREMENT OF THE INTERNATIONAL STATE SYSTEM

Our country from its birth has been a part of the Western international state system, which is based upon the principle of state sovereignty and noninterference in the internal affairs of other states. Peaceful diplomatic, cultural, and economic intercourse depends upon this mutual respect and mutual restraint. This concept of statehood is grounded in international law and the United Nations Charter.

Unfortunately, peace and stability in the world are always threatened by the pathological behavior of some states—aggression, subversion, terrorism, or incapacity to honor contracts with other states. The Soviet Union is the prime example of an aggressive, revolutionary state and Iran under the Ayatollah Khomeini is an example of a state unable to keep its word.

The most serious danger to peace, justice, and respect for human rights in the world today is the Soviet Union, an aggressive and messianic state supported by clients such as Cuba and East Germany. The Soviet Union is really a revolutionary conspiracy masquerading as a conventional state.

In such a world it is both necessary and right for the United States and its allies to have effective diplomatic, military, and intelligence services to protect their interests and the larger interest of global stability.

THE ROLE OF CLERGY AND OTHER CITIZENS

All American citizens, regardless of station or profession, have an equal obligation to protect the state and the institutions and values for which it stands. A garage mechanic, a politician, and a preacher should all have an equal right to be patriotic. They have an equal obligation to serve the common good. All American citizens should be free to cooperate with the CIA, FBI, HEW, or any other U.S. agency, in the pursuit of legitimate national interests.

If a citizen sees smoke coming from a building, he has not only a right but an obligation to notify the fire department. If a citizen sees a suspicious person in

his neighborhood, he should report the presence of that person to the police. If an American from any walk of life witnesses a crime, he has an obligation to report it.

Likewise, a missionary in any Third World country has an obligation to report important developments that affect the security and quality of life in the country in which he is a guest. If internal security is jeopardized, he may wish to report the development to the host government. But it would be entirely right to report it also to the authorities in the U.S. embassy. In my view, a missionary, or even a tourist, in a remote area who witnesses famine, genocide, or lesser threats has an obligation to report such developments to both local and U.S. officials.

In 1966, for example, I was driving with my family from East Berlin to Prague. We wandered off the autobahn and arrived at an unofficial, back road border crossing. While haggling with the East German border guards for permission to cross to the Czech side, my son pointed to a black panel truck on which these words were painted: "Danger! Radioactive Material." When we got to Prague, I reported this to the U.S. embassy.

Should a clergyman or a missionary be paid for giving useful information to the U.S. embassy or the CIA? Generally, the answer is no. But if the person spends time and effort specifically to gain additional information, it would not be inappropriate for him to be paid modestly for this effort, as long as it did not interfere with his assigned professional responsibilities. Normally, he should notify his superior that he is spending some extra time to keep the U.S. embassy informed.

The question of providing cover for intelligence officers or agents is somewhat more perplexing. If we assume it is right to seek information that can help the United States to pursue legitimate objectives, then a wide variety of cover guises for individuals is both useful and morally justifiable. If access to highly secret, sensitive, and dangerous activities on the part of an adversary (or an ally of an adversary) is needed, it may be justifiable for a CIA operative to pose as a journalist, geologist, or even a medical missionary. The ultimate moral measure of any such deception should be the consequences of the act—both short-range and long-range. Information so gained may save the lives of hundreds of persons. It is rarely possible, however, to anticipate the consequences of these or other more conventional means with precision or certainty.

THE ROLE OF CONGRESS

My study of foreign intelligence leads me to the clear conclusion that this discipline should be primarily the responsibility of the Executive Branch, as indeed it is in virtually every modern state. Under our American system the Executive Branch does have primary responsibility, but the Congress has been given an oversight role. This can be adequately performed by a select committee in each chamber to which appropriate members of the Executive Branch report. It is not necessary, however, for Congress to enact a detailed charter which specifies a list of do's and don'ts for the intelligence community. And certainly there should be no legislation barring persons in certain professions from cooperating with U.S. officials in this vital area.

There have, of course, been abuses in the intelligence community, as there have in every other government agency and every human institution. The way to minimize such abuses is to maintain an adequate system of accountability within the Executive Branch and responsible oversight procedures in the Congress. The quality of our foreign policy and the safeguards against abuses of those in positions of authority will be determined by the quality of the American people themselves. Through our effective, though less-than-perfect political process and system of checks and balances, the American people are and will remain the ultimate safeguard.

[From the Ethics and Public Policy Center, Washington, D.C.]

MISSIONARIES SHOULD COOPERATE WITH C.I.A., SAYS PROFESSOR

WASHINGTON, D.C.—"A garage mechanic, a politician, and a preacher should all have an equal right to be patriotic. All American citizens should be free to cooperate with the CIA, FBI, HEW, or any other U.S. agency in the pursuit of legitimate national interests," according to Ernest W. Lefever, president of the Washington-based Ethics and Public Policy Center.

Testifying before the Senate Select Committee on Intelligence today (March 25), Dr. Lefever asserted that Congress should not bar clergymen, missionaries, or nuns from providing information to the CIA or other U.S. agencies abroad. (See prepared statement of Dr. Ernest W. Lefever, p. 309.)

The coauthor of a recent book, "The CIA and the American Ethic," Lefever said there was "no good reason why an American journalist, missionary, or anthropologist should not report" famine, genocide, or lesser threats to internal stability in foreign countries to host government or U.S. officials.

He added, however, that such persons normally should not be paid for this patriotic service. Giving information to the CIA, he said, is like reporting a fire, the presence of a suspicious person, or a crime in one's neighborhood.

On the perplexing question of providing cover for securing sensitive intelligence, Dr. Lefever declared that in some circumstances "it may be justified for a CIA operative to pose as a journalist, geologist, or even a medical missionary."

These views, he said, are rooted in the assumption that "foreign intelligence is wholly compatible with the American ethic as long as its objectives are just and legitimate, the means employed are just and appropriate, and the probable consequences will advance the cause of justice, freedom, and peace."

Dr. Lefever, who has written widely on foreign policy issues, has been an ordained Protestant minister for forty years. He is a professorial lecturer in interuational politics at Georgetown University.

"The CIA and the American Ethic" is published by the Ethics and Public Policy Center, 1211 Connecticut Avenue N.W., Washington, D.C. 20036.

FACT SHEET OF THE ETHICS AND PUBLIC POLICY CENTER,
Washington, D.C.

Objectives.—The Center seeks to create a greater public understanding of public issues, including the positive contribution of American business to freedom of choice and human welfare.

Organization.—The nonprofit educational Center, founded in 1976, is supported by foundations, corporations, and individuals. Staff: five professionals and three support. It is fully tax exempt and has an IRS classification of 501(c)(3).

Program.—Research, writing, publication, aud conferences designed to provide information and stimulate debate on major domestic and foreigu policy problems. The authors of its publications affirm basic Westeru values and attempt to combine moral reasoning with empirical analysis.

Church and Society Projects.—Examines pronouucements on public issues by the World Council of Churches, National Council of Churches, and other Protestant, Catholic, and Jewish bodies to ascertain their policy relevance and fidelity to their religious traditions.

School and Society Project.—Examines social science and other textbooks to determine how well they present core Western values without selling short American pluralism.

Business and Society Projects.—Examines the problems and achievements of domestic and multinational corporations, with special reference to the ideological assault on business.

Pacific Project.—Addresses issues bearing on U.S. interests in the Pacific, with special reference to Japan, South Korea, Taiwan, and the Philippines.

Publications.—Both the original studies and reprinted articles focus on American institutions which transmit and interpret basic Western values and political ideas. They are addressed to leaders in religious, political, academic, and economic life both in the United States and abroad.

Comment.—The Center takes no position on specific political or economic issues, but selects authors who affirm the validity of individual freedom, limited government, the rule of law, and respect for private property.

Mr. LEFEVER. For 40 years I have been an ordained minister and I speak out of that tradition and experience. I will say at the outset that this problem of the relationship of clergy, missionaries, and other professional groups to the CIA has been made more complex by sensational disclosures about CIA activity in the recent past and by what I regard as unnecessarily stringent constraints placed on that Agency by the U.S. Congress.

I operate under several assumptions, Mr. Chairman.

First: Foreign intelligence is wholly compatible with the American ethic as long as as its objectives are just and legitimate, the means employed are just and appropriate, and the probable consequences will advance the cause of justice, freedom, and peace in the world.

Second: Intelligence activities by definition bear a closer relationship to war than to peace and in the twilight zone between war and peace in which we live it is both appropriate and necessary to judge intelligence activities by the standards of the Christian doctrine of the just war.

Third: The most serious danger to peace, justice, and respect for human rights in the world today is the Soviet Union which is an aggressive, messianic state supported by clients such as Cuba and East Germany. The Soviet Union is a brutal, revolutionary consipracy masquerading as a conventional state. Consequently we live in a very dangerous period when I believe the United States ought to have a miiltary establishment and an intelligence establishment second to none.

All American citizens regardless of station or profession have an equal obligation to protect the state and the institutions and values for which it stands. A garage mechanic, a politician, and a preacher should all have an equal right to be patriotic. They have an equal obligation to serve the common good. All Americans should be free (but not coerced into) to cooperate with the CIA, the FBI, HEW or any other U.S. agency in the pursuit of legitimate national interests. There is no fundamental moral difference between the CIA and the FBI and any other U.S. Government agency. The difference lies in how agencies behave and the consequences of their action.

Universities, for example, receive billions of dollars from various U.S. Government agencies. It seems to me there is no moral difference between receiving money from the CIA or from HEW. The question has to do with what is done with that money and the consequences for good or ill in the larger world.

A missionary in a Third World country, for example, may feel an obligation to report important developments that affect the security and qualities of life in that country in which he is a guest. If internal security is jeopardized, he may wish to report the certain events to the host government, but it would be entirely right to report them also to authorities in the U.S. Embassy. In my view, a missionary or even a tourist in a remote area who witnesses famine, genocide, or threats has an obligation to report such developments to both local and U.S. officials.

Should a clergyman or missionary be paid for giving useful information to the U.S. Embassy or the CIA? Generally the answer is no. But if a person spends time and effort specifically to gain additional information, it would not be inappropriate for him to be paid modestly for this effort just as many churchmen are paid directly or indirectly and many academics are paid in connection with conferences and other activities sponsored by or formally supported by the U.S. Government.

Many clergyman do cooperate with U.S. Government welfare agencies. There is no moral difference between such cooperating and the

cooperation with the CIA. Such cooperation is not a violation of the separation of church and state but an example of constructive interaction between the Government and its citizens who also happen to be church workers or clergymen.

The CIA is an important instrument of U.S. foreign policy and hence it has advanced the cause of human freedom in the world. It has supported efforts for peace and order and justice against subversion and aggression on a massive scale. There is nothing more humanitarian that battling and holding back the expansion of tyranny in our time.

The question of providing cover for intelligence professionals is a ticklish and perplexing one. But if we assume it is right to seek information that can help the United States to pursue legitimate activities, then a wide variety of cover guises for CIA operatives is both useful and morally justified. If access to highly secret, sensitive, and dangerous activities on the part of an adversary or an ally of an adversary is needed, it may be justifiable for a CIA agent to pose as a journalist, a geologist, or even a medical missionary.

The ultimate moral measure of any such deception, and deception is a necessary part of intelligence, should be the consequences of the act both short range and long range. Information so gained may save the lives of hundreds of persons. It is rarely possible, however, to anticipate the consequences of these and other more conventional means with precision or certainty.

For example, if some terrorists were holding a thousand innocent hostages in a monastery and the only person who would have access to that monastery would be a member of that order and if no such member of that order were present, would it not be morally responsible for a CIA operative or agent to dress up as a member of that order so he could gain access to the monastery to see whether the proclaimed presence of dynamite was in fact true? Would this brief moment of deception to save 1,000 lives compromise the church? Would this not serve humanitarian purposes?

Mr. Chairman, I oppose the categorical exclusion of any professional group from assiting the CIA and from being used for cover. I favor the complete elimination of 132(b) of the draft charter. The rules governing the members of each profession whether religious, academic, or press, should be left to that profession. The effort here on the part of some church spokesman to get the Government to impose this discipline rather than to turn to their own organizations for codes of ethics and discipline, appears to be an escape from responsibility.

The less the Congress legislates in these specific areas the better off we will be in terms of the freedom and respect of these organizations. The integrity of the church would not be damaged if an operative dressed as a monk saved a thousand persons from terrorists. The integrity of the church is damaged by misbehavior and corruption, by stupid, evil and naive things church workers do the same is true for universities.

The integrity of these basic institutions—whether the church, the school, the university, or media—is not hurt by an occasional use, under extraordinary circumstances I would admit, their use for cover by the CIA or the FBI. It is a great irony, Mr. Chairman, that some

of the very people who oppose the cooperation of clergy or missionaries with the intelligence service of a basically humane power are at the same time among the most vigorous supporters of the Program to Combat Racism of the World Council of Churches in making financial grants to Marxist terrorists who make missionaries their targets. This indeed is a great irony, Mr. Chairman, and one wonders what the motivation is.

Is there something wrong in supporting U.S. foreign policy when it is humane and legitimate and supporting one of the chief instruments of that foreign policy, the CIA? What fundamentally is wrong?

In the name of an affective and responsible foreign policy, I submit what appears at this table to be a minority position, Mr. Chairman.

Senator HUDDLESTON. Thank you very much, Mr. Lefever.

Rev. Anthony Bellagamba.

TESTIMONY OF REV. ANTHONY BELLAGAMBA, IMC, EXECUTIVE SECRETARY, U.S. CATHOLIC MISSION COUNCIL

Father BELLAGAMBA. Yes. Mr. Chairman, I would like to ask a question if I may. How many CIA's do we have in the United States?

Senator HUDDLESTON. How many CIA's?

Father BELLAGAMBA. One or two? From the description of my colleague here, I don't see the CIA people to be very experienced in foreign countries at all. Or they experience it in totally different ways.

Senator HUDDLESTON. It might be many things to many different people.

Father BELLAGAMBA. OK.

Mr. Chairman, I am the Reverend Anthony Bellagamba, IMC, executive secretary of the U.S. Catholic Mission Council. The U.S. Catholic Mission Council is a national office of the Roman Catholic Church in the United States which coordinates and fosters the missionary activities of the Church. The council consists of five constitutive committees: The Mission Committee of the National Conference of Catholic Bishops, the Mission Committee of the Conference of Major Superiors of Men, the Global Ministry Commission of the Leadership Conference of Women Religious, the Global Mission Committee of the National Council of Catholic Laity and the Mission Agencies Committee which includes Catholic Relief Services, the Society for the Propagation of the Faith, the Holy Childhood Association, Extension Society, and the Pontifical Near East Association.

I am speaking today on behalf of the Mission Council, and my testimony represents the council's views and strong desires. But I am also speaking on behalf of the 6,455 Catholic American missionaries sponsored by the U.S. Catholic Church who are serving abroad. Also I am a missionary myself, and I spent many years in foreign countries.

May I ask that my presentation together with the statement that my board passed just a couple of days ago on this same topic be entered in the record?

Senator HUDDLESTON. It will be entered in the record.

[The prepared statement of Rev. Anthony Bellagamba follows:]

PREPARED STATEMENT OF REV. ANTHONY BELLAGAMBA, IMC, FOR THE U.S. CATHOLIC MISSION COUNCIL, MARCH 25, 1980

Mr. Chairman and Members of the Committee: I am the Reverend Anthony Bellagamba, I.M.C., Executive Secretary of the United States Catholic Mission Council. The U.S. Catholic Mission Council is a national office of the Roman Catholic Church in the United States which coordinates and fosters the missionary activities of the Church. The Council consists of five constituent committees: the Mission Committee of the National Conference of Catholic Bishops, the Mission Committee of the Conference of Major Superiors of Men, the Global Ministry Commission of the Leadership Conference of Women Religious, the Global Mission Committee of the National Council of Catholic Laity and the Mission Agencies Committee which includes Catholic Relief Services, the Society for the Propagation of the Faith, the Holy Childhood Association, Extension Society, and the Pontificial Near East Association. I am speaking today on behalf of the Mission Council, and my testimony represents the Council's views and strong desires. But I am also speaking on behalf of the 6,455 Catholic American Missionaries (personnel) sponsored by the U.S. Catholic Church who are serving abroad.

These men and women work in difficult political, economic, social, and religious situations. Their presence in foreign countries is always a precarious one. Their actions are scrutinized carefully and their allegiances tend to be perceived clearly by the people among whom they work. The missionaries have gone to foreign lands to share a religious experience with their brothers and sisters and to share in the building of God's kingdom on earth.

If their work is to be successful, the missioners must be free from ties with the sending Church and country. They cannot try to transplant the U.S. Church abroad, nor try to represent American politics in any way. They cannot exercise their ministry from "outside." Rather, they must become an integral part of the people with whom they work, and a mutual trust and confidence must be nurtured within the community being formed.

The nature of missionary work is such that unless this confidence is present and operative, the missioners' work is nil and their efforts are useless. If people have doubts about the missioners' commitment to the country and the community where they come from, their labor will be in vain, and they will be totally unacceptable.

We acknowledge from the start that the primary responsibility for preserving this relationship of trust does not lie with the missioner's home government but with himself/herself. This having been said, we are convinced that S. 2284 does not go far enough to safeguard the rights of private institutions, nor does it provide even adequate guidelines for intelligence agencies. There could be reason for a citizen of a foreign country to fear that information could be obtained through U.S. missioners. There need be no personal distrust, since the missioner could be a most unwilling informant, but the results would be the same for the local person. With this Bill the grounds for trust between the missioner and the community could be rendered suspect.

The U.S. Catholic Mission Council is concerned about the provisos of Sec. 132 (c, d). We recommend that the Committee review these provisos with the following comments in mind:

1. Historical grounds

Several times in the past, missioners have been expelled from the country of service because they had in fact contributed information, or services, to their country of origin during wartime (e.g., Italian missioners in Ethiopia), or because they were suspected of such activities (e.g. German missioners in Tanzania). At present there are countries which prohibit entrance or cause difficulties for American missioners, because of the suspicion that U.S. missioners do work with intelligence agencies, or just because they are identified too much with American politics and/or business. We do not want to repeat mistakes of the past, nor to perpetuate difficulties.

2. Circumstantial grounds

In 1974 and 1975, disclosures of possible linkage between the C.I.A. and U.S. missioners cast a shadow of doubt on the motivation of those missioners who came into foreign lands. This shadow of suspicion persists, and has eroded

confidence in their work. If this legislation does not remove that shadow altogether, the erosion will continue, and will undercut the work of missioners making it impossible to carry out their vocation to evangelize.

3. Sociological grounds

Missioners are foreigners wherever they are. They minister in a land which is not theirs, and they do not belong naturally to the people among whom they work. Missioners live a dual role. Juridically they are citizens of one country; practically, they are residents of another. They are formed in one culture; they seek to become at home in another. They do not deny their country of origin; they must consider as theirs the one in which they serve at any given time. Theirs is a difficult balance; theirs is a delicate position. In the here and now of their ministry they have to form unity with the people they serve in order to genuinely form a local church. This task would be terribly difficult, if not impossible, if missioners cannot act fully, if they cannot sever altogether the linkage with their home country. Their "home" is a foreign land for the people to whom they minister, and that creates an obstacle to their acceptance, unless there is no reason for the local people to doubt the minister's sincere desire to become one of them.

4. Religious grounds

The work of missioners frequently touches on the most secret and most intimate realities of the people's lives and aspirations. Anything which is shared between missioners and members of the community they serve, must be in total confidence, respecting the intimacy of the revelation. If the people know that a missioner could, under certain circumstances, reveal their confidences, it would undercut the ability to share at its most basic level. There can be no trust in a minister who could, either voluntarily or under legal mandate of the President, reveal information shared in human confidentiality or sacramental seal. As it now stands, the legislation proposed will not end the ambiguity.

We realize that to protect the trust of people in the missioners is not only a task of this legislation. We as in a Mission Council have a serious responsibility to educate our missioners to the most sacred respect for people and the most intransigent secrecy for their confidentially. And we will do our part, as we have tried to do it in the past, even more vigorously in future, if necessary. And yet we feel that unless this part of the Bill is changed the task of the missioners will be rendered almost impossible. We are hopeful that a better proposal for accomplishing the goals of this Bill will be possible in the future. For the present we must decline to support this Bill.

STATEMENT APPROVED BY THE U.S. CATHOLIC MISSION COUNCIL BOARD AT ITS MEETING MARCH 21, 1980

The Executive Board of the U.S.C.M.C. has considered the U.S. Senate Bill S. 2284, "The National Intelligence Act of 1980," which is meant to "authorize the intelligence system of the U.S. by the establishment of a statutory basis for the national intelligence activities of the U.S. and for other purposes."

The Executive Board perceives the importance of the bill and the possible negative consequences that it may have on the work of U.S. missioners and it wishes to make some comments which hopefully would eliminate these consequences altogether.

The Executive Board, therefore, disagree with Section 132 (c, d) of the bill. The very nature of missionary activity demands as complete an identification as possible with the local Church where it exists, or the development of an authentically indigenous Church where as yet there is none. This premise clearly calls for the missioner's insertion into the local reality as far as this is possible, and for as long as his or her missionary commitment lasts.

In order to identify in this way with the host country, the missioner must strive to remain free from all suspect relations with his or her country of origin, i.e., free from any suspicion of working in favor of his or her native country.

For these reasons the Executive Board deems it necessary to remind the U.S. government that our missioners must not be used in any way, either in the host country or in debriefing furloughed missioners in the U.S.

The Executive Board proposed that Section 132 (c, d) be changed so as to remove all doubt in the minds of the people throughout the world of possible

future involvement of American missioners with national intelligence activities of the U.S. government.

Most Rev. William G. Connare, DD, President, USCMC; Chairman NCCB Mission Committee; Most Rev. Edward T. O'Meara, STD, Mission Agencies Committee; Rev. Thomas E. Hayden, SMA, CMSM Mission Committee; Sr. Mary Ann Dillon, RSM, Global Ministry Commission; and Mr. Fred Niehaus, Laity Mission Committee.

Father BELLAGAMBA. I am speaking of those people who are not in the pews, Mr. Chairman, but have left the pews to go to where the action is, and believe me the action is not an easy one where they are. These men and women who have left the pews are in difficult political, economic, social, and religious situations indeed. Their presence in foreign countries is always a precarious one. Their actions are scrutinized carefully and their allegiances tend to be perceived clearly by the people among whom they work.

The missionaries have gone to foreign lands to share a religious experience with their brothers and sisters and to share in the building of God's kingdom on Earth. Mr. Chairman, the clearest example of this happened yesterday. In Bolivia, as well as in El Salvador, two Catholic clergymen were killed yesterday—a Bolivian Jesuit and Archbishop Romero—and both local, not foreign, and yet the difficulties of the situation are such that they, too, being native, are killed by their own people. Imagine how much more difficult it is for us being foreigners to be in those situations, to have to work in those situations and to cope with those situations.

If their work is to be successful, Mr. Chairman, the missionaries must be free from ties with the sending church—I would like to underline that—and the sending country. They cannot try to transplant the U.S. church abroad, not try to represent American politics in any way. They cannot exercise their ministry from outside. Rather, they must become an integral part of the people with whom they work and their mutual trust and confidence must be nurtured within the community being formed.

The nature of missionary work is such that unless the confidence is present and operative the missioners' work is nil and their efforts useless. If the people have douhts about the missioners' commitment to the country and the community where they come from, their labor will be in vain and they will be totally unacceptable.

Mr. Chairman, I acknowledge from the start that the primary responsobility for preserving this relationship of trust does not lie with the missioner's home government but with himself or herself. This having been said, we are convinced that as to S. 2284 does not go far enough to safeguard the rights of private institutions nor does it provide even adequate guidelines for intelligence agencies. There could be reason for the citizen in a foreign country to feel that information could be obtained through U.S. missioners. There need be no personal distrust since the missioner could be a most unwilling informant but the results would be the same for the local person with this bill the grounds for trust between the missioner and the community could and in effect are rendered suspect.

The U.S. Catholic Mission Council is concerned about the provisos of section 132 (c) and (d). We recommend that the committee review these provisos with the following comments in mind:

First, historical grounds. Several times in the past, missioners have been expelled from the country of service because they had in fact contributed information, or services, to their country of origin, during wartime, for example, Italian missioners in Ethiopia, or because they were suspected of such activities. For example, German missioners in Tanzania, after the First World War. They were all expelled not because of any clear accusations but because they were suspected of having dealt with their government.

Mr. Chairman, at present there are countries which prohibit entrance or cause difficulties for American missioners because of the suspicion that the U.S. missioners do work with intelligence agencies or just because they are identified too much with American politics or American business.

I just came back, Mr. Chairman, from a long trip in Latin America and Central America. I have interviewed religious people, political people, many people. One of the first questions was always this: Are you by any chance a CIA agent? The first question was always that. And you don't know how to respond because people look at you and you say no, but you know that down deep they are not sure.

Second, circumstantial grounds. In 1974 and 1975, disclosures of possible linkage between the CIA and U.S. missioners cast a shadow of doubt on the motivation of those missioners who came into foreign lands. This shadow of suspicion persists and has eroded confidence in their work. If this legislation does not remove that shadow as much as possible, the erosion will continue and will undercut the work of missioners making it impossible to carry out their vocation to evangelize.

Third, sociological grounds. Missioners are foreigners wherever they are. They minister in a land which is not theirs and they do not belong naturally to the people among whom they work. Missioners live a dual role. Juridieally they are citizens of one country; practically, they are residents of another. They are formed in one culture; they seek to become at home in another. They do not deny their country of origin. They must consider as theirs the one in which they serve at any given time. Theirs is a difficult balance; theirs is a delicate position. In the here and now of their ministry they have to form unity with the people they serve in order to genuinely form a local church. This task would be terribly difficult, if not impossible, if missioners cannot act fully, if they cannot sever altogether the linkage with their home country. Their "home" is a foreign land for the people to whom they minister, and that creates an obstacle to their acceptance, unless there is no reason for the local people to doubt the minister's sincere desire to become one of them.

Finally, religious grounds. The work of missioners frequently touches on the most secret and most intimate realities of the people's lives and aspirations. Anything which is shared between missioners and members of the community they serve, must be in total confidence, respecting the intimacy of the revelation. If tbe people know that a missioner could, under certain circumstances, reveal their confidenees, it would undercut the ability to share at its most basic level. There can be no trust in a minister who could, either voluntarily or under legal mandate of the President, reveal information shared in human confi-

dentiality or sacramental seal. As it now stands, the legislation proposed will not end the ambiguity.

We realize, Mr. Chairman, that to protect the trust of people in the missioners is not only the task of this legislation. We as a mission council have a serious responsibility to educate our missioners to the most sacred respect for the people and the most intransigent secrecy for their confidentiality and we will do our part as we have tried to do it in the past even more vigorously in the future if necessary. And yet we feel that unless this part of the bill, section 132, is changed the task of the missioners will be rendered almost impossible. We are hopeful that a better proposal for accomplishing the goals of this bill will be possible in the future. For the present we must decline to support this bill.

Senator HUDDLESTON. Thank you very much, gentlemen.

Let me just pose a question from the world of reality: What is the nature of the word "intelligence" itself? It has a sinister connotation generally. Yet a great amount of intelligence that is collected and sought is very innocuous information—information about what is going on, not anything that can be construed to be particularly damaging to any person.

In addition, right now in the world some of the most troublesome spots are those where religion and state are not separated. Now to preclude the use of any clergy at all in some of these situations would almost seem to preclude any kind of the most harmless and innocuous intelligence collection.

Of course, I am referring to the Mideast situation and the governments there and the question of whether or not there is any way to get information. You know, much information we collect is not secret information; it is available if you happen to have somebody there to get it and to receive it and report it. Should this type of activity—also, would that be among the taboos?

MR. LEFEVER. MR. Chairman, may I make just a brief statement about a specific case in Ethiopia. A few years back there was famine in the provinces. There were missionaries out there who saw the famine; they were worried about it and when they came to Addis Ababa they not only reported to Ethiopian authorities but to U.S. officials as well.

Any legislation which limits the normal human compassion to report a fire, a child being beaten up by a bully, or a famine in Ethiopia is rather silly. A missionary should feel free to convey famine information to a U.S. official. Some missionaries might feel more reluctant to report information of subversive activities and then only under extraordinary circumstances.

What we are talking about here is a highly unusual situation in which a missionary might feel voluntarily compelled to pass on information. This is not a situation of a U.S. Government agency bribing or dragooning a missionary into doing something that he does not want to do.

Senator HUDDLESTON. Before we get to Dr. Wood, let me postulate just a little further the situation. Supposing there was a free and open election going on in one of these countries, and we had missionaries in place, and it was interesting to us, and maybe important to

us to know which candidates were being received favorably by the people. Over here we employ Mr. Harris to take a poll. Maybe there is no such way there to determine that except feedback from people who are on the scene and dealing with people, and suppose they went to missionaries or clergymen there and just asked if they would report on a regular basis over the next 2 or 3 months. Now adding that to the kind of situation I developed further there, Dr. Wood, what would you say?

Mr. WOOD. I wanted to back up just a bit. I certainly do not want to associate myself with the viewpoint that seems to indict or impugn intelligence information gathering as such. That is not a part of the testimony you heard from me today.

Senator HUDDLESTON. I think you have all made that clear.

Mr. WOOD. I also want to take some exception to illustrations that I regard as in no way germane to this bill—things that are being said about compassion and humanitarian acts. As a matter of fact, you did not hear in my testimony any dissent from 132(c) which allows an initiative to be taken by an individual who may voluntarily give such information on point. I am trying, rather, to focus on operational procedure—operational policy in which the Government of the United States takes the initiative in securing intelligence information from clergy, church workers, and missionaries. This is the case of 132(b).

Let's not think about the Government approaching some Moslem who lives in Afghanistan. We are talking about citizens of the United States who are missionaries, clergy, and church workers. Now it seems to me the real question is always, with regard to intelligence information—valid as that may be—what is the motivation? Intelligence information is motivated and sustained by concern for the political and national interests of the United States of America. I assume that the directors of the CIA or FBI would be ready to accept knowledge as far as it serves our national interests.

National interests, however, cannot be made co-terminous with humanitarian concerns. There is no way that we can do that. What is involved for us is of course the degree to which one's identity or one's association is really a part of national policy on U.S.A. national interests vis-a-vis the people with whom he or she is servicing or to whom the church is ministering. I think this is very much on point as to how we respond to a piece of legislation, as this is, relating to the use that could be made and should be made by the Government of the United States in taking the initiative for intelligence gathering of persons whose identity in a given country here or abroad is that of clergy, that of missionary, that of church worker.

In that case, I think that for reasons that some of us have already tried to give, and I do identify myself completely with the testimony of the Lutheran Council, the National Council of Churches in the United States of America, and the U.S. Catholic Mission Council, that indeed the religious integrity or credibility is the thing that is jeopardized and there is no way to avoid this, if, indeed, that is the policy of the U.S. Government, namely the use of church persons for intelligence information.

Senator HUDDLESTON. What are the views of other members on the panel?

Mr. HOUCK. As far as that hypothetical is concerned, I would say that we would be opposed to using the missionaries for that kind of intelligence gathering. My own feeling would be that in many of these Moslem countries where we have developed some kind of relationships with the Moslem world, and we continue to work on those kinds of relationships toward understanding that that kind of relationship would be jeopardized if it were found out that those clergy persons would be put into that compromised kind of position. So I would say that——

Senator HUDDLESTON. What if they were reporting to some one beside the CIA, maybe the State Department? I mean in other words that is a consideration, too, I am sure, because the CIA has its own difficulty with image and what I am talking about is information that the country itself could have no objection to being known; it is not that you are trying to undermine them or whatever.

Mr. HOUCK. Unless you are really talking about something that has to do with a religious issue, I would think you have and the State and CIA would have better access to all that information that they could get from the church people.

Senator HUDDLESTON. Possibly, yes, sir.

Reverend STOCKWELL. I think the question of harmless information is an interesting one though I never am quite sure what at one point may seem harmless may at another point seem to be very sensitive and very important information. I think for myself the question is not so much that but it is a question of role—what is the proper role of Government, what is the proper role of the church and the role of the missionary, and not to mix them unnecessarily.

It might be interesting, sir, to just recall the visit of clergy to the hostages in Iran last Christmastime, and some of the most interesting discussions apart from those which the hostages themselves were discussions with representative of the Moslem clergy. Now when that delegation returned, it did share indeed some with our State Department, some of the experiences that it had there, and some of the things that these Moslem clergy had said to them, they were happy to share that but there was never any question during any point during that visitation about role, they were not there representing the U.S. Government, not representing any intelligence agency and that was clear, crystal clear all the way which made possible a proper role for them, for the church, and for the Government it seems to me.

There are extreme cases that one can set up where voluntarily a person might wish to share, I as a missionary myself on one occasion shared certain things I think were quite harmless with representatives of our Government. I was a missionary and I don't object to that voluntary nature and opportunity but I do object to anything that would change my role as a missionary there, and to be a representative of Government. If I am on a payroll to do that, that vitiates that role entirely it seems to me.

Senator HUDDLESTON. I understand.

Father BELLAGAMBA. It has already been answered, Mr. Chairman.

Senator HUDDLESTON. Some of you have mentioned specifically cases of difficulties that have developed because missionaries were either suspected of being employed by the CIA or actually were so employed. Are there other instances that you can think of in recent times?

Reverend STOCKWELL. That is a question we have tried to do a bit of research on and we don't have a lot of research. It is not the kind of thing that is easy to find out. The particular person that I mentioned in my own testimony was a missionary in Bolivia. I know of another case of a person who had been a missionary in China who later was going as a missionary of the United Methodist Church to Hong Kong and was approached directly by a representative of the CIA offering him financial compensation for provision of information on a regular basis. That must have happened about 10 years ago or perhaps even before that.

We don't have many cases of that kind. There was one recently again in the United Methodist Church where it was not quite clear whether a person was providing information voluntarily or whether he had been requested, but the problem has been that once you have just two or three cases like this the whole missionary community and the churches with which they work come under a cloud.

Father BELLAGAMBA. The few cases that we have, Mr. Chairman, the missioners had been approached by the CIA. They were approached and they were asked to give them some information and even money was proposed to them.

Senator HUDDLESTON. Has this been recently?

Father BELLAGAMBA. A few years back.

Senator HUDDLESTON. Dr. Wood.

Mr. WOOD. Mr. Chairman, I think it may be helpful just to remind ourselves that there were, of course, for some years the rather sensational reports to which Dr. Lefever referred. They were shocking. They appeared, however, in very respectable publications—New York Times, Washington Post, St. Louis Post Dispatch among the American newspapers. I think the churches generally were very conservative in not overreacting to these stories but in December 1975, we had the shocking confirmation by the President of the United States, by his legal counsel, and by the Director of the CIA that this had indeed been a well established policy since World War II. In some cases there was one missionary who received an income of approximately $10,000 a year for two decades. This was acknowledged by the White House and the CIA as an established policy.

Now it is in view of that policy in the past we would like to be heard today, along with the resolutions which our religious bodies have passed. What we are also trying to say is that the past policy of using missionaries for intelligence gathering did an irreparable damage to missionaries all over the world and the damage, of course, is by no means over or passed since that policy was confirmed. Our Government has a policy which was carried out, and we speak, therefore, in terms of some historical experience in this matter not on the basis of just some journalists excursion. Our testimony today is on the basis of historical experience confirmed by the highest powers of our Government. Thus, we view with alarm and concern any kind of permissiveness of legislation that would allow the continuation or the reinstitution of that policy for church workers, clergy, or missionaries.

Senator HUDDLESTON. What about a case where some situation developed in a foreign country and it was determined by the CIA, the State Department, or the President that some church official, perhaps one of you individuals because of your knowledge or previous contact with the country and with the individuals involved, would be a very effective emissary to represent the country. If the Government covered your expenses to negotiate to release the hostages or some other situation, would this be acceptable?

Reverend STOCKWELL. Mr. Chairman, I have done that this past year. As a member of Presidential Commission on World Hunger I made a trip to Bangladesh where I was attempting to secure information about a hunger situation in that country, talked with representatives of both our governments, our ambassador and AID as well as with the representatives of the Bangladesh Government. I was also an advisor member of the U.S. delegation to the FAO Conference on Agrarian Reform and Development last July in Rome. I see no problem with that if I do it voluntarily, with the support of my organization.

In this case I had the full support of the National Council of Churches to do that as a service which is seen by us as a service not only to people in need in other parts of the world but also a service to our own Government and to our Nation. We do that. But again there was never a question of conflict of role. I keep coming back to that. I was a clergyman, I was a representative of the National Council of Churches, and we had many contacts with our Government and governments around the world, and want to serve as best we ean.

There was no question of any provision of any intelligence material that I didn't want to provide. I am under obligation to at least the National Council of Churches not to provide intelligence information to U.S. information-gathering agencies but I saw this as completely different from the kind of thing we are talking about here and there was never any doubt about role.

Senator HUDDLESTON. No final distinction about it either.

Reverend STOCKWELL. Not at all.

Father BELLAGAMBA. I think, Mr. Chairman, we cannot say if the President or the Government or the CIA sends you, it is different. I think that people would perceive a religious being sent by the Government when everything is open, as for a humanitarian purpose, nobody would object to that but the question of secrecy, the question of means used, and especially confusion of roles, that is especially what is detrimental to us. If those things are not clear, we cannot operate.

Senator HUDDLESTON. Gentlemen, I could discuss this with you for a long time and it might be we will need to come back to you again and ask for additional comments but I think we have gone beyond our time for today already. I appreciate very much your patience in staying with us and your testimony will be very helpful to us. We all thank you.

Mr. WOOD. Thank you.

Reverend STOCKWELL. Thank you.

Mr. HOUCK. Thank you.

Mr. LEFEVER. Thank you.

Father BELLAGAMBA. Thank you.

[Whereupon, at 6:25 p.m., the subcommittee adjourned.]

THURSDAY, MARCH 27, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met at 2:05 p.m. in room 5110, Dirksen Senate Office Building, Senator Birch Bayh presiding.

Present: Senators Bayh, Huddleston, Leahy, Goldwater, and Mathias.

Also present: Mr. Miller, Staff Director, and Mr. Eisenhower, Minority Staff Director.

Senator BAYH. We will reconvene our hearings. We are privileged this morning to have with us a good friend, a former Attorney General who served his country with distinction in that role as well as in previous roles. We are glad to have him back before this committee. We don't get to see him often enough. He looks hale and hearty. It's good to have you here with us to share your views.

TESTIMONY OF HON. GRIFFIN BELL, FORMER ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY MIKE KELLEY, FORMER COUNSEL TO THE ATTORNEY GENERAL

Mr. BELL. Thank you, Mr. Chairman and members of the committee. I am accompanied by Mike Kelley, formerly the counsel to the Attorney General when I was Attorney General. He is now counsel to the Secretary of Energy. He was my law clerk years ago, partner in an Atlanta law firm before I convinced him to come to Washington, and one of the people who makes my life a lot easier, or he did when I was in the Government so I asked him to accompany me today.

Senator BAYH. It is good to have Mr. Kelley here, too.

Mr. BELL. I am delighted to be here at the invitation of the committee to discuss H.R. 6588, the National Intelligence Act of 1980. This bill would provide, for the first time, a comprehensive legislative charter for U.S. intelligence activities. I believe such a charter is a necessary step forward.

The subject is subtle and complex. This bill is the product of over 3 years of thoughtful discussion, revision, and compromise. The bill attempts to bring order and clarity to an activity that has been conducted historically against a backdrop of ambiguity and anonymity. The personnel engaged in this activity are charged with obtaining the information our leaders need to guide this Nation through perilous times. That mission is difficult, sometimes dangerous, and always indispensable.

General George Washington recognized this fact at an early stage in the revolutionary struggle that created the United States. He wrote:

> Everything, in a manner, depends upon obtaining intelligence. Single men in the night will be more likely to ascertain facts than the best glasses in the day. Secrecy and dispatch may prove the soul of success to an interprise.

I am no stranger to the complex problems of guiding an effective intelligence system in a manner consistent with the principles of our democracy. One of the greatest surprises during my tenure as Attorney General was the amount of attention I was required to devote to intelligence matters. The role of the Attorney General in the Government's intelligence effort has expanded over the past several years to the point where the chief legal officer of the U.S. Government is involved in a tremendous array of legal and policy decisions about intelligence operations.

This is as it should be. An unbiased legal perspective is often valuable in the decisionmaking process, and it increases the people's level of trust in the Government's secret activities. I am pleased to see that the proposed bill preserves and heightens that role.

During my years as Attorney General, Executive orders were developed, establishing new standards for intelligence activities and classification practices. Also during my tenure several major espionage cases were prosecuted, the Foreign Intelligence Surveillance Act of 1978 was enacted, and the first version of this intelligence charter was introduced as S. 2525 and H.R. 11245. As Attorney General I was responsible for general supervision of the FBI, exercising direct review and approval authority for many of its intelligence operations.

Through these experiences I developed a genuine appreciation for the complex nature of the problems faced almost daily by this country's intelligence professionals. I also saw the lack of clear and comprehensive legal standards to assist them in resolving those problems. I know the difficulties of drafting general legal principles to govern an area where every day brings new situations.

Nonetheless, a carefully crafted set of general guiding principles, supplemented by procedures and guidelines, is badly needed to guide our intelligence efforts and restore public confidence in them.

I was privileged to be the first Attorney General to visit CIA headquarters, and to address its employees. At that time I noted that both the Justice Department and the intelligence agencies have a high calling—dispassionate service to the country. The dedicated men and women who are engaged in this calling will be ill-served if the opportunity to restore public trust and confidence in them and their activities through legislative action is not seized.

This is a Nation of law. Those laws develop with the times. Only 30 years ago, in an action unprecedented in the history of nations, the existence of an intelligence function was acknowledged in the National Security Act, and its functions described in five brief, ambiguous paragraphs. That law stands badly in need of replacement by a comprehensive statutory framework that will legitimize, regularize, and facilitate increasingly complex and necessary intelligence functions.

If the charter process fails, the void will continue to be filled by Executive orders, Attorney General regulations, and oversight arrangements. However, the intelligence function will continue to be chilled by the prospect of a different Congress, a different judicial viewpoint, or a different group of executive officials retrospectively viewing good faith decisions in a different light.

By the same token, charter provisions that impose unnecessary restrictions or procedural requirements could detract from the benefits

I have described to the point that the national interest would be better served by having no such legislation. I have in mind particularly the provisions that have been roundly debated during the past several weeks requiring prior reporting to the Congress in one form or another of all covert action proposals and other significant intelligence activities, and a flat order for full and complete access by the Congress to any and all intelligence information.

To the extent these provisions might serve to prevent the President and senior intelligence officials from carrying out vital activities with the requisite dispatch and secrecy, I believe them to be unwise, unnecessary and perhaps unconstitutional. From the earliest days of this Republic, it has been recognized that the foreign affairs function is necessarily the primary province of the Executive. Alexander Hamilton remarked in the Federalist papers that burdening the Executive's authority through "the control or cooperation of others in the capacity of counsellors to him" might "impede or frustrate the most important measures of the Government in the most critical emergencies of the State."

This is not to say that the Congress should have no control or oversight of the development and execution of intelligence activities. Indeed such a role is essential to the continued viability and legitimacy of these activities. The legislative function must be a reasonable one, adding its strengths to the process while not sapping the strengths of the Executive.

In reaction to certain excesses of the past, there is great pressure to insert Congress into the decisionmaking process at the earliest possible juncture to avoid recurrence of abuse. It must be remembered, however, that these excesses occurred in the absence of sufficient legislative guidance or precedent. With the advent of a clear record of congressional concerns, a comprehensive framework of guiding principles and a continuing oversight process, there is much less reason to fear such abuses.

Congress should be generally informed of the scope and nature of the intelligence activities undertaken by the Executive. However, to require prior notice or complete access without limit will sap the strength of the activity itself. Oversight should not equate to obstruction. There should be a continuing dialogue between the Executive and the Congress. But the Congress should not, in effect, be inserted into the councils of the Executive. This would alter fundamentally the checks and balances relationship intended by the framers of our Constitution.

These principles do not require a return to the excessive secrecy and overzealousness of the past. Nor do they imply a passive participation by the Congress in the formulation and execution of foreign policy. There must be a balance. We need sufficient flexibility for the Executive, and sufficient awareness on the part of the Congress to allow it to make informed and timely decisions. Prior reporting and full access to properly classified information may prove to be more detrimental to the national interest than no reporting and overly limited access have been in the past.

In the final analysis, the thoughts of Sir William Stephenson, the man called Intrepid, are most appropriate:

Perhaps a day will dawn when tyrants can no longer threaten the liberty of any people, when the function of all nations, however varied their idealogies, will be to enhance life, not to control it. If such a condition is possible, it is in a future too far distant to foresee. Until that safer, better day, the democracies will avoid disaster, and possibly total destruction, only by maintaining their defenses.

Among the increasingly intricate arsenals across the world, intelligence is an essential weapon, perhaps the most important. But it is, in secret, the most dangerous. Safeguards to prevent its abuse must be devised, revised, and rigidly applied. But, as in all enterprise, the character and wisdom of those to whom it is entrusted will be decisive. In the integrity of that guardianship lies the hope of free people to endure and prevail.

Thank you, Mr. Chairman.

Senator BAYH. Judge Bell, that is certainly a very thought-provoking statement, well thought out in your finest tradition. There are some questions that come to mind as to where one draws the line. What we are after is reasonableness, both on the part of the executive and the legislative branch.

The Stephenson quote is certainly a recitation of the facts of the world as we see them and will probably see them for the rest of our lives. Those of us on this committee, particularly some of us who have a responsibility in the constitutional area on the Judiciary Committee, are also reminded of Lord Acton's comment that absolute power corrupts absolutely. We are constantly aware of that human trait which, although I do not believe exists today and do not assume it will exist in the near future because of what we have experienced, has been present before in our country and I presume there will be temptations to assume power beyond the constitutional mandates.

The question is where do we draw the line between the ability of the President to function quickly to protect the country and the responsibility that Congress has to see that these actions are within proper limits inasmuch as successful or unsuccessful intelligence activities ultimately will involve Congress, we are going to pay for them.

I guess it was Senator Vandenberg who said that Congress had better be in on the takeoff because they're going to be in on the landing, or if they're going to be in on the landing they should be there on the takeoff.

Could I ask you to be a bit specific here? I think what we are searching for is what is the reasonable standard? And you express concern about the extent to which these provisions might serve to prevent the President and senior intelligence officials from carrying out vital activities with the requisite dispatch and secrecy.

Do you have any specific examples of that?

Mr. BELL. The only one I know of is the one the committee has been told about that I think Admiral Turner testified about. I can imagine such a thing happening, but I have been thinking about this testimony for the past week and in the last 2 or 3 days I have been thinking how we could solve the problem of the prior notice, because I know that is something that ought to be resolved.

This is important legislation. As a citizen I would hate to see it break down over a prior notice argument.

Two things have occured to me. Of course we all understand that Congress has the power to legislate and the power to appropriate funds, and from that you get the oversight power. The President has the power to run foreign policy, so you have with our checks and balances and separation of powers, you have these rights that run together.

So we have to make some reasonable accommodation so that the rights on both sides can be accommodated.

I think it would be a very rare case, if the facts I have are correct, it will be a rare case where prior notice was not given but—and here is the point I wish to make—I would hate to see this legislation break down because we are dealing hypothetically. We think there is a problem where there might not be a problem. You are going to be advised in every instance of covert operations. If you aren't advised prior to, you must be advised currently.

So you will know what covert operations are taking place and then you can decide whether you ought to have prior notice. This may never be an issue. You may decide there has been no time when prior notice was essential, that is, prior notice to this committee was essential.

I would like to suggest that we are anticipating a problem. Now if there are some other instances where prior notice has not been given, other than the one, I don't know about it. But if that is true, in 3 years, then it may be that this is a nonproblem and we ought to be able to work out some language which each side can live with where this committee and Congress can exercise maximum authority under the Constitution but at the same time does not invade the President's maximum authority. That is the way the Constitution operates and I think reasonable people can come to that view.

Senator BAYH. We are not in any way suggesting that we should have the right to veto.

Mr. BELL. I understand that.

Senator BAYH. What concerns some of us about the Administration's position is that this system has worked very well. You talk about hypotheticals and this being a trouble. It has worked well. All the intelligence officials have suggested that despite the fact they are deeply concerned about security, our committee has been good, we have not had a security problem, and we have been notified in advance.

Mr. BELL. There has never been a single leak to my knowledge from either this committee or the House Intelligence Committee.

Senator BAYH. We have been notified in advance, which makes some of us a bit apprehensive when now the administration says we will adhere to the guidelines and the way we have interpreted the guidelines so far, the Executive order, is prior notice. That is why we are particularly concerned about that.

Mr. BELL. But you wouldn't want the President to agree to that if it invaded his own constitutional authority.

Senator BAYH. All of the language is based upon the understanding that the President has certain constitutional prerogatives.

Mr. BELL. I would suggest that this is one of these things that works in practice but will not work in theory.

Senator BAYH. I certainly hope we can work it out.

Mr. BELL. If we operate on that basis and just let the facts unfold, if there's something wrong, take it up later, we can get beyond this roadblock. This is essential legislation in my judgment for the good of the Nation. I would hate to see it break down over this.

I don't believe we have a problem. In fact, one of the great dangers you have to worry about—I learned this as a young lawyer—be careful

about litigating on principle. A lot of times you litigate on principle. There used to be a saying in South Georgia that if you get two farmers who were mad over a land line, you could make a lot of money. [Laugbter.]

So we don't want to hreak down on principle if there's nothing wrong in fact. That's the main point I can make about that. I would like to see you resolve the conflict over prior notice to the extent that there is a conflict, and the way to resolve it is to set it aside and wait until you see a conflict. Don't give up anything and don't ask the President to give up anything. Just leave it in limbo for the time being. And I believe it will be a good service to the Nation.

Senator BAYH. Let me ask you about another provision which I think is a real problem. I wonder if you see any constitutional problems with the so-called Agee provision. Some of us get very angry when we see someone who has worked for the CIA and signed a pledge saying he will not release inside information without prior consent, and suddenly he shows up around the country releasing a list of agents and jeopardizing their lives. In fact, some have lost their lives.

Do you have problems with the provisions of the charter which would make that an illegal act?

Mr. BELL. I do not. As you know, I was the one that brought the Snepp case. I was widely criticized at the time for having the audacity to sue someone for breach of contract. The Supreme Court has now upheld that.

I think Agee has not only breached his contract but has brought great harm to the CIA and our Nation because he has created an atmosphere in which we are viewed as unstable by some other friendly nations with whom we ordinarily cooperate, and he probably has caused loss of life.

I don't have any trouble with it. Not everything is controlled by the first amendment. Freedom of speech would have nothing to do with it. For example, you cannot engage in espionage; if freedom of speech would block espionage charges, we couldn't have espionage statutes.

I have never had any problem with the Agee situation. We had to rule at one time that we couldn't do anything with him because we didn't have a statute.

Senator BAYH. The charter, as I recall it, would limit action to action against a person who makes the pledge. There are those who would go further and take action against people who then print the information.

Do you think we would get into a significant first amendment problem there?

Mr. BELL. That is a much more difficult question. In the *Snepp* case we did not sue the book publisher. We could have sued the publisher, in my judgment, as having conspired with Snepp, having done some things like meeting him in the park and things like that, to help him breach his contract, assisted him in a breach. But you would have to have a very strong case before you could do anything like that, and I think we ought not break down again on whether you can sue the newspaper or magazine which publishes the information. Probably you can, but the Agee type is the type of person doing the harm to the country. I wouldn't let those kind of people escape the long arm of the law because I was worried about a book publisher somewhere.

Senator BAYH. Thank you very much. Do you have some questions?

Senator GOLDWATER. Yes; thank you. It's great to see you back again. I told you you looked wonderful. I think that is from retirement. I don't want to start trying it right now.

Continuing the discussion you have had with the chairman, you say, "However, to require prior notice or complete access without limit will sap the strength of the activity itself."

Now I don't think any of us doubt that the President of the United States has the sole responsibility of the formulation of foreign policy, and I happen not to believe that the Congress should have access to decisions he might want to make or would make in the fields of covert action because many of our best successes throughout our history in the accomplishment of foreign policy have been through covert action.

I can think, for example, of the President coming to a decision, say, on a Saturday morning and the committee not available on the weekened. This might be an action which requires immediate execution. That is one of the reasons that I am opposed, not in a concrete way, but opposed to the idea that Congress should have some knowledge or say on whether we perform those covert actions.

So what you have said I think will help us. You have, in effect, put it in its proper perspective by saying that the effect is what we are after.

The writing of such a part of our charter is not easy.

Mr. BELL. It will be difficult. It will probably have to be handled by some examples in the report to make it clear.

Senator GOLDWATER. Even there we will run into arguments from those who feel that every single thing an intelligence agency does in this country should be public knowledge.

Mr. BELL. Yes.

Senator GOLDWATER. We have a lot of those people around.

Mr. BELL. Well, of course we can't have that.

Senator GOLDWATER. Well, they have never really understood what intelligence amounts to.

Mr. BELL. Well, our country cannot survive without a strong intelligence system.

Senator GOLDWATER. That is right.

Mr. BELL. One of the main reasons for that is that we have such an open society, other people can find out what we do much more easily than we can find out what goes on in other places.

Senator GOLDWATER. I think this will probably be our toughest hurdle in the whole development of a charter that we can report to the Senate. If you get any further ideas on language—I am only speaking for myself and I cannot speak for the chairman of the subcommittee, who has done such a great job in putting this whole thing together, Senator Huddleston—but I would certainly welcome any thoughts you might have on how we can put something together that would enable the President to act, whether or not we were here or not, because when action is needed is the important ingredient.

Mr. BELL. I will take a shot at seeing if I can write something. I just thought of this idea today, really, that it ought not break down over this exercise of power by separate branches until we have a problem.

Senator GOLDWATER. You have made a good start here.

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That's all I have, Mr. Chairman. Thank you very much.

Senator BAYH. Thank you, Senator Goldwater. Senator Huddleston?

Senator GOLDWATER. You didn't bring your instant translator today.

Mr. BELL. No, I made a speech not long ago, though, and told them that I was sorry I couldn't furnish instantaneous translation. [Laughter.]

Senator HUDDLESTON. Tbank you, Mr. Cbairman.

Judge Bell, I too am delighted to have you before the committee. Again I want to publicly express my appreciation for all of the help you bave given us in the past, in this area and other areas, too, while you served as Attorney General.

Mr. BELL. Tbank you.

Senator HUDDLESTON. I appreciate the counsel you have given us to move ahead on the charters and not be deterred by the seemingly very difficult stumbling blocks which we recognize we have.

I would like to say that I remain confident that we can find a way to satisfy the requirements of both the executive and legislative branches.

Mr. BELL. Good.

Senator HUDDLESTON. I hope that we will be able to do that before much longer.

There is another area of the charter legislation that gave us a lot of difficulty. That is the extent to which the CIA should be able to collect intelligence against innocent Americans, particularly abroad. And as you recall, we came up with the provision that if the President determines that some intelligence is essential—that is the only place in the bill I believe where we use the term "essential" to the security of the United States—the intelligence agencies can proceed to collect against an American citizen abroad. A court order would be required to tap his telephone, open his mail, search his house, or sometbing of that nature. What is your viewpoint on that?

Mr. BELL. You may recall that when we were debating the Foreign Intelligence Surveillance Act this became the No. 1 question in the whole legislation: What standard would we follow in taking action, wiretapping, that sort of thing, that sort of action, maximum intrusive action against American citizens. And the argument is—I remember when we were working on this draft—the argument is how can you treat an American citizen overseas in a foreign country different from the way you would treat an American citizen in this country?

And tbe intelligence people will say that sometimes an American citizen will have some information but they have not violated any criminal standard, the so-called criminal standard in the Intelligence Act, and they need to get that information, and that there has to be a lesser standard, which is the word "essential," and that you just have to trust the President and tbe Attorney General. If it's not as strong an action as a wiretap, I really don't know the answer to that question.

Senator HUDDLESTON. Do you see any legitimate reason for treating an American citizen abroad differently than you would treat him in this country?

Mr. BELL. The first time I heard it advanced I had some trouble with it. I can't think of a reason to do it. Perhaps the problem is that not everything in life is logical, and it is illogical to treat an American

citizen differently by virtue of their location. But on the other hand, I suppose if the intelligence people make a case, that is up to this committee to know whether they have made a case of need. Then you ought to seriously consider some lesser standard to get information. I suppose the best argument you could make for this power is that it is not as intrusive, just getting information, but you are maybe getting something from someone without their knowing it.

I tried to think of a way where you could get a warrant and you would serve the warrant and then you wouldn't be doing anything surreptitiously. You'd just be taking action. Then you run up again on what standard you use to secure the warrant. I don't have a good answer to that question.

Senator HUDDLESTON. Well, we ran into situations where it was suggested some impending event might be occurring and the President had reason to believe that someone, who had not committed a crime, had information to stop it. The question was whether you had to sit idly by and watch it happen without taking any kind of action to prevent it.

Some of these hypotheticals are far-fetched. Some, however, are very real, and sometimes the real ones seem more far-fetched than the fiction.

Mr. BELL. This maybe raises a question, whether we went too far in adopting the so-called criminal standard in the Foreign Intelligence Surveillance Act. Maybe we should have said the standard is that if it is found to be essential we would do it. But we have crossed that bridge and there is no turning back.

Senator HUDDLESTON. Yes. But from your experience—

Mr. BELL. That is a bootstrap operation, though. We have set up that safeguard and now you must go another step because we set that one up.

Senator HUDDLESTON. Do you see a difference in your judicial experience between collecting intelligence from him as opposed to other types of investigative activity in which the Government might be involved, such as investigating a criminal charge against him? Would you say the collecting of the intelligence with minimization procedures which we have is less offensive than the other kind of investigation?

Mr. BELL. I think it may be what one would expect the parameters of the right of privacy to be. I certainly would not expect anyone to tap my telephone or put a microphone in my office or home, but I would know that if I went to a political rally someone might see me there. If someone said was he there, I know that might be reported. I know that people might know the numbers of my license plates on my automobiles and where I live. They might see me go to work and know what time I go to work, that sort of thing.

But if it is something that you would expect to maintain as private, something that was private, you wouldn't expect anyone to be able to invade that privacy without getting some kind of higher authority. That is my philosophy. I want to have some detached magistrate pass on it.

Senator HUDDLESTON. That is what we would provide, in addition to the President himself.

Mr. BELL. We have this fine foreign intelligence court that you might work out some way to employ in this.

Senator HUDDLESTON. That is what essentially we would do.

Mr. Chairman, I would yield.

Mr. BELL. Mike Kelley worked every day in foreign intelligence when I was Attorney General. He has given me a suggestion here which I think might be good, and that is the judge might be asked to prepare minimization standards.

Now the FBI is doing it. I don't know how it is under this bill. I think the Director of the FBI passes on many of these things. The way it is now, the Attorney General sets up a lot of these standards, but it might be you could bring a judge in on some of these things you were talking about. You wouldn't be using a criminal standard. You would be safeguarding what "essential" means. You would define "essential" and then maybe have some standards which the judges would promulgate, something like that.

It doesn't require much examination to see that maybe we could use judges some way, other than just getting these orders sigued, now that we have judges in the process.

Senator HUDDLESTON. Thank you, Mr. Chairman.

Senator BAYH. Senator Mathias, have you questions?

Senator MATHIAS. Thank you, Mr. Chairman.

Judge, I like your approach in which you say you don't fuss about matters of principle which are not in dispute.

Mr. BELL. Just wait.

Senator MATHIAS. We had an old county circuit judge in Maryland who used to say "Yes, you have rights, everyone has rights, we all have rights. If we fuss about our rights all the time we'll never get anything else done"—Judge Arthur Willard. I think it's the same general principle. If we are going to set up these theoretical situations, we shall never really come to grips with the practical questions.

I hope you would agree with the other side of that equation, that we really ought not to raise the issue of whether or not Congress has a constitutional right to access to everything ultimately.

Mr. BELL. Well, that is a different question. I have not addressed that. [Laughter.]

Senator MATHIAS. Well, I thought we ought to look at the other side of the coin, to be sure where we were.

Mr. BELL. Well, I have something I could say on that subject. As you know, I had the great embarrassment of being held in contempt of court because I wouldn't give the name of informers to a judge in New York. It was probably one of the low points in my career. [Laughter.]

Senator MATHIAS. I should say you bounced back pretty fast. [Laughter.]

Mr. BELL. Well, there was a good reason for that. Congress could not exercise its power to legislate or appropriate funds without knowing what is going on. We have to concede that.

Now we had a number of disputes with the Congress when I was Attorney General about this very issue: sources and methods. We had a House group once who wanted to know the names of everyone in some counterintelligence operation we were carrying on, as I recall. They will frequently ask for the names of informants in criminal law.

There was never a time we were not able to work out a compromise with these groups so that they could have all of the facts they needed for oversight purposes, which would include appropriations or legislation.

Senator MATHIAS. I think that is exactly the way we should handle the charter situation. There are ways, I am convinced. When I say Congress has a constitutional right to everything, I don't mean 435 Members of Congress should get a printout daily. It may be that it would be restricted, in highly sensitive cases, to the leadership, say to the majority and minority leaders of the Senate and the Speaker and minority leader of the House. It may be, in other cases, it would contemplate the chairman and ranking minority members of the committees, not even the full intelligence committees.

The details, the workout, it seems to me, is subject to the kind of practical exercise you suggest, if we do not get all tied up in the question of fighting over the principle.

Mr. BELL. We had a lawsuit, you know. I believe it started under Attorney General Levi but I had to finish it up with the House because we would not just open our informer files. We couldn't do that. So the court of appeals had to finally tell us to get together and do what we are talking about doing right now, try to work it out. All of these powers were running at crosscurrents.

Congress was entitled to the information and so forth, and we did work that out. We worked them all out. We never had a single one we were not able to work out, and I feel certain that can be worked out. I don't regard that as a serious problem once both sides become convinced that the necessary element of good faith exists.

Senator MATHIAS. Absolutely. Some of the concerns which have been raised by the administration, for example, that a Member of Congress would leak to the press. I think that is unlikely. Or that a Member of Congress might take advantage of his constitutional immunity and go to the floor and blow an operation by announcing it to the world, I think that is highly unlikely.

I think there is a possibility that, if a Member of Congress were notified in advance of an operation like the Bay of Pigs——

Mr. BELL. He might try to stop it.

Senator MATHIAS. He might call the President and say "I think this is unwise, unwarranted and not in the best interest of the country." I can understand why Presidents might want to avoid that kind of pressure, but I think that is the worst that would happen.

Mr. BELL. I think that is a good assessment of the situation. I don't get too excited about the leaks. There are enough leaks in Washington to take care of everyone. [Laughter.]

There has never been a leak in this committee or the House Intelligence Committee. There have been leaks in the executive department. There are plenty of leaks there.

Senator MATHIAS. I'm glad you said that.

Mr. BELL. Well, I have had them in my own department when I was Attorney General, and I never could do anything about them, because I couldn't find out who was doing the leaking. It's a way of life to some extent, but the more serious the matter is the less chance there is of a leak, and when you get into some of these covert operations it would be a strange person indeed who would leak the information.

My objection to having to report to eight committees is not so much on that ground as that it makes it cumbersome.

Senator MATHIAS. I think we are all agreed.

Mr. BELL. That really is not an issue any more.

Senator MATHIAS. It is not a serious issue.

In your statement you suggest that two requirements in S. 2284 might be an unconstitutional intrusion into the foreign affairs province of the Executive.

Mr. BELL. Well, I have a theory, a feeling about constitutional law that the Congress cannot force the President to give prior notice. He cannot force you not to seek all of the information or not to require that he report to you currently. That is what Senator Bayh is saying, the chairman.

There is a fine line there because on separation powers and the checks and the balances, these things collide. And you notice that I said—I think I put some doubt on it—probably unconstitutional. One thing we have to have in mind that this question might never be resolved in court. The court might not decide this question because it is essentially a political question, these powers as between tbe Executive and the Congress.

And I have been wracking my mind trying to imagine how this ever could be in court, get into court to be resolved.

So I think it is going to have to be resolved between this committee, the President, and the House committee. That is about what it comes down to.

Senator MATHIAS. You have already said that you don't think you should allow this to scuttle the charters.

Mr. BELL. Yes.

Senator MATHIAS. And I assume, with your broad and comprehensive approach to life, that you mean that the Congress should not insist that the President should, in effect, waive his conditional prerogatives and authority.

On the other hand, that the President should not insist that the Congress would waive any of its responsibilities.

Mr. BELL. Not at this time because I don't think we have a problem yet. This is wbat you would call a finesse. Let's finesse this point and wait until it becomes the problem.

Senator MATHIAS. Let's finesse that question for a moment and let me ask you this: Are there any other incursions into Presidential prerogatives, either as Commander in Chief or as an architect of foreign policy under article II of the Constitution, which you feel are seriously threatened by any provision of the charter?

Mr. BELL. There's another authority to faithfully execute the laws. If the President said I can't give you this information because I am getting ready to prosecute some people for espionage or something like that, you could have a problem, but that is rather farfetched. That is the one other responsibility he has that I have thought of, but mainly it is his foreign policy role.

Senator MATHIAS. So, just to be sure I understand what you are saying, you would really leave the question of the constitutional authority of the President to withhold and the constitutional authority of the Congress to obtain information, both where the Constitution holds them today?

Mr. BELL. Right.

Senator MATHIAS. And you would not attempt to adjust those in either direction by statute at this point?

Mr. BELL. That is exactly right, because I don't think it is necessary. I think it will enable the committee to make progress on something that is needed, and this bill is very much needed in my judgment. It will be a great morale booster, not only for the people who work in intelligence, but it will be a morale booster for the American people.

Somehow or another there is a fairly large number of people who think our troubles in other places, Iran for example, are caused by the fact that the CIA was hamstrung in some way and was unable to get the information they should have.

So bringing all of this in focus and passing this legislation will be good for our country.

Senator MATHIAS. I agree with you.

Mr. BELL. And there is no risk in what I have offered.

Senator MATHIAS. I agree with your conclusion that passing a charter, which makes clear how we have resolved the problems that surrounded the intelligence community, would be a healthy thing. However, in finessing this one question, I don't think we should leave the possibility that a Bay of Pigs operation in training over a period of time, involving a huge amount of resources, would be concealed from the Congress. I think that would be a mistake, and I think the legislative record, as you have suggested, can make it clear that neither the executive side nor the legislative side would——

Mr. BELL. And that the only reason you are finessing it is because it has not become a problem, but should it become a problem Congress would take the matter up at that time. I think that is about all of the safeguard that is needed. It would be a rare President who would not want to cooperate 100 percent with these intelligence committees, this one and the one in the House. It would be a rare thing.

Senator MATHIAS. Let me tell you, Judge, we have had some rare Presidents.

[Laughter.]

Senator MATHIAS. Thank you very much.

Senator BAYH. And some rare Senators, too.

[Laughter.]

Senator BAYH. Thank you, Senator Mathias.

Senator Leahy?

Senator LEAHY. Judge, it's good to see you back here and I agree with Senator Goldwater. You look fantastic, maybe due to the salubrious weather in Georgia. You didn't look all that bad before. I don't want someone to think you have been resurrected from the dead.

[Laughter.]

Senator LEAHY. Just to follow up what Senator Mathias was saying, it may be a rare President where that occurs, but if we are leaving this whole thing to be determined somehow by the good will of the Congress and the good will of Presidents, maybe it does go beyond arguing on principle. Maybe we are trying to establish some kind of guideline which directs not only us and the President but the intelligence agencies. which tend to go on and overlap.

Let me ask you a couple of questions. When you were working on this whole area and when we were talking about the wiretapping of Americans abroad, I realize that to some extent we deal with that in hypotheticals, but did the intelligence agencies come to you with spe-

cific cases? I mean John Jones, Mary Smith in XYZ country. Were you looking at specific cases when you made the decisions you did, when you made the recommendations you did?

Mr. BELL. This discussion was not in the context of cases. It was when we were drafting the bill, and we were considering it I think in the National Security Council meeting. We talked about it two or three times, but I can only remember one instance in which we needed to look at a package, look in a package in a foreign country that bad been in the possession of an American. It was no longer in the American's possession.

Under the procedures that we followed at that time, I got the President to sign an order. I didn't think I as Attorney General had the power to do that. We looked and when we got the package it was not wrapped and there was no reason why we couldn't look anyway. But that's the sort of thing that comes up.

I don't know. They didn't give me any examples. I would suggest you might get Admiral Turner or someone from his group to tell you the need, because I don't know the examples offhand.

Senator LEAHY. Do you mean when these recommendations were being formed it was done as a hypothetical exercise? They didn't come to you and give you some specific examples?

Mr. BELL. Well, they may have but I can't remember if they did. I know we had quite a discussion about it because I could foresee it was going to be a problem. How were we going to treat Americans differently overseas than in this country? I wanted to make sure there was a need for it, and somehow or another I was convinced, and I am not easily brainwashed. but they made me believe this anyway.

You might ask for some examples. I bave one of my own. Do you remember some others, Mike, that we had?

Mr. KELLEY. I don't remember specific examples but I know we discussed specific hypotheticals.

Senator LEAHY. Specifics, hypotheticals, or specific hypotheticals?

Mr. KELLEY. Both.

Mr. BELL. In this example I gave you someone's life depended upon it. We had to look in the package.

Senator LEAHY. I see.

On the question of prior notice, you do feel that that is something than can be worked out without being spelled out; is that right, Judge?

Mr. BELL. I would work it out simply by saying we don't reach it. I would cite the case of *Ashwander* v. *TVA*, the special concurring opinion of Justice Brandeis when he said that in deciding cases you ought to do everything you can to avoid baving to pass on a constitutional issue.

Senator LEAHY. I understand. What about your feeling under Hughes-Ryan? Do you accept in emergency situations and situations which will occur in perhaps a matter of hours or so, do you feel that that requires, as it now stands, prior notice?

Mr. BELL. No, I do not, not under Hughes-Ryan. We rendered an opinion. I think the Office of Legal Counsel did.

Senator LEAHY. Yes, that's why I asked.

Mr. BELL. That it did not require prior notice.

Senator LEAHY. Under any circumstances?

Mr. BELL. I have forgotten the language. It's a hard question to answer when you say under any circumstances because actually I think the President has been giving prior notice in most everything. I think it is a sense of cooperation. I think he is cooperating and showing good faith in trying to work things out as best he can with Congress.

Senator LEAHY. But that is a cooperative effort not required by Hughes-Ryan.

Mr. BELL. The argument is whether the Executive order goes farther than that, his own Executive order.

Senator LEAHY. Do you feel it does go beyond Hughes-Ryan?

Mr. BELL. I think it does. Oh yes, I think the Executive order is beyond Hughes-Ryan. I think there is a good strong argument in the Executive order for prior notice. I rendered an opinion saying it didn't mean prior notice.

Senator LEAHY. I am getting a bit confused here. So you feel the Executive order does require prior notice?

Mr. BELL. I do not.

Senator LEAHY. Then you have lost me again. I'm sorry, sir. Hughes-Ryan you don't feel requires prior notice?

Mr. BELL. Nor the Executive order.

Senator LEAHY. But the Executive order does go further than Hughes-Ryan?

Mr. BELL. It goes much further. It is much stronger. You can make a better argument from it.

Senator LEAHY. In what way does it go further if neither requires prior notice?

Mr. BELL. I don't have it in front of me but there were two provisos added. One was added by—who has a copy of it? It has two clauses on the end.

[Pause.]

Mr. BELL. I am looking for the Senate resolution. What is it, 400? Is the language the same in the Executive order as 400, plus we added the preamble?

Senator HUDDLESTON. Right.

[Pause.]

Mr. BELL. Yes, the Senate resolution by itself was to keep the Committee on Intelligence—that's both committees—fully and currently informed concerning intelligence activities, and this is added. This is over and beyond Hughes-Ryan, including any significant activities which are the responsibility of or engaged in by such department or agency, and then someone added this next sentence: "This requirement does not constitute a condition precedent to the implementation of such intelligence activities."

Then there is something in the report which makes that even more ambiguous. So we put in the preamble. Now the preamble says,

Under such procedures as the President may establish, consistent with applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches,

that is constitutional and by law to protect sources and methods and so forth.

That preamble in my opinion—that is an opinion I rendered—taken with the language that came out of Senate Resolution 400, convinces me that there does not have to be prior notice.

Now I understand from reading in the newspaper, and most everything you read in the paper is true——

Senator LEAHY. I had noticed that. [Laughter.]

Mr. BELL [continuing]. That perhaps the committee never knew of my legal opinion or my staff never knew about this legal opinion I rendered to the President, and if so I regret that, but it would be like two ships passing in the night. That was my view of it, it was my opinion, and it still is. Had the committee known about it we could have had an argument earlier than this on prior notice, but I'm glad now you didn't know about it because maybe we can solve it without arguing.

Senator LEAHY. I have the feeling, Judge, that before this matter gets voted on one way or the other, there may be, if not arguments, at least some discussion of the subject, both in committee and on the floor. And I rather suspect that as much as we would like to get the thing worked out, a very large part of the things we are talking about tend to work themselves out in the course of normal events, but there are still enough which do not. This whole question of prior notice and the resolution of that will probably be the single most difficult stumbling block in this whole area and may even be enough to stop the charter from being actually voted on.

Mr. BELL. I would regret that very much if that were to turn out to be the case because I would be sitting down in Georgia trying to figure out why you were making such a problem over a nonproblem.

Senator LEAHY. Maybe we should all go down to Georgia and get a different perspective, or up to Vermont. But I personally hope we can get some kind of a charter through and I hope that we would not be so foolish as to put something through just to say that we put something through, and leave the intelligence agencies with some kind of an ethereal, gossamer type of a charter which makes it even worse for them than it might be otherwise. I think we can put something together.

I ask the question on behalf of others because this is the one area which will probably cause us the greatest problem. I am sure you know the amount of work you have put on it is commendable. It is essentially commendable because I know you share that concern.

Mr. BELL. Thank you.

Senator LEAHY. Thank you, sir.

Senator BAYH. Thank you very much. Judge Bell. I want to say to you and Mr. Kelley. I think this committee owes you a debt of gratitude for the tremendous assistance you provided us in that Foreign Intelligence Surveillance Act, which was landmark legislation, which had to get over a lot of the hurdles this one will have to get over, and you really were an extremely important aspect.

Mr. BELL. Thank you very much, and I wish you well in your endeavors.

Senator BAYH. Thank you. We look forward to seeing you on occasion. Thank you both.

Our next witnesses are Mr. Raymond J. Waldmann, and Mr. Steven B. Rosenfeld. Mr. Waldmann is the intelligence consultant, Standing Committee on Law and National Security, American Bar Association, and Mr. Rosenfeld, on behalf of the Committee on Federal Legislation of the Association of the Bar of the City of New York, will appear together. I appreciate both of you gentlemen being bere.

Mr. Waldmann, why don't you proceed? Mr. Rosenfeld, tben you may proceed and if you like we will have questions.

TESTIMONY OF RAYMOND J. WALDMANN, INTELLIGENCE CONSULTANT, STANDING COMMITTEE ON LAW AND NATIONAL SECURITY, AMERICAN BAR ASSOCIATION

Mr. WALDMANN. Thank you very much, Mr. Chairman. It is a pleasure to accept this committee's invitation to appear today to discuss pending intelligence charter legislation. I have observed the intelligence community with a great deal of interest, first as Deputy Assistant Secretary in the Department of State, then as special counsel to President Ford to assit with intelligence reform and the drafting of Executive Order 11905 and now as a consultant to the American Bar Association Standing Committee on Law and National Security.

The standing committee is concerned with the relationship between our Nation's security interests and the requirement that our society be built upon law. The standing committee is chaired by Morris Leibman, bas a prestigious membership and is counseled by former Secretaries of State Rusk and Kissinger and former Attorney General Levi, among others.

In the last year I bave been directly involved in helping the ABA establish a program of analysis and public discussion of intelligence issues. I bope that in the course of the montbs to come, we will be able to work with the Congress to provide useful ideas and assistance. Today, however, I am not testifying on behalf of the ABA or the standing committee.

Since Congress has already received ABA positions on tbe FBI Charter and graymail, a few words at the outset about the American Bar Association's procedures may be helpful. Tbe ABA House of Delegates has not adopted any resolution on issues of intelligence in the last 5 years. The ABA is composed of State and local bar associations and speaks only through its house of delegates which meets twice a year. Other sections and committees of the bar associations as well as tbe standing committee on law and national security will probably deal with the subject of intelligence charters.

In the fall of 1978 the standing committee began its work in tbe intelligence field as one of many edueational and profesional researeh activities, and it has become increasingly active over the last year. After Prof. Antonin Scalia and I were engaged as consultants to tbe ABA early in 1979, we began assembling materials, bibliographies, and an intelligence law library. We have followed hearings and developments in Washington. In the summer of 1979 we started a montbly ABA intelligence report for members of the standing committee, tbe ABA hierarchy and other interested lawyers.

In December the standing committee sponsored a 2-day conference in Wasbington on the subject of law, intelligence and national secu-

rity. One panel addressed the question of the need for charter legislation, the issues remaining to be resolved, and the form any new legislation might take. The standing committee proposes to continue its examination of these issues at a forthcoming conference at the University of Chicago Law School in June.

Shortly after the December conference, the standing committee presented two resolutions on the FBI charter legislation and graymail legislation to the midyear meeting in December of the ABA. Though not dealing directly with the charters before the committee today, some of the concerns expressed by the ABA in those resolutions are relevant as well to the consideration of intelligence charters. In both cases the standing committee's views were, with minor amendments, adopted by the full house of delegates and copies of the resolutions have been formally submitted by the ABA to Congress.

With the introduction of the National Intelligence Act of 1980 by Senator Huddleston, of the Intelligence Reform Act of 1980 by Senator Moynihan, of the companion legislation and other bills in the House, and with the possibility of other legislation being introduced, it is clear that negotiations between the Congress and the administration have reached a point where public and bar participation in the legislative process is possible. To study the legislative proposals the standing committee has formed an advisory group which I chair composed of 18 concerned citizens and informed observers, some with experience in the intelligence community. The advisory group will report to the standing committee, which will report to the ABA board and the house of delegates.

As lawyers we are not per se generally concerned with questions of statecraft. Issues such as the consequences of intelligence activities on foreign relations, the internal structure of the intelligence community, and the budgetary and other administrative processes are not issues on which lawyers have greater expertise than any other citizens.

I will concentrate instead on those issues to which our profession can bring a special understanding and concern. Lawyers are concerned with the effects of Government activity on the activities and rights of citizens, including those citizens within the intelligence community. Lawyers are concerned with the comity and relationships between the executive, legislative and judicial branches. Lawyers are concerned with the role of the judiciary in intelligence processes. Lawyers are concerned with the protection of the secrecy which is necessary to effective intelligence. Lawyers are concerned with the sanctions which may be imposed on individuals for violations of law.

I feel our first objective in this area must be to enhance the effectiveness of the intelligence community within the framework of the law and the Constitution, based on the proposition that an effective intelligence community is necessary for the protection of national security. We should debate the limits to be placed on that community as well as the positive role of the law in encouraging effective intelligence; in other words, we should consider the authorizations as well as the restrictions.

A related objective must be the protection of the rights of U.S. citizens. The relationship of these protections to the basic purposes for

which we have intelligence agencies must be publicly discussed to air fully all of the problems involved.

A subsidiary but nonetheless important objective should be to seek to remove ambiguities and conflicts in the law. Both the public and Government employees legitimately seek greater clarity. Clearly any legislative drafting process is subject to difficulties, particularly with long and complex bills ,but merely because we are dealing with clandestine activities we should not accept careless draftsmanship, especially where criminal penalties and other sanctions may be imposed. For example, I am concerned about such matters as the effect of the inclusion of blanket rules of construction such as section 111(e) and section 233 of S. 2284. I am also concerned about the Attorney General's responsibility to report significant violations of law—section 141(f). In other words, our standards of legislative drafting in this area must be as high as they are in any other area.

Let me now turn to some specific issues I have raised within the standing committee's advisory group.

First, I think the case for comprehensive charter legislation is not yet completely persuasive. The mere recitation of historical abuses by the intelligence agencies acting in different situations and without the present institutional and legal checks does not support the conclusion that a comprehensive charter is necessary today. In contrast to the situation examined in 1975 by the Rockefeller Commission and the Pike and Church committees, we now have a structure of checks and balances which did not previously exist.

In addition to the basic legislative charter contained in the National Security Act of 1947 and the CIA Act of 1949, President Ford issued the first detailed intelligence charter in 1976 in the form of an Executive order. President Carter's Executive order expanded the protections as have a series of guidelines from attorneys general.

Since the 1975 revelations we have also seen the establishment of the Intelligence Oversight Board, the establishment of the two permanent intelligence committees in Congress, the active involvement of tbe Attorney General and a new Department of Justice office for intelligence matters, the continuous reporting of covert actions to as many as eight congressional committees, the establishment of the Foreign Intelligence Surveillance Act protections, and a much greater awareness of intelligence agencies' activities by the public and the press.

For these reasons it seems to me these hearings must document for the public record the need, if any, for comprehensive charter legislation.

Second, public discussion of three specific issues has advanced to the point where legislation may be adopted without raising the problems of a comprehensive charter. The three areas requiring attention are the Hughes-Ryan reporting requirements, the protection of agents from unauthorized disclosure of their identities, and the partial exemption of the CIA and possibly other agencies from the full requirements of the Freedom of Information Act. Our advisory group will probably recommend specific positions to the ABA in at least these three areas.

Third, I am concerned about the involvement of the judiciary in what may occasionally be the sanctioning, through a warrant proce-

dure, of intelligence operations which violate the laws of other countries. The involvement of U.S. judges in approving intrusive techniques in other countries is certainly a unique precedent in our jurisprudence.

Further, the question must be raised whether judges will have the discretion necessary to protect the rights of citizens and not merely act as rubber stamps. No matter how great the need to involve the judiciary in electronic surveillance in this country for law enforcement purposes, no case has been made for identical protections from surveillance for positive intelligence collection purposes abroad.

Fourth, careful thougbt must be given at the outset of the legislative process to the types of sanctions, if any, that will be imposed for violations of charter provisions. A disproportion now exists between crimes and penalties; for example, the charter contains an outright prohibition against assassinations with no specific sanction attached, but also a criminal or civil sanction for a good-faith violation of the charter by an employee given a direct order by a superior. As the ABA argued in its comments on the FBI charter, unless the question of enforcement and sanctions is addressed at the outset, specific prohibitions cannot be discussed with any precision.

Fifth, I believe that the relationship of the charter provisions to the first amendment and the public's, including Congress', right to know affects the whole charter exercise. There now exists a conflict between the view that legislation to protect the names of agents and details of operations should be sharply circumscribed, and the view that effective secrecy must be maintained.

In my view, it is not enough to rely on the cooperation of the responsible press; history has shown that not all of the press falls into that category. We must be very clear how far we are willing to go to deny the desire of anyone to know what is going on in order to protect an agent in the interests of national security. Among the pending proposals, a part of the Moynihan bill may be the best compromise.

Last, I am concerned about the direct involvement of Congress in the management of executive agencies. Congress should concern itself with authorizations, restrictions, and procedures. The writing of detailed rules and regulations is more appropriate for an administrative agency for its own operations. Congressional oversight provides that no detailed administrative legislative charter has been required to conduct the necessary operations of the intelligence community.

Any Presidential directive authorizing community action later deemed abusive would not have been prevented by legislated prohibitions without a clearer resolution of the constitutional issues relating to the President's powers as Commander in Chief and as Chief Executive of foreign policy under article II of the Constitution.

These constitutional provisions are not hollow concepts, but fundamental principles which affect the way in which the executive branch discharges its responsibilities. These principles should be considered, in a spirit of comity, in writing any new intelligence charter legislation.

Let me, in closing, reiterate my thanks for this opportunity to appear before the committee and my willingness to work with the committee and to answer any questions at this time.

Senator BAYH. Thank you very much, Mr. Waldmann. We appreciate getting your thoughts. Mr. Rosenfeld, why don't you give us yours? It is good to have you with us. We appreciate particularly the assistance you provided the committee in our efforts to try to get the Foreign Intelligence Surveillance Act, the wiretap bill, passed.

TESTIMONY OF STEVEN B. ROSENFELD, ON BEHALF OF THE COMMITTEE ON FEDERAL LEGISLATION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. ROSENFELD. Thank you, Mr. Chairman. I am honored to have been invited here today to present the preliminary views of the committee on Federal legislation of the Association of the Bar of the City of New York on S. 2284, the National Intelligence Act of 1980. These views are set forth in my prepared statement, which I do not plan to read in full this afternoon, but I respectfully request be made a part of the record at this point.

Senator BAYH. Without objection, so ordered.

[The prepared statement of Steven B. Rosenfeld follows:]

PREPARED STATEMENT OF STEVEN B. ROSENFELD, ON BEHALF OF THE COMMITTEE ON FEDERAL LEGISLATION, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

I am honored to have been invited here today to present the preliminary views of the Committee on Federal Legislation of the Association of the Bar of the City of New York on S. 2284, the National Intelligence Act of 1980.

Our Federal Legislation Committee is responsible for developing and presenting the views of the Association of the Bar of the City of New York on proposed federal legislation of a diverse nature. In recent years, our Committee has devoted particular attention to the threats to individual rights, liberties and privacy raised by recent disclosures concerning the domestic and foreign intelligence activities of the Federal Government, and the ongoing search for legislative solutions to those problems. The Association's views on those subjects have been expressed in, among other documents, a 1975 Report entitled "The Central Intelligence Agency: Oversight and Accountability"; a 1977 Report on "Legislative Control of the FBI"; our Committee's testimony in February 1978, before both this Committee and the Senate Select Committee on Intelligence, concerning the Foreign Intelligence Surveillance Act of 1978; and this Committee's testimony last December concerning the remedies and sanctions sections of the proposed FBI Charter. Currently in preparation is an exhaustive report discussing the FBI Charter in detail, which we hope will be published in May, as well as a more detailed written consideration of the National Intelligence Act of 1980 which will follow, we hope, later in the spring.

Our Committee is gratified to see that serious congressional consideration of charter legislation for both the FBI and the foreign intelligence community is finally underway. The record compiled in the late 1970's by the Church Committee and other investigations, disclosing serious violations of the rights and liberties of Americans in the name of foreign intelligence and national security, cried out for legislation bringing those activities under the rule of law. It would be a shame if the lessons of the Watergate era were so quickly swept away by the current tide of national sentiment brought on by the international crises of the past six months.

We recognize, of course, that the difficult task before this Congress is to strike the balance between maintenance of an intelligence system which can collect reliable information necessary to make informed foreign policy, domestic security and counter-intelligence decisions, as well as to counteract the rising tide of international terrorism, while at the same time safeguarding the cherished rights, liberties and privacy of all Americans, both at home and abroad. We believe that Congress was able to strike such a balance in enacting the Foreign Intelligence Surveillance Act of 1978, as far as that statute went, and we hope

to see a similar balance struck in creation of a comprehensive Foreign Intelligence Charter.

Since 1975, the Association of the Bar has supported comprehensive legislation which would define precisely both the authority of, and restrictions upon, the Central Intelligence Agency and other entities within the foreign intelligence community. We continue to believe that there is a fnndamental need for a comprehensive charter, and we would therefore oppose the stop-gap approach to selected issues represented by S. 2216, introduced by Senator Moynihan on Jannary 24. We urge this Committee to continue its work on S. 2284, rather than yieiding to the temptation of settling for the much more iimited focus of the Moynihan biii.

Becanse the time has been so short since the introduction of the National Intelligence Act, our Committee has not yet had an opportnnity either for detailed study or fuii Committee discussion of the important issues raised thereby. Our forthcoming written report[1] wiii undoubtedly reflect the benefit of more careful study and discussion. However, we are pleased to have been asked to express our preiiminary views in this first round of hearings, and therefore offer our tentative conciusions on some of the issues before this Committee based on our initiai iook at the proposed legisiation. As Senator Huddleston stated in introducing the National Intelligence Act on February 8, congressional oversight is "the foundation of this charter enterprise." We agree. A system of oversight and public accountabiiity for intelligence operations ought to be the most fundamental part of any charter legisiation. Accordingly, we begin our comments with those relating to the portions of S. 2284 which we see as helping to accomplish that goai.

Section 142 of S. 2284 appears to afford a solid basis for regular and thorough oversight by this Committee and the House Select Committee on Intelligence. If its dictates are observed in the manner in which they are clearly intended, the crucial oversight function should be fulfilled. We do, however, have some question about the precise meaning of section 142(c): we assume that the intent is that the two committees will be given reguiar reports, based on the records required to be kept, concerning each use of the authorized "covert" and "extraordinary" intelligence gathering techniques, authorized by the procedures set forth in section 212. That would enabie the inteiligence committees to determine, and inform the Congress, whether the statutory procedures for safeguarding constitutional rights and privacy are working—an important objective of tbe oversight function. Accordingly, we would like to see section 142 reworked to make such a reqnirement explicit.

"Special Activities" and Prior Notice

If the intelligence community is to be specifically authorized to undertake foreign covert activities for purposes other than pure collection of information, as the charter contemplates, we strongly believe that there must be scrupulous adherence to a requirement of prior authorization and prior notice to Congress. We are disturbed hy indications in Director Turner's testimony last month that the government has not always been observing its previous commitment to give prior notice, further underscoring the need to make that obligation explicit in the law.

We agree that it is probabiy unnecessary to report on covert activities to seven or eight different congressional committees encompassing more than 200 members; reports to this Committee and the House Committee on Intelligence shonld be adequate. But, for the reasons outlined hy former Senator Hughes in proposing what became the Hughes-Ryan amendment in October 1974, we also strongly support the present approach of section 125 clearly requiring prior notice of covert activities, rather than the uncertain approach apparently favored by the Administration. We have no immediate objections to the provision allowing the President in extraordinary circumstances to iimit prior notice for a period of 48 hours to the Chairmen and ranking minority members of the two committees and the ieadership of the two Houses, but we believe that S. 2284 is correct in mandating some prior notice to Congress before American intelligence operatives are unieashed on covert adventures abroad.

In passing, I might note that we are not now taking a position on whether, or under what circumstanees, covert foreign activities ought to be permitted. We do note onr concern, however, that the present definition of "special activity" in

[1] See appendix XI, p. 654.

section 103(18) specifically excludes all "counterintelligence" and "countererrorism" activities, thereby exempting all such activities from the pre-notice requirement. We wonder whether that exclusion may in practice ultimately permit covert operations abroad without the kind of Presidential authorization and notice to Congress which is contemplated by section 125. We therefore urge close consideration to whether the definition of "special activity" in section 103(18) should not be revised.

Freedom of Information Act

Since its enactment in 1966, the Freedom of Information Act has played a major role in our system of accountability on all levels of government. We believe that it remains, and should remain, an important part of the requirement of accountability on the part of the intelligence community. We therefore oppose any attempt to exempt the CIA from the coverage of the Freedom of Information Act, such as the provision embodied in section 421(d) of S. 2284. Testimony on behalf of the CIA before the House Intelligence Committee and before the Senate Judiciary Committee has indicated that the CIA has been able to adjust to its responsibilities under the Fredom of Information Act. The case has not been made for sacrificing that Act's important function of assuring public accountability and unmasking wrongdoing by intelligence agencies. We thus view section 421(d) as an ill-considered reaction to current international tensions.

It has not been persuasively shown why the existing exemptions in the Freedom of Information Act, for classified information, inter-agency and intra-agency communications, and investigatory records, are not fully sufficient to alleviate the intelligence community's concern for unwarranted public disclosure of sensitive operations. If any change must be made at all, we suggest a slight amendment to 5 U.S.C. section 552(b)(7) to include within that existing exemption "investigatory records" compiled for "foreign intelligence" purposes and endangering the lives or safety of "intelligence personnel" to the same degree as the present language exempts files compiled for "law enforcement purposes" and disclosure of which would endanger "law enforcement personnel." (We note that the bill introduced last week by Rep. Austin would also solve this problem by a modest, but different, amendment to section 552(b)). But we see no justification for exempting the CIA totally from disclosure under the Freedom of Information Act of information other than that relating to the requester.

Criminal and civil remedies

As this Committee has said in its prior reports and previous testimony, an effective system of remedies and sanctions is essential to any meaningful legislative reponse to the recently-disclosed abuses in intelligence operations. Remedies and sanctions, including civil damage actions, represent still another cornerstone of the system of public accountability.

We note that section 232 of S. 2284 provides for civil remedies, modeled upon the civil remedy section of the Foreign Intelligence Surveillance Act of 1978, but only for electronic surveillance and physical searches conducted in violation of the Act. We believe that civil remedies should be available to redress any damage to Americans from intelligence gathering conducted in violation of the standards and procedures set forth in the charter. We also would reiterate the reservations we expressed in our testimony in support of the 1978 bill: (1) we question whether it is either necessary or wise to deny standing to sue for damages to all foreign powers, and to all agents of foreign powers as defined in Section 101(b)(1)(A) of the Foreign Intelligence Surveillance Act, since we can conceive of situations in which both classes of potential plaintiffs could legitimately have suffered damage from clear violations of this law and yet be unable to seek redress; and (b) we believe that, especially after two more years of double-digit inflation, the limitation on liquidated damages of $1,000 is too small to be meaningful; there should be an upward adjustment of that number not only in the present charter, but in all similar legislation in which liquidated (as opposed to actual) damages are kept to $1,000.

Intelligence gathering techniques and the rights of individuals

We are pleased to see language in the proposed legislation which makes it clear (Section 111(a)) that intelligence activities may be conducted "only in accordance with" the provisions of the Act and (Section 111(e)) that the Act may not be construed to authorize any intelligence entity to conduct any activity "for the

purpose of depriving any person of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States." We would hope and expect that all of the safeguards and restrictions which follow Section 111 will be construed in light of those provisions.

We also applaud the inclusion of express prohibitions against assassination (Section 131); against use of religious, media, educational and arts organizations, as well as the Peace Corps, as covers for intelligence activities (Section 132(b)); and against the publication within the United States of books, articles and films intended to influence public opinion without acknowledging government involvement (Section 133).

We also note with satisfaction the requirements of Section 212 of the bill that specific procedures be adopted by each intelligence entity and approved by the Attorney General, designed to protect constitutional rights and privacy, to make clear the designation of officials authorized to initiate intelligence activities, to require periodic reports to Congress under Section 142(c) of all approvals of actions under those procedures, and to minimize the extent of information obtained by the government unrelated to legitimate intelligence objectives.

What concern us most, however, about the sections of the bill relating to intelligence-gathering techniques are the provisions authorizing use of intrusive techniques against innocent Americans. In recent years, our Committee has urged Congress to take the lead in providing the maximum amount of protection for individual rights and expectations of privacy. We were, on balance, content with the Foreign Intelligence Surveillance Act as finally enacted, because we believe it achieved the appropriate balance between legitimate intelligence needs and the necessity of protecting these rights and liberties. In 1978, we strongly urged that electronic surveillance against Americans be permitted only with a judicial warrant obtained under a criminal standard, and the 1978 Act finally adopted that view.

We are therefore unhappy that Sections 213 and 221 of S. 2284 would permit the use of intrusive techniques, including infiltration of groups, mail openings and mail covers and electronic surveillance and physical searches against Americans outside the United States—all without any showing at all of criminal activity. Although there are procedural safeguards in the form of a Presidential finding of "extraordinary circumstances . . . essential to the national security of the United States" and, for foreign electronic surveillance and physical searches, the Attorney General's certification and a court order based on a noncriminal showing, the bill departs from the 1978 Act's substantive safeguard for United States persons of a probable cause to believe that the target of surveillance is or may be engaged in a violation of criminal law.

While we have not researched the question (and would hope to do so before our final report is issued [1]), our initial reaction is that constitutional protections against unreasonable searches and seizures and constitutional rights of privacy do not cease when an American departs the borders of the country. We believe that Americans have, or at least ought to have, a legitimate expectation that they will be protected against unwarranted intrusions by their own government no matter where they may happen to travel. We do not think that a compelling case has been made for abandoning the modest protections contained in the 1978 Act simply because the intrusion takes place outside the United States. At the very least, therefore, we would urge that the procedures and standards of the 1978 Act be fully applicable to electronic surveillance, physical searches and mail openings undertaken against United States persons outside of the United States. Moreover, while we would hope that a President would not lightly direct intrusive techniques such as mail covers, physical surveillance and infiltrations against innocent Americans at home or abroad, we would prefer to see such techniques subject to greater procedural controls and substantive standards than simply the Presidential authorization provided for in Section 213.

In our testimony on the 1978 Act, we noted that the phrase "clandestine intelligence activities"—which is an integral part of the statutory standard for who may be targeted for surveillance—remained undefined. We urged that it be defined, in terms which relate it clearly to criminal activity, but it remained in the statute with no definition. We note that the same phrase now appears in Section 221 of S. 2284, in defining the standard for use of extraordinary techniques in the counterintelligence and counterterrorism areas; once again, we urge that the phrase be defined and, consistent with what is said above, that it be defined in terms of criminal activities.

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[1] See appendix XI, p. 654.

Foreign intelligence functions of the FBI

As noted above, we are currently working on, and hope to issue soon, a detailed report on the pending FBI Charter legislation. We know that the basic FBI Charter does not purport to regulate FBI activities in the foreign intelligence sphere, and we note that an attempt to accomplish that is embodied in Title V of S. 2284. We hope to be able to deal with that Title more fully in our forthcoming report, but have the following initial reactions:

(a) We question whether the FBI should properly have any role at all outside of the United States, just as the CIA is prohibited from activities within the United States. It remains to be seen wheher there is a real need for the grant of authority contained in Section 504(b) of the bill.

(b) More important, we are concerned with the broad grant of authority to the FBI in section 504(a)(2) to "conduct such other counterintelligence and counterterrorism intelligence activities as are necessary for lawful purposes." While we do not for a minute denigrate the importance of a strong counterintelligence and counterterrorism effort, both within this country and abroad, we are concerned that—especially as those terms are defined in Sections 103(3) and (5) of the bill—the grant of authority in Section 504(a)(2) may be construed as a broad authorization to the FBI to conduct a large number of activities similar to the notorious COINTELPRO program in the name of "counterintelligence" and "counterterrorism," activities which the FBI Charter will, we hope clearly prohibit. We would not want to see the National Intelligence Act re-open for the FBI the kind of loophole which the FBI Charter attempts to close tight. Our concern was reinforced by the newspaper reports of Director Webster's testimony before the House Intelligence Committee on March 18, indicating his belief that this bill would permit the FBI to use intrusive techniques against domestic political groups. Accordingly, we believe that careful scrutiny should be given to the meaning and intent behind the grant of authority in Section 504(a)(2).

Prohibiting disclosure of identities of undercover intelligence agents

We can understand, and we support, a provision which attaches criminal penalties to the public disclosure of the identities of present and former undercover intelligence agents, informants and operatives. We think that Section 701 of S. 2284, as presently drafted, properly meets the need, unlike S. 2216 (the Moynihan bill) which we think goes much too far.

Specifically, we believe that the criminal prohibition should be limited to the disclosure of classified information and that criminal penalties should be imposed only upon persons having authorized access to such classified information, and not to others (such as news media and publishers) who might exercise their First Amendment rights to publish information revealed to them. Section 701(c) makes clear, we think, that Congress does not intend any such persons to be prosecuted for exercise of their First Amendment rights under theories such as aiding and abetting, conspiracy or misprision of felony.

By contrast, the Moynihan bill (S. 2216) as introduced is objectionable because (1) it does not limit criminal liability to disclosure of classified information and (2) it would subject persons to prosecution for aiding and abetting, conspiracy and misprision of felony, if it could be shown that they "acted with the intent to impair or impede the foreign intelligence activities of the United States." We do not think that the exercise of First Amendment rights should be chilled by uncertainty as to whether the publication of such information might later be found to have been committed with such intent.

Finally, we approve the additional defense in section 701(d) that "it shall not be an offense" under this section "to transmit information directly to the House Permanent Select Committee on Intelligence or to the Senate Select Committee on Intelligence." That safeguard provides not only a brake upon over-zealous prosecution, but adds yet another stone to Senator Huddleston's "foundation" of congressional oversight.

As I said at the outset, the foregoing comments are necessity no more than our initial reactions to this important legislation upon a first reading and preliminary discussions among some of our Committee members. We do intend to give the National Intelligence Act of 1980 more thought, closer scrutiny, and extended discussion within our Committee. We would hope that this Committee will include our written report[1] as a part of the record when it is issued and we would be

[1] See appendix XI, p. 654.

honored to be invited to appear again at any later hearings to share our ultimate conclusions with this Committee and to answer any further questions. Meanwhile, on behalf of the Federal Legislation Committee and the Association of the Bar of the City of New York, I want to thank the Chairman and this Committee for inviting me here today.

Mr. ROSENFELD. This afternoon I will cover the major points. Since preparation of the prepared statement, we have also had a chance to look briefly at H.R. 6820 introduced by Representative Aspin, and we have some comments on that.

The Federal legislation committee, which it is my privilege to chair, is responsible for developing and presenting the views of the Associa- of the Bar of the City of New York on proposed Federal legislation of a diverse nature. In recent years, our committee has devoted particular attention to the threats of individual rights, liberties, and privacy raised by recent disclosures concerning the domestic and foreign intelligence activities of the Federal Government, and the ongoing search for legislative solutions to those problems.

Our committee is therefore gratified to see that serious congressional consideration of charter legislation for both the FBI and the foreign intelligence community is finally underway. The record compiled in the 1970's by the Church committee and other investigations, disclosing serious violations of the rights and liberties of Americans in the name of foreign intelligence and national security cried out for legislation bringing those activities under the rule of law.

It would be a shame if the lessons of the Watergate era were to so quickly slip away by the current tide of national sentiment brought on by the international crises of the past 6 months.

We recognize, of course, that the difficult task before this Congress is to strike the balance between maintenance of an intelligence system which can collect reliable information necessary to make informed foreign policy, domestic security and counterintelligence decisions, as well as to counteract the rising tide of international terrorism, while at the same time safeguarding the cherished rights, liberties, and privacy of all Americans, both at home and abroad.

We believe that Congress was able to strike such a balance in enacting the Foreign Intelligence Surveillance Act of 1978, as far as that statute went, and we hope to see a similar balance struck in creation of a comprehensive foreign intelligence charter.

Since 1975, the association of the bar has supported comprehensive legislation which would define precisely both the authority of, and restrictions upon, the Central Intelligence Agency and other entities within the foreign intelligence community. We continue to believe that there is a fundamental need for a comprehensive charter, and we would therefore oppose the stopgap approach to selected issues represented by S. 2216, introduced by Senator Moynihan on January 24. We urge this committee to continue its work on S. 2284, rather than yielding to the temptation of settling for the much more limited focus of the Moynihan bill.

I might add that, based upon an initial perusal of Representative Aspin's bill, it strikes me as an effort to simplify the charter, in his words: "To avoid a dissent into excessive detail," is worthy of consideration so long as the major objectives and safeguards are not sacrificed.

Because the time has been so short since the introduction of tbe National Intelligence Act, our committee has not yet had an opportunity either for detailed study or full committee discussion of the important issues raised thereby. In a forthcoming written report, we will undoubtedly reflect the benefit of more careful study and discussion. However, we are pleased to have been asked to express our preliminary views in the first round of hearings, and therefore offer our tentative conclusions on some of the issues before this committee hased on our initial look at the proposed legislation.

As Senator Huddleston stated in introducing the National Intelligence Act on February 8, congressional oversigbt is "the foundation of this charter enterprise." We agree. A system of oversigbt and public accountability for intelligence operations ought to be the most fundamental part of any cbarter legislation. Accordingly, we begin our comments with those relating to the portions of S. 2284 which we see as helping to accomplish that goal.

Section 142 of S. 2284 appears to afford a solid basis for regular and thorough oversight by this committee and the House Select Committee on Intelligence. If its dictates are observed in the manner in which they are clearly intended, the crucial oversight function should be fulfilled.

If the intelligence community is to be specifically authorized to undertake covert foreign activities for purposes other than pure collection of information, as the charter contemplates, we strongly believe that there must be scrupulous adherencc to a requirement of prior authorization and prior notice to Congress. We are disturbed by indications in Director Turner's testimony last month that the Government has not always been observing its previous commitment to give prior notice, further underscoring the need to make that ohligation explicit in the law.

We agree that it is probably unnecessary to report on covert activities to seven or eight different congressional committees encompassing more than 200 members; reports to this committee and the House Committee on Intelligence should be adequate. But, for the reasons outlined by former Senator Hughes in proposing what became the Hughes-Ryan amendment in October 1974, we also strongly support the present approach of section 125 clearly requiring prior notice of covert activities, rather than the uncertain approach apparently favored by the administration.

While section 125 of S. 2284 does appear to require prior notice, its reliance on the phrase "significant anticipated intelligence activities" to accomplish that result seems to me not to be as clear and unambiguous as the formulation in Representative Aspin's bill, H.R. 6820, which would require reports at least to the two committees, "before the activity is commenced."

Since its enactment in 1966, the Freedom of Information Act has played a major role in our system of accountahility on all levels of government. We believe that it remains, and should remain, an important part of the requirement of accountability on the part of the intelligence community. We therefore oppose any attempt to exempt the CIA from the coverage of the Freedom of Information Act, such as the provision embodied in section 421(d) of S. 2284.

Testimony on behalf of the CIA before the House Intelligence Committee and before the Senate Judiciary Committee has indicated that the CIA has been able to adjust to its responsibilities under the Freedom of Information Act. The case has not been made for sacrificing that act's important function of assuring public accountability and unmasking wrongdoing by intelligence agencies. We thus view section 421(d) as an ill-considered reaction to current international tensions.

It has been persuasively shown why the existing exemptions in the Freedom of Information Act, for classified information, interagency and intraagency communications, and investigatory records, are not fully sufficient to alleviate the intelligence community's concern for unwarranted public disclosure of sensitive operations. If any change must be made at all, we suggest a slight amendment to 5 U.S.C. section 552(b)(7) to include within that existing exemption "investigatory records" compiled for "foreign intelligence" purposes and endangering the lives or safety of "intelligence personnel" to the same degree as the present language exempts files compiled for "law enforcement purposes" and disclosure of which would endanger "law enforcement personnel."

Similarly, the limited "confidential source" exemption set forth in section 201 of Representative Aspin's bill might also be an acceptable solution, but we see no justification for exempting the CIA totally from disclosure under the Freedom of Information Act of information other than that relating to the requestor.

As this committee has said in its prior reports and previous testimony, an effective system of remedies and sanctions is essential to any meaningful legislative response to the the recently-disclosed abuses in intelligence operations. Remedies and sanctions, including civil damage actions, represent still another cornerstone of the system of public accountability.

We note that section 232 of S. 2284 provides for such civil remedies, modeled upon the civil remedy section of the Foreign Intelligence Surveillance Act of 1978, but only for electronic surveillance and physical searches conducted in violation of the act. We believe that civil remedies should be available against the United States and any individual who has acted willfully to redress any damage to Americans from intelligence-gathering conducted in violation of the Constitution or the standards and procedures set forth in the charter. Section 307 of Representative Aspin's bill approximates that kind of civil remedy. We are pleased to see language in S. 2284 which makes it clear that intelligence activities may be conducted "only in accordance with" the provisions of the act and that the act "may not be construed to authorize any intelligence entity to conduct any activity for the purpose of depriving any person of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States." We would hope and expect that all of the safeguards and restrictions which follow section 111 will be construed in light of this important provision.

What concerns us most about the sections of S. 2284 relating to intelligence-gathering techniques are the provisions authorizing use of intrusive techniques against innocent Americans. In recent years, our committee has urged Congress to take the lead in providing the maxi-

mum amount of protection for individual rights and expectations of privacy. We were, on balance, content with the Foreign Intelligence Surveillance Act as finally enacted, because we believe it achieved the proper balance between legitimate intelligence needs and the necessity of protecting these rights and liberties.

In 1978, we strongly urged that electronic surveillance against Americans be permitted only with a judicial warrant obtained under a criminal standard, and the 1978 act finally adopted that view. We are, therefore, unhappy that sections 213 and 221 of S. 2284 would permit the use of intrusive techniques, including infiltration of groups, mail-openings and mail covers, as well as electronic surveillance and physical searchers against Americans outside the United States, all without any showing at all of criminal activity.

Although there are procedural safeguards in the form of a Presidential finding of "extraordinary circumstances * * * essential to the national security of the United States" and, for foreign electronic surveillance and physical searches, the Attorney General's certification and a court order based upon a noncriminal showing, the bill departs from the 1978 act's substantive safeguard for U.S. persons of a probable cause to believe that the target of surveillance is or may be engaged in a violation of criminal law.

While we have not researched the question—and would hope to do so before our final report is issued—our initial reaction is that constitutional protections against unreasonable searches and seizures and constitutional rights of privacy do not cease when an American departs the borders of the country. We believe that Americans have, or at least ought to have, a legitimate expectation that they will be protected against unwarranted intrusions by their own government, no matter where they may happen to travel.

We do not believe that a compelling case has been made for abandoning the modest protections contained in the 1978 act simply because the intrusion takes place outside the United States.

At the very least, therefore, we would urge that the procedures and standards of the 1978 act be fully applicable to electronic surveillance, physical searches, and mail openings undertaken against U.S. persons outside of the United States. Moreover, while we would hope that a President would not lightly direct intrusive techniques such as mail covers, physical surveillance, and infiltrations against innocent Americans at home or abroad, we would prefer to see such techniques subject to greater procedural controls and substantive standards than simply the Presidential authorization provided for in section 213.

Once again, the standards and procedures adopted by title III of Representative Aspin's bill appear to come much closer to achieving the objectives stated above.

We are concerned with the broad grant of authority to the FBI in section 504(a)(2) of S. 2284 to "conduct such other counterintelligence and counterterrorism intelligence activities as are necessary for lawful purposes." While we do not for a minute denigrate the importance of a strong counterintelligence and counterterriorism effort, both within this country and abroad, we are concerned that—especially as those terms are defined in sections 103 (3) and (5) of the bill—the grant of authority in section 504(a)(2) may be construed as a broad authorization to the FBI to conduct a large number of activities—

similar to the notorious COINTELPRO program—in the name of "counterintelligence" and "counterterrorism" activities which the FBI charter will, we hope, clearly prohibit.

We would not want to see the National Intelligence Act reopen for the FBI the kind of loophole which the FBI charter attempts to close tight. Our concern was reinforced by the newspaper reports of Director Webster's testimony before the House Intelligence Committee on March 18, indicating his belief that this bill would permit the FBI to use intrusive techniques against domestic political groups. Accordingly, we believe that careful scrutiny should be given to the meaning and intent behind the grant of authority in section 504(a)(2).

Finally, we can understand and we support a provision which attaches criminal penalties to the public disclosure of the identities of present and former undercover intelligence agents, informants, and operatives. We think that section 701 of S. 2284, as presently drafted, properly meets the need, unlike S. 2216, the Moynihan bill as originally introduced, which we think goes much too far.

Specifically, we believe the criminal prohibition should be limited to the disclosure of classified information only and the criminal penalties should be imposed only upon persons having authorized access to such classified information, and not to others—such as news media and publishers—who might exercise their first amendment rights to publish information revealed to them. I might add we were pleased to see Senator Moynihan has rethought his position on that latter point.

As I said at the outset, the foregoing comments are of necessity no more than our initial reactions to this important legislation upon a first reading and preliminary discussions among some of our committee members. We do intend to give the National Intelligence Act of 1980 more thought, closer scrutiny, and extended discussion within our committee. We would hope that this committee will include our written report [1] as a part of the record when it is issued and we would be honored to be invited to appear again at any later hearings to share our ultimate conclusions with this committee and to answer any further questions.

Meanwhile, on behalf of the Federal Legislation Committee of the Association of the Bar of the City of New York, I want to thank the chairman and this committee for inviting me here today.

Senator BAYH. Thank you very much, Mr. Rosenfeld. I have a question or two here. If you gentlemen have no objection, I think we could submit them to you and ask if you would submit some answers for the record.[1]

Could you do that?

Mr. ROSENFELD. With pleasure.

Mr. WALDMANN. Certainly, sir.

Senator BAYH. We thank you for your contribution. We know how busy you are. Thank you for taking the time to help us. We appreciate it.

We will recess, subject to the call of the Chair.

[Whereupon, at 3:40 p.m., the committee recessed, subject to the call of the Chair.]

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[1] See appendix XI, p. 654.

MONDAY, MARCH 31, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The select committee met, pursuant to notice, at 10:15 a.m., in room 1201, Dirksen Senate Office Building, Hon. Malcolm Wallop presiding.

Present: Senators Wallop and Jackson.

Senator WALLOP. The hearing will come to order. I expect to be relieved at my post almost any moment, but I thought in view of the length of the witness list that we probably ought to get on.

This morning, we are pleased to welcome an impressive group of experts on the intelligence process. Either as consumers of intelligence or as students of the effects of organizational structure on the output of organizations, or both, our witnesses today are well-qualified to discuss how the structure of the intelligence community affects the quality of intelligence analysis and of its finished product.

In order to comply with administration policy concerning the non-appearance of Government officials and others on the same panel—it is not clear to me who this policy is intended to protect from whom—we will first hear from Mr. Andy Marshall, the Director of Net Assessment in the Department of Defense.

In this position, Mr. Marshall is one of the primary consumers of intelligence in the Government.

We will then hear from a panel of experts from outside the Government including two distinguished former officials of Government, Mr. Paul Nitze and Gen. Danny Graham; three members of the Academy, Dean Graham Allison and Prof. Ernest May of the Kennedy School of Government at Harvard University, and Dr. Roy Godson of Georgetown University who is the coordinator of the academic consortium for the study of intelligence and Mr. David Kahn, expert on communications intelligence.

In this hearing, we will try to broaden our focus somewhat from the specific provisions of the proposed intelligence charter and consider in general terms the analytic function of the intelligence community, which is the bottom line, for the sake of which all of the other functions are performed.

We are seeking the witnesses' views on how well this function has been performed in the past, how this performance has been affected by the structure of the intelligence community, whether the analytic work has been accurate, unbiased and relevant, and perhaps, most important, how the analytic process may be improved.

Mr. Marshall, please proceed as you wish.

[The prepared statement of Andrew W. Marshall follows:]

PREPARED STATEMENT OF ANDREW W. MARSHALL, DIRECTOR OF NET ASSESSMENT/OSD

I appreciate the opportunity to testify before this Committee on the structure of the Intelligence Community and its effect on the Community's ability to perform its analytic function. High quality intelligence is important at any time, but it is likely to be crucial to this nation in the future. The quality of the intelligence analysis is not the sole determinant of the effective performance of the Intelligence Community, but it is an important factor. In any case, the intelligence analysis function has been an area of long-term interest and concern on my part.

The task of providing appropriate and high quality intelligence analysis is likely to become more difficult in the years ahead. For one thing the range of topics and geographic areas that demand attention are likely to grow. In the military area itself this will be so because of the growing size and scope of the military effort of our major competitor. Also, as our technological lead erodes in many military areas, the analytic problems will become much more difficult. More broadly, the rising unrest in the world, the increased importance of the economic dimension of our foreign policy and military efforts, as well as increased Soviet preparations for worldwide projection of power, will increase the number of areas in the world that deserve high priority intelligence coverage.

While the job is likely to become larger and more difficult, budget pressures over the last decade have been eroding the analytic base within the Intelligence Community. There also has been a persistant trend since the late fifties toward a focus on the production of current intelligence, to some extent at the expense of more indepth analysis. It is also true, I believe, that the success of the technological collection systems has concentrated efforts within the intelligence analysis staffs on first level inferences from the information the systems collect at the expense of more comprehensive and indepth analysis designed to answer more difficult questions.

The quality of analysis produced by the Community is not primarily determined by the general way in which it is organized, but by the analysis programs and the environment within the major organizational elements. There are no surprises in the description of how to develop a capability for high quality analysis. You have to attract intelligent and able people, and provide them with both incentives and an appropriate organizational context within which to work. Suitable training and opportunities for intellectual development must be present. Adequate careers must be possible for analysts without their becoming managers. Intellectual competition, especially through competing analytic groups, is critical. The basic elements are small teams of people with continuity of focus on specific problem areas. A commitment of upper level managers to the quality of analysis is also required, as well as their support for independent review, quality control, and the equivalent of sophisticated market analysis.

I also believe that it is possible to apply the concept of research and development to the intelligence analysis area. What is needed is something akin to the development of new academic fields of study in some cases, not just new tools of analysis for improving existing analysis approaches.

It is my view that good intelligence is so critical to this country that our Intelligence Community should see itself as a mechanism to produce the best intelligence and intelligence analysis this country can produce, not simply what can be produced by the resources contained within the Community itself. That means reaching out, finding mechanisms to reach out, and tapping the whole range of talent and knowledge that exists in this nation. But it also means broad support of the public and the Congress for the mission and performance of the Community.

I am very heartened that this Committee has turned its attention to the intelligence analysis function. You can play a major role in insuring the high quality of intelligence that will be needed in the future. This is partly a matter of resources, but also the encouragement and support for the efforts of the top management within the Intelligence Community to create and maintain high quality analytic staffs and all of the programs that will be required.

TESTIMONY OF ANDREW W. MARSHALL, DIRECTOR OF NET ASSESSMENT, OFFICE OF THE SECRETARY OF DEFENSE

Mr. MARSHALL. I have prepared a short statement to be inserted into the record. I do not intend to read it, but I thought I might begin by summarizing some of the high points and then take any questions that you have.

I appreciate the opportunity to testify this morning. This issue of the quality of the intelligence product and the analytic process has been a long-term interest and concern of mine. As I look to the future I feel, if anything, that the analytic problems that we have had in the past are going to increase. In part because the number of problems and areas that we will have to follow are likely to increase. Also the large Soviet military R. & D. program of the past decade is now reaching a stage where in a number of technology areas they may be into them before we are. Therefore the intelligence analysis problem of understanding the significance of the development may become more difficult.

The projection of military power into the world is one of the major missions that the Soviets have begun to design their forces for in the last decade. That means that there are many more parts of the world that we will have to pay attention to and be concerned about.

It seems to me that the analytic base of the community has, to some extent, been eroding over the last decade or more. That is largely a matter of past budgets and program size. As regards the quality of the product and how it is related to the overall organization of the intelligence community, my view is that short of major departures from the current organization, that the changes that most people talk about are not likely to have a great deal of impact on the quality of analysis. The quality of the product is, largely a matter of the policies and the procedures within the analytic organizations themselves, the ability of these organizations to attract high-quality people, career structures that facilitate long-term careers in analysis so that talented analysts do not have to move to management jobs as a way of getting ahead. There must be adequate training and other opportunities for intellectual development. There should be an overall organizational style that creates small teams of people who engaged themselves for long periods of time on the more difficult analytic problems. And there should be an environment of strong intellectual competition in the final intelligence analysis process.

I feel that there is a tendency of people to take too narrow a view of redundancy. You really need several teams of people on some of the more difficult problems, otherwise you are not going to have all the questions raised that you should, nor all of the checks on calculations, data interpretation that it is wise to have.

There is a need, particularly at this time, for thought about the role and mission of the intelligence community and about the functions it serves in the many markets that exist for its products in the Government. It is not just a matter of serving the very top leaders of our Government. There are many markets, many sorts of products and services that are delivered by the intelligence community. Now is an appropriate time for some hard thought about exactly what

these roles and missions are, and how intelligence can contribute to the various decisionmaking or deliberative processes that go on within the executive branch and the Congress. There may also be a place for some sophisticated market analysis of what intelligence input is needed (wanted) in the various processes and markets.

The intelligence analytic process deserves to have an investment in research and development on analysis methods. This has not been pushed enough in the past by the intelligence community.

Let me say finally that not only is the scope and difficulty of our intelligence problem increasing, but that it is a very critical function that intelligence performs. In fact, so critical that the intelligence community needs to be used as a mechanism for drawing upon all of the talent in this country. It's goal should be to produce the best analysis this whole country can produce, not simply that which the set of people who are within the intelligence community itself can produce.

I am heartened by this committee's interest in the quality of the intelligence products and the performance of the community. I know that you have taken some measures in the past that have been helpful to DIA in increasing the number of analysts. With that, let me just take any questions you have.

Senator WALLOP. Thank you, Mr. Marshall, for an assessment of things as they stand. Are there any major structural changes that you, as one of the chief consumers of this product, might propose in order to improve analysis?

Mr. MARSHALL. Are you thinking only of changes in structure or other changes also?

Senator WALLOP. Any ones that you, as a consumer, would see as major things that could be done to enhance the quality of analysis—the ultimate product.

Mr. MARSHALL. Let me answer that in two parts.

First, one of the things I believe could be documented is a long-term trend which probably began in the late 1950's toward more and more emphasis, and allocation of resources in the analytic community, to the current intelligence function at the expense of in-depth analysis.

One of the things that needs to be done for the future is to reverse that trend by an expansion of the effort devoted to longer term, in-depth high quality analysis. How do you do that? Well, I think you do it, as I have suggested already, by attracting high-quality people, providing careers for people within these organizations that allow them to specialize in particular areas.

You encourage small teams of people to work on the more difficult analysis problems. I have always felt that, if I had the opportunity to do so, I would try some experiments using external contracts in an attempt replicate the very great success that has been had in some of the technological analytic areas with small, stable teams of about 12 to 20 people.

This may be one of the ways of separating some people from the pressures of the day-to-day current intelligence production process. It may be a way of attracting some people who may be difficult to hire otherwise. It may be a way of fostering the required stability in analysis teams. There are two or three such teams which now exist and have existed since the late 1950's analyzing the Soviet missile programs.

Senator WALLOP. Would that be one way in which we could institutionalize, as it were, the intellectual competition of which you spoke?

Mr. MARSHALL. Yes; I think so.

Senator WALLOP. Are there others?

One of the things that worries me, having sat here now over these years, is the rather persistent underestimation of the nature of the Soviet strategic threat. I am appalled in the NIE's competitive points of view, disagreement with the underestimations are buried. They are not really presented as competitive arguments so that a consumer might really have the time and the ability to choose between them.

Mr. MARSHALL. I agree with you. I think that while there has been an improvement in some of the NIE's, particularly those dealing with Soviet strategic forces, where more of the disagreements have surfaced. But there is a tendency, and a tradition within the U.S. intelligence community to push for consensus. The fact is that on the really hard questions it is very difficult to have a consensus because the data is often fragmentary, and what determines a person's judgment are his general view as to the nature of the Soviet Government, or the nature of large bureaucracies, etc.

Senator WALLOP. But that is one of the things that worries me. The fact that it is difficult to achieve consensus would tend to indicate a fundamental uncertainty that, sooner or later, will begin to be reflected in the thinking of this or any other administration.

If there is not genuine competition, intellectual or otherwise, and if it is difficult to achieve consensus, then obviously the people who go along are the ones who get along. Sooner or later you lose the capability of coming up with a product that really reflects any real intellectual judgment on the facts presented.

Mr. MARSHALL. In general, my concern has not been that the intelligence product will reflect or kow-tow to administration views, but that seeking a consensus on hard questions is unwise, if pushed too far. It would be nice to have a consensus, but the problems are so difficult and the data in many cases so skimpy that it is unrealistic to assume that there is going to be, or can be a meaningful consensus. Therefore, you want much more clearly stated differences of opinion.

Several years ago I worked for 2 years for Henry Kissinger on the NSC staff and since then for three Secretaries of Defense, and I do not think any of them found it an imperfection in an estimate to have clearly-stated difference of views and argument. But there is a strong feeling, especially in CIA that they are not doing their job unless they get a consensus.

I believe that they misrepresent to themselves what the top people really want and would prefer. Several attempts were made a number of years ago to communicate very clearly the view that consensus should not be the overriding goal.

Senator WALLOP. Should the community strive to present those conflicting views in such a way as to encourage the ultimate consumer to make the choice? That way the consensus would not have to come from within the community.

Mr. MARSHALL. That is right. In general, I believe, the top level decisionmakers would find it informative and valuable to know that there were several views and the arguments for each when that is the actual state of affairs.

Senator WALLOP. Is it presented satisfactorily in that light to you now?

Mr. MARSHALL. The only case that I know of where something rather like this is attempted is in the text of the NIE on the strategic forces. I have not seen the latest draft of that assessment so that I do not know if that practice continues.

Where there is real disagreement, yes, I think that it would be valuable for the community to try to develop appropriate formats and ways of presenting argument and controversy.

Senator WALLOP. What are the forces at work that makes the intelligence community seek to achieve consensus? Does it seek consensus in order to justify its existence?

In other words, if the consumers do not mind seeing conflicting views, and intellectual conflicts between people with equal training but perhaps different perspectives, what are the forces at work to make the community seek to achive consensus in order to justify performance? Could we get rid of such forces?

Mr. MARSHALL. I do not know the full answer. As I say, I was closest to that problem a number of years ago when I worked for Henry Kissinger. The impression I had then was that this was a strong preference of the Office of National Estimates that existed at the time and their sense of what they ought to be producing.

And it is true, that, to the extent that consensus really can be achieved, yes, you want that. But where there are real disagreements, you want them stated. It was, I think back in 1970, that some criticisms of the NIE's had been conveyed to Richard Helms and other people in the community that led him to change the NIE's on Soviet military forces and provide a clearer exposition of the differences within the community.

Senator WALLOP. How would we set up this R. & D. program on the analytical process of which you spoke?

Mr. MARSHALL. First, funding for the purpose is needed. More than one part of the community should be encouraged to select analysis areas and to develop analysis R. & D. programs.

My view has been that you would select three, four, or five areas and have 5-year efforts on each. The successful efforts would be continued, the others dropped. Some would be contract efforts designed to duplicate the success that has been achieved in some of the technical areas.

Senator WALLOP. It would seem that might be one of several ways in which we might get rid of the day-to-day excitement of intelligence analysis and get into the longer range picture of which you spoke earlier.

Would there be other ways in which you see that happening?

Mr. MARSHALL. Within the community itself, some way should be found to create small teams of analysts looking on in-depth analysis. I think the main problem within the intelligence community organizations, as they function now, is that it is hard for people to make a full, long-term career in intelligence analysis in many topic areas. The result is a tendency to have more turnover of people than is advisable in most analysis areas.

Senator WALLOP. Why is that so? I am told, at least within CIA, that the NIO is a pretty attractive career slot.

What can we do to provide some continuity and to bring some long-term intellectual forces to bear on the major problems that we are facing?

Mr. MARSHALL. I think it is quito difficult from your position to impose this on these organizations.

Senator WALLOP. Is that something to do with the basic, overall thrust of these several hearings that we might be having with regard to mission? Is that something that has not been demanded of them?

Mr. MARSHALL. No; there are demands for more in-depth analysis.

Senator WALLOP. In other words, should we contemplate doing something like that when we are trying to create a mission for the——

Mr. MARSHALL. Let me say that some years ago I undertook what in effect was a market analysis for the community. I interviewed all of the people on the NSC as to what they really wanted in the way of intelligence analysis.

One of the things that I found was they really wanted both current and indepth analysis. They want a monitoring of the world to keep track of what is going on in the world and to be alerted to emergency problems. But they also wanted more in the way of a monthly magazine level of analysis in which longer term trends would be presented and analyzed, which would provide a better understanding of why some of the things in the current reporting were happening, and hence what might happen next.

When you ask their top level decisionmakers, their staffs say they want both. However, the community has tended—and I think it would be an interesting question to ask exactly why—to focus increasingly on day-to-day reporting.

Senator WALLOP. Should we charge them with the task of making long-term studies and longer term analyses of events and the relationship of events to more immediate events?

Mr. MARSHALL. Well, I think they should certainly be encouraged to so do. Moreover this committee can support programs that the analysis organizations might then propose as to how to go about providing more indepth analysis.

Senator WALLOP. I guess my question is, would they propose those programs in a vacuum?

In other words, it is pretty hard for us to pass judgment on a program that is not presented to us.

Mr. MARSHALL. I do not know. I believe that they would. I believe that it would be appropriate to talk to both the DIA and CIA people about that.

Senator WALLOP. As you know, the budget comes before us yearly with marvelous arrays of technical equipment and long-range views of how that might someday come on line. All that seems to be the recipient of a lot of long-term planning. But we are never presented with proposals, or even an assessment of the need, for more mundane, but perhaps in the long run, more useful, long-term assessments and forecasting.

So if such plans are not presented to us, it is pretty hard for us to judge whether or not they are adequate. One of the things I hope to achieve by way of drafting a mission for these people is to force them to make assessments and forecasts about what they're up against.

Mr. MARSHALL. I agree with you on that point. That is why I mentioned that I believe that some hard thought should be given to the role and mission of the intelligence community using a sophisticated sort of market analysis.

And it has always concerned me that while there was long-term planning that for the acquisition of major collection systems that there was little long-term planning with respect to the analysis staffs. You do not see plans that say 10 years from now economic intelligence is going to be made more important than it is now, and here is our program to build the appropriate analysis staffs. The analysis staffs and the organizations are not treated as objects of investment as the major collection systems are, and to some extent they should be.

Senator WALLOP. Would it be fair to say that we are overly enthralled with our technical capability—or overly committed to it and therefore leaving behind some other things which any lay consumer would consider important.

The consumer should be able to compare what is happening against what was forecast to be happening and to react accordingly.

But in the absence of pressure from the consumer, the analyst is just going to use his day to day technical capability.

Mr. MARSHALL. Well, I think it is more that one would like to put more effort into analysis and into those things that improve its quality, that the technical collection efforts have been remarkably successful. As someone who has been associated with intelligence in one way or another for a very long time, there have been periodic miracles. I mean that in the sense that things that you just did not think could be done are done. Since the technical collection systems have been so successful, this may have led the community to concentrate on exploiting these success and to overly specialize on reporting the results.

One of the reasons I raised the issue of reviewing the role and mission of the intelligence community, its markets and strategy for serving those markets, is that there is a tension in the community between two views of what the intelligence community should be doing. There is a view that in some sense it is an acquirer and marketer of information collected by community managed systems and that their main role is, in effect, analyzing that information and telling you about what they have and is covered.

Another view, developed right after World War II, is much more ambitious. The best known book advocating the view of the mission of the intelligence community is Sherman Kent's. He and others saw the mission as supplying a comprehensive basis for strategic and top-level policymaking. The intelligence community was not simply to be the purveyor of a special secretly obtained set of information, but would bring to bear all human knowledge about particular problems in form that would be helpful to top-level decisionmakers.

Senator WALLOP. Well, somebody ultimately ought to do that, or do something akin to it.

Mr. MARSHALL. Let me only say that it is very important for the intelligence community to decide which mission they have. When you go to them with a hard, difficult problem and you get into—in any case I have gotten into—discussions with the top level managers

which are like those that you might expect to have with a craft union representative. Discussions in which they say, yes we understand what you want done but you should get a carpenter, we are bricklayers. Do not expect us to do that job.

Senator WALLOP. I sense some of the reason for this hearing is that we have run into a bit of the union problem.

Senator Jackson, do you want to ask anything?

Senator JACKSON. Thank you, Mr. Chairman.

Mr. Marshall, I read your statement. It is very fine. It is crisp. I think it goes to the heart of our problem.

It seems to me that we have become such a technological society that we get into the habit of thinking that technology alone can really do the impossible things that we expect out of the intelligence community.

I must say that observing the operations of the intelligence community over the last 30 years suggests to me that too many people have fallen into the habit of thinking that because we have these unique means of acquiring information, thanks to science and technology, that in itself solves our problem. I am wondering if some of the difficulties that you are so capable of addressing—that is, the need for better analysis—do not stem from that overreliance on contracting out to the scientific community the main job of intelligence.

Is there something to that aspect of it?

Mr. MARSHALL. Yes, I think that there is something in that view. The way it seems to me that this focusing of the community happens is that they have all of this information they have collected and they want to make use of it. It is true that in terms of being able to describe, for example, in the military area, what the Soviet Union is doing, they are quite successful, more than in the 1950's. You have had a tendency to exploit the richer set of data available and a tendency to draw back from the more ambitious minimum for intelligence. The emphasis is upon first-level inferences from the collected data. That is, they say yes, we have acquired some information which shows that the Soviets are starting up, we know it takes 2 years and we have seen it happen 25 times before, and these startup activities turn out in the end to produce a ship or a missile silo or whatever.

So there is a tendency to confine themselves to a descriptive type of analysis, and not go on to the questions of why is this happening, what is the general course of events likely to be, how would they react to some move on our part.

Senator JACKSON. Well, it seemed to me that if you are going to have a good intelligence organization, the intelligence community must have within it the best scholars in the world dealing with all of the disciplines that are relevant to the world in which we live in.

Is that an overstatement?

Mr. MARSHALL. No; that is the way I think it has to be.

Senator JACKSON. To me it is just axiomatic. What has gone on in this country in the last few years is that intelligence is a dirty word and that the need for the kind of scholarly input, which I think is the greatest deficit that we face, is being ignored.

I mean people in the community are trying, I know, to get people in it, but from the standpoint of doing the job that must be done, it seems to me there is hardly a discipline that can be left out in order

to develop the relevant background that we need to do the job of analysis.

Mr. MARSHALL. I agree very much with what you say.

Senator JACKSON. I mean, when you look at World War II and Britain, it was the dons from Cambridge and Oxford who played a very, very critical role during that period. I think that the public perception of the role of intelligence has hovered between the James Bond syndrome and spy satellites. The failure to recognize the scholarly community is, I think, our biggest current problem, Mr. Chairman. The role that they can play is just enormous.

Mr. MARSHALL. I agree with that and I feel strongly that whatever can be done should be done to make it possible to attract good people, and to provide them with attractive careers within the intelligence community. I also think you want to search for mechanisms that allow the community to tap the full range of talent and knowledge that exists in this country. That is academia, but it also means the business community and wherever else it exists.

Senator JACKSON. Now, having said all of this, I come to the main question.

What are two or three important things that you feel we could do in the Congress to achieve the kind of goals that you and I are discussing here, and we both agree, for getting the most talented, the very best people that we can encourage to come into the Government?

What are some of the things that we could do to improve the analytic product?

You might also mention some of the major barriers to making improvements in the quality of analysis.

Mr. MARSHALL. What the Congress can do, and this committee can do, is, first, to hold additional hearings on this problem of exactly how to improve the quality of analysis and the product. You ought to ask the elements of the intelligence community to come in and make proposals and to discuss the critical questions: How to attract good people, how to get training and investment in them so that they mature and flower intellectually. I would also fully explore mechanisms for reaching out into the rest of the country, into academia, into the business world so that we tap more of the talent and understanding in the country. How can we contract for, or otherwise get some of this talent focused on the problems.

Senator JACKSON. Well, something needs to be done, would you not say, as far as the campus is concerned, like support and cooperation for instance?

Mr. MARSHALL. Yes. Clearly there are things that need to be done and can be done. If you look at what has been happening, in the Soviet studies area we have had this kind of odd concurrence; here is the Soviet Union getting bigger, stronger, more active all over the world, and at the same time support for studies of the Soviet Union have been on the decline. The number of graduate students has been declining. Language training is falling off.

At Defense we have tried to do something. We have been sponsoring a program of studies in the universities to provide some encouragement for people to move into the Soviet and East European studies area. There is a need for language and area training across the board.

Senator JACKSON. The Government, separate and apart from the immediate intelligence needs, certainly should encourage greater investments in those studies.

Specifically we have a lot of experts on China and the Soviet Union. We have a number of universities and colleges which have done some fine things, but we have very, very few people for example who understand the nature of the Sino-Soviet problem and how you manage it. It is probably the biggest problem that we face, at least for the balance of this century.

Now, the acquisition of that kind of talent, it seems to me, is enormously important from the standpoint of basic needs of the Nation. But the need to analyze and deal with problems of intelligence is of equal importance, if not of greater importance.

Mr. MARSHALL. I agree. I think it would be useful not only to encourage more people to go into these areas and develop language skills, but also perhaps to encourage the development of areas within these fields so as to make them more helpful to the policy community than they might be if just left to go entirely their own way.

While the Government cannot appropriately simply direct how these fields of study develop, it can encourage the people in the field to focus on questions of special interest.

Senator JACKSON. Thank you, Mr. Chairman. I want to commend Mr. Marshall for a keen analytical statement.

Senator WALLOP. Thank you very much, Mr. Marshall.

Mr. MARSHALL. Thank you.

Senator WALLOP. I think, in the interests of time, we will ask the next gentlemen to sit as a panel, and that will be Mr. Paul Nitze, General Graham, Professor May, Professor Allison, Mr. David Kahn, and Professor Godson.

Mr. Nitze, why do you not lead off, and we will just go right on down.

[The prepared statement of Paul H. Nitze follows:]

PREPARED STATEMENT OF PAUL H. NITZE BEFORE THE SELECT COMMITTEE ON INTELLIGENCE

As I understand it, the subject of today's hearing is the process of arriving at intelligence estimates, not clandestine intelligence collection activities.

I would like to mske three preliminary points abont this segment of intelligence.

There being no potential conflict with generally applicable law in the process of arriving at intelligence estimates from the mass of available information, I see no reason why any unique iegislative problems arise. The interest of the Congress in this field would appear to be comparable to its interest in any other government activity—to authorize the necessary activities, approve proper organizational arrangements, and appropriate fnnds as it deems necessary.

The second point is that the process of arriving at useful intelligence activities does not so much involve analysis (separating into parts) as it does synthesis (making an intelligibie whole out of many parts). Enormons amonnts of raw information are available. The crucial problem in arriving at nsefui estimates is to sort ont all that information and bnild from it a simplified and pertinent picture of what the situation is and how it is apt to develop in the future. In that process it is important to sort out those developments which may be favorable to U.S. interests and those which may be unfavorahie. It is also necessary to sort out those which can be affected by U.S. action and those which cannot.

The third point is that the world of foreign and secnrity policy is not a wholly deterministic world; it is mnch affected hy human decisions and by accident. Despite the enormous amount of raw information which is available, information is never complete. Judgments as to the current situation must always be hased

on partial and inherently inadequate data, and predictions as to future trends must be based on the application of rules of thumb as to probable causal relations. The selection and application of the right rules of thumb requires experience and wisdom.

Intelligence estimation is therefore necessarily as much akin to artistic creation as it is to scientific analysis.

From these underlying ideas what thoughts arise as to the proper relation between the policy makers and the intelligence estimators? There must be the closest mutual understanding between them, but also a sharp and definite distinction between their roles.

The policy maker should have an understanding of the intelligence process, of the nature of the raw data which is available, the way in which it is synthesized into intelligence estimates, and thus of the value of and uncertainties involved in the particular estimate. In particular, he should have an almost instinctive feel of whether a given estimate is based upon a careful evaluation of the available evidence or is predominantly subjective. The estimator, on the other hand, must have an understanding of the policy making process, of the factors which the policy maker must take into account, the questions which are, or will be, of interest to him, and also some feel for the tools available to the policy maker to influence events.

Equally important with mutual understanding of each other's task is a clear and definitive dividing line between the policy maker's and the estimator's roles. The estimator must resist the temptation to make policy or try to influence its making in one direction or another. The policy maker should eschew any temptation to influence the estimator to make a judgment contrary to the weight of evidence. He may suggest questions other than those the estimator has addressed. He may also ask for evidence on which an estimator's judgment is based. He should always support the estimator's continued objectivity.

A related problem is that of making net assessments of Soviet capabilities versus ours. Merely to list numbers and specify characteristics of the weapons and forces of a potential opponent is not particularly helpful to a policy maker. He needs to have a feel for what those forces could do against opposition. Specifically, he would like help in judging how they compare with our forces and even more specifically how the forces of the two sides would probably do if pitted against each other in some possible scenario. Only then can the policy maker have a reasonable basis for policy judgments. The intelligence community is, however, not itself expert in U.S. capabilities. It must rely on the U.S. defense community for assistance in that field. Nor is it particularly expert in conducting two-sided analyses or wargames. The Joint Chiefs of Staff are jealous of their responsibility for such work and do not believe others are competent to do it. Nevertheless, the estimators cannot make meaningful estimates without making, at least subconsciously, net assessments. Generally they weave partial net assessments into their estimates, but those are not rigorous and thorough. In my view, it would be much better to bring the net assessment problem out in the open and have it done rigorously and thoroughly, both by the intelligence community with the assistance of the military and by the military with the assistance of the intelligence community.

Closely related to the net assessment problem is that of estimating intentions—in particular, Soviet intentions. The conventional wisdom used to be that capabilities and intentions have no relationship to each other. This is not necessarily so. Had Hitler had fewer and less competent divisions and air squadrons, his intentions at any given time would undoubtedly have been far more limited. Intentions tend to grow with the capability to carry them out. On the other hand, a basically aggressive and expansive policy orientation on the part of the leadership of a country tends, over time, to show itself in a growth in its military capabilities.

It is my opinion that many of the shortfalls in the past history of the U.S. estimating performance have sprung from one or more of the above difficulties.

Is there anything which can be done by legislation to assure against such shortfalls in the future? I believe not. On the other hand, too much legislative prescription could make such shortfalls more likely.

As I see it, the estimating business is essentially an Executive Branch function. It is unlikely that it will be well done unless the President and his principal advisors wish it well done. If they want it well done, they should develop a proposed organizational scheme, a set of principles to guide the people manning that organization, and nominate a team of people competent to give it leadership.

I would have thought the principal role of Congress would be to carefully question the Executive Branch to assure that they had done their job well and could fully defend their recommendations. From that point on, the estimators should be backed up in doing their job as rigorously and objectively as they can, even if their estimates deviate from the then prevailing mood of the Executive Branch, the Congress, or the public.

TESTIMONY OF PAUL H. NITZE, CHAIRMAN OF POLICY STUDIES, COMMITTEE ON THE PRESENT DANGER

Mr. NITZE. Thank you, Mr. Chairman.

I take it that my statement has been read. If you would prefer, I could go directly to a point that springs from the preceding discussion rather than repeating my statement.

Senator WALLOP. I think that, to the extent that anybody wants it that way, we will insert the statements as if delivered and prefer to have your comments on where we are trying to go.

Mr. NITZE. Looking back on my experience with intelligence estimates, I think the primary problem revolves around the weight that is put upon the balance of evidence as against the weight to be put upon the opinions that people have and the arguments that they can make in support of those opinions. Sorting out between those two things is, I think, in essence, the central problem in intelligence estimating.

I am reminded of the time back in 1962 when we were working on the foundations of the limited test ban treaty. Each one of the agencies of Government had a different view as to what should be done and each one of them had assembled their own scientists who had come up with evidence which backed their particular view of what the solution ought to be.

In view of this chaos—I think there must have been at least six or seven different approaches to the problem—I went to see Mr. McNamara and asked him what we should do. He said I should sort out the problem into its analytic parts, divide it into no more than 50 parts, arrange a hearing on each one of those 50 parts, and let everybody bring their scientists. Then, on the basis of the evidence that was brought before us, I should decide what I thought was the best evaluation of the evidence as to that part. I was then to circulate those tentative decisions to everybody involved and let them reclaim them, but only on the basis of new evidence. If they did reclaim, I was to have a second hearing on the basis of that new evidence.

The upshot of that was that we got agreement among the scientists on 47 of the 50 different propositions and on the remaining 3, I think only one was seriously opposed thereafter. Having gotten agreement on the evidence, or agreement on the analytic conclusions from the evidence, it was easy to sort out policy.

My experience with incorrect intelligence estimates is that, by and large, they arose when the evidence clearly indicated a given result but people overrode it because it violated their past mental sets "The Russians will not do anything like that." and "The Arabs will not attack in 1973," are examples of those mental sets.

There was not any evidence that the Arabs would not attack in 1973—in fact, the evidence indicated they would attack—but that evidence was overridden by an opinion, which was explicitly stated in

the intelligence estimate of the actual day of the attack, saying: that nevertheless, we do not think that the Arabs will attack.

Similarly, at the time of the Cuban missile crisis, the evidence, I thought—and I thought so at a time before we had photographs—the factual evidence indicated the missiles were there in Cuba, but this was overriden by an opinion that we know about tbe Russians, we know about the Cubans, and they would not do such a tbing.

What I am trying to get at is also pertinent in the missile estimating business. If you look at Albert Wolfstedter's study on the estimates as to the number of Soviet ICBM's that there would be in future years, you can see that from the 1950's up through the late 1960's, the harder the evidence became, the more it was overriden by the preconception that the Soviets would not do any such thing. It was believed they would not want more than parity.

I asked the estimators, is there any evidence that the Soviets do not want more tban parity?

The only evidence that they could give me were speeches which had been made by the top Soviet leaders to the international community where clearly there was an advantage to tbem in the propoganda field from making such statements.

So that, as I see it, the essence of the question as to the quality of our intelligence goes to whether the estimators override evidence because of some prior belief. Those beliefs, in part, come from what is chic in the intellectual community at the time, or the opinion that you know to be held by the senior people in the organization. You don't want to encourage that. What you want to do is to encourage the estimators to make the best estimate that they can make on the basis of the evidence.

Granted there is more to it than just the evidence that one gets from technical instruments and sensors. But there still is evidence behind every rule of thumb as to how people will probably act, either historical evidence, or analogies, or something or other. There are reasons why people are apt to act this way or that way. The good estimator can bring all that out.

This also bears on the question of morale in the intelligence agencies. There has been a good deal of talk about how do you encourage people to stay in this business? The people that I talk to indicate that it is not that the careers are not adequate or that the pay is not adequate, or that the opportunities are not adequate. The thing that bothers them is that the sense of being able to contribute to a professional job in the intelligence field is no longer there. They feel that professionally sound judgments are overridden by the prejudices that come from chic opinions.

They believe the main thing is to have the honor and respect of your peers and your superiors, and the feeling that you will be protected against unwarranted criticism for coming up with unwelcome conclusions. You know you are going to run into opposition if you come up with an unchic point of view; therefore, you need protection against that.

My last point is that I do not believe that there is anything you can usefully legislate in this field. I do think, however, that there

is much that you can contribute by questioning the intelligence community when they come up here to testify and see to it that they can answer questions about what the evidence is that supports their estimates.

Senator WALLOP. Just for the sake of my own edification, having never been on the administrative side, who is the overrider in these instances? Are the views and opinions overridden within the community before being presented to consumers, or are they overridden by the consumers as just being an intolerable match to their preconception?

Mr. NITZE. It can happen both ways.

I can remember when we started the SALT negotiations in 1969 the first paper that was presented to those of us who were participating in the actual negotiations was agreed to by the CIA, the DIA, the JCS staff, the State Department, and the Department of Defense. The opinion stated in that paper was that the Soviet Union did not seek more than parity.

When you asked what was the evidence for the judgment that they do not seek more than parity, there was no solid evidence. It was merely an opinion of these agencies.

Now, I think those opinions did reflect the views at that time of all parts of the executive branch. I think it was the almost universal view of the community at that time, but there was not any evidence behind it. Now, one could well understand a paper which said we policymakers hope this to be the Soviet attitude. But it came out as an intelligence estimate, presumably based upon intelligence. You ask the question where is the evidence; there is no evidence.

Senator WALLOP. General Graham?

[The prepared statement of Lt. Gen. Daniel O. Graham follows:]

PREPARED STATEMENT OF LT. GEN. D. O. GRAHAM, FORMER DIRECTOR, DIA

There are several components of American intelligence—clandestine collection, counterintelligence, covert action, and analysis—because over the last several years, enough evidence has become public to suggest that none of them is functioning well. Of course no nation's intelligence can do well if any of these components malfunction. But may I suggest that the malfunction of analysis is potentially the most serious drawback which any nation's intelligence could experience. It can be argued, for example, that no failures, no abuses which have occurerd within the American intelligence community, portend consequences for the United States as awful as those portended by the failures of intelligence officers to analyze the Soviet strategic buildup.

Between about 1975 and 1978 the intelligence community officially disregarded the massive evidence available to it concerning the size, scope, and purpose of the Soviet Union's programs for building strategic weapons, and repeatedly minimized the importance of what was going on. The National Intelligence Estimates' (NIEs) track record on Soviet strategic arms was thus sumamirzed in a dissenting opinion to the Senate Intelligence Committee's report on the so-called A–B Team affair in February 1978:

"While the Soviets were beginning the biggest military buildup in history, NIEs judged that they would not try to build as many missiles as we had. When the Soviets approached our number, the NIEs said they were unlikely to exceed it substantially. When they exceeded it substantially the NIEs said they would not try for decisive superiority—the capability to fight and win a nuclear war. Only very recently have the NIEs admitted the possibility as an 'elusive question.' Now the NIEs say the Soviets may be trying for such a capability but they cannot be sure if it will work." In January of 1979, the nation learned from the New York Times that the brand new National Intelligence Estimate now recognizes that the Soviet Union is indeed trying for the capability to win a nuclear war with minimal damage to itself, and that it is well

on the way to achieving such a capability. Unfortunately the NIE recognized this well after the readers of most of this country's military and strategic publications, and of Commentary magazine had done so, and roughly about the time the New Republic did so. The nation has the right to expect more than that from its intelligence analysts.

No one yet knows how much the NIEs mistakes will cost the United States. Even if we began now to build our forces to take account of the real world, we would not achieve results in time to avoid some very dangerous years ahead. One need not belabor that intelligence exists precisely to avoid such rude awakenings as the United States is experiencing.

One could extend the list of failures by our intelligence analysts ad nauseam. Everyone is aware that, as the Shah of Iran was falling, a score of highly paid analysts at CIA was writing that Iran was not in a revolutionary situation or even in a pre-revolutionary one. That kind of ignorance not only crippled our policies in the years prior to the revolution, years which could have been used to warn and bolster our friends, it also could have led us to think the foolish thoughts by which we advised our Iranian friends during December and January 1978–79 and which proved to be lethal to them.

Almost as many people are aware that failures of intelligence analysis and judgment led American policymakers to support the formation of left-wing governments in Italy and Chile in the early 1960's. Scholars working from intelligence analyses recently declassified are showing that these analyses proceeded from fervent beliefs that only socialist governments could stand in the way of communist ones. They are also showing that these analyses had little basis in fact.

All of this is not to say that the record of our analysts is one of unrelieved failure, nor that the level of analysis has always been below that of the information available to support it. Rather, the tragedy of intelligence failures such as the ones I have described is that they are quite avoidable. Typically, as in the case of the NIEs on Soviet strategic weapons, solid information is available, which would lead reasonable people to the correct conclusion. Moreover, such reasonable people have never been absent from the ranks of intelligence analysts. Throughout the decade during which the NIEs were so wrong about Soviet forces, there were intelligence analysts in the Defense Intelligence Agency who were right on the mark. There were even some analysts who, about a year ago, dissented from the chorus of pollyannas in the intelligence community and said that the Shah was in deep trouble. However, the salient fact is that the views of these analysts have been smothered and lost in the process by which the volumes of data the U.S. receives on the world—and the judgments which this data inspires in the minds of individual analysts—are translated into finished intelligence. I have seen, and taken part in, countless inter-agency sessions on estimates in which perceptive insights and relevant data have been shunted aside, sent back for reconfirmation, or watered down because they would not fit with some agency's position, or because they stood to block inter-agency consensus on a particular point. In short, the laborious process by which many views are formed into the intelligence view of the United States has not served the country well because it has made for less accurate products.

I submit, then, that the problem with the analysis of intelligence is at least in part an organizational one, and that organizational changes could well improve matters.

All of this is not to discount the responsibility of managerial and intellectual factors. It is true that the analytic elements of the intelligence community are overly preoccupied with being close and visible to policymakers, and that, to that end, they busy themselves with countless short-term reports. These reports take from the analysts the time they need to steep themselves in the data about their area of concern, and tend to reduce intelligence reporting to—or below—the level of journalism. It is also true that perhaps the greatest barriers to sound analyses are in the minds of the analysts—I am referring to "conventional wisdom." An example of this is the view that if we know the Soviets conduct, say three-fourths of their tests on ICBMs during business hours Monday through Friday, and we observe two-thirds of these, we will have observed half of Soviet tests, and can safely extrapolate our knowledge to the other half. Another example may be summed up by statements such as: Telemetry of missile tests is the standard way for the Soviets to learn about their own tests. Therefore they will not learn about them any other way. Therefore if we read x percent of the Soviets' telemetry we know x percent about Soviet tests. This is sheer nonsense. For intelligence based on such rigid perceptions to be effective, the target would

have to be more stupid than the Soviets have proved to be. Yet another example, perhaps the most dangerous one, is the belief that if information on a particular item satisfies the official intelligence requirements for that item, then we know all we need to know about it. Admittedly, analysis of intelligence and bureaucratic routine are mortal enemies.

Political considerations are also the mortal enemies of good intelligence analysis. The very possibility that a high-level policymaker might send a paper back to an agency indicating he did not like the conclusion all too often sends chiefs and sub-chiefs scurrying, trying to shade their judgments. The very perception of political interest can create a big controversy based upon little substantive differences. The controversy over the role and range of the Soviets' Backfire bomber is as good an example as one could want of a difference of opinion which exists because there are high-level customers for the different views. No one disagrees that an airplane with such a range could fly from Soviet territory to American territory without refueling. The refueling probes are visible to all analysts. Yet there is disagreement over whether the airplane has intercontinental range. This is not an argument for eliminating differences of opinion which are based on political considerations—quite the contrary. We should recognize that they are inevitable, and that they could even be healthy—in the right organizational contexts.

The rest of my argument concerns organizational measures for alleviating the troubles in analysis. We should recognize that organization is not the primary factor affecting the quality of analysis. In fact, almost any organizational scheme would produce excellent analysis if the working analysts were well-qualified, well-trained, free of the fetters of conventional wisdom, if their managers were wise, and if their political superiors did everything they could to keep politics out of analysis. Improvements in the minds of analysts, in their managers and superiors would be far more effective than improvements in organization. But whereas it is reasonably easy to make organizational changes by act of Congress, the other improvements are out of the legislators' immediate reach. Changes in organization cannot eliminate bad management, ossified thinking, or political influence. But they can reduce their ill effects on the analysis of intelligence.

Consider two events in 1976. Pursuant to a suggestion by the President's Foreign Intelligence Advisory Board (now defunct), a team of independent analysts was given access to the intelligence community's data on Soviet strategic arms. This B–Team concluded that the NIEs had been grossly underestimating Soviet developments and intentions. Despite loud wounded cries, the authors of the NIEs, unable to produce evidence to contradict the B–Team, changed their own views. Also in 1976, an independent analyst showed that the CIA had underestimated Soviet defense expenditures. Unable to contradict him, the CIA changed its estimates. Bad management, ossified thinking, and political considerations were made less effective by the pressure of competition. More important, decision makers in the executive and legislative branches were faced with arguments for different views, and had the opportunity to make more responsible choices.

This suggests that organizational changes in the intelligence community which fostered competitive analysis would tend to improve analytical products. The existence of more than one estimate—each by a different bureaucracy—would spur each bureaucracy to do those things necessary to minimize the possibility of embarrassment. Yet competitive analysis might well be resisted by policymakers for whom a single estimate on any given subject is welcome relief from the responsibility to make judgments.

But competitive analysis is also likely to be resisted by the intelligence community, many of whose officers have comfortable stakes in the way things are done presently. After they advance preliminary objections based on managerial efficiency, their chief argument is certain to be that establishing competitive analysis could well involve dismembering CIA as we know it—that is, as a complex which does a little bit of everything in intelligence. That claim is probably correct. Since 1947 intelligence has changed, and CIA has developed in ways which argue for disentangling the CIA's various functions and reaffirming its original and unique functions. No one should shrink from doing something which would be to the country's advantage mainly to spare the sensibilities of an organization. Intelligence and CIA are not coterminous.

The CIA's original core, its primary unilateral responsibility, was the clandestine collection of foreign intelligence and covert action in support of U.S. foreign policy. The broader the scope of CIA activity became, the more difficult it was to

preserve the secrecy required for its central mission. For instance, the CIA chief in a foreign capital, if charged only with liaison with that country's clandestine intelligence service and the conduct of U.S. espionage efforts could maintain a very low profile—say, as a low-ranking embassy employee, or other inconspicuous cover. However, if he is charged with a broad spectrum of activity such as making arrangements with the local government for the purchase of U.S. technical intelligence equipment, exchange of information with the local military people, and so forth, he can no longer maintain anonymity. He requires a title commensurate with his broad range of official contacts, a large office, secretarial help and other trappings of a quasi-diplomat. Under such circumstances, the circle of persons, U.S. and foreign, who are privy to his CIA affiliation is too broad to allow more than a pretense of secrecy about it.

CIA involvement in the development and management of large technical systems (e.g., the Glomar Explorer) with all the requisite contact with industry, contractors, labor forces, operating crews, etc., further weakens its capability to keep that which must be clandestine under cover. A Director of CIA responsible essentially for clandestine and covert operations can stick to a "no comment" policy in response to the news media; a Director of CIA as spokesman for the entire U.S. intelligence effort and as the substantive intelligence contributor to national decisions cannot get away with a response of "no comment".

Even as it became less able to fulfill its primary unilateral responsibility, CIA spread out and tried to realize a vision of itself as the paramount influence in American intelligence. CIA analysts have long imagined their shop as the National Foreign Assessment Center (NFAC), and have therefore created and fed the myth that military intelligence agencies consistently produced bloated, self-serving intelligence, and that only by feeding these deliberate Pentagon distortions through the cool medium of CIA could the nation get honest military intelligence. This attitude on the part of CIA's analytical branch has kept it in the good graces of some circles both in and out of government for years, but has resulted in a remarkable record of underestimation of Soviet forces. However, it has paid off in the establishment of NFAC, as well as in legislative proposals—e.g. S. 2525—to centralize the intelligence community even further under a Director of National Intelligence who would also be the Director of CIA. It must not be forgotten that the double role of Director of CIA and Chief of the Intelligence Community has proven to be an irresistible bureaucratic imperative to CIA staffs to devise mechanisms permitting control or absorption of the intelligence activities of other agencies.

The thrust of the above argument is that in any reorganization: (a) it is imperative that the functions of the head of CIA and the oversees of the total U.S. intelligence effort be separated; and (b) CIA's function must be more narrowly focused on the critical and highly sensitive field of clandestine intelligence abroad and covert action.

The only argument usually against the separation of the intelligence community coordinating function from the Director of CIA is that no Director of National Intelligence could function without CIA as his "institutional base". The argument, as one might expect, comes mostly from CIA spokesmen resisting the sharp diminution of CIA dominance entailed in such separation. The argument is a weak one. Any Director with direct access to the President, the Congress and the National Security Council would not lack authority because he did not also "own" the CIA. To accept the objection, one would have to believe that Henry Kissinger, prior to his appointment as Secretary of State, lacked power because he had only an NSC staff and no "institutional base".

Most important, neither the CIA, nor the Pentagon, nor any Director of National Intelligence, nor any single bureaucracy should have control over the analysis of the mountains of information the United States receives. It is less important to decide where the analytical resources of the intelligence community should be located than to decide that there should be more than one, and that both should have equal resources, and equal access to the nation's policymakers. This institution of competitive analysis might be achieved by strengthening the size, independence, and competence of the Defense Intelligence Agency, or by separating the analytic side of CIA from the Directorate of Operations, and then splitting it into two analytic agencies, each perhaps augmented by some of the assets which now belong to DIA. There are any number of ways in which this can be done. All need to be studied. In the end it will matter less which of these we choose than it will that we have chosen not to accentuate the present features of our intelligence system which have not served us well.

TESTIMONY OF LT. GEN. DANIEL O. GRAHAM, FORMER DIRECTOR, DIA

General GRAHAM. The problems of analysis that stem from bias will never go away because anytime you get a man or woman bright enough to take all the intelligence data, put it together and come up with his views of what all this means, he is also a fellow who reads the newspapers and has his own world outlook, or general philosophy.

So you are always going to have a certain amount of bias. But we have, I think, in the way that we have organized the intelligence community, underscored and emphasized the effects of bias. I believe that the way we have organized intelligence in this country, which seem to make surface sense, in an attempt to centralize the function, creates irresistible bureaucratic imperatives toward bias.

So this is a criticism of central intelligence and can be construed as a criticism of the Central Intelligence Agency. However, I hasten to add that I spent 4½ years in the Central Intelligence Agency as a military officer and I am just as proud of those years as any other years I spent in the military.

It is an excellent, supple bureaucracy and full of good people.

But the CIA personnel are in a situation where they are put in a contest with other major departments, such as the Department of Defense and the Department of State, and they do not enjoy departmental status and therefore there is an urge there to centralize things, centralize technical collections, centralize the analytical process, And this has allowed biases to take over from evidence very often as Mr. Nitze has pointed out.

For instance, you take the missile gap. It is a very famous overestimate of Soviet ICBM capabilities. One can argue that it was an underestimate of their medium-range missile capability estimates, but as far as ICBM's, a very serious overestimate which, had it held up through the Cuban missile crisis, might have caused a completely different result.

What was the missile gap? It was the difference between the CIA opinion, which was held almost exclusively by CIA, and other opinions, separate opinions.

The Army and the Navy had an opinion that said that the Soviets have deployed few, if any, of these big missiles. That happened to turn out to be precisely correct.

There was an Air Force estimate that was very much higher, and if you look at those estimates back in those days and you say that the Army-Navy estimate is A, the Air Force estimate is B, you will find that the CIA estimate is A + B over 2. That is not intelligence. That is bureaucratic machination.

Then we had, as Paul pointed out, Cuba. On the eve of the actually finding the missiles installations being built, the intelligence community put out an estimate that said they would not do it.

On the eve of the invasion of Czechoslovakia, an estimate came out which, thanks to a logistical delay, did not get printed, which said that they would not invade Czechoslovakia.

Now, on Yom Kippur, on the eve of that invasion, the Yom Kippur War, the word went out to the policymakers that there would be no war. This one was a peculiar set of biases because both the military

side and the CIA side—or rather, if you want to be simplistic, hawks and doves—both came to the same conclusion, both without regard to the evidence, both consulting their biases. The military bias was that nobody attacks another nation if they are going to get whipped, so the Egyptians will not attack Israel. And the other—dovish—bias was: "Well, Mr. Sadat is a sensible man and sensible men do not go to war. That is a bad thing to do, so it will not happen."

And so both sets of biases coincided in that case—the first time I have ever seen it happen—to cause a grievous intelligence error.

Now, you in your questioning and Senator Jackson in his, mentioned this problem of technical collection and what does that have to do with analytical failures? Well, the technical collection problem, I can state as a manager of intelligence resources, really does have a severe impact on your ability to analyze the problem, because every time one of those big, new machines is put into orbit and starts spilling out millions of pieces of intelligence, you have to put people to work milking that cow, and processing what that thing is producing.

And unless somebody is willing to add a lot more personnel to your agency, which I have not found to be the case—I did not find it to be the case while I was running the Defense Intelligence Agency—one has to scramble around to get more people in the processing side of intelligence, which is not the analytical side of intelligence.

Also, other kinds of electronic collection, and so forth, demand huge numbers of personnel to process the material—in other words, to just get it into an intelligible form—and this squeezes down your analytical staff.

As an example, Senator, when Portugal went bananas, you know, after they had their revolution, everything was going wild in Portugal. I can remember Mr. Clements, then Deputy Secretary of Defense, saying why are you not giving me more material on Portugal?

I said, Mr. Clements, do you know how many people I have had on Portugal in the whole Defense Intelligence Agency up to now? One-sixth of a man, a guy who was handling Spain, Portugal, Angola, Mozambique, and a couple of other places was the analyst for Portugal.

So that is an example of the kind of squeeze that you get on your analytical assets as a result of having to tend to these technical devices.

Now, all of those things can be cured by budget decision and so forth—at least this last one—but the one that cannot be cured, I think, by anything other than a rather severe organizational look at the problem is the problem of continuing to attempt to centralize intelligence.

Good analysis, I found, was usually the result of two different agencies taking a look at a problem all by themselves. Two or three agencies taking a look at a major problem all by themselves and not trying to coordinate their views until after they had put together their own paper. Then the dispute, if one arose, was productive.

And I gave you an example of what can happen when you do not do it that way.

My agency, then being DIA, had put out a paper on what the Japanese might do with regard to nuclear weapons over the next 10 years. The Central Intelligence Agency had put out a similar paper.

Then they decided we should have a national intelligence estimate on this matter.

The results of the analysis were quite different and I could make a substantive case for either one. The CIA case was that the Japanese, after having suffered Hiroshima and Nagasaki are so shy of nuclear weapons that, over the next 10 years, there is simply no possibility that they will begin to produce their own nuclear capability. The Defense Intelligence Agency analysis of such data as was available said not only that the Japanese might go nuclear, there were signs that they had created the capability to do it.

Well, when these two views clashed out at Langley, CIA, being in the position of ruler of the estimates, solved the problem by reducing the timespan of the estimate from 10 years to 3 years. Nobody from DIA was going to say in the next 3 years the Japanese were going to go nuclear. Therefore, the problem was solved in a nice, bureaucratic way, and what view ruled the roost? The CIA view ruled the roost.

The CIA view may be dead right, but the fact that good, sound analysts had come up with quite a different opinion was lost to the policymaker who might need to know that good, sound analyses would come up with quite a different opinion.

So I think that what should be done in the intelligence analysis area—and this bears a bit on what Senator Jackson had to say about getting academia aboard—is to avoid hiring academia and keeping them aboard permanently as analysts. What you do is get yourself a board of experts on which you can call, given your subject matter. If you are doing an estimate on Spain, get people who are knowledgeable about Spain. If you are talking about nuclear weapons, get people who know about nuclear weapons.

But men like Mr. Nitze are a good example of the kind of people who should be available at all times to the intelligence community when they come up with an estimate so that they can look at it and say what makes sense out of this and allowing them to look at the evidence.

I believe that could be done. I believe it should be done, and the sooner the better.

We should give up the idea that somehow you can centralize the analytical function and not see serious error creep in—office bias, bureaucratic bias, and sometimes just personal bias—taking over and ruining a very expensive effort to get the information.

Senator WALLOP. Can that be construed to be an endorsement of the PFIAB concept?

General GRAHAM. Yes, sir. The PFIAB concept somewhat expanded, though. The PFIAB, people that I knew very well, given my jobs, they look at the whole range of intelligence. They did not put together a board of experts, although there were some real experts on PFIAB such as Mr. Foster on technical matters and so forth. But the roster from academia and the science community, whether they are academics or not, would have to be a lot bigger list than what PFIAB was if, in fact, you reached for experts on particular areas. Because we just do not have that many nomini universali any more.

Senator WALLOP. I was thinking more in terms of the concept rather than——

General GRAHAM. In concept, that is right, Senator. In concept, I think that is right. One thing about PFIAB. It was out of the bureaucratic battles that were going on down in the community and was able

to take a view of what was going on that was not connected with anybody's program or preference for satellite A versus satellite B or anything like that.

So I think in concept, the PFIAB way is the way to go.

Senator WALLOP. Professor May?

[The prepared statement of Prof. Ernest R. May follows:]

PREPARED STATEMENT TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE BY PROFESSOR ERNEST R. MAY, HARVARD UNIVERSITY

The Committee is exploring an extremely important set of questions. Our national well-being—indeed, our survival—may well depend on the quality of our national intelligence assessment capabilities and the prudent and timely use of those capabilities by policy-makers.

The Committee faces two problems. The first is to determine what might be done to insure that the intelligence community produces work of the highest possible quality and that its products are used to best advantage in the policy-making process. The Committee's second problem is to identify steps toward those goals that might be taken through legislation or legislative oversight.

The first problem has many facets. Judging intelligence assessments is a little like judging whiskey. It is not difficult to identify poor stuff. It is much harder to distinguish a really good product.

Poor intelligence estimates have obvious shortcomings. They may be narrow, blinkered, or dominated by preconceptions. They may be thin on evidence or unimaginative in the use of evidence. Even if apparently free of these defects, they may be weak in judgment, perhaps basically wrong.

Good intelligence assessments are obviously the opposites of bad assessments. They are characterized by breadth of perspective and awareness of the need to test all suppositions. They use all available evidence and use it carefully and creatively. Even though they may get important specifics wrong, they will be perceptive and accurate concerning basic tendencies.

The last comment has to be amplified, for common sense would suggest that the best test of an estimate is the extent to which it is right about important specifics. In sports, a tip sheet can be judged by how often it picks winners. Why should intelligence estimates—and estimators—not be graded according to how often their predictions turn out to be right?

For some types of estimates, such a rule can work. Estimates concerning the performance characteristics of weapons systems can be so measured. So can the majority of economic projections. But the rule cannot be applied inflexibily even to economic projections. A couple of years ago, CIA conceded publicly that it had been understating Soviet defense spending. New evidence led to wholesale recalculation. The Agency's analysts believe, however, that their judgment of the trend-line has been right even though the specific numbers have been too low. If that claim holds up, the analysis could still be rated as quite good.

In political analysis, accuracy concerning specifics serves as a very uncertain test of quality. The person who can come closest to predicting the popular vote in our forthcoming presidential election will not necessarily be the person with the best sense of our political dynamics or of likely long-term trends in our national life. The same proposition can be stated even more forcefully concerning people who analyze secretive systems such as that of the Soviet Union or highly volatile systems such as that of present-day Iran. The only person I know who predicted in 1975 that Mr. Carter would be elected President of the United States in 1976 was a Russian who based his prediction on the argument that Wall Street needed a puppet from the agrarian South in order to quiet the restless peasantry. For the most part, the people who predicted in 1958 or 1959 that the Castro regime in Cuba would be a Soviet-style Communist dictatorship were people too ignorant or too prejudiced to recognize that Castro had strong support among the Cuban people. Those who saw this evidence predicted otherwise because they assumed that a Communist dictatorship and popular support never went together. The first group was right in its prophecy but wrong in its underlying analysis. The fact that its accuracy in prediction was mistaken for accuracy in analysis contributed to the subsequent debacle at the Bay of Pigs.

All this is not to say that we can afford an intelligence community made up of .300 hitters. It is to suggest, however, that accuracy in specific prediction is not always the best measurement of the quality of intelligence analysis. The

point is very important because policy-makers in both the executive and legislative branches pay most attention to the intelligence community when some event catches them by surprise. In such circumstances, they easily become captious. Both branches need to devise methods for assessing the quality of analysis produced within the intelligence community other than diagnostic examination of real or apparent intelligence failures.

The usefulness of a piece of intelligence analysis depends only in part on its quality. Three other conditions have to be satisfied. First, relevant policy-makers have to ask questions that intelligence analysts can answer. Second, the analysts have to have acquired well in advance the knowledge and skills necessary for answering the questions. Third, some person or persons must be able to link the curious policy-maker with the knowledgeable analyst and interpret from one to the other.

Many different arrangements can satisfy the first and third conditions. In the executive branch, something entirely different may be required. One function to be performed is to identify questions important to the particular policy-maker or policy-making body. The second function is to see that these questions get to the people who can answer them. The third function is to see that answers reach the policy-makers when they need them and in a form which makes them useful.

The best models available are probably those of the Deputy Special Assistant for National Security in the Treasury Department and the Director of Net Assessment in the Office of the Secretary of Defense. Each has a close understanding of the department principals' needs. Each has knowledge and authority necessary for reaching deep into almost any part of the intelligence community—the clandestine service, the National Foreign Assessment Center, the Defense Intelligence Agency, the National Security Agency, and even the Secret Service and FBI. The Director of Net Assessment additionally contracts for analytic work by organizations and individuals outside the government.

The intermediate condition—the pre-existing supply of analysts—must be satisfied by the Director of Central Intelligence or, if his title is changed, the Director of National Intelligence. The difficulty of this assignment can scarcely be overstated.

For the most part, questions that will occur to policy-makers can be answered only by people who have invested years in becoming experts on some subject or some foreign area. They will be well answered only by experts who have additionally had practice in wrestling with hard analytical questions. And they will probably be answered to the policy-makers' satisfaction only if one expert's answers have been subjected to scrutiny and criticism by others. The DCI (or DNI) therefore has to maintain a bank of experts, up to date in knowledge, constantly honed in analytic skill, and overlapping sufficiently so that none has an effective monopoly.

This bank has to have many different classes of deposits. That is why it is under the DCI (or DNI) and not under the Librarian of Congress or the Commandant of the National Defense University. While it must include people who could be classified as scholars or academics, it must also include people whose expertise derives from human sources or from photography or electronic data or cryptography.

The bank must also cover a vast range of subjects. The DCI or DNI has to make provision now for needs that will arise several years hence. If he does not, those needs will not be met. And they are very hard to anticipate. Who would have guessed in March 1978, for example, that the most acute intelligence requirements of the United States by March 1980 would include Islamic fundamentalism, the politics of El Salvador, and internal factionalism within the world's Olympic committees?

To turn now to the second question: how might this Committee best promote the quality and usefulness of intelligence analyses? In my judgment, not much can be done toward that end through the proposed charter or, indeed, any other legislation.

The only suggestion I can offer is that the Committee sponsor reestablishment of something like the President's Foreign Intelligence Advisory Board. A new Board should not reassume the function of scrutinizing covert operations. Questions of legality, propriety, and the like should remain with separate bodies such as the current Intelligence Oversight Board. A new Intelligence Advisory Board should concern itself solely with intelligence, and it should report to the appropriate congressional committees as well as to the President. Like the original

PFIAB, it should take a broad view of the nation's long-term intelligence needs. It should advise the President, the Congress, and the DCI (or DNI) about allocation of resources to meet those long-term needs.

An additional assignment for this Board should be to assist the intelligence community in improving the quality of its analyses. Many devices might be employed. In the last few years, the annual estimate of Soviet strategic forces has been vetted by a small but widely representative panel of knowledgeable outsiders. Everyone agrees that the product has been improved thereby. An overall Advisory Board could identify other areas where such a procedure might be desirable. In addition, the Board might choose some subjects at random and designate teams to appraise and evaluate the quality and adequacy of analytical work in progress on those subjects throughout the intelligence community. Awareness that such a review might occur could have beneficial effects among analysts. The results of such reviews might thus be incorporated in training programs or otherwise used to improve criteria for qualitative judgments.

The reestablishment of an Advisory Board would not be free of cost. It would probably lay heavy claims on the time of the DCI (or DNI) and on many other already harried people in the intelligence community. Nonetheless, I believe that a high-level Board reporting confidentially to the President and the key committees of Congress could contribute materially toward sustaining and raising standards of analysis and toward helping the DCI (or DNI) do his job.

Beyond this specific measure, the Committee can pursue the desired ends by means of hearings that force attention to the central questions. It should ask the DCI (or DNI) for a periodic report somewhat comparable to the posture statement issued annually by the Secretary of Defense. That report should describe the actual and prospective state of the "bank" for which the DCI (or DNI) is the manager. It should portray the types and categories of expertise reachable if required. It should take into account expertise outside the intelligence community. It should note specifically the areas in which, because of necessary trade-off decisions, expertise is comparatively weak. It should outline plans for the future and explain not only where investments will be made but also where they will not be made.

The Committee might ask that the DCI (or DNI) possess and be able to describe in generalities an inventory of all the nation's intelligence resources. It could then ask such questions as the following: In various parts of the intelligence community, the Foreign Service, executive departments, congressional staff, corporations, banks, unions, universities, newspapers, etc., how much expertise, of what kinds, can the government tap with regard to a particular foreign region? How much with regard to a particular country in that region, How much with regard to that country's energy resources? . . . food production, . . . ethnic, religious, social, economic, and political divisions? . . . etc. Does the DCI (or DNI) foresee need for our government to strengthen certain categories of its own expertise concerning the region or country? If so, why, and at what cost, in terms not only of dollars but of expertise concerning other areas?

Whether by this device or by others, this Select Committee should concentrate on overseeing the work of the DCI (or DNI) as custodian of the nation's reservoir of information and analysis concerning foreign areas and problems. Its budgetary oversight should have this focus. On occasion, it should also take upon itself the function of reviewing and commenting upon corollary matters. For example, as the Committee concerned with the nation's intelligence resources, it should have more than peripheral interest in authorizations and appropriations having to do with foreign language and area training in the United States.

With regard to the usefulness of the analytical product, the Committee might do well to conduct hearings on how policy-makers see their immediate and prospective intelligence needs and how, historically, they have staffed themselves to make use of intelligence analyses.

It is my impression that in the past fifteen to twenty years the officials who have been least well served have been the President and the Secretary of State. The reason is that these two officials have usually entrusted the staff function of liaison with the intelligence community to people who were preoccupied with the line function of managing a component of that community. Presidents have turned to the DCI, Secretaries of State to the heads of their Bureau of Intelligence and Research. The arrangement has not always been unworkable. John McCone succeeded in being an intermediary between President Kennedy

and the intelligence community while at the same time serving as DCI and head of CIA. The periods of success, however, appear to have been few and far between.

Hearings and staff studies by this Committee could explore such hypotheses and improve understanding of the various structures and procedures available for such a purpose. The results could be of great value to newcomers taking over high office. They could also provide this Committee with several different perspectives from which to view the resource allocations and resource planning of the DCI (or DNI).

I greatly appreciate the opportunity to present these views to the Committee. To conclude with a brief summary, I urge the establishment of a high-level Intelligence Advisory Board reporting to the President and to the relevant committees of Congress. This Board would concern itself with the availability and quality of intelligence analysis. I urge secondly that the Committee view the DCI (or DNI) as the person responsible for keeping track of all the nation's intelligence and intelligence-analytic resources, estimating short-term and long-term intelligence needs, and planning the allocation of resources for the government's intelligence community. I urge finally that the Committee undertake analyses of actual and possible ways in which both the executive and legislative branches can organize themselves to make most effective use of the nation's and government's intelligence resources.

TESTIMONY OF ERNEST R. MAY, PROFESSOR OF HISTORY, HARVARD UNIVERSITY

Mr. MAY. Thank you, sir. I would like, if I could, to make a few comments that really are additions to what Mr. Marshall said, and endorsements of many of the points that he made.

The first is just to underline the elementary point that the quality of analysis is extremely hard to judge. To the extent that the subject is a technical subject, or quantitative, then it is fairly easy to find out whether the analysis was right or, anyway, whether the trend line was right. But where the judgment has to do with the behavior of a government or choices that people are making, it is extremely hard to decide whether the analysis is good or not.

Let me offer an example.

You cannot judge it in terms of whether the prediction is right. The only person I know who, early in 1975, predicted that Mr. Carter would be President of the United States, was a Soviet analyst whose basis was the argument that Wall Street would want someone from the South in order to deal with the alienation of the American peasantry.

Now, the analysis was absurd; the prediction turned out to be accurate.

There are just so many variables that enter into political prediction that I do not think accuracy is the measure of its quality.

You know bad analysis when you see it. The characteristics are fairly obvious. One is the presence of evident preconceptions that guide the choice of evidence. A second is shallowness, lack of firsthand familiarity with the subject or indifference to context, historical or cultural.

Another is just basic wrongness. The analysis may be wrong even though based on a lot of evidence and not obviously showing preconceptions. For example, I think all of our political analyses of Cuba were wrong in the immediate aftermath of the fall of Batista. On the one hand, people who could perceive the character of the Cuban Government could not believe that it could be popular. On the other hand, people who thought it could be popular did not believe that it could

have the character that it would have. They assumed it would have to be essentially a social democratic government and not a repressive dictatorship.

You can see what is bad analysis, but it is very hard to see what is more than just not bad—to see what is good.

The second point, having to do with the questions the chairman put in his letter, has to do with the relevance of analysis, particularly political analysis, for that relevance is likely to be dependent on a number of variables. One is the interests of the policymakers in that particular analysis.

The second is the availability of the analytic base at the time when the policymaker wants it. The third is the existence of some kind of linkage. Let me illustrate, just elaborating on an example which General Graham cited: that is, the "missile gap."

As I understand it, President Eisenhower, although a military man and someone who had seen a lot of reports dealing with Soviet missile program, did not actually focus his attention on the dangers to the United States of the Soviet intercontinental ballistic missile program until the spring of 1957, about 3 months before our first unsuccessful test of an Atlas and about 5 months before the Sputnik launch.

At that point he saw evidence of a test of a very long-range Soviet missile that appeared to have extraordinary accuracy. He suddenly became interested. He saw the extraordinary risks to the United States that were involved if such missiles actually became operational with thermonuclear warheads.

At once, he began to ask a lot of hard questions. It happened that the intelligence community, in all its parts, had been studying this problem for quite a long time. They had been producing papers, some of which had passed over the President's desk, but apparently had not captured his interest.

So, the basis was there. A lot of evidence that had been collected from various sources and analyzed in various ways about what Soviet missile programs could produce. And there were links. There was Mr. Dulles, the Director of Central Intelligence, who enjoyed the President's confidence. He did not, himself, feel comfortable in this technical area, but he had a trusting relationship with the head of the Directorate of Intelligence, Ray Cline, who did have some understanding of it and who was able to reach people in that part of the community.

Second, in addition to the linkage through the Director of Central Intelligence, there was a linkage through the President's science adviser, Dr. Killian, who understood these issues, and studied them himself, and was able to tap a number of other sources. Though the missile gap was something that was widely believed in, it was not believed by the President.

The President understood exactly what the situation was and was not alarmed after Sputnik. He had a very just estimate of what were their likely developments as compared with ours.

Others were deceived, but the President apparently was not.

So you had three things that made analysis relevant. You had the interest of the policymaker, you had all the information in the bank,

and you had people who could link the policymaker with the bank of information.

The third point is one that Mr. Nitze made originally. It is that these critical questions that the committee is now addressing are, for the most part, not questions that are easily influenced by legislation or at least not by the charter for the community. The quality of analysis depends more than anything else on the quality of mind and the expertise, the depth of knowledge, of the people who are doing the analytical work—on the quality of people. Second, it depends on the perceptiveness and interest of the policymakers, including members of the legislative branch as well as the executive branch—on the kinds of questions they ask.

And it would be my feeling that the best protection against tbe kind of bias that has been evident on occasion in the past and which you addressed and Senator Jackson addressed, the best protection is the existence of interplay between these two: policymakers really interested, asking hard questions, and people doing analytical work who really feel confident of their expertise, and who are prepared to stand by their own judgments and defend them, because they think they know truth as well as anyone in the world.

In terms of specific suggestions, having said that, I do not think that much of this can really be dealt with in the charter. Thinking of specific suggestions that might be made to the committee, the first is one that Mr. Marshall made which does not really have to do witb the work of this committee, but rather with the Senate as a whole. It is support for foreign language and area training in the country which is a wasting asset. The Perkins Commission report, among other things, gave the alarming figure that the Soviet Union has more teachers of English than we have students of Russian. And that is a condition that it seems to me important that public policy be directed toward remedying, hence providing expertise around the country that can be tapped by the intelligence community and providing recruits for the intelligence community over a long period of time.

The second is for the committee specifically to concern itself, as Mr. Marshall suggested, with the quality of the preparation of analysts, with the recruitment and training of intelligence analysts. When looking at budgetary questions, the committee can, by its hearings, encourage in the intelligence community—not just in CIA, but throughout the community—exchange of people from one part to another, lateral entry of various kinds so that you have people doing analysis who have had some experience on the policy side, or at least have had some extensive experience in the countries with which they are dealing and have more than an academic feel for the conditions that they are trying to analyze.

The committee can also encourage, as Mr. Marshall suggested, analytical careers rather than supervisory careers. This happens in the technical side. It happens much less often in the political side. There people almost have to move into managerial positions in order to be promoted.

The third is for the committee, in its hearings and in managing the budget of the intelligence community, to concern itself with the building up of the bank—of the base for analysis of problems that are not

easy to anticipate. If you think back just 2 years ago, it would have been very difficult for anyone to predict that what policymakers would most need by the spring of 1980 would be clear analysis about Islamic fundamentalism, the politics of El Salvador, and the condition of the various Olympic committees around the world.

In some ways, as is true of a great library, you probably measure some of the quality of a nation's intelligence community by the resources that are not used, by the knowledge that is there, that is available, that could be used in case something comes up.

Lastly—and specifically here in connection perhaps witb the charter—it seems to me that the committee ought to try to assist the whole intelligence community by helping it to obtain external assessment of the quality of its product. It should do this not just by looking into specific cases, because, for example, a hearing on Iran or something of the sort is likely to highlight a failure. Retrospective diagnosis of that kind is not necessarily encouraging to anything in the community other than to spur people to protect themselves. It does not necessarily encourage them to do higher quality work.

The committee can have more general hearings, as Mr. Marshall suggested. Possibly it could even, perhaps not on an annual basis but on some periodic basis, ask from the Director of National Intelligence—if such an officer comes into being—a posture statement, which could be the basis of hearings. Such a statement could say where the intelligence community stands, what seems to be the priorities over an x year period ahead, and what are the strengths and weaknesses as seen at a given moment. The committee could ask general questions about that. It could also do what General Graham suggested and encourage the formation of boards of consultants such as the one which now functions on the strategic estimate for the Soviet Union.

Also, I would urge specifically the creation of a new foreign intelligence advisory board responsible to the Congress as well as to the President. It should not take on functions that have now heen appropriated by the intelligence oversight board. That is, it should not concern itself with questions of propriety, but focus almost exclusively on the quality of analysis that is done in the community and help the community to have a general overview of the kinds of problems that may develop over the future and see where attention should be devoted. It could also do a sort of random grading, addressing the problem of assessing the quality of analysis by picking out some examples almost at random, looking at the sources that were used, trying to help people in the community define more precisely what are the criteria for excellence in analysis and to help them develop training programs that could improve the quality of analysis.

Senator WALLOP. Thank you very much.

One of the things that I despair of is your excellent suggestion that we should try to encourage analysts to pursue careers in analysis rather than careers as supervisors. In the manpower manipulation scheme of governments, there just seems to be an inherent assumption that unless you can be chief of the Park Service, you cannot be a good ranger.

I am frustrated by the idea that everybody has to be, sooner or later, chief of staff of the Air Force or ultimately chief of Central Intelligence or any of these other things.

I agree with you that we ought to change this, but it is an almost impenetrable mindset, not only in this administration, because it has been in every one that I have ever had any dealings with. Government generally believes that you have to move people upward or otherwise you will have to get rid of them.

I saw it when I was a second lieutenant in the Army. My first company commander was a captain who had 24 years of service and he was by far the best battery commander I ever saw. And he came to the end of the line and they made him a field grade officer and gave him literally a nothing job when he had many, many years of profound service left in him. Any battalion I ever saw would have been damned glad to have a whole squadron of battery commanders of that quality.

But it just was not part of the mindset that you could be a career battery commander. And I guess the same thing holds true, as you point out, in this.

Maybe we can get at it some way.

Mr. MAY. One suggestion, Senator, is that you might look at differences within CIA and the ways in which careers develop. I do have an impression—which General Graham can correct if I am wrong—that in the Directorate of Science and Technology it is much more common for people to have careers as specialists, divorced from administrative responsibilities.

General GRAHAM. One of the problems that CIA solved better than I could solve at DIA was that problem, of promoting a guy because he just simply happened to be the best guy around on some subject and not giving him any administrative responsibilities.

That was because the civil service rules did not apply there. They applied to my people in DIA which made it extremely difficult to do.

But within the intelligence field, you simply have to do that. The civil service rule, for instance, that you have a man who has the general description of an analyst, and if you suddenly need an analyst, the bumping starts or something and the guy is an expert on the Soviet Union he can go over and bump and take the guy's job who is an expert on China. He may not know anything about China.

So you really do need some slack in the civil service regulations in order to run a proper analytical shop.

What I did was cheat to get those kind of people, but I got caught at it.

Senator WALLOP. Mr. Allison?

[The prepared statement of Graham Allison follows:]

PREPARED STATEMENT OF GRAHAM ALLISON

CENTRAL QUESTIONS

1. What is the major problem of the intelligence community?
2. Is the problem of poor performance of the intelligence community a matter of real importance to the United States?
3. Why? What difference can intelligence analyses and estimates make?
4. What is required for the production of first-class intelligence analyses and estimates?
5. Is the charter proposed as the National Intelligence Act of 1980, S. 2284, part of the problem, or part of the solution?
6. Why is Congress not likely to pass a charter during the current legislative session?
7. What could the committee do if it really wanted to improve the quality of intelligence analyses and estimates?

Mr. Chairman and members of the committee, it is my privilege to testify today to the Select Committee on Intelligence and to address two specific issues about which you asked: (1) the performance of the Intelligence Community in producing analyses and estimates relevant to policy-makers; and (2) actions the Committee might take to improve the performance of the Intelligence Community in this area.

As a student of American foreign policy, I have followed these subjects for the past decade—as an analyst at the Rand Corporation; as the author of a major study of the Cuban Missile Crisis; as a participant in an Intelligence Study Group of the Institute of Politics at Harvard's John F. Kennedy School of Government, which produced a report submitted to the Church Committee; as Director of Defense and Arms Control studies of the Murphy Commission on the Organization of the U.S. Government for the Conduct of Foreign Policy; as co-author of a book, Remaking Foreign Policy: The Organizational Connection, published in 1977, which contains a chapter recommending splitting the analytical and operational sides of CIA in order to make a new start at analysis; and as a current consultant to a number of government agencies interested in the issue of intelligence, organization for intelligence, and the performance of the Intelligence Community. I am the Dean of the John F. Kennedy School of Government at Harvard and the Don K. Price Professor of Politics. Today I appear in my private, personal capacity as a concerned citizen, not on behalf of any organization with which I am associated.

With your forbearance, I will begin with a distinctly personal note of concern. I believe that the United States is in a critical period of our history—a period when the premium on first-class intelligence is steadily increasing, when the performance of the Intelligence Community is declining, and consequently when the gap between our national needs and the Intelligence Community's performance grows ever larger.

Under such circumstances, one would expect that reasonable men would feel a real urgency to move expeditiously to improve our intelligence capacity. Unfortunately, I find little evidence of such urgency in Washington. I hope that these hearings may encourage those responsible for the current state of affairs to face this problem squarely.

My presentation is organized as answers to seven central questions—answers I propose to put briefly and provocatively—with a warning that for the sake of brevity I am omitting some caveats and qualifiers. Copies of my seven questions are, I believe, before you.

1. What is the major problem of the intelligence community?

An observer of the work of the Select Committee, the Church Committee which preceded it, and the product of the effort embodied in S. 2284 finds a clear answer to this question: The major problem of the Intelligence Community is the problem of *abuse.*

I believe this answer is incorrect.

Recognizing the real problem of abuse and the vital importance of restoring public confidence in lawful intelligence, I believe nonetheless that the larger problem of the Intelligence Community is the problem of *performance*—performance in producing the Intelligence Community's primary product: namely, analyses and estimates that provide a comprehensive base of evidence and reasoned judgment for decision-making.

The performance of the Intelligence Community is poor: poor on average as compared to the best examples produced within the Community; poor in comparison to the best analyses produced outside; and poor in comparison to reasonable expectations.

2. Is the problem of poor performance of the intelligence community a matter of real importance to the United States?

As Senators, every day you confront government agencies and programs that perform poorly—job training programs, OSHA LEAA, the managers of the U.S. economy. One is reminded of Italians' assessment of the latest crisis in Italian politics: critical, but not serious.

Is the poor performance of the Intelligence Community in producing analyses and estimates a matter of serious importance of the United States?

I believe the clear answer is yes.

3. Why? What difference can intelligence analyses and estimates make?

Let me answer by offering three examples in capsule form: the Cuban Missile Crisis, the oil price increases of 1973–74, and Iran today—the first a striking success, the second a dismal failure, the third presently unfolding.

Most of you will recall the Cuban Missile Crisis of 1962—the only real nuclear confrontation we have ever had, a crisis in which President Kennedy estimated the chances of nuclear war to have been one in three.

The crisis began when Chairman Khruschev attempted to sneak strategic offensive missiles into Cuba, while assuring President Kennedy both publicly and privately that he would do no such thing. In a great intelligence coup, the U.S. Intelligence Community discovered the Soviet initiative early in the process of construction, before the missile sites were completed or the strategic missiles operational. Because of this intelligence success, President Kennedy had a window of a week to consider carefully the U.S. response—a week in which the United States knew that the Soviet Union was taking an action that would bring the world to the nuclear brink, but in which the Soviet Union did not know that we knew.

This window proved essential for the strategy President Kennedy adopted for forcing Soviet withdrawal. Because the Soviet missile construction was not complete and the missiles not yet operational, the United States had an option that would not have been available two weeks later. That option was to blockade naval shipments of further Soviet missiles and related materials to Cuba. Had the missiles not been discovered until two weeks later, a naval blockade would have amounted to no more than locking the barn door after all the cows were gone.

How in this instance was a first-class intelligence performance achieved? A U.S. U2 aircraft, equipped with a camera of extraordinary capacity flew over an area identified by other intelligence sources as suspect. This U2 took photographs that CIA analysts could interpret, on the basis of years of experience, as incontestable evidence of Soviet strategic missile bases.

Consider the ingredients:

Technical capacity.—Not only did the capacity of both the aircraft and the camera go beyond the prevailing technical frontiers. Their capabilities were not widely known outside a small circle—for example, not known in the Senate or press or Soviet Union—and thus not taken into account by the Russians responsible for constructing the Soviet missile sites;

Complementary intelligence sources.—The U.S. received reports from human sources of an ally with whom it had a formal liaison relationship—American agents having been decimated in the Bay of Pigs fiasco;

A high-level spy in the Soviet Union.—Colonel Oleg Penkovskiy provided the United States vital information on Soviet strategic forces that proved invaluable to U.S. analysts interpreting Soviet activity in Cuba. (In fact, Penkovskiy was arrested by the Soviet Union in the middle of the crisis, on October 22, 1962, and shot shortly thereafter);

Expert analysis.—CIA analysts had decades of experience sifting evidence of Soviet capabilities and intentions, and particularly in interpreting photos and encrypted messages that to you or me would have been noise, but to them signaled Soviet missiles in Cuba.

I could go, since as you may have gathered, I am an afficianado of this event. What I have said here, in even more detail, is contained in my study of the Missile Crisis, Essence of Decision: Explaining the Cuban Missile Crisis, a copy of which I have brought along for the Committee. I would, of course, be pleased to provide additional copies to any member who requests one.

I can't leave this success story without offering my judgment, for whatever it is worth, that at present, if an analogous situation occurred, the U.S. Intelligence Community would fail to discover the Soviet missiles. The Intelligence Community would fail because of the current level of effort vis a vis the problem; the general publicity about intelligence sources and methods; the chill that five years of revelations have put on foreign agents and potential agents; the deterioration in relations with foreign intelligence agencies caused by their perception that the U.S. Government can no longer keep secrets and that their secrets may be shared with hundreds of legislators; the new conservatism of Intelligence Community employees encouraged by an environment of uncertainty about the ground rules and their fear of jeopardy to post hoc exposure of what may come

to be classified as an abuse; and the general sluggishness that has resulted from the introduction of hundreds of lawyers and a regulatory regime for intelligence activities. As a friend of mine at the DDO says, the most active agents at the DDO are the lawyers!

My judgment that the Intelligence Community today would fail to discover the missiles is a complex counterfactual, since it is difficult to say what would constitute an analogous situation. So let me restate my judgment more precisely: If the events of the last five years and their impact on the Intelligence Community had occurred in the five years preceding 1962, it is my view that the U.S. Intelligence Community would not have discovered the Soviet strategic missiles in Cuba, before they became operational.

A second example of the importance of intelligence analyses and estimates can be briefer, since it is a page from the Committee's own book. Your study, "U.S. Intelligence Analysis and the Oil Issue 1973–74," is one of a number of excellent reviews prepared by your Subcommittee on Intelligence Collection, Production, and Quality. The study focuses on three related issues: the position of Saudi Arabia, the stability of OPEC prices, and the impact of these prices on the international economy. It asks three questions: (1) How well did the U.S. Intelligence Community recognize Saudia Arabia's shift from a comfortable relationship with the United States to the vanguard of Arab states calling for the use of oil as a political weapon against the United States? (2) After the 400 percent increase in oil prices in October 1973, how well did the Intelligence Community gauge the ability of OPEC to maintain oil prices at $11 per barrel through 1974 and beyond? (3) How well did the Intelligence Community address the issue of the effects of OPEC actions on the international economy?

The Select Committee's study concludes, and I quote: "The performance of specialized public sources (including Petroleum Intelligence Weekly, the London Financial Times, and the Wall Street Journal) on the three issues addressed in the study equalled or exceeded that of the Intelligence Community."

Of what importance might better answers to these questions have been to the U.S. government? In 1974, OPEC proposed that oil prices be indexed at the then current $11 per barrel. The United States and its allies rejected this offer out of hand, presumably on the expectation that this oligopoly's artificial prices could not be maintained. Better analysis might also have identified opportunities for U.S. leverage to weaken OPEC or prevent further price increases.

A final illustration of the importance of intelligence analyses and estimates is Iran today. I raise this issue, speculatively, and only because I have no official involvement in it, and no special knowledge of it beyond what I read in the newspapers.

What would you want to know today as a basis for intelligent U.S. policy towards Iran?

About the Ayatollah Khomeini's health?

About the nature of relations among the Ayatollah, President Bani-Sadr, and the militants at the U.S. Embassy?

About the composition of the militants, and particularly their relations with other groups, including foreign intelligence groups?

About the state of the Iranian military forces, particularly who controls which tanks and planes and in what state of readiness?

About the stock and flow of various essentials to the population of Teheran and other areas—water, kerosene, food, spare parts?

About the basic logistical systems and infrastructure, for example, public health?

About procedures for succession when Ayatollah Khomeini dies?

About how to read Iranian rhetoric; for example, the role played by Islamic traditions of martyrdom?

For each of these questions and many others, it is essential to ask: What would who have had to do when in order for the U.S. Intelligence Community to be in a position to offer reliable answers to these questions today?

Stand back, if you will for a minute, and think about the problem operationally. Suppose you or I were responsible as Directors of Central Intelligence for providing an adequate basis for intelligent decision in the current Iranian crisis. To make an intelligent choice about sanctions, President Carter needs to know, for example, what impact sanctions will have on whom. Specifically, how—not—will each package of sanctions affect the balance of power within the Revolutionary Council?

If this were your job, how would you produce an answer? Are you prepared to place your bets on the basis of what you read in the newspapers? What else would you like to provide the President and how would you get it?

Suppose, just to speculate, I told you an agent might be able to successfully place a listening device in the Revolutionary Council's meeting room? Or suppose a member of the Revolutionary Council were prepared to give his best judgment on these questions, for some consideration. What would those be worth?

If you were the agent selected to go to Iran today to try to put the bug in the Revolutionary Council's meeting room, or if you were the friend to whom the member of the Council was prepared to talk, what assurances would you want about the secrecy that would surround your action?

I apologize for pounding my point. But I believe the doctrinal debate about such issues as "prior notice" and "full access" has often lost touch altogether with the operational refinements you or I would insist on to do jobs we know the nation needs done.

Let me conclude this point with two final questions:

What has this Committee done to encourage or discourage the acquisition of capabilities that are needed for Iran today?

What is it now doing to encourage or discourage preparation for an analogous crisis five years hence?

4. What is required for the production of first-class intelligence analyses and estimates?

Obviously there are no simple answers or quick fixes. First-class intelligence requires an effective, vigorous, high-morale organization consisting of thousands of dedicated, competent intelligence professionals prepared to take risks on behalf of their country. After a period like the last five years, it will require at least five more years to build such an organization—assuming a full commitment to the task and full support from the Administration and Congress.

First-class intelligence analyses and estimates emerge as the final product of a subtle process that includes four key ingredients—mission, collection, analysis, and presentation.

A clear organizational mission. Congress should make the production of first-class intelligence *the* mission of the Intelligence Community. The central goal of the Intelligence Community is the production of relevant, authoritative analyses and estimates: products embodying deep understanding, applying the most powerful tools of analysis, and exploiting all collectible information. It is to this standard that the Intelligence Community should be held accountable.

Vigorous collection. Current technical collection is innovative, inventive, competitive, duplicative, expensive, wasteful and remarkable, sometimes to the point of being magical. In contrast, human intelligence collection, which is a much harder task, has shrunk dramatically over the last five years—in response to budget cuts and reductions in numbers of slots, the chill of which I spoke earlier, and a de-emphasis of clandestine activity. I believe the most important human intelligence comes from individuals with decades of experience in a country, individuals who have a deep understanding of developments in their country which they are prepared to share. I believe the U.S. has steadily disinvested in assets of this sort.

Powerful analysis. Andrew Marshall has already spoken to this point. The Intelligence Community behaves as if it believed that analysis is not really important, that is, that analytic effort can add little of real value to the finished intelligence product, beyond packaging collection for consumers. (This practice has not been adversely affected by recent events). For years there has been no regular process of evaluating performance by criteria of accuracy of prediction or quality of analysis, there has been no structured competition in analysis, there has been no career track for expert analysts, little investment in human capital, little R. & D., and so on. Devising a plan of action for an order of magnitude improvement in intelligence analysis would not be impossible. It would involve demonstrating the possibility of more authoritative and useful analyses and estimates; harnessing more of the nation's talent outside the Intelligence Community to the task; developing a personnel system to support and nurture analysts; reducing layering; and promoting R. & D. I should add that I believe some steps have been taken in some of these directions under Admiral Turner.

Presentation.—Analyses and estimates must be presented in ways relevant to decision-makers' needs and in forms they will use. The Intelligence Community has never given sufficient attention to either.

Building an organization capable of first-class analyses and estimates requires a framework of authority, demands, and support. In spite of the present Director of Central Intelligence's best efforts, neither the Administration nor Congress has provided steady demands or support for first-class intelligence product.

5. Is the charter proposed as the National Intelligence Act of 1980, S. 2284, part of the problem or part of the solution?

Both.

This Charter emerged from an examination of abuses of the Intelligence Community. Originally, the problem was thought to be one of rogue elephants. When evidence showed this diagnosis wrong, Senator Church, to his credit, acknowledged this fact. Nonetheless, there has been a systematic drift towards prescription of a lawyer's remedy; a tax code and regulatory regime now embodied in an Executive Order 12036 and a morass of regulations issued by the Director of Central Intelligence and the Attorney General, encouraged by a Congressional climate that mandates a system driven by the single maxim: Do no wrong.

While I believe that it is important to prevent abuses of the sort that occurred in the past, to my mind the much larger danger is that the Intelligence Community will fail to do right. It is not difficult, especially in Washington, to create another bureaucracy with the single merit that it abuses no one. It can achieve that goal by doing nothing. What is much harder is to build an organization in which individuals risk their own lives and those of others in collecting information that may be vital to our national security. The focus of attention must therefore be shifted from "have we devised a regulatory system that makes it impossible for the Intelligence Community to beat its wife" to "have we assured that the Intelligence Community will produce first-class intelligence."

By leaving hanging the question of the Intelligence Community's mandate, and even its legitimacy, with shifting groundrules in an ever-expanding thicket of regulations, the Charter is part of this problem.

I believe the Charter can become part of the solution if Congress could move directly in the current legislative session to pass a Charter that establishes the Intelligence Community and gives it the authority and responsibility to produce first-class intelligence.

The headline of my preferred Charter would read: "To promote the National Security of the United States by establishing an Intelligence Community that shall produce intelligence of the highest quality; to protect American Constitutional rights by creating a System of Accountability to assure that intelligence activities are lawful and effective."

Such a core Charter, as I think of it, should take as its model the National Security Act of 1947, rather than S. 2525 or the current bill. It need not be more than 15 pages long. After a short section specifying the primary duties and responsibilities of the several agencies, it should legislate the current System of Accountability including the deliberate process for authorizing special activities and the system of Congressional oversight by the two intelligence committees. It is this System of Accountability, rather than any regulatory regime, that provides the protection Americans need and deserve. After a short section protecting identities and modifying the Freedom of Information Act, one would be done.

6. Why is Congress not likely to pass a charter during the current legislative session?

Because there are irresolvable differences between Congress and the Administration? No. As Senator Huddleston has said, there really are none.

Because a Charter acceptable to the parties fails to assure Intelligence activity consistent with the Constitution and the laws of the land? No. An acceptable Charter would establish both a trail of accountability in authorizing special activities and effective Congressional oversight—two pillars of a System of Accountability that offer all the insurance one can have or need.

Because the Charter fails to reduce unnecessary restraints, or to reduce the Committees who oversee intelligence activity to two, or to provide reliable sanctions against unauthorized release of classified information, or to protect identities? No. The Charter could do all this.

So why am I pessimistic about the prospects for a Charter in this Session? In the primaries, candidates and the press talk about "Big M:" Momentum. Who has

it? Who has lost it? In observing the legislative process, I am more impressed with "Big I:" Inertia. This is a short legislative year, some of the parties are inclined to doctrinal differences or to seek marginal advantage for some secondary concern they hold dear.

If the Administration gave this issue the priority President Carter assigned it just two months ago in this State of the Union message, if the members of the Committee gave the issue the priority it deserves, if other parties were consulted are encouraged to put the general interest ahead of their special concerns, then I believe one could pass a core Charter that legislates current practice. Certainly, if the Committee were so inclined, I stand ready to do whatever I can to prove my pessimistic prediction wrong.

7. What could the committee do if it really wanted to improve the quality of Intelligence analyses and estimates?

Pass a core Charter that makes the Intelligence Community responsible for first-class intelligence.

Then hold a major set of "preparedness hearings" along the lines of hearings previously held by the Armed Services Committees, focused on a single question: Is the character of the intelligence effort and the level of the intelligence effort appropriate to provide for the common defense?

I will offer my judgment that it is not, that we are not even in the right ballpark in the level or character of our intelligence effort. In my view, our nation's security in the world of the 1980's requires an Intelligence Community with the best eyes and ears and mind the nation can command. But the Committee hearings would provide an occasion to examine this question in depth.

TESTIMONY OF GRAHAM ALLISON, DEAN, JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY

Mr. ALLISON. The question that you raise to Professor May and to General Graham, is not unlike the problem of the organization of a university. As a dean of a school of government I have the problem as well of trying to keep professors working on a problem over 20 or 30 years, producing books which, at the end of decades of investment display a depth of knowledge and understanding they would not if they had followed a different career path.

So I think there are some alternatives in the society for keeping analysts working on a problem for a long period of time and that the analytic tracts in CIA and the other intelligence communities should resemble them.

I will follow the precedent of my fellow panelists in submitting for the record my longer statement if that is appropriate.

Senator WALLOP. It is appropriate, and that will be introduced into the record.

Mr. ALLISON. I will simply try to hit several highlights.

But let me first applaud what I take to be the thrust of your questions, as I think several of the fellow panelists have done, because I believe that the United States is currently in a critical period of its history, particularly as concerns intelligence, a period in which the premium on first-class intelligence is steadily increasing, in which the performance of the intelligence community is and has been declining and consequently, a period in which the gap between our national needs and the intelligence community's performance grows ever larger.

I think that this is clear today. I think that it will be even clearer 5 years hence and 10 years hence, so I think the fact that the committee is turning to this problem now seems to me to be right and important.

In my written statement, I address seven central questions and offer

brief answers to them. Let me see if I can be even more brief on some of the key points.

The first question is, what is the major problem of the intelligence community? If I were to observe the work of this committee, of its predecessor, the Church committee, of S. 2284, I think there is a clear answer. It is that the major problem is the problem of abuse.

I think that that is the wrong answer. I think that the right answer is that the major problem is a problem of poor performance, poor performance of the intelligence community in doing its primary job which is producing analyses and estimates that provide a comprehensive basis for policy making.

My second question asked whether this problem is really important. As a Senator, you see every day programs and agencies that produce poor performance. OSHA, one of your favorites. the management of the economy or job training program . . . we could go on and on. Is the poor performance of the intelligence community a matter of great national concern? I believe that it is.

My third question says, why, or what difference does intelligence make?

Let me offer an example which Paul Nitze knows better than I do, but which has been mentioned by each of the previous speakers, the Cuban missile crisis, a crisis which I have studied in some detail.

As you recall this is really the only instance of a major nuclear confrontation, a confrontation in which President Kennedy afterwards estimated the chances of nuclear war to have been 1 in 3.

How did the crisis arise? Chairman Khruschev was attempting to sneak strategic offensive missiles into Cuba. That action was discovered by the U.S. intelligence community in what remains, I think, a considerable achievement. The missiles were discovered before all of them were in Cuba and before they had become operational.

Because of that success, President Kennedy had the opportunity to think hard for a week about what the United States should do, to think in a period in which the United States knew that the Soviets were taking this action, but the Soviets did not know that the United States knew. He also had the opportunity to choose an option, namely a naval blockade of further shipments to Cuba before all the missiles had arrived and before the missiles had become operational.

If the discovery of the Soviet missiles in Cuba had not occurred until 2 weeks later, for example, all the missiles would have been in Cuba and they would have been approaching operational readiness, so that option would have been like closing the barn door after the cows were gone. In fact, the President had that option, and he chose it.

Now, how did the intelligence community achieve a first-class performance, in my view, in this instance? There are several ingredients. Let me see if I can mention them.

A U.S. U–2 aircraft equipped with a camera of really magical capacity flew over an area in which the United States had reasons to believe, from other intelligence sources, that there might be suspicious activity. The U–2 took photographs that CIA analysts could interpret, on the basis of years of experience looking at similar photographs, as evidence of Soviet strategic missile basis.

Think about the ingredients. First, a technical capacity, both the aircraft and the camera, that went beyond the prevailing technical

frontier, and whose capacities were not widely known outside a small circle—not in the Senate, not in the news, not in the Soviet Union—and thus were not taken into account by the Soviets who were responsible for constructing those missiles in Cuba. Had they been constructed in a different way with a camouflage pattern, they might not have been discovered.

Second, complementary intelligence sources; especially reports from human sources of an ally with whom the U.S. intelligence community had a formal liaison relationship, since the United States had lost most of its human assets in the Bay of Pigs fiasco. Moreover, the United States had a high-level spy in the Soviet Union, Colonel Penkovskiy who provided the United States vital information on Soviet strategic forces that proved invaluable to U.S. analysts interpreting the Soviet activity there, and which also gave President Kennedy a good view of what the real strategic balance was at the time.

In fact, Penkovskiy was arrested by the Soviet Union in the middle of the missile crisis, on October 22, 1962, and shot shortly thereafter.

And third, analysts who had decades of experience in shifting evidence of Soviet capacities and intentions, and particularly in interpreting photos that would have appeared to you and me to be noise but were, in fact, a signal that the Soviets were installing missiles in Cuba.

I could go on and on with this example, as you might gather since I happen to be fond of it, but I will not. I do think, though, that this success story illustrates a point that I would like to put provocatively, for whatever it is worth.

I believe that, at present, if there were an analagous situation, the U.S. intelligence community would fail to discover the missiles in time. I think the U.S. intelligence community would fail because of the current level of effort vis-a-vis the problems; because of the general level of publicity about sources and methods; because of a chill that set in over the last 5 years with respect to agents and potential agents; because of the deterioration in the relationship with foreign intelligence agencies, since they perceive that the United States can no longer keep a secret; because of a new conservatism in the intelligence community employees in response to an environment of uncertainty about the ground rules and a general fear of jeopardy to post hoc exposure of what may come to be classified as "an abuse."

All this, combined with the sluggishness that has resulted from the introduction of hundreds of lawyers and a regulatory regime into the intelligence community. As a friend of mine says, the most active participants in the DDO are the lawyers, today. I think that is correct.

My judgment that the intelligence community would fail to discover the missiles is a complex counterfactual, so let me see if I can put a little sharper point on it, since it is difficult to identify what would be an analagous situation.

If the events of the last 5 years and their impact on the intelligence community had occurred prior to 1962—maybe this would be a better way to put it—if you could imagine that the past 5 years had occurred prior to 1962, then I will stick by my judgment that the U.S. intelligence community would not, in those circumstances, have identified the missiles in Cuba before they became operational.

I could provide several other examples of why I think the first-class intelligence product is of greatest importance to the United States. I think that, in fact, this Subcommittee on Intelligence Performance has done a study of the oil crisis of 1973–74 which concludes that the performance of the intelligence community when compared to the performance of Petroleum Weekly, the Wall Street Journal and the Economist was no better than those three alternative sources.

I think for a great country, that is a shame.

My fourth question, which I will deal with very quickly, is: What is required for the production of first-class intelligence analysis and estimates? I think that problem has been dealt with well by the previous speakers. I think that Mr. Marshall got the point essentially right.

It is not that difficult to design an organization for the purpose of producing first-class intelligence, analysis, and estimates. That is not the organization of the intelligence community that we have today. I believe. But it is not an impossible task. It is not beyond the capacity of this Government or of this country. It is just not something that I think has been taken deeply seriously by any President or Assistant for National Security Affairs, or Cabinet officer, or even Director of Central Intelligence. I think that the current Director of Central Intelligence, Admiral Turner, has tried, under very difficult circumstances, to do what could be done and I think some steps have been taken in the right direction, but I do not think we are there today.

My fifth question is: Is the charter proposed, as the National Intelligence Act of 1980, S. 2284, part of the problem or part of the solution? I say the answer is, both. By leaving hanging the question of the intelligence community's mandate, even its legitimacy, with shifting ground rules and an ever-growing thicket of regulations, the charter contributes to the problem.

On the other hand, I believe that the charter could become part of the solution if Congress were able to move directly in current legislative session to pass a charter that establishes the intelligence community, gives it the authority and responsibility to produce first-class intelligence, sets up the system of accountability that has been developed, and then says let's move on to other business.

Indeed, I think the headline of that charter should then read: "to promote the national security of the United States by establishing an intelligence community that shall produce intelligence of the highest quality, and to protect Americans' constitutional rights by creating a system of accountability to assure that intelligence activities are lawful as well as effective."

I believe that the committee has achieved something quite remarkable—indeed, unknown previously in history—namely an effective, working legislative engagement in intelligence activities which, together with the trail of accountability, seems to me to be an adequate protection—and, indeed, the best protection that I, as a citizen can have, of my constitutional rights.

I think that what the committee has not done has said, "now, that part of our job is done. Let's get on to what I regard to be the primary business, namely, the performance of the community and the improvement of that performance."

My last two questions I will deal with very briefly.

The sixth question is, why is Congress not likely to pass a charter during the current legislative session? Now, it is not for me to offer advice to you about legislative strategy. But I believe that the reasons why a charter will not emerge in this session are not good ones. That is, it is not because there are irresolvable differences between the Congress and the administration. I think it is not because the charter that could be written as a core charter is one in which the parties that would have to agree disagree that substantially, or which fails to meet the real needs or concerns.

I guess in campaigns, people talk primarily about "Big M:" Momentum, who has got it, and where it is shifting. In legislating, I always think about the "Big I:" Inertia. I believe that that will be the primary reason no charter emerges in this session.

If it does not, I think it will be a shame, given all the excellent work that has gone into this effort over the past 3½ or 4 years, and as I have said to several members of the committee and members of the committee staff, I would be eager to be helpful in any way I could in pressing this thing toward a successful conclusion in the short run.

My final question is what could the committee do if it really wanted to improve the quality of intelligence analysis in estimates? I think the first step is to pass a charter that requires the community to do first-class intelligence analysis and estimates.

A second suggestion which I would make for your consideration would be the possibility of a set of hearings, almost like the preparedness hearings that Armed Services has held from time to time, on the question of whether or not the present character and level of effort of the U.S. intelligence community is adequate to American intelligence needs.

I suspect that a serious multiday hearing on this task would conclude that the level of effort and the character of the effort is not anywhere near proportionate to the problem. Indeed, I suspect that if one is buying national security in the current environment, an extra billion dollars in the intelligence area as against the defense budget, if that were the tradeoff, appropriately spent, would be a wiser investment.

That is my conclusion and I think that should be a question that would be addressed in such hearings.

Thank you.

Senator WALLOP. Thank you very much, Professor Allison. That is a provocative statement and I wish I had some more folks here listening to it.

One of the problems that we have is to get several minds on any given topic at the same time around here.

Mr. Kahn?

TESTIMONY OF DAVID KAHN, AUTHOR OF "CODEBREAKERS: THE STORY OF SECRET WRITING," EDITOR, NEWSDAY

Mr. KAHN. Thank you very much.

With the committee's permission, I would like to submit my statement for the record and talk, instead, about the questions which have been raised here today.

Senator WALLOP. Your statement will be included in the record in full.

[The prepared statement of David Kahn follows:]

PREPARED STATEMENT OF DAVID KAHN

Gentlemen, I thank you for the opportunity to participate in the democratic process. I hope that my ideas will help.

Perhaps I should begin by listing some of the credentials that, I believe, have led to the invitation to appear here. Cryptology has been a hobby of mine since I was 13. As an outgrowth of this interest, I wrote a history of cryptology, entitled "The Codebreakers," published in 1967, which kind people have called the classic on the subject. I have since written frequently on cryptology, including for such publications as The New York Times Magazine and Foregin Affairs, and am a coeditor of the new scholarly journal, Cryptologia. I am past president of the New York Cipher Society and of the American Cryptogram Association. I have also written on wider aspects of intelligence, which helps put cryptology into perspective, most notably in my 1978 book, "Hitler's Spies: German Military Intelligence in World War II." I work as an editor for the Long Island daily Newsday and hold a Ph. D. in history from Oxford. I am married, have two sons, and was raised and still live in Great Neck, N.Y.

I applaud the committee's intention of putting the National Security Agency on a statutory basis. The agency has done outstanding work for the nation's security. It is filled with dedicated, hardworking people, and I am grateful to it for its contributions. But it is not perfect. It has sinned against the people of this country. I am glad to say that these evil practices have apparently stopped. But this does not mean that we can forget them. Just as the agency scrutinizes potential employees to screen out any whose pasts suggest that they might endanger the agency, so the nation must scrutinize an agency that has erred to try to prevent it from doing so again. The oversight functions of this committee and the bill under consideration here are important elements in ensuring that the National Security Agency remains the servant of the people.

This bill, S. 2284, furnishes important advantages to the N.S.A. It obtains a legislative foundation for its existence and for its work. This affords it security and permanence.

The nation, too, gains from the bill. Properly drawn the bill can help protect the people against violations of their rights. Perhaps the fact that only a secret Presidential order created the N.S.A. facilitated its subscribing to the despicable Huston plan, which would have led to widespread eavesdropping on the private communications of free Americans, and to its disgraceful interception of the telephone calls and cable messages of individual Americans. Law alone cannot prevent abuses, but clear legislative restrictions can certainly reduce them below the quantities that an agency might squeeze out of the less scrutinized language of a Presidential order. Moreover, a law may grant the Congress a firmer basis for legislative oversight, since in accepting a statutory foundation, an agency perhaps yields some of its prerogatives on executive privilege.

For these reasons, then, I urge that this bill be enacted into law. May I, however, offer some suggestions that I hope will better carry out what I believe is the committee's intent.

I

I should like first of all to ease the committee members' minds about the sensitivity of cryptologic information—a sensitivity that is sometimes greatly exaggerated.

Executive orders and laws grant cryptologic information protection beyond that accorded most government information that is classified as a national defense secret. The reason is that cryptologic information is more fragile than most other information. A foreign nation can cut off the intelligence we obtain from codebreaking by simply changing its codes; if it wanted to shut off intelligence supplied to us by a spy, it would first have to find him. Disclosure of our codes would obviously furnish a foreign government with floods of information. So the extra protection is, in most cases, proper.

But it is not always so. The fears of disclosure are sometimes overstated. N.S.A. feels that public studies or discussions of cryptology may alert other nations to the possibility that their codes may be broken and so lead them to change them. The present N.S.A. director recently told the House Government Information and Individual Rights Subcommittee that N.S.A. has given the House Select Committee on Intelligence documented proof of such a case, with deleterious

effects for the United States. But this case, serious though it may be, must be seen in the context of the dozens and dozens and dozens of other cases in which nations do *not* change their codes despite discussions of cryptology or even actual warnings that their codes were broken. For example:

Before Pearl Harbor, the Germans told the Japanese that one of their sources in Washington had learned that the United States was reading the Japanese diplomatic codes. What did the Japanese do? They painted the words "state secret" on the sides of their cipher machines—period. During World War II, statements on the floor of Congress and printed in newspapers that specifically mentioned American solution of Japanese codes did not lead the Japanese to change their naval codes, whether because they did not see the stories or because they felt their codes were strong enough anyway is not known. I know this case runs counter to the accepted version, but the facts are as I have stated them. Also during World War II, the German Navy never abandoned its Enigma cipher machine despite strong suspicions that the Allies were solving it—which they were, to their great advantage. And more recently, when the two defectors from N.S.A., William H. Martin and Bernon F. Mitchell, listed in a Moscow statement the names of countries whose codes N.S.A. had broken, some of those countries afterward did not change their cryptosystems.

There are several very human reasons for this apparently incredible behavior. One is that people who invent or introduce cipher systems generally refuse to believe that anyone else can solve them; there is no one quite so intransigent as the inventor of an "unbreakable" cipher. Another is that the cryptographers do not wish to admit to their superiors or themselves that they have failed. And a third is that devising, testing, producing and distributing a new cipher system and training thousands of bored men in its use is an awful lot of work: it's simpler to persuade one's self that the system in service may leak here or there but that its numerous key variations protect most of the messages sent in it.

These instances show that not every revelation about cryptology results in a change of code. N.S.A., however, likes to imply that that is the case. To a large degree, it seeks to protect the national interest. But it also has less disinterested motives. It wants to avoid Congressional and press probes into its efficiency, value and blunders. The committee must realize that the dangers of discussing or revealing cryptologic information are sometimes made to seem greater than they are.

In the light of this, may I make three recommendations to the committee?

The first is not to be deterred from energetic, thorough investigations into the cryptologic agencies.

The second is to bring the N.S.A. within the purview of the Freedom of Information Act. I understand that the agency holds that the special protection accorded cryptologic information removes it from control of the act. But I feel that, as long as the extra protection is granted where necessary, N.S.A. should be subject to the act. I urge that the committee include language to do this.

The third is to add the phrase "and classified" in Section 613(a)(16) to make the clause read, "ensure that cryptologic information is classified and declassified in accordance with applicable law . . ." I know that the power to classify implies the power to declassify. But I feel that inserting this phrase would remind the agency emphatically of its duties toward the public.

II

In another area, the committee should add to S. 2284 language that would bring the activities the bill authorizes into line with existing law.

At present, a treaty which the United States signed in 1961 seems to forbid the interception of foreign diplomatic messages. Article 27(2) of the Vienna Convention on Diplomatic Revelations, which the United States signed in 1961, states that "The Official correspondence of the mission shall be inviolable." But now S. 2284 would authorize activities that appear on their face to conflict with this. Section 611(b) specifies that "It shall be the function of the [National Security] Agency to conduct signals intelligence activities . . . ," Section 602(b)(7) defines "signals intelligence" to include "communications intelligence," and Section 602(b)(1) defines "communications intelligence" as "technical and intelligence information derived from foreign electromagnetic communications by other than the intended recipients." The committee should not allow this contradiction to stand. It obviated a similar conflict between the treaty and the Foreign Intelligence Surveillance Act of 1978 by including in the latter the phrase "Notwithstanding any other law." Perhaps the same language would rectify the same

problem here. It might also dispel any lingering doubts about a conflict with Section 605 of the Communications Act of 1934, which states that "No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person" but has been interpreted to refer only to American communications.

III

May I also offer several suggestions for some changes in the language of the bill that may clear up some minor discrepancies?

Section 602(b)(4) as drawn would include a combat soldier's use of an optical image-enhancer to watch an enemy force or even his sighting down his rifle barrel to utilize the light waves reflected from an enemy soldier so he could aim at him. If "emanating from" in the bill is construed to mean "emitted by" or "generated by," the problem is avoided. If not, and if the committee wishes to exclude these low-level forms of intelligence-gathering from its definition of "electronics intelligence," it might consider adding to this subsection a limitation from Section 104(18) of S. 2525 of the 95th Congress: "Such term does not include any intelligence activity which is so closely integrated with a weapons system that the primary function of such activity is to provide immediate data for targeting purposes for the weapons system." I think this makes an excellent distinction between these low-level information-gathering activities and those normally considered as intelligence, and it ought to be preserved in the present bill.

The definition of Section 602(b)(5) would, as written, include mail. The term of "electromagnetic" should be inserted to make the definition read: ". . . means an electromagnetic communication that has at least . . ."

Section 611(c)(1) says that "The functions of the Agency shall be carried out under the direct supervision and control of the Secretary of Defense . . ." Perhaps this means that, unlike in the past, when directors of the N.S.A. have reported to a deputy secretary of Defense, directors will now report to the secretary himself. If so, I commend this tightening of control and suggest that the committee specify that it means just this. If this is not so, I urge that the committee consider requiring that directors report directly to the secretary.

Section 613(a)(6), as written, seems to exclude any exchange of signals intelligence with foreign countries. Section 613(a)(17) and 621(a)(13) and 621(c) do not seem to permit such exchanges. Yet they are made all the time. The bill should authorize them.

Section 613(a)(8) requires the director to "fulfill the communications security requirements of all departments and agencies based upon policy guidance from the National Security Council. . . ." But Presidential Directive NSC 24 makes the Secretary of Commerce the "Executive Agent for Communications Protection for government-derived unclassified information (including that relating to national security). . . . "In other words, the N.S.A.'s writ seems not to run to all departments, as the bill states. Perhaps the committee distinguishes between communications security and communications protection. If so, it should explain the difference in its proceedings. If the committee is not separating the two, and if it wants to adopt the arrangement created by Presidential Directive NSC 24, it should rewrite this subsubsection.

Section 613(a)(20) seems likewise to conflict with Presidential Directive NSC 24. The subsubsection should be redrafted to resolve the apparent or actual conflict. The subsubsection should also make clear that the phrase, if existing law does not cover the situation, "United States communications" means government communications and not those of private U.S. residents. For if the phrase can be construed as covering private individuals, the bill might allow improper interception of their messages for "testing" purposes, thereby perhaps circumventing Section 105(f) of the Foreign Intelligence Surveillance Act of 1978.

Section 613(a)(22) omits the needs of the State, Treasury, Energy and other departments. Perhaps there is a reason for this, but perhaps it is an error.

Section 621(a)(12) should include the phrase "where necessary" at the end. It may help limit the number of N.S.A. employees scurrying about the country in secret.

Section 641(a) lets the director delegate operational control of specified signals intelligence activities needed for direct support to military commanders or the heads of departments or agencies. It is not inconceivable that a director,

wishing to protect his signal intelligence capabilities or simply his own bureaucratic powers, may refuse such a delegation. The subsection should therefore—if existing law does not already provide for such a procedure—grant both the director and the military commanders or department heads the right to appeal to the Secretary of Defense in case of disagreement.

Finally, my mimeographed copy of S. 2284 seems to have dropped some words in the fourth line of Section 621(a)(4).

THE PROBLEM OF ANALYSIS

Communications intelligence is one of the most important, if not the most important, forms of secret intelligence in the world today. It owes this importance to several factors. It is authentic: its information comes from the horse's mouth. It is fast: it picks up its information at the speed of light. And it is voluminous: it provides a heavy and continuous flow of information, which permits its users to see changes over time and to cross-check data among sources.

The first two advantages engender few problems. But the volume does: it is sometimes so great that the users choke on it. This applies more to users outside the N.S.A. than within the N.S.A. itself. In the days before the start of the Yom Kippur War in 1973, the House Select Committee's leaked report says, the N.S.A. reported that "unusual Arab movements suggested imminent hostilities." But N.S.A. data overwhelmed outside analysts, the committee said. "N.S.A. intercepts of Egyptian-Syrian war preparations in this period were so voluminous—an average of hundreds of reports each week—that few analysts had time to digest more than a small portion of them. Even fewer analysts were qualified by technical training to read new N.S.A. traffic. Costly intercepts had scant impact on estimates."

Looking at the causes of this situation may suggest a solution. What are they?

One is the cheapness of communications intelligence. It costs far less to equip and pay a radio operator and a codebreaker to sit in a building in Turkey or Washington and do their work than it is to equip, pay, and support a spy inside the Kremlin—and the eavesdroppers will produce far more intelligence.

Another cause is the decline of codebreaking. The technology that has given everybody hand calculators has also made good cipher machines available to more nations. Relatively speaking, fewer coded messages are being solved than before. The intelligence effort has moved from the cryptanalytic core to the peripheral areas of analyzing the volume of traffic on different circuits and the routing of messages. This requires more work and produces more paper—and yields thinner information.

A third is the excessive concentration of the three armed forces communications intelligence agencies upon the tactical messages of foreign nations. These agencies do this apparently on the basis of policy which assumes that war is always imminent. This generates enormous quantities of intelligence that almost immediately becomes outdated but that floods the intelligence channels.

A fourth is the unbalanced apportioning of labor between collectors and analysts. At one U.S. monitor post abroad, 200 radio operators passed their intercepts to 5 analysts. The analysts could not process this volume properly, and consequently passed many messages in the technical language of the operators back to commanders, who could not understand them, resulting in an enormous loss of information and effort.

A fifth reason is the pressure imposed by policymakers. What they want was best expressed (in a different context) by the apostle Luke: "For nothing is hid that shall not be made manifest, nor anything secret that shall not be known and come to light." In an attempt to respond to these desires, intelligence agencies provide quantities of data to increase the chance that the answer the policymaker seeks is lurking in one of the items submitted.

Of these five reasons, only the third and fourth are amenable to change. If the three armed forces communications intelligence agencies were to convert some of their collectors to analysts, this would automatically deemphasize the tactical, reduce the volume of incoming material, and improve the usefulness of the material sent to commanders and policymakers. Perhaps the committee might consider discussing this with the three agencies and their superior, N.S.A. I thank you.

Mr. KAHN. Everybody has been talking about analysis. I would like to put in a word for collection to make sure that we realize that

you cannot have good analysis without good collection. This has been proven, I think, a number of times in the past.

In World War II, the Germans on the Eastern Front had relatively good collection and also relatively good analysis. On the Western Front, the Germans had very poor collection because their codebreaking was in no way as good as the Allies' codebreaking and because their forces were not in contact with the enemy for long periods before allied leadings. And then their analysis totally fell down. They were not able, for example, to predict where the invasion was going to come in Normandy and this was a critical factor in helping them lose the war in the West.

The point is that you do need good collection.

Why, however, are there more problems with analysis than there are with collection? It seems to me that the answer is that collection is kind of easy, and analysis is much more dangerous in terms of career, and in terms of laying your own abilities on the line, because it is in analysis that you are saying either the other fellows are going to do this or they are not going to do that, and there you can be tested later when the events come around. If you fail too many times, you are not going to be sitting in the same job very long.

As a consequence, intelligence officers hedge their bets. When I read intelligence estimates, they all seem to have the same flavor, whether they are German intelligence reports from World War II or British estimates in World War II or American estimates today. They often seem to me very much like horseracing tips, horseracing sheets that they say a horse "shows early foot," "has promise," and so forth.

Nobody is willing to make the final definite statement, "War is going to come here or there at a certain time, and it is not going to come over here," and I well understand the reason for this. You are asking them to look into the future.

That is a very murky undertaking and the question that we have to answer, or attempt to answer, is, How are we possibly going to improve this analysis function and perhaps eliminate some of the forces which you were asking about earlier today, the forces which tend to make intelligence officers cautious in producing their estimates.

A number of answers have been suggested today. Perhaps I should say first that I do not think one of the answers is contracting out an analysis, because you are just placing the problem at one remove. The people who are getting the contracts want to get the contracts in the future, and so they will be subject to the same pressures of wanting to conform their analysis to the policymakers' wishes as the people in line. So you are really not getting much of an advantage that way. A slight one, I agree, but not a very great advantage.

So what, then, are some of the posssible answers? It seems to me that one is to get policymakers willing to ask hard questions and intelligence officers willing to stand by their judgments.

During World War II this problem was solved on the intelligence level in the American Army by having just what was suggested earlier, namely a number of individuals who worked strictly on analysis and were not in line for promotion but were only the country officers in a particular area and just did their work. I do not know if they were able to get raises or anything like that, but they were protected in their jobs and managed, therefore, to produce generally good

analyses. I think that, in general, the American intelligence in World War II was quite good.

So it is possible to make this kind of organizational change which will produce the protection which the analysts need to make tough judgments and to stand by them.

Another answer is to have policymakers and top intelligence officers who are open to conflicting estimates and to minority estimates. Here, it is seems to me, is where the committee comes in strongly.

If the committee, in its regular reviews, can demand evidence that unpopular views or minority views are being given a hearing and also if the committee can open its doors to whistle-blowers and people who wish to point out shortcomings and failures in the intelligence community, then we have a more open structure, a better structure, for information to flow more freely from the bottom to the top and perhaps, therefore, get a stronger and a more balanced view than might be possible with a more rigid bureaucratic structure.

Senator WALLOP. Mr. Kahn, I could not agree with you more, but there is an institutional barrier against having that happen and that is the very mechanism by which this committee is set up and it simply says that you cannot be on the committee for more than 6 years. It takes you at least 4 of those years to begin in any way to get some kind of familiarity with what you are dealing with, and you are not likely to stay on the full 6 years. It has been a struggle for some of us to stay on for 4 years.

But there is this institutional bias that almost prohibits us. It seems to me that one of the things we ought to be looking at is how to provide a level of expertise within the Congress, because it is often hard to ask a question that you do not know exists.

Mr. KAHN. There is no question about that, but does the 6-year limitation inhibit a general openness on the part of the committee to admitting whistle-blowers or anything like that?

Senator WALLOP. I think you would have to get in the rhythm of the thing before you would know where those things might be coming, or where somebody would have some confidence in a given Senator or given Member to approach him.

With the way it is and the way it has been, I just do not think that exists. However good the intentions of most committee members are, you do not have that much time and people do not take that much time to devote to it.

It is very, very hard to get any openness from the community; just in an ordinary executive session hearing it is rare, extremely rare, that you get opinions from any of the leading lights.

Mr. KAHN. Opinions about what, sir?

Senator WALLOP. Anything.

The biggest disappointment I have had is that unless you know specifically the question to ask you will never get an answer and you will never have it volunteered to you and there will never be an admission of a problem or a failure or some kind of, to quote the President, a malaise that might exist anywhere.

In point of fact, this committee forced those extra analysts on the community against its loud outrage and protest and to their subsequent cries of joy that we succeeded.

But that is the nature of the problem that we have sitting here. It took me 1½ years to learn half the acronyms that were coming out of there and not get them confused. Just as in any other segment of Government, there are enormous numbers of initials that you have to learn.

By the time you get that comfortable feeling where you know how they relate and you know who in the community does what, then you are gone. And it seems to me that part of the problems that the community faces is one that we have laid on ourselves that makes it impossible for them to be as forthright as it might be.

Mr. KAHN. Does an enlarged staff help in any way, sir?

Senator WALLOP. I do not know. I am pretty reluctant to talk about getting anything around here bigger at the moment.

It is less a question of staff. We all have to rely on staff and there is no question about that, but it is more a question of having Members of Congress, Members of the Senate, who take an active interest in the nature of what is good with regard to the intelligence community and can stay around long enough to be of some use once they learn something about it.

Mr. KAHN. I think there is no question about it. I do not know what the answer to the problem is because it may also happen that, if you stay around very long, or if the staff stays around very long, they may become the captives of the agencies upon which they are relying for information.

Senator WALLOP. That is a risk, but lately, at least, with regards to the Senate, that would take care of itself just because we have been rolling over about a fifth of the body every election.

Mr. KAHN. Even though you have made this statement, I wonder if I might just add one other minor point which I feel is important for the committee to realize and which may set the committee's mind at ease in a certain area, and this is the area of investigating the National Security Agency.

As you know, cryptologic information and intelligence is given a special place in Government classifications of secret information. This is because it is more sensitive. It is easy for a nation to deprive us of information simply by changing its codes upon suspicion that we are reading its messages, whereas if they fear that a spy is giving us information, they first have to hunt down the spy.

So directors of the agency have pointed out particular cases in which even mentions of codes and ciphers have caused other countries to change their codes. They have always attempted to quash as much of this discussion about cryptology as they possibly can. Most recently Admiral Inman told a House subcommittee that he had given to the House Select Committee on Intelligence a documented case of a foreign country's changing its codes with consequent loss of intelligence to the United States.

But I wish to point out that such cases do not occur as often as the National Security Agency suggests that they do. There are dozens and dozens and dozens of cases in which codes and ciphers are mentioned, as in this hearing room, and countries do not go around and change their codes.

There are a couple of very famous, or notorious examples, from World War II. Before Pearl Harbor, the Japanese were told by

the Germans, who had gotten it from an informant, that we were reading their codes. Well, the message was flashed around the world and the Japanese were told about it. Their total reaction was to take their cipher machines and paint the words "state secret" on them. That was it.

Afterwards, during the war itself, there were a number of statements in the press and on the floor of the Congress that the United States had broken the Japanese naval codes. The story has gone out that as a consequence of this, the Japanese changed their codes. In point of fact, they never did change their codes, despite these revelations. Whether they did not pick them up or they thought their codes were secure, I do not know. But the fact is that they never did change their codes.

Again in World War II, German U-boat commanders, concerned about the fact that while they were fueling from their milchcow submarines in the vast wastes of the Atlantic, a bomber would suddenly appear and start dropping depth charges—they became suspicious that perhaps there was some kind of a leak, most probably their codes. Well, even though this was reported to the commander of the Kriegsmarine, no changes were made.

And finally, during the cold war, when two Americans defected from the National Security Agency—Martin and Mitchell were their names—they came out from behind the Iron Curtain in Moscow and made a statement in which they named the names of countries whose codes the National Security Agency had broken. Despite this publicity, a number of the countries named did not change their codes.

You might ask, what could be the reason, what could possibly be the reason for this incredible ineptitude? Well, there are a number of human reasons for it. First people who invent codes and introduce them do not like to think that they can be broken.

No. 2, it is much easier to convince yourself that nothing has really happened than to go through the whole problem of inventing a new code, dealing with manufacturers, getting it produced, training thousands of very bored men in its use and introducing it with all the concomitant errors that come about from the introduction of any kind of a new system.

So many men prefer to say, "Hey, maybe in a few cases they have read our stuff, but basically we have so many key variables, so many changes, that this code, in general, is not being read."

A third reason is simply the cryptologists do not wish to admit failure, either to themselves or to their superiors.

As a consequence, for these very human reasons, even though you might think that every time a code is mentioned, some country is going to go about changing its cryptosystems, this does not happen.

The point that I am trying to make for the committee is that it should be aggressive and not fearful in investigating the National Security Agency, just as it is forceful with the Central Intelligence Agency and the other elements of the intelligence community and that the fears raised by the National Security Agency are not always valid, as it attempts to suggest.

Thank you.

Senator Wallop. Thank you very much, Mr. Kahn.

Dr. Godson?

[The prepared statement of Dr. Roy Godson follows:]

PREPARED STATEMENT OF DR. ROY GODSON, ASSOCIATE PROFESSOR OF GOVERNMENT, GEORGETOWN UNIVERSITY AND COORDINATOR CONSORTIUM FOR THE STUDY OF INTELLIGENCE

Mr. Chairman and Members of the Committee, I very much appreciate this opportunity to present my views on the proposed intelligence charter embodied in S. 2284. I am a professor of government at Georgetown University where I teach courses on intelligence and national security. I am also coordinator of the Consortium for the Study of Intelligence, a project of the National Strategy Information Center. The Consortium, a group of thirty academics at Universities and research institutes in various parts of the country, is studying the organization and functions of intelligence, its role in a free society, and the interrelationship between intelligence and the study and teaching of international relations. We also have been studying the requirements for an effective full-service intelligence capability for the United States.

My testimony today will, I hope, reflect the knowledge and experience I have gained from my study of intelligence, and particularly from the meetings of the Consortium, but the views I am expressing today are my own and do not necessarily represent those of Georgetown University or the Consortium for the Study of Intelligence.

Perhaps the most persistent theme of the national debate about intelligence in the last five years has been the need for effective safeguards against the possibility that U.S. intelligence agencies might violate American civil liberties in the future. This concern, I believe, has been well served by the oversight performed by this Committee and its House counterpart.

Now, in my judgment, it is time to shift the focus of the debate to other important concerns. This nation cannot afford to be surprised by world events, as we have been all too often in the past—including the very recent past—and we need better protection against hostile activities than may have been acceptable in the less threatening world of the 1950s. The focus of the debate should now become, what kinds of laws and practices do we need to ensure that we have an effective intelligence capability to deal with the activities of hostile entities, both from abroad and also from within the United States, and at the same time ensure that our own intelligence agencies do not transgress the civil liberties of Americans? I suggest, Mr. Chairman, that this is the key question before us today—the litmus test for judging the specifics of S. 2284: Will this proposed charter provide us with the means to take such actions as we deem essential to fulfill our own national purposes, to achieve what we want to achieve, and thus to advance the interests of the other democratic nations of the Free World?

Charters for the intelligence agencies can help to achieve these goals. I stress the word "help." No intelligence charter is an end-in-itself. It will do no more than provide a skeleton, which then must be fished out with solidly professional intelligence services and, on the part of the American people and their representatives, a continuing commitment to build and maintain such services. Although our intelligence agencies apparently functioned reasonably well from their inception until the mid-1960's without charter legislation, a combination of developments reduced their effectiveness in relation to the job they have to do. First, of course, the dangers confronting the United States burgeoned. The presence of hostile intelligence personnel in this country has probably at least tripled since 1960. International terrorism is now a clear, present, and persistent danger. The Soviet Union has become probably the world's greatest military power and has continued to wage a massive covert action campaign directed at what it calls "the main enemy," the United States, as the House Permanent Select Committee on Intelligence discussed at public hearings earlier this month.

But the agencies' decline has been not only relative to our adversaries (to the USSR in particular). There appears to have been a decline in performance as well. Beginning in the mid-1960's, feuds began to tear apart the CIA. We read about those feuds in books, in the New York Times, the Washington Post, even in Playboy. As a result, vital coordination within and among the agencies was strained and the counter-intelligence function in particular, according to a number of accounts, was seriously diminished. Presidents frequently had looked on the agencies and their products principally as means for bolstering their own policies. Each succeeding administration has pulled intelligence closer and closer

to the partisan political vortex. A number of the former participants in the intelligence process have maintained that from this have flowed some abuses of civil rights as well as faulty national intelligence estimates. Charter legislation cannot by itself reform intelligence. But it can give the community a structure better able to function and the strength to resist being compromised by politicization—i.e., a charter can enhance a necessary degree of independence under today's conditions.

The attitude, the laws and guidelines, and the bureaucratic conflicts prevailing in the intelligence community are now such that charter legislation may well be necessary to make significant improvements. After the attacks the community suffered in the mid-1970s, it is understandable that many of its officials should be wary of going beyond very specific written authorization. Once, our intelligence officers acted according to their own sense of mission. And, as far as I can determine, they did so, for the most part, professionally and responsibly. But now, if we want them to pursue a mission, we may be obliged to spell it out and enact a mandate. Prior to the 1970s, intelligence activities were governed more by custom and the common sense of its high officials than by law. This permitted a certain flexibility—for example, in coordination of counterintelligence among the FBI, CIA, and the Department of Defense. But now that laws have been hardened by guidelines, if we want coordination we may have to provide a statutory base. Today's bureaucratic conflicts within the intelligence community were not envisaged by the authors of the 1947 act. That act did not foresee that CIA would become the bureaucratic omnibus it is today. If we want bureaucratic squabbles to play a lesser role in governing the several disciplines of intelligence, we had better disentangle the knots of contention. And all of this is the legitimate realm of legislation.

There are several ways to approach charter legislation. One is represented by S. 2284, now before this Committee, and by its predecessor, S. 2525. In my opinion the bill addresses only one basic set of concerns, which I believe are too narrow in focus. It also is overly complex and, in some essentials, dangerously ambiguous. Let me say it again: the overriding questions we now must address (in the Charter among other vehicles) are these—in what does a solid intelligence capability consist and how do we build and maintain such capability? These are the benchmarks, in my judgment, for evaluating the proposal before us.

Now, with reference to the narrow focus: first, it seems to me that the bill's approach in the main is to address the kinds of complaints that the Church Committee made against the intelligence community, only some of which appear to be accurate. According to that Committee's final report, as of course you recall, the intelligence community suffers most from lack of effective control by this country's responsible political leadership; from lack of standards by which to limit intrusion into the private lives of Americans; from the overzealous pursuit of, in effect, its own "foreign policy"; and from excessive, wasteful duplication of activities. But it is possible to draw up an entirely different list of complaints (which the Church Committee skirted): For example, that intelligence has become excessively politicized; that performance standards have become slack, even as the only outside entity in the Executive Branch responsible for judging performance has been abolished; that this country lacks the professional capability to exert carefully-targeted influence in the world in support of its own interests, and that there is not enough duplication of analysis on vital subjects. This list of concerns would naturally lead to a bill quite different than the one now before you.

S. 2284 is flawed, I am suggesting, not because it addresses the concerns of the Church Committee—some of which are legitimate and should be addressed—but because it addresses those concerns to the exclusion of other, equal, or even more significant concerns and does so in a way that tends to undermine the entire intelligence system of the United States, to the grave detriment of the national interest. The bill suffers from overapplications or misapplications of past lessons, which may well have been misinterpreted in the first place. Let me offer several examples.

Consider two of the most publicized alleged abuses—the CIA's operation CHAOS and the assassination plots. The lesson that apparently has been drawn from these cases is that the agencies were running amok. Consequently, S. 2284 would force a host of important decisions to be made by the President, the Attorney General, or their designees. But in fact both cases, it appears, were decided on, some would say forced on CIA, precisely by Presidents and Attorneys General. The bill's authors probably do not mean to produce such a result but,

as S. 2284 stands, the agencies could do little without the direct, detailed involvement of high-level political officials. Consequently, the weight of political pressure might become intolerable. This could be as perilous for civil liberties as for intelligence.

As I understand the bill, it appears that the authors have decided that the U.S. military exercises too much influence in intelligence. It is difficult to know why. There is no evidence for the proposition that the U.S. military poses the kinds of dangers that all of us want to curb. In fact, military men have been quite absent from the lists of miscreants. Yet S. 2284 devotes pages to prohibiting military or ex-military officers from holding certain posts in the intelligence community, and gives the President's appointee, the Director of National Intelligence, the authority to take any category of intelligence out of the Department of Defense's jurisdiction and to control totally the budget of the Defense Intelligence Agency. In addition a little-noticed provision of S. 2284 would allow the directors of the CIA and the National Security Agency actually to reduce in rank any military person serving in those agencies. As a consequence, the President's political appointees would have greater power than ever to intimidate military intelligence, and the CIA's bureaucracy would be able to undercut the competition it has heretofore received from the military, which has been modest at best. In the analysis of intelligence. Does the Congress really want to legislate in such a way that the CIA may have less rather than more competition in the field of analysis, and on the unexamined premise that the military presents some special danger?

It is not clear, moreover, why the bill contains somewhat labored definitions of such terms as "foreign intelligence" and "counterintelligence." One wonders also why nowhere in the bill is there any statement of mission and goals with regard to foreign intelligence, counterintelligence and covert action. Why, in other words, legislate detailed definitions of activities but refrain from any statement of what these activities are expected to achieve?

The answer may be inferred from the fact that the heart of the bill consists of "standards" that must be met if the activities are to be carried out. S. 2284 centers on restrictions—both outright restrictions on certain activities and de facto restrictions in the form of cumbersome rules of procedure before even permissible activities may be undertaken. These lengthy and complex restrictions and procedural constraints could not have their dominant effect on the bill were they not pegged to definitions written, it would seem, specifically for that purpose.

What I am suggesting is that S. 2284 has been so structured that the only standards it mandates are those for restrictions and not for effective performance—and the latter does not simply flow from the former. Instead of being concerned only with specific restrictions on and requirements for prior notification of covert activities, for example, the bill could have defined the affirmative mission of covert action, and provided incentives for its performance. To illustrate further, perhaps the bill could specify the following or similar mission—focusing on standards of performance rather than restrictions:

"The agency shall prepare plans and assets, both physical and human, foreign and domestic, for exerting covert influence on political and military events abroad, as the President and the National Security Council from time to time may direct. The agency shall covertly operate in foreign areas with such assets to support or to oppose causes and persons, in both cases to further the foreign policies of the United States.

"The Director [of National Intelligence] shall report annually to the House and Senate, an assessment of those situations in the world where covert influence by the United States could serve to gain advantage for the United States, for persons friendly to the United States, and for causes supportive of U.S. foreign policy, and he shall explain what action the agency has taken or intends to take to achieve such advantage; the Director shall further report on instances in which the agency has refrained or intends to refrain from undertaking such operations."

This sort of language would provide wholly different incentives than the language by which S. 2284 seeks to regulate covert action.

Let me return for just a moment to the question of the unnecessarily cumbersome procedural restrictions that are built into S. 2284—for example, in sections 213 (b) (i) and (c) (i). If the target of intelligence collection by covert means is a "U.S. person" who is also a senior official of a foreign power, or is an organization "directed and controlled" by a foreign power, such collection can be authorized by an official designated by the President. But, if the target is a junior

official of a foreign power, or an organization directed but not under the total control of a foreign power, then intelligence can be collected only if the President personally signs off on it and declares that the information is "essential to the national security of the United States". Before the President can make such a finding, there must be a meeting of the National Security Council or of a committee designated by the President which must include the Secretary of State, the Secretary of Defense, the Attorney General, and the Director of National Intelligence—or their designated representatives. What intelligence officer would even initiate such collection against a junior official of a foreign power if it entailed involvement in such a maze of red tape? I am suggesting, Mr. Chairman, that this comes close to being process for the sake of process—or even de facto denial of certain means of essential intelligence collection.

All of this is doubly unwarranted because there are reasonable ways to safeguard the civil liberties of Americans without subverting the intelligence community in the process. For example, instead of enacting procedural constraints on the collection of information, we could let the information be collected but enact harsh penalties for its misuse—e.g., for improper dissemination. In the final analysis, of course, the existence of well-staffed oversight committees composed of legislators from both parties is the only real guarantee that the agencies will not do harm to the American people, even as they are enabled to do the jobs we want them to do, with professional competence and effectiveness.

It even matters little whether this Committee receives information concerning intelligence activities before or after they take place, as long as the members are fully informed and have the opportunity to dig further. Few intelligence officials are likely to transgress under these circumstances. It is well to note that the transgressions of the past were stopped precisely by oversight. It can even be argued that a complex statute which establishes all sorts of procedures—including court orders—for sensitive activities would diminish the effectiveness of congressional oversight, by lending the flavor of legitimacy to whatever the agencies did, whether or not it was wise and sound and reasonable, just because it went by the book. This would indeed be to elevate process over substance.

Finally, the bill is dangerously ambiguous. Case officers and agents will have to make judgments about what is and is not legal in circumstances that simply cannot be anticipated. In the nature of a risky profession in which instant judgment is often of the essence, it is far from fatuous to suggest that legal and interpretative skills may become more important than operational skills—or that legal counsel will have to be added to every operational team!

Let me call to your attention two instances of major ambiguity, among many more. S. 2284 prohibits any employee of the United States from assassinating anyone or conspiring to do so or encouraging anyone else to do so. On its face, this appears to be only reasonable for the agents of a civilized society. But the bill does not define assassination, nor does it provide for a waiver of that provision in wartime. What then are intelligence officers to do when they come in contact with foreign sources of information who may become involved in violent activities and who are willing to trade information in exchange for operational assistance? What are they to do in wartime with information regarding the movement of foreign officials which, if turned over to the military, might well result in ambush? What are they to do about terrorist acts? And to what extent can American officials engage in self-defense? Under this provision, they would virtually be compelled to seek written orders to cover every unforeseen (and often unforeseeable) contingency. Moreover, the provision would prevent the United States—in any and all circumstances, regardless of the stakes—from taking extreme but necessary actions which sovereign states always have reserved the right to take (although none has been so foolhardy as to talk about it).

The concept of "U.S. person" so prominent in this bill is another of many examples of ambiguity and narrow focus. As a result of this bill, and with very few exceptions, any association, incorporated or not, need only be "organized in the United States" or contain a "substantial number" of U.S. citizens or resident aliens to receive the same protection the Constitution affords U.S. citizens. This means that by very simple expedients foreign powers can run intelligence and covert operations in the United States against the United States with much less risk of detection. When is participation by U.S. citizens "substantial" enough to create a special immunity for foreign intelligence agents? I would expect that very few U.S. officials would risk violating the law to find out. I cannot believe that this is what the Congress wants to achieve.

But let us look at a set of facts that should concern ns even more. Many former and recently retired intelligence officials and a significant number of academics and other sepcialists maintain that U.S. intelligence today has become prone to sloppy habits, even disarray, and is falling below performance standards we have every right to demand of it. Some failures long known to scholars are also becoming unmistakable to the public. Already the Congress has taken on major responsibility for intelligence via oversight. By passing a charter, Congress would make itself as responsible for inteliigence as it is for defense—or any other major governmentai activity. Common sense would require especially that the members of the Congressional oversight committees satisfy themselves as to the probable causes of these intelligence failures and that they have done everything possible to minimize the chances of their recurrence. It will not do, in the face of repeated failure, simply to repeat (as some have done), "we have the world's finest intelligence system," and let's not criticize it. It is far from clear that we have the world's best inteliigence system. If indeed we do, we should never cease trying to improve it anyway.

For example, three years ago, the nation found out that for more than a decade our National Intelligence Estimates (NIEs) were telling policymakers that the Soviet Union would not try to achieve the ability to fight and win a war. Now we know that they were not only trying, but that they appear to be succeeding. The NIEs apparently did not tell us about the "window of vulnerability" we are now entering. This came about not because there was a lack of information but because the anlysts did not interpret the data correctiy. In fact, several anaiysts in the Department of Defense and a few at CIA were right on the mark. As far as can be determined at this point, the estimative failure occurred because the CIA's analysts in this field got carried away by their own belief that all reasonable men would look at nuclear weapons in much the same way as they did—which happened to coincide with the national policy of detente—and because the system by which National Intelligence Estimates are produced tends to give supremacy to the CIA "iine" and short shrift to dissenters. Today, the intelligence estimates the Administration is making availahle (for example, the report apparently leaked to the Washington Post on the strategic estimates relating to SALT) to bolster its current policies similarly give no hint that much of the professional defense intelligence community strongly disagrees. One is entitled to ask—how can we get the full range of intelligence analysis before executive policymakers and Congress so that they can make responsible decisions? How can we disentangie intelligence from excessive, transient political influence in the narrow sense?

In the Middle East in recent years, the United States has suffered a number of major surprises which obvlously, in terms of neccssary lead-time, never should have been surprises. For over thirty years, we have invested heaviiy in clandestine services, yet they did not tell us enough about the Iranian revolution, or the Afghan coup of 1978, or Soviet intentions in Afghanistan in 1979. It is little comfort that our satellites sent us pictures of the events as they were taking place. My impression is that we did not know about the KGB's role in Iran and do not now know about many other critical developments in the world because we have simply not sufficiently penetrated the ranks of our adversaries, incluiding dissident groups in friendly countries.

Why is this? Some possible answers seem quite apparent. You may want to consider the fact that our clandestine service is aimost devoid of cover, and how this came to be. To my knowledge, unlike any other country in the world, we do not even offer our clandestine officers full "official cover." As for unofficial cover, we hardly provide incentives for private groups to cooperate with intelligence operations. Qnite the contrary. The Deputy Director of CIA testified before the House Intelligence Committee that corporate executives have told him that under current laws and guidelines they would be "crazy" to cooperate with the CIA. In addition, this bill would codify the regulations restricting our clandestine officers from assuming the cover of journalists, academicians, students, or clerics. This leaves few alternatives open. Indeed, there are legitimate concerns about certain forms of cover—journalistic for example—and some potential for dangerous role confusion. In my view, this counsels for care against indiscriminate use of these covers—not for a flat, inflexible ban that strips us of potential benefits of a high order.

Moreover, the clandestine service mnst constantly fight bureaucratic battles within CIA. There has been a steady decline in the size of the clandestine directorate (the DDO) for more than ten years and, as I understand it, a consequent snbstitution of technical for human collection. In sum, the Congress should decide

whether we should get serious about the clandestine service, becau argument can be made that we should not have one—a faulty a judgment—no argument at all can be made for having one that from the start.

Much the same can be said about our capability for covertly in abroad. As the Soviet Union and its surrogates have moved into various parts of the Third World usually we have not been able to foster, marshall, and support effective indigenous opposition to them, either political or paramilitary. Is this satisfactory? If you decide that we should be able to exercise greater covert influence you must determine why the CIA's capability to do so has so gravely deteriorated. Then you must decide how to structure both statutory and budget authorizations to rebuild the capability. It is not at all clear to me that you should leave this matter entirely to the intelligence community, a substantial part of which has been dubious about the value of covert action. It is also a responsibility of oversight.

Many knowledgeable people who have left the FBI and CIA maintain that U.S. counterintelligence is not even up to realizing quite what it is up against. A major reason for this, they suggest, is lack of interest at the highest levels of government. Among other reasons is that counterintelligence never really took root at CIA. There is an inherent conflict between the professional interest of those who collect intelligence and those who must question the validity of the intelligence collected. Counterintelligence in CIA was organizationally subordinate to the very people whose accomplishments and integrity it was supposed to question—an impossible built-in conflict. Another reason is the divided jurisdiction within counterintelligence between the FBI and the CIA, jurisdiction both as to subjects and where events are taking place. Just consider what would happen to the efficiency of the drug enforcement agencies, e.g., if they were split into foreign and domestic branches separated by the laws and regulations that separate FBI and CIA. The situation in counterintelligence is worse than that because, whereas DEA works on a single problem, the FBI and CIA have to deal with a host of different ones, involving several disciplines.

Any charter legislation will affect this situation in some measure. It is for you to focus on the essential problem, the present state of affairs, and where now we should be heading. This is no easy assignment. But it *must* be undertaken.

This relates directly, of course, to intelligence "reform" in the most affirmative sense. I want to discuss briefly and in general terms the kinds of reforms that I hope you in the Congress will at least consider. Over the last few years, there have been many hearings on protecting the American people from the abuses of their own government. But there have been none, or at least no public ones, on what capabilities the United States needs to meet the challenges of the future and how the American people can be protected from hostile foreign intelligence services operating both abroad and within the United States.

First it would seem appropriate to consider how the intelligence community should be organized so as to insulate it from undue political influence—but never from responsible oversight and control—and to disentangle the web of bureaucracy that has led to so much destructive conflict within the community.

Certainly the general concept of an overall Director of National Intelligence is worth serious consideration. But is it appropriate for such an official to double as the head of any one of the intelligence agencies? Moreover, as the President's man, should he taken part in drafting intelligence estimates? If he were excluded from specific operational and institutional duties, it might at least temper the conflict that directors always have faced between their loyalty to the administration and to the CIA, their responsibilities to the rest of the intelligence community, and their commitment to good and effective intelligence.

Should the several agencies which comprise the intelligence community be headed by directors appointed for fixed terms which would overlap administrations? This might help to guarantee an essential requirement for intelligence: independence. (Yet, as always in this incredibly complex policy area, there also are countervailing considerations to weigh and balance. Independence can cross the line and become undesirable in isolation from responsible political control.)

Should the CIA continue to exist as an omnibus organization whose widely different tasks have brought its elements into conflict?

Should every agency of the U.S. government be required to furnish our clandestine services with full credentials and working assignments abroad for purposes of "cover"? And should the law prohibit any American, regardless of his occupation, from lending willing assistance to U.S. clandestine intelligence?

The task of analyzing intelligence is most important. Few analytical failures have so endangered the United States in the last generation as the underestimation of the Soviet Union's buildup of strategic arms and defense expenditures in nearly a decade of National Intelligence Estimates. This underestimation continued despite the availability of information that gave the true picture of what was happening. While the intelligence community itself apparently was beginning to reconsider its position, it was not until the President's Foreign Intelligence Advisory Board (PFIAB) allowed an independent group of analysts to go through the data and make its sharply contrasting report that fundamental revisions were made. Unfortunately, President Carter abolished this board as one of his first official acts. Should PFIAB or something like it be reestablished?

Moreover, should the law establish more than one center for the production of National Intelligence Estimates? It would seem that intelligence analysts—like professors and legislators—are more accurate, sharper, more up to their jobs, to the extent that they have competition. If this healthy competition in the analysis of intelligence is to be encouraged, should there be recognized by law only one source of intelligence estimates—the CIA's National Foreign Assessment Center? Ought another be created, either a much-improved Defense Intelligence Agency or a wholly new source of alternative analyses? Or is this really for "the law" at all? Law lends clarity, but also it can lead to inflexibility.

Counterintelligence has never been "popular" (or even much understood), but it is absolutely vital. Somehow, the United States must develop a first-class capability to deal with the counterintelligence problems of the 1980s and 1990s. We may have to mandate this in law. For example, the law could establish a locus, a physical site, where employees of the FBI, the CIA, and the military could maintain integrated central files on counterintelligence and counterterrorism. Here, teams of officers from the military and the domestic and foreign intelligence services could have access to the same data and make rational decisions about the nature of threats from foreign intelligence services and terrorist groups. From this office, guidance and tasking would go out to the counterintelligence elements in various parts of the government on how to pursue cases in their respective jurisdictions. I am not convinced that we have yet developed the best way to organize and deal with counterintelligence. But to pretend that we have counterintelligence without some sort of central files, analysis, and direction is wholly unrealistic.

These remedies are largely in the realm of organization. Much could be done to improve intelligence by a wise and energetic President, without recourse to such organizational changes. Yet we should consider them anyway because, as the nation's founding documents warned, and as we have bitterly experienced, "enlightened statesmen will not always be at the helm."

Organization is not an end-in-itself. It will not, alone, guarantee excellence of results. Faulty organization and misconceived law or executive orders can, however, severely hinder the possibility of quality performance and virtually guarantee the opposite.

Thus, I very much hope, Mr. Chairman, that this Committee and the Congress will explore alternative approaches to analyzing the threats and challenges we face and alternative methods of dealing with them—before fixing S. 2284 into law. With all respect, as it stands it is not good enough. It does not proceed from a clear definition of role and missions and a deliberate calculation—never an easy task—of costs and benefits.

In the meantime, a number of problems that have come to public attention need to be addressed—as they have been in various proposals now before the Congress, particularly the bills introduced by Senator Moynihan and by Congressman Young. These are:

1. *Reducing the number of congressional committees receiving reports on covert action to the two Intelligence Committees.*—While there remains some controversy over "prior notice," a reasonable compromise would seem to me to be the one developed by Congressman Zablocki and approved by the House Foreign Affairs Committee—that is prior notice along with the availability of a waiver for the President, where there is danger to human life or in other emergency situations.

2. *Reform of the Freedom of Information Act to protect sources and methods and remove excessive burdens on the agencies.*—Proper oversight by the intelligence committees would seem to me to be more effective and less dangerous to security than selective release under FOIA. As a scholar I, of course, want to

obtain as much information as possible, but I understand also the need to protect sensitive sources and methods.

3. *Protection of the names of officers, agents, and assets of the clandestine service.*—I support the principle embodied in Congressman Young's bill that extends the same protection to FBI counterintelligence and counterterrorism agents and informants. I am concerned about the First Amendment implications of the section related to the release of the names by persons who never have had authorized access. However, I am also concerned about protecting officers and assets from those who would expose them and their missions to danger. Some have pointed out that today, in the absence of law in this area, it can be more dangerous to work clandestinely for the United States than to work openly against the United States.

I believe careful consideration should be given to both protecting First Amendment freedoms as well as protecting officers and assets, and I hope the Committee in its deliberations will be able to reconcile these two values.

Mr. Chairman, your Committee and its House counterpart already have achieved a great deal through rigorous oversight. In a real sense, and appropriately so, you now share in both the successes and failures of U.S. intelligence: you are part of the action. The next step is to fashion a carefully-targeted Charter that will delineate the missions of the intelligence community and the necessary means to accomplishing them. In the interim, as I have suggested, there are several pressing problems for which reasonable solutions are at hand.

TESTIMONY OF ROY GODSON, ASSOCIATE PROFESSOR OF GOVERNMENT, GEORGETOWN UNIVERSITY AND COORDINATOR, CONSORTIUM FOR THE STUDY OF INTELLIGENCE

Mr. GODSON. Mr. Chairman, may I also submit a lengthy statement for the record and summarize some of its major propositions.

I would propose also that we think about analysis and estimates in terms of the other components of intelligence. As was pointed out, collection is very much related to analysis, and I would also wish to argue that I think counterintelligence, and even covert action, still should be regarded as part of our consideration of analysis.

Mr. Chairman, it seems to me that the most persistent theme of the national debate about intelligence has been the need for effective safeguards against the possibility that U.S. intelligence agencies might violate American civil liberties in the future. This concern, I believe, has been well served by the oversight performed by this committee and its House counterpart.

Now, in my judgment, it is time, and I welcome the shift in the focus of the debate to other important concerns. I would argue that this nation cannot afford to be suprised by world events, as we have been all too often in the past and we need much better protection against the hostile activities that may have been acceptable to us in the less-threatening world of the 1950s.

The focus of the debate should now become—and I must say this is the first hearing where I think really it has become—what kinds of laws and practices do we need to insure that we have an effective intelligence capability to deal with the activities of hostile entities, both from abroad and also from within the United States and, at the same time, insure that our intelligence agencies do not transgress the civil liberties of Americans?

I am suggesting, Mr. Chairman, that this is the key question and it is the litmus test for judging the specific legislation before us today and some of the other measures that I hope will be considered by the Congress. Will this proposed charter provide us with the means to

take such action as we deem essential to fulfill our own national purposes and to achieve what we wish to achieve?

I would argue, Mr. Chairman, in contrast to some of my colleagues here today, that charters for the intelligence agencies can help achieve these goals. I stress the world "help." No charter is an end in itself. It will do no more than provide a skeleton which then must be fleshed out. But I would argue that charters, and the organization as provided in these charters, can make a difference.

I would argue that law can make for a better intelligence product, and some kinds of laws and arrangements can make for a much worse product. As I said, in this sense I think I differ possibly from some of the statements I have heard today.

Now, what I would argue is that the proposed charter, specifically S. 2284, is inadequate for the tasks that we face in the future. It is far too narrow in focus and it is far too complex and dangerously ambiguous.

If I may, let me briefly summarize why I think it is too narrow in focus as well as briefly touch on some ambiguities.

First, it seems to me that the bill's approach, in the main, is to address the kinds of complaints that the Church committee made against the intelligence community, only some of which appear to be accurate. According to that committee's final report, the intelligence community suffers most from lack of effective control by this country's responsible political leadership, from lack of standards by which to limit intrusion into the private lives of Americans and from the overzealous pursuit, in effect, of the intelligence community's own foreign policy. Also I think the committee was charging that it suffers from an excessive and wasteful duplication of activities.

But it is possible, I believe, to draw up an entirely different list of complaints which. I believe, the Church committee basically skirted.

For example: That intelligence has become excessively politicized, that performance standards have become slack—even as the only outside entity in the executive branch responsible for judging performance, the PFIAB, was abolished. That this country lacks the professional capability to exert carefully targeted influence in the world in support of its own interests and that there is not enough duplication of analysis on vital subjects.

Now, this list of concerns, the second list, would lead to a bill quite different from the kinds of proposals that are before us today.

This bill, I am suggesting, is flawed not only because it addresses the concerns of the Church committee, some of which. I believe, are legitimate and should be addressed, but because it addresses those concerns to the exclusion of other equal or even more significant concerns and does so in a way which I am afraid, tends to undermine the entire intelligence system of the United States to the grave detriment of our national interests. The bill, in sum, suffers from an overapplication or misapplication, of past lessons which may well have been misinterpreted in the first place. In my statement I offer a number of examples to illustrate this point.

I would, Mr. Chairman. like to cite one specific area which I think is perhaps the most egregious example of single and narrow-minded focus; I think this can be found essentially in the whole of title I and title II.

It is not clear to me why the bill contains somewhat labored definitions of such terms as foreign intelligence and counterintelligence. One wonders also why nowhere in the bill is there any statement of mission and goals with regard to foreign intelligence, counterintelligence, and covert action. Why, in other words, legislate detailed definitions of activities but refrain from any statement of what these activities are expected to achieve?

The answer may be inferred from the fact that the heart of the hill consists of standards that must be met if these activities are to be carried out.

S. 2284 centers on restrictions, hoth outright restrictions on certain activities, and de facto restrictions in the form of cumbersome rules of procedure before even permissible activities may be undertaken.

These lengthy and complex restrictions and procedural constraints would not have their dominant effect on the bill were tbey not pegged to the definitions, it would seem, specifically for that purpose.

What I am suggesting is that the bill has heen so structured that the only standards it mandates are those for restrictions and not for effective performance. Instead of being concerned with specific restrictions, the bill could have defined tbe affirmative mission of various aspects of intelligence, and in my prepared statement I cite one example, a specific case which I have studied, and that is covert action.

This would produce a statement of goals and missions, a method of inducing performance rather than one simply of restricting performance, and I believe this is lacking in the charter.

I could, Mr. Chairman, also cite some very unnecessary, cumbersome restrictions, and I do provide examples of this in my statement, and I will not take up your time with this.

All of these restrictions, I believe, are douhly unwarranted because there are reasonable ways to safeguard the civil liberties of Americans without subverting the intelligence community in the process.

For example, instead of enacting procedural constraints on the collection of information, which we all agree is vital, we could let the information be collected, but enact harsh penalties for its misuse—for example, on the dissemination of collected information.

In the final analysis, the existence of well-staffed oversight committees composed of legislators from both parties is the only real guarantee that the agencies will do no harm to the American people, even as they are enabled to do the jobs that we want them to do.

Finally, I believe the bill is dangerously ambiguous. I attended hearings of this committee and its House counterpart and I heard senior members of the intelligence community unsure about key provisions of the bill.

In fact, Chairman Boland of the House Committee at one point pointed out that the Russians, or indeed other people, could not learn very much about our intelligence activities from reading the charter as it has been proposed.

He argued the reason for this was it was so full of ambiguities and complexities that he and the Russians would both be confused by this kind of legislation.

Mr. Chairman, instead of addresing more of the specific ambiguities, the absolute and procedural restrictions in the bill, may I suggest some of the directions which I hope this committee and its House counterpart will turn its attention to.

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e last few years, there have been many hearings about pro-
American people from the abuses of their own Government,
oday there have been no hearings—or at least no public ones
aware of—on the capabilities the United States needs to meet the challenges of the future.

First, it would seem to me appropriate to consider how the intelligence community should be organized so as to insulate it from undue political influence, but never from responsible oversight and control, and to disentangle the web of bureaucracy within the intelligence community that has led to so much destructive conflict within the community.

Certainly, the general concept of an overall Director of National Intelligence is worth serious consideration, but is it appropriate for such an official to double as the head of any one of the intelligence agencies? Moreover, as the President's man, should he take part in drafting the intelligence estimates?

If he were excluded from specific operational and institutional duties, it might at least temper the conflict that directors have always faced between their loyalty to the administration, and to the CIA, and their responsibility to the rest of the intelligence community.

Should the several agencies which comprise the intelligence community be headed by directors appointed for fixed terms which would overlap administrations? This, it would seem, might help to guarantee one of the qualities that I think we all search for: independence.

Should the CIA continue to exist as an omnibus organization whose widely different tasks have brought its elements into conflict? Mr. Chairman, I think other countries have found it wise to separate these various components into different organizations. I do not think yet we have addressed this question in the United States.

Should every agency of the United States be required to furnish our clandestine services with full credentials and cover and working assignments abroad for purposes of cover?

Should the law prohibit any American, regardless of his occupation, from lending willing assistance to U.S. clandestine intelligence?

The task of analyzing intelligence is most important and I think few analytical failures have so endangered the United States in the last generation as the underestimation of the Soviet Union's buildup of strategic arms and defense expenditures in nearly a decade of national intelligence estimates.

This underestimation, I think, continued despite the availability of information that gave the true picture of what was happening. While I think the intelligence community itself was about to reconsider its own position, it really was not until the PFIAB allowed an independent group of analysts to go through the data and make its sharply contrasting report that fundamental revisions were made. Unfortunately, President Carter abolished this board as one of his first official acts.

Should PFIAB, or something like it, be reestablished? Should the law specifically establish more than one center for the production of national intelligence estimates?

It would seem that intelligence analysts, like professors and legislators, are more accurate, sharper, more up to their jobs, to the extent that they have competition. If this healthy competition in the analysis of intelligence is to be encouraged, should there be recognized by

law only one source of intelligence estimates—the CIA's National Foreign Assessments Center? Instead, should another center be created, either a much-improved Defense Intelligence Agency or a whole new source of alternative analysis?

Finally, Mr. Chairman, counterintelligence also seems worthy of our attention, even as we consider analysis and estimates. Counterintelligence has never been popular, but it would seem to me it is absolutely vital for the collection and analysis of intelligence. Somehow, the United States must develop a first-class capability to deal with the counterintelligence problems of the 1980's and 1990's.

I think we may have to mandate this in law.

For example, the law could establish a locus, physical site, where employees of the FBI, the CIA, and the military could maintain integrated central files on counterintelligence and counterterrorism.

Here, teams of officers from the military, as well as from the domestic and foreign intelligence services, could have access to the same kinds of data and make rational decisions about the nature of the threats from foreign intelligence services and terrorist groups.

From this office, guidance in tasking would go out to the counterintelligence elements in various parts of the Government on how to pursue cases within their respective jurisdictions.

I am not convinced that this is, in fact, the best way to organize counterintelligence for the future, but to pretend that we have counterintelligence, which is vital, also, to our analytical ability, without some sort of central files, analysis and direction, I believe, is wholly unrealistic.

These remedies are largely in the realm of an organization, and organization, I think we will agree, is not an end in itself. It will not alone guarantee excellence of results and in this I do, in essence, concur with other witnesses here.

But faulty organization, misconceived law, or executive orders can severely hinder the possibility of quality performance and virtually guarantee the opposite. Thus, I very much hope that this committee and Congress as a whole, will explore alternative approaches than those that have so far been proposed, to help us analyze the threats and challenges we face, and alternative methods of dealing with them.

With all respect, Mr. Chairman—and I know a lot of hard work went into the formulation of 2284—I do not believe as it stands that it is good enough. It does not proceed from a clear definition of roles and missions and a deliberate calculation of costs and benefits.

Thank you.

Senator WALLOP. Thank you, Professor Godson. I guess that is one of the reasons why we are having this hearing.

It just strikes me that it is impossible to create a charter without knowing what kind of service it is you want the community to provide for you.

My problem with the charter is not that I do not think that we ought not to have one—because I do—but that this charter authorizes a little bit of activity and it prohibits a great deal of activity and it directs nothing. It simply does not charge the community with the responsibility and authority to do its job.

But having listened this morning, I like the idea that you had, Professor Allison, that we should hold hearings on the community's performance and on the level of effort we expect from it. I know that is sort of standing in the way of prompt action which some would like to see on charters, but it seems to me that there may be a structural problem within the community that you are not going to resolve by passing a charter which sets in concrete the structure that presently exists.

I worry that if the Congress says that for the next decade or two the community's structure will remain what it is the day we passed the charter, we will have to change the structure somewhere down the road in order to have an intelligence community that serves the needs of the public.

Professor Godson, one of the things that this committee can do well, and has done well, is to look after the rights of Americans. It seems to me that those rights are really clearly established and do not need to be reiterated. But is it also an abuse of the American people to so cripple the community that it leaves us without adequate information by which to conduct our role in the world, and to do these things in the world obviously only we can do?

Is it also an abuse of the American people to provide a mechanism that so cripples the intelligence community that it provides us with inadequate, or cannot provide us with adequate, information to conduct ourselves as is appropriate for the leading Nation in the Free World?

Mr. GODSON. I would respond yes, sir, it is a type of abuse.

I think, through oversight, Congress has taken on responsibility both for the successes and the failures of the intelligence community. You now are part of the action.

It could be argued that in the past, the Congress as a whole may not have known enough, or may not have wished to know enough, but now that it has taken the responsibility, and now that you are receiving all the information you request, it seems to me that it would be also considered an abuse, I think, in the way you have characterized it, for you not to take the opportunity to look into the performance of American intelligence.

Senator WALLOP. It is an interesting problem.

Mr. Nitze, I asked you earlier a little bit about who does the overriding of the evidence, and it is obvious that it comes in many forms. Is there an inherent danger for an analyst to be accused of being a wolf-crier?

In other words, supposing that an analyst did take a look at all the information on the eve of the Yom Kippur war and did provide that information to the policymakers and the policymakers then reacted in such a way that the Yom Kippur war never came off.

Would he then be in danger of having been accused of crying dangers that did not exist?

Mr. NITZE. There are two points on that, Senator. The first point is that it has been my experience that people down the line in the analytical and synthesizing jobs of producing estimates—at the lower level—are dedicated to the evidence, and they have been first class; they do very good work.

The problems arise when those bits and pieces are put into a bigger context, for instance, when you get an overall report on the vulnerability of missiles. Then all these bits and pieces gets shoved around and somebody puts in a sentence saying, despite all this evidence, we do not believe that the Soviets will have a meaningful capability because we believe that they are not seeking anything more than parity—that sort of line of evidence.

Or assume the subject matter is the civil defense effort, for instance. This was another illustration of a case where for a long period of time they had only half of one person's time devoted to an important subject, that of analyzing Soviet civil defense. They put more people on it who did very good work in collecting the evidence; they got really first-class evidence.

Then it was put into an interdepartmental report. The basic evidence is correctly reflected in the interdepartmental report, but also is included a paragraph that says, despite all this evidence, we do not believe that this will have any effect upon the Soviet willingness to engage in a course of action which might lead to a risk of nuclear war.

These sentences seem to have been put in at a higher level of authority in the intelligence community. I think they get put in, not necessarily on the direction of the policymakers, but at that level where the views of the policymakers are reflected, It is where the line that I tried to draw in my prepared statement becomes vague, between the estimators and the decisionmakers.

It is at that point where this thing——

Senator WALLOP. Is that the point where we have to try to find some means of protecting ourselves from the chic opinion, as you put it?

Mr. NITZE. I, frankly, have not been able to think of any organizational arrangement which would make more specific the proper dividing line between the policymakers and the estimators. As I said in my prepared statement, both groups need to be closely related and understand each other's business, but they must also understand that there should be a very specific and distinct line between what the estimator is supposed to do and what the policymaker is supposed to do.

Senator WALLOP. Well, we can never protect ourselves from the administration's, any administration's susceptibility to chic thinking. No amount of writing will take place that can change that.

But we have to figure some means that can get him, or her, and in such a form that at least they can be held accountable for what they did or did not do on the basis of what they knew.

It seems to me that is our chore, to somehow or other provide the system so that those who made the judgment and created the policy are ultimately accountable.

Mr. NITZE. Is this a field in which you really want to emphasize accountability?

Senator WALLOP. Their accountability is before history or before political polling booths.

Events will decide whether policymakers have decided well on all, but it seems to me that it is unfair to hold somebody accountable for acting on the basis of information that came to him with everything hedged and couched in terms that nobody really understands.

Mr. NITZE. I would like the estimators to go beyond the tout sheet and make as precise estimates as they can. I used to have arguments

about this with Sherman Kent. I asked Sherman once, what the likelihood was that the Russians would attack Yugoslavia—this was after the beginning of the row between Tito and the Kremlin. Sherman said, we do not make precise estimates. We use adjectives. I replied, that does not do the policymaker much good. I have to make up my mind what to recommend to Mr. Acheson; I will do that on the basis of whether I think the risk is around 10 to 30 percent or whether I think it is 60 to 80 percent. Whether you give me that estimate or not, I am going to have to decide on a policy recommendation. Would it not be better if you give an estimate to me, rather than my deciding alone, because I do not know as much about this as you do? He still would not do it, but it troubled him and he wrote a long and wise article about it later.

General GRAHAM. If I might interject, Senator, I always felt as an intelligence chief, that for key analytical subjects, I did not want them coming through the same guy. When I had DIA, despite being short of staff and analysts and so forth, I made sure that not all analysts reported through the same general to me on key subjects.

So I duplicated, to protect myself—of course, this did not protect anybody from my bias, because I was over those two generals—but it protected me and I think it helped get good intelligence.

To me this is sort of the fundamental problem in our arrangements today, and why I hate to see a charter come out that reestablishes the concept that somehow there really is only one source of true national intelligence and the rest of the folks can write footnotes. Because there are just all sorts of ways that if you are in charge of the process that those footnotes can be made to look silly.

I used to try, in the intelligence process out at the U.S. Intelligence Board to get a separate opinion in there, and I would hook it to a paragraph or a sentence, and then find that the drafters were taking that paragraph or sentence away, so I did not have any place to hook my dissent.

And this is not wickedness. This is just the natural inclination of bureaucrats who have a bureaucratic imperative to serve.

So I think that if I as Director of DIA wanted to be sure that key opinions, or key analyses were made by analysts who did not report through the same general, I think that the country as a whole needs to have key analyses made that are not reporting to the same bureaucrat, general, or whatever, that it has to come up through separate chains. Otherwise an office view becomes the order of the day.

I worked in the Office of National Estimates for many years and an office view did come to pervade the Office of National Estimates.

Senator WALLOP. Let me ask you this. Did it tend to reflect contemporary political thinking?

General GRAHAM. Yes; to a certain extent it did. I have seen in one administration where the office ethic was to write intelligence to buck the administration and another one where it was to serve it as best you possibly could, and this changed the nature of the language that went forward.

As Mr. Nitze has pointed out, you can take a big, thick intelligence estimate and you see in the back of it there is a whole lot of evidence about what actually is happening, and on the top for the readership of busy men is a résumé that could have been written by Walter Lippmann without any access to intelligence whatsoever.

But it is that top thing, it is these summaries, these executive summaries, where you see influence of current politics coming to the fore and changing the nature of the document.

Senator WALLOP. General Graham was talking about Portugal falling apart and somebody asking you why you did not have more people working on Portugal. I can understand why you did not. But it seems to me that the other side of some of the undercurrent that I have heard from all of you, is that, in addition to dealing with the immediate, somebody ought to be looking down the road a little bit. It had to have been almost predictable that things would start falling apart in Portugal after the death of Salazar.

Anybody looking at Portugal would have said gee, you know Salazar is getting on; or, there is enough unrest that we should begin to take a look at the forces that will be at work out there.

Where would we put such long-term research? Is that a tasking thing? Who does that?

Mr. NITZE. That is a function of the decisionmaking apparatus, the policy people. The policy people ought to ask questions and they ought to have this in mind.

Certainly, in the days when I served in the policy planning staff of the State Department this is exactly what we thought our business was—to look out in the future from today, out 5, 10 years and try to see what the important things might be 5, 10 years from now and what actions today might influence the possibilities you had in the future and to formulate the pertinent questions which we would ask the intelligence community.

Senator WALLOP. OK. Then it would be your suggestion that that not be contained within the structure of the intelligence community, that the consumers would be the ones who looked out——

Mr. NITZE. It goes back and forth between the two sides. In part I was saying that it is a bad thing for the executive branch and for the policymakers to interject their bias into the intelligence community. On the other hand, the only way in which you can get the right spread of questions before the intelligence community is from the decisionmakers, from the executive branch policy people.

It is for this reason that I do not think there is any rule of thumb where you cut off one and say that this is the limit of what he ought to do, and tell the other he should not do that. It requires the closest cooperation between the policymakers and the estimating community for it to go well.

Mr. ALLISON. If I could add a point, Paul, I think that I agree with that very much, but I think there are two issues that you are lumping together.

One issue is how you get the array of questions that you would like to have people addressing; I agree very much with you that the idea of asking the policy people, or even some broad survey in addition, what are the questions that are going to arise that will matter 5 years hence, 10 years hence is a very good mechanism. After you have got that list, however, there is a second issue of how you go about addressing and applying to those important questions some capacities, both in collection and in analysis, over a long period of time?

Now, we could sit down here and in 5 minutes, make a list of the 25 questions which any intelligent U.S. Government would have to know the answers to in order to fashion a policy toward Iran today.

It is not very difficult: What, for example, would one like to know about if the Ayatollah Khomeini should die, how is a successor ayatollah chosen?

What is the state of the military in Iran today and in particular, who controls which tanks? We could go through a long list of questions.

But to be able to answer those questions in a reasonable manner, 5 years ago people would have had to have been investing both in the understanding of Islamic fundamentalism, and also in the development of some capacity on the ground in order to get current intelligence. Neither of these, I suspect, have been done well.

So, in part, it is a matter of getting one's list of questions. In part it is a matter of bringing to bear the capacity to give you both the shorter term and some longer term analysis of those issues and that goes to the question of the structure of the community and the level of effort.

I think it is back to the point that Senator Wallop raised about looking at the broad level and character of the effort, to say, is it commensurate with the problems? If Danny Graham has only one-sixth of a person working on Portugal, it is no surprise that the guy does not know too much about Portugal.

Mr. GODSON. Senator, may I interject also?

I agree with what was said here but it seems to me that a way of getting at this problem, presents itself by the kind of activity we are engaged in today.

That is to say, you as a committee now have a chance to view overall what the executive branch is doing. You do this in general and you do it through budgetary oversight as well.

It would seem to me if the administration comes in and says it only has one-sixth of a man for Portugal, or in the course of your investigation you determine the administration only has one-sixth of a man for Portugal, and other problems which seem to be of some significance, you could ask the question what do you need at that point, and then try to direct the administration in a given direction.

Of course, you cannot enforce this. But you can certainly raise questions. This leads back to the question of a statement of missions in the charter. That is to say, by including a statement of mission which requires the DNI or DCI to come in and present what he is doing, and also what he is not doing, to this committee, you then would be in a position at least to try to nudge him in a certain direction and it would seem to me you have some ability to do that.

Senator WALLOP. That is all the more reason that you have to have a committee with some kind of continuity on it because frankly, two situations, at least in my experience, persist.

One is that you frequently will not get, as a committee, answers in any kind of an official setting from the community's witnesses, working for an administration. You will get all kinds of dodges and runs around the outside edges of it, but unless a guy is about to retire, it is pretty hard to get a really honest, hard answer to your question.

The second one is that it is pretty hard to ask a really hard, relevant question unless you have been around long enough to draw some historical background and some background from the events that have been unfolding.

You cannot just come on and start it in your first year on this committee unless you have been, as Senator Jackson has, a decade or more on the Armed Services Committee or have some other kind of experience. Even then your dealings with the community become rather specific and they appear to be no different than any other of the bureaucracies.

They appear, in many instances, to reflect what they have been told to reflect.

Mr. NITZE. Mr. Chairman, I think it was in 1966 or 1967 that this problem arose very intensely between the CIA, the Defense Department, the State Department, and the Bureau of the Budget. As a result, a program was created to try to organize a computer program which would try to reconcile the relative importance of intelligence objectives—things that you wanted to know about—with the cost of or the allocation of resources to, that objective.

We went through at least 2 years of intense effort trying to rate various things that we wanted to know in a hierarchy and then trying to allocate expenditures with respect to each one of those intelligence objectives.

This became a complicated exercise involving many people, and it really produced no worthwhile results. It came down to just what you are talking about, that the judgment of those with experience was much better than this phony computer program which appeared to give you more solidity than could actually be built into it.

General GRAHAM. Well, actually I reinvented that wheel when I was working for Bill Colby as the community intelligence chief because we had the same question come up again, and we put together a thing called the key intelligence questions and tried to get the consumer to say what were there key intelligence needs.

That was little less formal than the attempts to do it in a computerized fashion.

There is something about the intelligence business that I should have mentioned earlier. It has to do with this line of conversation, Senator. One of the previous witnesses was talking about the problem of in-depth analysis as opposed to day-to-day current intelligence activities.

Well, the intelligence community is like any other bunch of bureaucrats. They react to who has got the blow torch on the seat of their pants, and usually it is in the current intelligence area, and if you start falling down in current intelligence, somebody will be down your throat immediately.

Now, if you fall down in longer range analysis and so forth, it will take a little while for the steam to build up.

So you are bound to have this current intelligence pressure and, once again, the bureaucratic arrangement in the community tends to make everybody try to get it in his classified newspaper first and this eats up a lot of capacity that is not necessary.

I think if the current intelligence business were broken out by kinds of intelligence, economic, political, military and so forth and allow that current intelligence job to be done just by those who specifically were zeroing in on their specific part of that job, it would probably save a lot of very good analysts for work on more in-depth matters.

No intelligence chief can allow himself to be scooped. You are almost like the competing newspapers. My gosh, if something comes up in the CIA daily bulletin that you do not have in the DIA daily bulletin, you are in trouble, and vice versa.

So there is something that I think could bear some direction from somebody like a PFIAB or Director of National Intelligence—which I agree, by the way, should be disconnected from any organization because there is no way for a Director of National Intelligence to disregard his bureaucratic responsibilities. I know I could not. I do not think anybody else could.

Senator WALLOP. Let me offer my thanks to everybody. It has been an excellent hearing.

It is obvious to me that it is no easier having conducted the hearing than I thought it was before we started. I did not really expect anything different.

I just would hope that, somehow or another, we do not overly rush and set in concrete some mechanisms that we find difficult to chip back out later on.

Thank you very much. I appreciate it.

[Thereupon, at 12:55 p.m. the committee recessed to reconvene at the call of the Chair.]

TUESDAY, APRIL 1, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 11:18 a.m., in room 318, Russell Senate Office Building, Hon. Walter D. Huddleston (chairman of the committee) presiding.

Present: Senator Huddleston (presiding).

Staff Present: William G. Miller, staff director.

Senator HUDDLESTON. The committee will come to order.

We will continue our hearings on Senate bill 2284, the National Intelligence Act of 1980.

Our first witnesses this morning will be Mr. Robert Lewis, on behalf of the Society of Professional Journalists, and Mr. Joseph Sterne, editor of the Baltimore Sun on behalf of the American Society of Newspaper Editors.

Gentlemen, we welcome you to the committee. We regret the delay in getting started this morning. There are some things that even we have no control over.

So, you may proceed.

TESTIMONY OF ROBERT LEWIS, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI

Mr. LEWIS. Thank you, Mr. Chairman.

I appreciate this opportunity to discuss Senate bill 2284, the National Intelligence Act of 1980.

My name is Robert Lewis. I am a Washington correspondent of Newhouse Newspapers and chairman of the freedom of information committee of the Society of Professional Journalists, Sigma Delta Chi.

The society, as you may know, is the world's largest and most representative organization of journalists. Founded in 1909, we have 300 chapters and 35,000 members in all branches of communications.

I would like to begin by saying I am not a lawyer or specialist on intelligence matters, and the society does not claim any national security expertise. Our interest, rather, is in the full exercise of the first amendment's guarantee of free expression and a free press.

We recognize the necessity for a degree of secrecy in foreign intelligence operations, even though secrecy in the conduct of public affairs—a linchpin of totalitarian governments—is alien to this country's political heritage. But such secrecy should be balanced against the desirable goal of conducting as much of the public's business in the open as is possible. To do less is to invite abuses of power and losses of public

confidence, as recent history of the Central Intelligence Agency has shown.

A balance between secrecy and sunshine was achieved when Congress enacted the Freedom of Information Act, which requires the CIA to disclose only those materials which do not impair the national security. The FOIA has been used precisely as its authors intended, to help shed light on illegal or questionable CIA wiretapping, break-ins, interception of mail and compilation of files on American citizens suspected of nothing more than opposing Government policies. The FOIA helped uncover CIA surveillance and infiltration of peaceful and lawful antiwar and civil rights movements during the 1960's and early 1970's.

By helping expose these practices, the FOIA fostered a public opinion climate that resulted in the Charter proposal now before you. Absent a showing that the FOIA has compromised our intelligence operations or has resulted in the disclosure of CIA secrets, I cannot understand the rationale for giving the CIA what in effect is a blanket exemption from the FOIA. With the exception of requests from individuals for information about themselves, S. 2284 would shroud the CIA in secrecy.

As I understand their testimony, CIA officials do not contend that the FOIA has led to the disclosure of national intelligence secrets. Their chief reason for seeking the FOIA exemption is that it is the perception of foreign nations and foreign agents that intelligence secrets might leak out through use of the FOIA. The CIA can deal with that by continuing to keep its legitimate secrets secret. A blanket exemption would make it difficult if not impossible for the public and the press to monitor the CIA. It would be counterproductive to the charter's objectives of establishing mechanisms for holding the CIA accountable.

If the existing national security exemption in the FOIA is not adequate, it could be amended to provide the protection to the national security that it was meant to provide. But to extend a sweeping exemption raises the suspicion that the CIA really wants only to avoid a repetition of the embarrassing disclosures that have come out.

Journalists attending a First Amendment Congress sponsored by 12 press groups at Williamsburg, Va., on March 18, 1980, adopted a resolution opposing legislation that broadens the FOIA exemption of the CIA and other Federal agencies.

S. 2284 is silent on what the society believes is a crucial question: The recruitment and use of journalists for intelligence purposes. The society believes this practice should be specifically prohibited, particularly during peacetime and periods of undeclared war. To allow the CIA to use journalists as informants suggests to the world that the American press is an investigative arm of the CIA, and taints all American correspondents, particularly those working overseas, with that suspicion.

The society supports section 132(b), which prohibits CIA personnel from using the media as a cover. It is imperative for the survival of an independent press to maintain an arm's-length relation between government and the press. Anything that blurs that distinction should be avoided for the good of both. The society also supports 132(c), which would permit voluntary exchanges of information between

journalists and CIA personnel. What we strongly object to is the creation of a formalized relationship between the CIA and the press in which journalists are used as paid, secret, ongoing informants, or for other intelligence purposes.

Mr. Chairman, one of the worst kept secrets in this town is that the correspondents for the wire services of certain totalitarian countries wear two hats. On the one hand, they are journalists; on the other hand, they serve their national security agencies. Knowing that, we take what they write with a proverbial grain of salt.

They lack credibility because they are not bringing professional, objective standards to bear on what they write. And I think it would be a mistake for the United States to do anything that would even suggest that the same is true with our press.

America's free press is looked upon as an example by emerging nations. But if the United States tolerates the recruitment of journalists as spies, it makes us no different than totalitarian countries, in the eyes of Third World journalists. And I think it would be a mistake to start on that path.

It is instructive to note that at the suggestion of the United States member, Elie Abel, the United Nations International Commission for the Study of Communication Problems—the MacBride Commission—has recommended against both the employment of journalists by national intelligence agencies or the masking of agents as journalists. The Soviet member objected to Mr. Abel's proposal, as I understand it, attacked Mr. Abel lucidly, but the Commission accepted it, nonetheless. What the CIA is proposing in this regard is contrary to the Commission's recommendations and contrary to this country's position on that international body.

Section 701 of S. 2284 provides for a maximum penalty of 10 years in prison and a $50,000 fine for disclosing the identity of CIA agents. Only persons with authorized access to classified information could be prosecuted. Admiral Stansfield Turner, the CIA director, proposes to subject the recipients of such information, including the press, to prosecution even though the recipient did not have access to classified data.

Admiral Turner's proposal would have the, I hope, unintended effect of discouraging reporting that might be, even remotely, a section 701 violation. The society agrees with Senator Daniel Patrick Moynihan's observation that Admiral Turner's suggestion would be intimidating on the press and, to quote Senator Moynihan, "extraordinarily careless of the rights of journalists." The Senator also said:

> Under this provision, a journalist would be liable to be hauled into court and required to reveal his sources in order to prove he did not know (that) what his newspaper or radio or television station reported was based on classified information.

Finally, Mr. Chairman, I would like to comment on the publication contract that CIA employees are required to sign. We can appreciate the CIA's concern in preventing former employees from disclosing, intentionally or otherwise, sensitive information that could damage this country's national security. But we are disturbed by the reach of the contract: Employees are forced to sign away their first amendment rights of free speech and free press for the rest of their lives.

The contract seals off from historians a valuable source of information about an increasingly important activity of Government. When the history of the CIA is written, it may be only the CIA version that gets out. Books or articles by former CIA employees that are critical of the CIA might not be written even though, as in the *Snepp* case, there is no disclosure of classified information.

I would urge the committee to explore options to the present contract requirement. Among possible approaches are a ban only on writings that irreparably harm the national security, or setting a time limit, say 5 years after leaving CIA employment, during which former CIA employees would have to submit manuscripts for clearance.

Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you.

Mr. Sterne?

[The prepared statement of Charles W. Bailey, presented by Joseph R. L. Sterne follows:]

PREPARED STATEMENT OF CHARLES W. BAILEY, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, AMERICAN SOCIETY OF NEWSPAPER EDITORS, PRESENTED BY JOSEPH R. L. STERNE, EDITOR OF THE BALTIMORE SUN, BEFORE THE SENATE SELECT SUBCOMMITTEE ON INTELLIGENCE, APRIL 1, 1980

Mr. Chairman, I am Joseph R. L. Sterne, Editor of the Baltimore Sun and member of the Freedom of Information Committee of the American Society of Newspaper Editors. I appear today on behalf of Charles W. Bailey, Editor of the Minneapolis Tribune, Chairman of the Freedom of Information Committee, who has asked me to express his regrets to you that he was unable to appear in person.

The American Society of Newspaper Editors is an organization of over 800 editors of daily newspapers in the United States.

We strongly oppose Section 421(d) of S. 2284, "The National Intelligence Act of 1980", which would substantially exempt the Central Intelligence Agency from the Freedom of Information Act. A similar provision is contained in S. 2216, "The Intelligence Reform Act of 1980."

We believe that current provisions of the Freedom of Information Act—permitting the CIA to withhold information if it is properly classified and if its release would cause "identifiable harm" to the national security—give the CIA ample protection.

CIA officials have admitted in Congressional testimony that the present Act does in fact give the Agency all the protection it needs. Deputy Director Frank Carlucci, in testimony before the House Intelligence Committee in 1979, said:

> "It is undeniable that under the current Freedom of Information Act national security exemptions exist to protect our most vital information."

The provisions of the pending legislation, by creating a new and sweeping exemption, would prohibit legitimate historical and journalistic research. The result would be to pull down a curtain of secrecy that is simply unnecessary. While the courts have been most liberal in interpreting the present exemption in the Act as the CIA wishes, they have allowed items of political and historical importance to be made public. This in turn has allowed informed public debate on issues of the greatest importance to our Nation.

We endorse Section 132(b) of S. 2284, which prohibits CIA employees from using journalistic "cover." If the people of this country and of the world are to have faith in a free and independent press, they must know that CIA agents are prohibited from masquerading as journalists in undercover operations.

We urge the addition of language which would also prohibit the CIA from recruiting, or seeking to recruit, journalists employed by American news organizations. Again, the knowledge that such a prohibition exists is necessary if the public here and abroad is to have full confidence in the freedom and independence of our press. We believe that as a matter of policy such practices should be forbidden by statute and not, as at present, by Agency regulations which may be set aside by the Director of Central Intelligence.

We support the Committee's position on Section 701 of S. 2284 which allows prosecution of those having, or having had, authorized access to classified information who disclose the identity of CIA agents. We feel this is the sensible way to control this problem, rather than violating the First Amendment of the Constitution of the United States by proposing to penalize publication by those who come into possession of such material without ever having been authorized access to classified information. We urge the retention of Section 701(c). We find this language far preferable to similar language contained in S. 2216, which we understand is also before your Committee.

TESTIMONY OF JOSEPH R. L. STERNE, EDITOR, THE BALTIMORE SUN, REPRESENTING THE FREEDOM OF INFORMATION COMMITTEE, AMERICAN SOCIETY OF NEWSPAPER EDITORS

Mr. STERNE. Mr. Chairman, I am Joseph R. L. Sterne, editor of the Baltimore Sun, and a member of the freedom of information committee of the American Society of Newspaper Editors.

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We urge the retention of section 701(c). We find this language far preferable to similar language contained in S. 2216, which we understand is also before your Committee.

Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you very much, gentlemen.

Do you see any justification for the CIA to be exempted from requests from foreign sources for information under the Freedom of Information Act?

Mr. LEWIS. I think that would be an exercise in futility, because if a foreign source was bent on getting information under FOIA, I am sure he or she would be able to find an American citizen to submit the request, and further, I wonder whether that would be constitutional to allow only American citizens to use a Federal law.

Senator HUDDLESTON. Do you see any legitimate problem for the Agency in making a determination itself as to whether or not the information it may be providing is of intelligence value to a foreign source? The agency contends that sometimes it doesn't know precisely what the other side knows or precisely what they are looking for; it doesn't know whether or not they might be supplying the missing piece to the puzzle. Do you see any validity to these contentions.

Mr. LEWIS. I understand as long as they have the national security exemption in the law and are free to apply that as generously and liberally as they see fit, that that should provide the protection against what you are suggesting, and if it is not, maybe Congress needs to take a look at the FOIA Act.

Senator HUDDLESTON. We have had the historians before us, and they, of course, are very much concerned with this provision.

Their work is somewhat different. They are different from journalists in that time and immediacy may not be as important to them. For a journalist is the delay that is already built into the law a serious problem?

Mr. LEWIS. Of course, journalists are writing the first draft of history. In the breaking news business, a delay can be a grave hindrance.

Senator HUDDLESTON. Now, in the use of journalists by the CIA, what is your response to the theory that the profession itself should or could solve that problem by establishing its own canons and enforcing them rather than having Congress write the ethical code for the journalists.

Mr. LEWIS. The society has adopted a code of ethics which is completely voluntary. It would be my judgment that the vast majority of reporters would not be interested in becoming an ongoing informant for the CIA, but this is a free country, and we do not attempt to impose any collective will on individual reporters. That is why we support the section in S. 2284 that allows for voluntary contacts between members of the public and the CIA, and as a matter of fact, in the real world, foreign correspondents or reporters who cover the CIA frequently trade information with members of the CIA. We would not want to interfere with the coverage that now goes on and the relationships that do develop between the CIA and the press, but to fix in a law a formalized relationship, I think, would be a grave mistake.

Senator HUDDLESTON. You don't see any kind of infringement on journalists' rights to preclude them from entering into some kind of legitimate contract with a legitimate agency of the Federal Government?

Mr. LEWIS. He would be free to do that. We are just proposing that it would not be given the force of law in the charter or incorporated into the CIA's guidelines. The authority to go out and recruit, affirmatively recruit journalists—is what we oppose. If a journslist approaches the CIA and offers his services, we do not object to that.

Mr. STERNE. Could I respond to that also?

Senator HUDDLESTON. Yes; I wish you would.

Mr. STERNE. I think there has been a lot of talk from the CIA about perception. They worry about the FOIA, the perception that the FOIA is compromising their recruitment of agents abroad. I think that we have to be also worried about perceptions so far as the press is concerned. The press operates in most countries in much closer liaison with its government than the American press.

If we were to formalize any kind of connection between the press and the Government, I am afraid that this would compromise the work of the American newspaperman abroad. I have been a foreign correspondent in my day for 6 to 8 years, and many times I have found it very useful to deal with members of the American Government in getting rundowns and briefings on situations in foreign countries. I have not hesitated in relaying back on a trading basis some of my impressions that I might get in traveling around.

This is the way journalists have to operate abroad. They get information where they can get it, but to make explicit in the law or to sanction in the law any contract in which the CIA or other Government agent could hire an American journalist I think would be terribly compromising to the work of the American journalists, and really create a perception that we don't want to have.

Senator HUDDLESTON. I understand the problem. I am somewhat sympathetic with it. We, of course, have precluded the use of journalists as cover, which probably is the most pernicious of practices. While some would want to go much further than that, the subcommittee decided not to at the present time.

Mr. STERNE. There is some concern, Mr. Chairman, whether the bill as present also precludes recruiting of journalists already employed. I think that is one of the questions. It is not a matter of infiltrating an agent into a newsgathering organization. It is a matter of recruiting a present employee of a newsgathering agency.

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Senator HUDDLESTON. Do you perceive the system of the Executive order and CIA guidelines to be adequate?

Mr. STERNE. I can only speak for myself on that. I have never in my work as a journalist found that the present guidelines so far as journalistic cover do not work. I have felt free to get information where I can, to trade information if I wish. I have felt very free to dissuade any foreign contacts I have that I am in any way an agent of the U.S. Government.

As one working journalist overseas, I have been satisfied with the present situation, yes.

Senator HUDDLESTON. There is one school of thought that says most foreign countries assume that all journalists are possibly agents of the CIA anyhow. Any law that we pass is not going to change that. What is your response to that?

Mr. STERNE. I would have to say that you might be right, that the practice that governments all over the world have, not just Soviet bloc governments, of using journalists for cover, using journalists as agents, imposing very severe restrictions on the press that we fortunately do not have in this country is so pervasive in this world that we do have that problem, no matter how free a press we try to maintain, but if we were to just give up and say, well, since this perception exists, we can legitimize this kind of contract between the Government and working reporters, I think the perception would be carved in stone. There would never be a way of eliminating it.

Senator HUDDLESTON. Just to give a hypothetical—it is not necessarily too hypothetical—suppose in the case of the hostages that the only person with any credibility to get in to talk with the captors was a journalist. Do you think the agencies ought to be able to negotiate with that individual to secure his services for that purpose?

Mr. LEWIS. Again, we are talking about, I think, two different things, Mr. Chairman. As we have said, it is a very common practice for journalists to exchange information with CIA personnel.

Senator HUDDLESTON. This would be a little more than exchanging information.

Mr. LEWIS. If the reporter comes into possession of information that is important or even vital to the United States I can't conceive of a person who would not be a good citizen and share that information, but what we are talking about is, if the CIA actually retained and set up a formalized, for remuneration arrangement with that reporter. That is what we are trying to avoid.

Senator HUDDLESTON. Those examples are fairly easily understood. I don't have any trouble personally with that an ongoing, continuing relationship of a reporter working secretly for the CIA. Where we get into trouble when we are writing law is, how do you accommodate situations where an impending event needs the kind of assistance, that only a certain reporter because of his contacts, can perform.

To deal with those kinds of situations should there be flexibility? I can see how these situations could develop. It might be necessary for the agencies to at least pay something, maybe the expenses connected with that kind of operation.

You would have a case where it may be very advantageous to enter into some kind of contractual relationship, even if it is just for one act, one instance.

Mr. LEWIS. Mr. Chairman, to use the example of Iran again, say a reporter came across information that only he had, and it is of interest to our intelligence community. The first thing most reporters would do would be to get that information in his newspaper or get it on the air.

He is in the business of gathering and disseminating information. It is inconceivable that he would have information that he did not put out for public consumption that would be of interest to the CIA.

Senator HUDDLESTON. I can see those kinds of instances, too, Suppose the CIA was aware that a reporter had access to a group of people who were planning some kind of activity that caused us a great deal of concern. Suppose the CIA went to this reporter and said, we know you are going to have an opportunity to meet with these people. You are going to be in their headquarters. While you are there, would you also, for us, determine who the leader is or who is in charge or what their plans might be, and report back to us?

What should the reporter do in that kind of situation?

Mr. LEWIS. I think some reporters would say, well, if I did that, would you share information with me that you are getting from this other direction? Because he is after the story, and that kind of thing does go on. That, as I understand it, is not what the guidelines that were adopted in 1977 are getting at. Those internal guidelines allow the Director to authorize, in effect, to sign up in a contractual way, a newsperson, and that bothers me.

Only if we have an all-out mobilization and we are back into a full-fledged declared war, could that kind of arrangement be tolerated.

Mr. STERNE. Mr. Chairman, on that, I would like to say also that the kind of situation you are discussing does come up. These are not hypothetical situations. They are very real situations. They have been dealt with informally by the press and the CIA and other agencies of our Government through the years, through foreign correspondents.

Sometimes there has been cooperation. Sometimes there has not. Sometimes it has been much to the benefit of the journalists so far as exchange information is concerned. Sometimes he might be giving more information to the Government than he is getting. That is a matter of individual maneuvering and operation, but I think my personal concern is to avoid having in the law anything that would be a specific authorization of a Government agency to contract, to hire a working American newspaperman to use him as an agent.

There is a big difference between having a used agent, whether part time or full time, and having an informal negotiation between the Government and the reporter.

Senator HUDDLESTON. We did not put anything in there specifically that would indicate that there would be a contractual or ongoing arrangement. We prohibited cover use of journalists. We set out that the integrity of the various professions ought to be respected and allowed for guidelines or the use of their members. It might be that we should be totally silent if we couldn't go as far as you want to go—to prohibition; that's where I started. Maybe we ought to just be silent on the issue, so they can operate as they are now, through guidelines which can be waived by the CIA Director himself.

Mr. STERNE. Yes, sir. On that, may I say that the word "cover" would have to be very carefully defined, I would think, in the legislation.

Senator HUDDLESTON. Well, that one, I guess, is one that has not been resolved as yet. I take it you both agree that the committee's approach on identity legislation, the so-called Agee provision, is better than the broader approach to try to encompass everybody, including the press. We came to the conclusion earlier than Senator Moynihan that there was a constitutional question involved. To try to make it too broad in its application would mean we probably would run afoul of the first amendment.

Gentlemen, thank you very much.

Mr. Reed Irvine, Mr. Marshall Perlin, and Ms. Katherine Meyer are the next panel.

Ladies and gentlemen. Mr. Irvine, if you want to begin or to lead off.

[The prepared statement of Reed Irvine follows:]

PREPARED STATEMENT OF REED IRVINE, CHAIRMAN, ACCURACY IN MEDIA, INC., BEFORE THE SENATE SELECT COMMITTEE ON INTELLIGENCE, TUESDAY, APRIL 1, 1980

Mr. Chairman, I welcome the opportunity to appear before this committee to discuss certain aspects of S. 2284. I am chairman of the board of Accuracy in Media, Inc., a private, nonprofit citizens' organization that is concerned with accuracy and fairness in news reporting. I am editor of the AIM Report, Accuracy in Media's newsletter, and I also write a weekly syndicated newspaper column and do a daily radio commentary, Media Monitor, together with another journalist.

The questions that I wish to address are these: (1) Should our intelligence agencies be permitted to hire working journalists to assist in collecting intelligence information in foreign countries? (2) Should American intelligence agents be permitted to use journalistic covers in carrying out their intelligence activities abroad?

S. 2284 would make it impossible for the CIA or any other American intelligence agency to do either. This is a position that seems to be favored by most journalistic organizations that have taken a position on the questions.

I believe that the enactment of these provisions into law would be a serious error, and I strongly recommend that restrictions on the use of journalists or journalistic cover by our intelligence agencies be stricken from the bill.

I do so because I prize very highly the freedoms which the people of this great nation enjoy. I want to see those freedoms preserved for future generations. I know from my own personal experience as a Marine in World War II that our people are willing to lay down their lives in defense of our freedoms. We all hope that war and bloodshed can be avoided. We all recognize that intelligence operations can be a way of achieving our objective of defending our country and our freedoms without going to war. We also know that if war becomes necessary, intelligence plays a vital role in helping us win and helping us minimize our casualities.

Just as we would be foolish to hobble our armed services and risk losing lives and indeed our freedom, so we would be foolish to place crippling restrictions on our intelligence services without very carefully weighing the costs of those restrictions in human lives against the possible benefits.

There is no disputing the fact that journalists and journalistic covers can be extremely valuable to intelligence services. The Soviet KGB makes heavy use not only of Soviet journalists, but also of foreign journalists. The Soviets and their satellites are not the only intelligence agencies that appreciate the great utility of journalistic cover, however. It is safe to say that any of the world's great intelligence services have made and continue to make good use of journalistic sources and journalistic covers in their operations.

The reasons for this are obvious. Journalism itself is basically an intelligence gathering operation. Much of the information that is filed by the CIA, military

intelligence, and the State Department comes from journalistic sources—mainly from the published product of journalists all over the world. It is the function of reporters to inquire and pry. We know from our own treatment of Soviet journalists in this country that reporters are given considerable latitude even though they may be suspected of being intelligence agents.

For example, we regularly permit correspondents of the Soviet news agency, Tass, to cover White House, State Department and Pentagon press briefings, even though we can be 99 percent certain that they are working for the KGB. There is no other cover that the KGB could give an agent that would permit him to attend these briefings and ask questions.

Given the unquestioned usefulness of journalists and journalistic covers to intelligence organizations, what are the perceived costs that have convinced so many people that the United States should deny itself the use of this valuable resource regardless of what other nations may do? Those costs must be perceived to be extremely high. When we wanted to see the use of poison gas banned as a weapon of war, we did not abjure its use unilaterally. We sought to obtain the agreement of all civilized nations that they would not use it. But in the case of this valuable tool of intelligence, we either place such a low value on it, or we perceive its costs to be so great that we alone are willing to deny it to our intelligence agencies in the full knowledge that both our friends and adversaries will continue to exploit it.

It appears that there are two major costs that are perceived to result from the employment by our intelligence agencies of journalists or journalistic covers.

One, it is believed that our intelligence agencies can and do use journalists or journalistic covers. Then all of our journalists will be suspected and will be hampered in their legitimate journalistic endeavors.

The second is that it is assumed that an intelligence tie would corrupt any journalist, making it impossible for him to be an honest and objective reporter. Simply because he was receiving pay from an intelligence agency, he would be considered prone to fouling the wells of information by coloring or distorting his reports for publication.

I would not want to pretend that these objections are entirely without merit, but I want to point out that there is far less here than meets the eye.

First of all, it should be stressed that nothing in the proposed legislation bars any journalist, American or foreign, from working for a foreign intelligence agency. American correspondents could with impunity establish working relationships with British, French, German, Israeli, or even Soviet intelligence agencies. As already noted, we can be sure that most of the journalists working for the communist countries have close ties with their intelligence agencies. And we know that the KGB has put a high priority on the recruitment of foreign, including American, journalists. Therefore, this legislation cannot possibly guarantee the purity and integrity of the journalistic profession, by stamping it "Free of Intelligence Connections." It can, at best, insure that those connections are not American. From this point of view, all it really accomplishes is to permit our intelligence agencies to say that they are not using journalists or journalistic covers, not that journalists and journalistic covers are not being used by intelligence agencies.

Moreover, since the legislation does not bar voluntary cooperation by journalists with our intelligence agencies, no one can be sure that journalists are not actually passing information on to the CIA or other agencies on a voluntary basis.

Concern over the possible pollution of the wells of information if our intelligence agencies are permitted to use journalists or journalistic covers is genuine, but the dangers have been vastly exaggerated.

Journalists are ordinary mortals with all kinds of biases, loyalties, blind spots and frailties. Many of them have axes to grind. The picture of the brave reporter who is motivated solely by the desire to ferret out and report the truth objectively and fully bears little resemblance to real life.

I would point out, for example, that no less a person than Pierre Salinger, press secretary to President Kennedy, charged that back in 1963 the Saigon correspondents of the New York Times, the Associated Press and United Press were openly proclaiming that they were going to bring down the government of President Ngo Dinh Diem.

It is a measure of the tremendous power that these young men had that their reports of the alleged persecution of Buddhists by the Diem government played an important role in bringing on the coup that toppled Diem, even though those reports were later demonstrated to have been distorted and exaggerated.

The point I wish to make is that the wells of information are being constantly corrupted by false information, some of it planted, some of it generated by journalists who may be motivated by anything from the mere desire to create a sensation and attract attention to themselves to the desire to ingratiate themselves with some person, some organization, or some country. For example, the kind of reporting that you get out of countries such as Cuba or China is strongly influenced by the knowledge that the rulers of those countries react very strongly against negative reporting about them.

It is relevant to note that in 1978 The Washington Post employed as its correspondent in Cuba a man named Lionel Martin. He had been an adviser to Castro's government and had previously been a correspondent for a communist paper. Given his background, there was reason to think that he was probably no stranger to the Cuban Directorate General of Intelligence. When we suggested to The Washington Post that Mr. Martin's background might cast doubt on the accuracy and objectivity of his reporting from Havana, we were told that the editors of The Washington Post were not concerned. They felt that they could judge from his copy whether or not he was reporting accurately and fairly.

I would also like to point out that The New York Times from time to time publishes articles by Wilfred Burchett, an Australian Communist Party member who was identified as a Soviet KGB agent in testimony before the Senate Internal Security Subcommittee. The New York Times prints articles by Mr. Burchett which identify him only as "a leftwing Australian journalist living in Paris."

One does not perceive in the behavior of either The Washington Post or The New York Times great concern about fouling the wells of information by journalists with known or probable ties to foreign intelligence agencies. This is a far more serious problem in my view than the danger that an occasional journalist with ties to an American intelligence agency might impart a pro-American slant to his reporting. If that is the cost of permitting our intelligence agencies to use journalists occasionally, I would suggest that it is a cost that is entirely bearable.

We must get away from the insane movement to hobble our intelligence agencies and render them ineffective. We know why defectors to the other side such as Philip Agee want to do this. They recognize that a strong intelligence service like a strong military force is a serious barrier in the path of those who want to destroy our freedoms and rob us of our independence. They have succeeded to an amazing degree in convincing large numbers of Americans that just the reverse is true. Unfortunately, they have done so in large measure by securing the cooperation of our own news media in his campaign of disinformation.

TESTIMONY OF REED IRVINE, ON BEHALF OF ACCURACY IN MEDIA, INC.

Mr. IRVINE. Mr. Chairman, I welcome the opportunity to appear before this committee to discuss certain aspects of S. 2284.

I am the chairman of the board of accuracy in Media, Inc., a private, nonprofit citizens' watchdog organization that is concerned with accuracy and fairness in news reporting. I am editor of the AIM Report, Accuracy in Media's newsletter. and I also write a weekly syndicated newspaper column and do a daily radio commentary, "Media Monitor," together with another journalist.

The questions that I wish to address are these. One, should our intelligence agencies be permitted to hire working journalists to assist in collecting intelligence information in foreign countries? Two, should American intelligence agents be permitted to use journalistic covers in carrying out their intelligence activities abroad?

S. 2284 would make it impossible for the CIA or any other American intelligence agency to do either. This is a position that seems to be favored by most journalistic organizations that have taken a position on the question. I understand this is not the committee's intent. They intended only to prohibit the use of journalistic cover and were

not specifically barring the intelligence agency from hiring journalists to do particular jobs.

I think there is an ambiguity in the language of the bill and I am not so sure how the courts might interpret it, but I would alter my testimony, my prepared testimony to take account of this difference of opinion.

I believe that the enactment of these provisions into law would be a serious error, and I strongly recommend that restrictions on the use of journalists or journalistic cover by our intelligence agencies be stricken from the bill.

I do so because I prize very highly the freedoms which the people of this great Nation enjoy. I want to see those freedoms preserved for future generations. I know from my own personal experience as a marine in World War II that our people are willing to lay down their lives in defense of our freedoms. We all hope that war and bloodshed can be avoided. We all recognize that intelligence operations can be a way of achieving our objective of defending our country and our freedoms without going to war. We also know that if war becomes necessary, intelligence plays a vital role in helping us win and helping us minimize our casualties.

Just as we would be foolish to hobble our armed services and risk losing lives and indeed our freedom, so we would be foolish to place crippling restrictions on our intelligence services without very carefully weighing the costs of those restrictions in human lives against the possible benefits.

There is no disputing the fact that journalists and journalistic covers can be extremely valuable to intelligence services. The Soviet KGB makes heavy use not only of Soviet journalist, but also of foreign journalists. The Soviets and their satellites are not the only intelligence agencies that appreciate the great utility of journalistic cover, however. It is safe to say that any of the world's great intelligence services have made and continue to make good use of journalistic sources and journalistic covers in their operations.

The reasons for this are obvious. Journalism itself is basically an intelligence-gathering operation. Much of the information that is filed by the CIA, military intelligence, and the State Department comes from journalistic sources—mainly from the published produce of journalists all over the world. It is the function of reporters to inquire and pry. We know from our own treatment of Soviet journalists in this country that reporters are given considerable latitude even though they may be suspected of being intelligence agents.

For example, we regularly permit correspondents of the Soviet news agency, Tass, to cover White House, State Department, and Pentagon press briefings, even though we can be 99 percent certain that they are working for the KGB. There is no other cover that the KGB could give an agent that would permit him to attend these briefings and ask questions.

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war, we did not abjure its use unilaterally. We sought to obtain the agreement of all civilized nations that they would not use it.

But in the case of this valuable tool of intelligence, we either place such a low value on it or we perceive its costs to be so great that we alone are willing to deny it to our intelligence agencies in the full knowledge that both our friends and our adversaries will continue to exploit it.

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The second is that it is assumed that an intelligence tie would corrupt any journalist, making it impossible for him to be an honest and objective reporter. Simply because he was receiving pay from an intelligence agency, he would be considered prone to fouling the wells of information by coloring or distorting his reports for publication.

I would not want to pretend that these objections are entirely without merit, but I want to point out that there is far less here than meets the eye.

First of all, it should be stressed that nothing in the proposed legislation bars any journalist, American or foreign, from working for a foreign intelligence agency. American correspondents could with impunity establish working relationships with British, French, German, Israeli, or even Soviet intelligence agencies.

As already noted, we can be sure that most of the journalists working for the Communist countries have close ties with their intelligence agencies. And we know that the KGB has put a high priority on the recruitment of foreign, including American, journalists. Therefore, this legislation cannot possibly guarantee the purity and integrity of the journalistic profession, by stamping it "free of intelligence connections." It can, at best, insure that those connections are not American.

From this point of view, all it really accomplishes is to permit our intelligence agencies to say that they are not using journalists or journalistic covers, not that journalists and journalistic covers are not being used by intelligence agencies.

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They have succeeded to an amazing degree in convincing large numbers of Americans that just the reverse is true. Unfortunately, they have done so in large measure by securing the cooperation of our own news media in this campaign of disinformation.

Thank you.

Senator HUDDLESTON. Thank you, Mr. Irvine.
Mr. Perlin?

TESTIMONY OF DOROTHY STEFFEN, NATIONAL DIRECTOR, FUND FOR OPEN INFORMATION AND ACCOUNTABILITY, INC.

Ms. STEFFEN. I am Dorothy Steffen, national director of the Fund for Open Information & Accountability, and I am going to ask your indulgence to make a few minutes' statement before Mr. Perlin.

Our work is the use, protection, and defense of the Freedom of Information Act, based upon the presumption that the Government and the information of Government belong to the people. The last words were a quotation from the 14th Report of the Committee on Government Operations of this Congress in 1977. Those words are as true today as they were in 1977.

The research and analysis of the archives of the Fund for Open Information and Accountability, which contain hundreds of thousands of pages of FBI, CIA, State Department, Atomic Energy Commission, and other Government documents, makes it clear that the Freedom of Information Act is an essential instrument to keep Government accountable to the people and to prevent abuses of power.

It is for that reason that we have viewed the proposed National Intelligence Act of 1980 with alarm. We call your attention to the letter that the Fund for Open Information, jointly with some 150 organizations and individuals, including scholars, historians, journalists, scientists, religious, and others, a broad cross-section to the community representing millions of constituents sent to the members of this committee expressing opposition to section 421(d) of S. 2284 and section 3 of S. 2216. These provisions would, in effect, exempt the intelligence agencies from the Freedom of Information Act and place sharp limits on the disclosure of information to the public.

This is not our only concern about legislation, and our general counsel, Marshall Perlin, will speak both to this issue and to other serious concerns we have with the legislation you are considering.

The CHAIRMAN. Mr. Perlin?

[The prepared statement of Marshall Perlin follows:]

PREPARED STATEMENT OF MARSHALL PERLIN, GENERAL COUNSEL, IN BEHALF OF FUND FOR OPEN INFORMATION AND ACCOUNTABILITY, INC.

The Fund for Open Information and Accountability, Inc. is a not-for-profit corporation dedicated to the support, strengthening and implementation of the FOIA. Its objectives include aiding those seeking to obtain files from various agencies of government, and to disseminate the information obtained as it bears upon events of public importance and educational and historical value and relates to the constitutional rights, liberties and guarantees of the people and in particular the people's right to know what their government is doing.

In addressing ourselves to the National Intelligence Act of 1980 (S. 2284) we do not limit ourselves to that provision (§ 42(d)) which essentially exempts the CIA from any meaningful disclosure under the FOIA but to the other portions of the bill as well which would empower the executive and the intelligence agencies under a cloak of secrecy to engage in a multitude of activities, many of which have been found to be contrary to our most basic precepts of a democratic society and in violation of our Constitution and law. We must be aware that in addition to the present bill, legislation has been introduced such as the FBI Charter (S. 1612) and numerous other bills which seek to exempt the FBI and other federal agencies and categories of information from the FOIA.

Pursuant to the FOIA, I have instituted an action in behalf of the sons of Ethel and Julius Rosenberg to obtain files bearing upon their case from the CIA, the Atomic Energy Commission (and its successor agencies) and the Department of Justice. In the course of that litigation we have obtained access to approximately 200,000 pages which reflect the activities of those agencies over a period of more than a quarter of a century. I do not here dwell upon the revelations of suppressed facts and evidence which if known would have resulted in the setting aside of the conviction in post-trial collateral proceedings.

Rather, I direct myself to what these files represent, files relating to two organizations and 90 individuals. They reveal unlawful activity on the part of intelligence agencies in intruding upon the lives and well-being of thousands upon thousands of innocent people engaged in lawful activities. They reveal break-ins, thefts, mail openings, electronic surveillance, COINTEL program surveillance and intrusion upon the most personal and intimate affairs of individuals never accused of any crime. They reflect investigations which resulted in the injury to lives of workers, scientists, teachers, and loss of jobs.

These files reflect at the same time information of tremendous historical and research value. They contain documents and records, they reflect attitude and policies on the part of the intelligence and other agencies of government. They reflect a history of a significant portion of our national life and the organizations; and the people's social and political activities from the late '30s to the late '70s. Most of the people whose files were obtained and most of the people whose names and records and activities are reflected therein are not "name" persons, noted persons, people in the news. They are the common people who are the essence of this nation's history and life and who are the guarantors of the democratic process.

The history to be derived from these files and records bears upon the most fundamental questions of relationship between government and people, the role of police and intelligence agencies in a democratically ordered society. It is from these files as well as the conclusions reached and the reports issued by the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities which served to establish the absolute need for access to records and accountability if we are to have a democratic society accountable to the people.

Files made available to us concerning other organizations and individuals establish that the activities to be found in the Rosenberg case where no aberration but represented an established practice on the part of all too many agencies of government, practices contrary to law and without any statutory authority.

These revelations led to the FBI engaging in the massive destruction of its files in order to avoid disclosure under the FOIA. A group of organizations and individuals, 50 in number, under the aegis of the Fund for Open Information and Accountability, instituted an action in the Federal Court to enjoin the destruction of FBI files. On January 10, 1980 Hon. Harold H. Greene, Judge of the United States District Court for the District of Columbia, in *American Friends Service Committee, et al., v. William H. Webster, et al.*, enjoined the FBI and the National Archives from destroying their files pending independent review and evaluation and the establishment of a plan to preserve files as required under the Archival and Records Acts of the United States. Judge Greene in his opinion, referring to the FBI but applicable to all intelligence agencies, stated:

> Congress has determined that federal record keeping shall accommodate not only the operational and administrative needs of the particular agency but also the right of the people of this nation to know what their government has been doing.
>
> The files of such an agency contain far more of the raw materials of history and research and far more data pertaining to the rights of citizens than do the files of Bureaus with more pedestrian mandate. . . .

After citing the well-known adage of George Santayana that "those who cannot remember the past are condemned to repeat it" the Court went on to say "The lessons of history can hardly be learned if the historical record is allowed to vanish." Beyond question, it is essential that our nation's historical records be preserved and that the congressional mandate for such preservation under the Archival and Records Acts be enforced. Nevertheless even if these records are

preserved but kept secret and denied to the American people, they will be deprived of the only means, the essential ingredient to assure accountability and governance by the people.

It is in this context that we evaluate the National Intelligence Bill of 1980. In so doing the revelations of the past decade must be given great weight. If we "cannot remember the past, we are condemned to repeat it." The repetition of unlawful conduct on the part of the executive and intelligence agencies will strike a severe blow and do grievous harm to our nation both at home and abroad.

S. 2284

The genesis of the present bill was the realization that in order to prevent the injury and sins of the past, it was essential to enact legislation in the form of a charter which would proscribe and prevent unlawful activity by the executive and the intelligence agencies. But an examination of S. 2284 reveals rather a bill which with the broadest language and the vaguest of definitions only enhances and expands the power and jurisdiction of the executive and the intelligence agencies to engage in the illicit and dangerous activities it was supposed to deter and prohibit. The purported "limitations" of the powers of these arms of government are inordinstely limited to the point of depriving them of any effectiveness. Further, each and every "limitation" has exceptions and loopholes that essentially negate them.

The bill in effect becomes the "statutory basis" attempting to legalize the improprieties of the past, giving Constitutional sanction to those improprieties and in effect establishing a secret arm of government accountable to no one. The bill suffers from numerous constitutional infirmities, and is clearly violative of the First, Fourth and Fifth Amendments of the Constitution. It destroys the entire concept of a government of checks and balances.

The unlawful activities, the invasion of constitutional rights on the part of the president and the executive agencies was said to be authorized by the "inherent powers" of the presidency. The inherent powers theory has in many instances been found to be lacking by the courts, by congressional committees and repudiated by the American people upon learning of the misdeeds engaged in under the cover of such executive authority.

In looking at S. 2284 we are compelled to state that it has a certain deja vu quality reminding one all too much of the excesses during the Nixon administration, epitomized by the Huston Plan. This plan, which was to be effected by the "intelligence system" authorized the covert activities, COINTEL programs, mail openings, surveillances, electronic and physical, infiltration, breaking and entering, the massive use of informers. The defect in this plan was not merely its lack of statutory authority, but that it was one that cast aside any constitutional protection and rode rough shod over basic rights and liberties.

S. 2284, we are compelled to state, is a more sophisticated Huston Plan, given the cover of legality by the vesting of statutory authority, by act of Congress to carry out these activities in secrecy under the claim of external and internal security and acquisition of "intelligence" data. The enactment of a bill such as S. 2284 does not justify or make legal and constitutional that which was unlawful and unconstitutional prior to its enactment.

As a result of the media reports of this legislation, one would believe that it was limited to the CIA alone, but clearly as this Committee knows, and as the bill provides, its scope and compass is much broader and even more dangerous. It not only authorizes certain activities by the CIA, the FBI and the National Security Agencies as well as certain bureaus and divisions of the Department of Justice, the Department of State, the Treasury and Energy, it also authorizes the president to vest such "intelligence" powers in any other executive agency or subdivision the president deems appropriate.

Over the past decade the Congress has sought to assert its constitutional powers and require that the office of the president act coordinately with it and account to it in the exercise of presidential powers and in compliance with the statutes enacted by Congress. The present legislation makes a mockery of presidential accountability to the Congress or meaningful congressional oversight. This bill constitutes a carte blanche to the executive to do what it will in the area of "national and internal security", national defense and foreign relations. It gives unbridled authority to intrude upon and disrupt lawful activities of United States persons domestically and abroad. It gives the president and the intelligence officials authority to engage in political and economic warfare and to assemble and exploit quasi military forces in countries throughout the world.

The only suggestion of accountability to Congress is the very limited advice and notice which may be given by the executive or the intelligence agencies of certain types of covert, special or extraordinary activity. The few members of Congress to whom this notice is given must themselves be cleared and approved by the intelligence agencies who are to "account" to them. Exaggerated claims of secrecy with limited disclosure are bound to have an intimidating effect and deter correction and exposure where truly warranted in the national interest. It becomes a form of cooperation.

But it is not only Congress which is excluded as a branch of government, as a check and balancer. It is the judiciary as well. Under the Foreign Intelligence Surveillance Act of 1978, for the first time in this nation's history, we created a court that sits in secret to deal with applications for the issuance of secret warrants authorizing electronic surveillance and the fruit of the surveillance remains hidden unless revealed at the sole option of the intelligence agencies. Any action of this court may be reviewed on appeal, in secret, only upon the application of the government in the event the secret court refuses to authorize the warrant. This bill extends the power of the secret court and the authority of the intelligence agencies to obtain warrants including warrants applicable to United States persons for physical as well as electronic surveillance, and the color of authority to engage in the very kinds of activities which were so roundly condemned by the Church Committee. Thus the checks and balances which constitute the foundation of our Constitution is substantially impaired by S. 2284.

The past disclosures establish that the record of illicit CIA and FBI activities and that of other investigative agencies and personnel were not initiated by the officials and employees of those agencies alone. Much of the unlawful activity was initiated and authorized by the president, directly and through cabinet members and presidential aides in formulating and carrying out, in secret, foreign and domestic policies unbeknownst to the people as well as other branches of government. By vesting this broad indiscriminate power in the executive and the intelligence agencies under S. 2284, Congress is vesting in the president the power to utilize these agencies in secrecy in conceiving and executing policies and without being compelled to account to Congress or the people, and without judicial scrutiny and injunction.

The mere enactment of S. 2284 without § 421(d) would nevertheless constitute a serious blow to the FOIA and the right of the people to seek and obtain an accounting from the government. The elaborate intelligence system created by S. 2284 and its articulated premises are bound to have an adverse impact upon the judiciary and make it more fearful and less disposed to grant the disclosure the people are entitled to under the FOIA as it now exists.

The real danger to the national interest

The CIA has been operating under its initial charter of 1947 without any accounting by it to the people or to Congress except to a limited extent for a brief period following Watergate. Even in the absence of congressional oversight and based upon information that has been disclosed without the FOIA, it is a known fact that the CIA has engaged in "covert operations" and special and extraordinary activities in many countries throughout the world such as Greece, Guatemala, Chile, Cuba, Iran, France, Angola, Zaire, Brazil, Italy, the Philippines, Portugal, Korea, Viet Nam, Laos and Thailand. Obviously neither Congress nor the people know of all covert activities of the CIA of an operational rather than an intelligence gathering nature.

Yet most of these secret actions have not advanced the security, welfare or interest of the United States. Quite to the contrary (e.g. Iran). They have caused severe harm to the status, influence and reputation of the United States in the eyes of untold millions of people throughout the world. It has interfered with the capacity of the United States to establish good faith relationships with countries, particularly of the Third World, based upon mutual trust and common purpose. We are because of the very activity the intelligence agencies wish to engage in, in secrecy, looked upon as an opponent of democracy and social change abroad, as supporters of undemocratic and repressive elements and regimes.

The intelligence agencies at home and abroad and the U.S. people

S. 2284 represents an elaborate piece of legislation vesting tremendous power with the president and his executive and intelligence agencies. This bill creates a vast intelligence system with enormous powers never before conceived of let

alone enacted by any Congress. It raises the most profound constitutional questions and on its face suffers from constitutional defects and infirmities. Its implications and effect upon the total structure of the United States Government are such as requires the most intensive and prolonged study, scrutiny and evaluation. Legislation such as this should never be enacted in moments on perceived political crises at home or abroad. To permit the enactment of such legislation in these circumstances would result in the enactment of laws that will do irreparable injury to this nation and all of its people.

The legislation both because of its scope and novelty is complex and hence it would be impossible in this brief statement in the shortness of time available to deal with all of the multi-faceted problems it raises. In effect this bill establishes a fourth branch of government, not merely an information-gathering system, but an active operational system which unlike any other branch of government, will be permitted to act in what amounts to total secrecy destroying the people's means and right to know and exercise their constitutional privilege of knowing what the government is doing and seeking correction by legislation and elective process.

It must be noted and remembered that almost all of the domestic intelligence activity of the CIA engaged in illegally, pertain to political surveillance, political information and intrusion upon and interference with the people's exercise of their lawful constitutional rights. More than 50 percent of the files of the FBI have nothing to do with criminal activity. Rather its focus has been political surveillance, political operations in the form of COINTEL and otherwise and in the vast intrusion upon the private and political lives of the people.

In light of the above this statement can only deal with a few aspects of this bill. The need for time to study, to present evidence and testimony on the bill and its implications require an extended period of time and it is hardly subject to critical analyses and intelligent discernment in the context of a presidential election.

The very definition of terms as found in § 103 of the bill, terms such as counter intelligence activity, intelligence activity, terrorist activity, national intelligence activity, special and extraordinary activity as defined in that section, the very meaning and impact and the broad and vague definition of such terms raises serious questions and thereby taints the entire piece of legislation and subjects it to constitutional attack on the grounds of vagueness under the Fifth Amendment. The vesting of authority to conduct such activities and other sensitive intelligence activities and the authorization to engage in them are equally vague and subject to abuse. The president's power to delegate and sub-delegate authority to engage in such activities only serves to compound the danger of § 123.

The limitations in the bill pertaining to private institutions and the maintenance of their integrity is essentially ineffective and includes a whole series of categories of organizations which would be subject to exploitation and manipulation by the intelligence agencies, the effect of which would destroy their integrity and validity and would make it impossible for them to function abroad with any sense of credibility and trustworthiness.

Title II of the Act, Standards for Intelligence Activity, and the definitions thereunder, suffer from the same deficiencies as that applicable to Title I. Part B thereof and particularly §§ 211–214 grant the intelligence system essentially uncontrolled authority subject to their subjective and non-reviewable judgment, to engage in various forms of surveillance, intrusion, by mail cover, surreptitious entry, recruitment and placement of informants, and the power to engage in COINTEL activities all under the cover of the broad definition of counter intelligence, counter terrorism in the absence of illegal activity, based upon the possibility that some conduct may be engaged in some time in the future or that a United States person may be the subject or target of hostile organizations, governments or agencies. The language used in the bill, "circumstances which indicate that the person is or may be engaged in clandestine activities" only serves to vest unlimited discretion with those intelligence agencies which past disclosure has established have acted illicitly and violated the constitutional rights of hundreds of thousands of people.

Title II of the bill along with Title IV § 414 and Title V, § 504 grants jurisdiction to the CIA within the United States and expands the jurisdiction of the FBI beyond the United States. They authorize these intelligence agencies to act in concert without jurisdictional limit among themselves and with foreign intelligence agencies with no accountability to any independent branch of government or the people.

The showing necessary to obtain a warrant is far less than that required for a criminal proceeding. The obtaining of the warrant by the agency and its enforcement and the information derived therefrom, can at the sole discretion of the agency, be kept secret, secretly disseminated to other federal agencies and to local and state agencies or can be destroyed at the agency's convenience under a minimization procedure.

Were we now to look at the hearings of the Church Committee, and the final reports issued by it, we would find that essentially each and every one of the activities frowned upon and condemned and found to be a threat to our national integrity would be authorized and sanctioned by this bill and all such activity would have a total cloak of secrecy.

This piece of legislation constitutes a clear and present danger to the entire fabric of American democratic government. It is a threat to all of our basic liberties. It is a bill which will damage this country at home and abroad. This is a bill that does not limit and prevent the abuses of the past. It sanctions, condones and authorizes them. It gives statutory approval of the excessive claims of executive authority and inherent power and relegates legislative and judicial branches of government to non-participants and deprives them of the power to protect this nation, its national interest and its security in the truest meaning of the word.

Under the cover of more efficient intelligence gathering, this bill de facto amends our Constitution and destroys any semblance of checks and balances. It deprives the people of the knowledge essential to enable them to call a halt to improper, unwise and illegal conduct by the government.

TESTIMONY OF MARSHALL PERLIN, GENERAL COUNSEL, FUND FOR OPEN INFORMATION & ACCOUNTABILITY, INC.

Mr. PERLIN. I am pleased to have the opportunity to give testimony with reference to this bill, whose consideration by this committee and the discussion and concern it is causing throughout the country mandates that it receive whatever aid each and every one of us can give to this committee to assure that no bill is enacted into law which does injury and harm to our basic democratic society.

I have been practicing law for more than 33 years. For the last 5 years, whether I wished it or not, most of my time has been concerned with the Freedom of Information Act, and many other years prior to that time, I have been concerned with representing unions, workers, and other people who have suffered grievous harm by intelligence agencies and no means of having effective recourse because of the cloak of secrecy that existed and protected these agencies doings, legal and illegal.

One of the first cases that I handled on behalf of some clients in the Freedom of Information Act were the sons of Julius and Ethel Rosenberg. As a result of that litigation, which has been going on now for 5 years, we probably have obtained more pages from the FBI, surely from the FBI, as well as pages from other agencies, totaling approximately 200,000 pages, but that took 5 years of work.

But even more significant is that more than that number have been withheld. More than that number have not been accounted for; 100,000 pages are being withheld on the grounds of (b)(1) laws under the Freedom of Information Act, that is, national security, and the national defense and foreign relations.

Almost an equal number of pages and portions of pages have been withheld on claims protecting confidential sources. Many of these claims, as the litigation has demonstrated, have been ridiculous and

absurd. There is an illusion that by instituting a Freedom of Information Act, you suddenly have the doors open and the files fall upon you. That is not so.

The agencies, and particularly the intelligence agencies, use every means to delay and limit that which you receive. The CIA gave us 300 legal-sized pages of an inventory, single-spaced, of the total number of documents that we obtained. It was slightly more in pages than the size of the inventory.

The amount of material that was disclosed from the CIA under the FOIA has been miniscule. We have had the opportunity also to face one other problem. In order to resist disclosure, and we have found the evidence on that, and we brought action in the Federal courts based thereon, the FBI destroys its files.

But it is not the FBI alone. It is a convenient way of withholding documents, either to destroy them or to not find them or not search for them. So, I do not see in the course of processing these past 5 years FOIA proceedings any massive disclosures of national security interest and exposure of informants, any danger to our national security. What I do see from reading those 200,000 pages I have referred to and thousands of other pages from other organizations that we have seen, we find a history going back at least a quarter of a century of the CIA, the FBI, and other intelligence agencies engaged in unlawful, illicit conduct.

The remarkable thing is, much of their conduct which is hidden under claimed FOIA exemptions is known to many of the people. When we have a CIA having the power in coordination with the FBI to draw up lists of people who sign petitions, citizens of the United States and fine people, and amass those lists of names and send them to CIA stations throughout the world so those people can be subject to scrutiny—in one example, thousands upon thousands of names were disseminated for those purposes for one single reason. People overseas and people here had committed the dangerous and subversive act of seeking to save the lives of the Rosenbergs.

When I see among the limited files that I obtained records of the FBI active in almost every country of South America, Cuba, Ecuador, Panama, Argentina, Uruguay, and go right on down the list, evidence of CIA interference in the domestic life of those countries, seeking to affect those lives, and seeking to interfere with organizations of people who wish to express their views on current issues that hear upon relations with the United States, I get very concerned. When we are then confronted with a statute which says, in effect, the intelligence system can act in absolute secrecy, there is a natural and inevitable dichotomy of countervailing interests which we under our Constitution have to try to reconcile, the right of the people to know, the right to compel their government to account, the right to rectify their government's action, and the need to acquire intelligence information.

We have the present bill placing under secrecy not merely the CIA, but all intelligence agencies. It is not merely 421(d), you also have pending before a Senate committee a bill, the FBI charter, which essentially exempts the FBI documents from disclosure. You have a host of other bills which have the effect of eviscerating the FOIA or under the claim of national security and the national interest.

Now, in this context we realize that the activities of the CIA and the FBI as revealed in the Church committee reports and hearings consitituted a pattern of conduct which the Senate and its committee found to be dangerous to the very existence of the integrity of the democratic process. We then find not only does the public not have the right to know, but Congress under this bill has no right to know what Government, the Executive and its agencies have done and a total absence of accountability.

The CIA or the intelligence system has an obligation to report to Congress, save to a limited number, but Congress people who will get the report have to be cleared by the intelligence system who is accounting to them. They face the fear that if any of the information they receive, information given, I am sure, with the agency impressing with the seriousness of the matter and the national stake involved, it has, to use an old phrase, a chilling effect on any oversight committee, whether of the House or of the Senate. The Senator or Representative will be charged with endangering the national security.

That whole process of secret accountability in my mind becomes a form of cooptation, that denies true access and true evaluation by the legislative arm of our Government, and we know under this bill many of the most important activities of the intelligence system are not subject to judicial scrutiny. We have for the first time in all history a secret court, the district and Court of Appeals judges who operate in secrecy, whose record is secret, where the only right to review is when the Government appeals where they are denied a warrant regardless of the showing made. When we have that sort of situation where the courts do not know, the people do not know, and their representatives do not know, we are creating under this bill a separate fourth branch of Government which is accountable to no one.

If you look at the Church committee report, and I will try—I have been trying to be a bit more brief than my statement, but it is difficult for a lawyer to achieve that result—I must confess, and I have spent many times and many days on the Church committee report and hearings, because—I think whatever happened, it was a magnificent piece of research and work, both by the members of that committee and their staffs—when you read what they found, what the report condemned, what the committee pledged to prevent happening again, such things as the Huston Plan by Mr. Nixon under the theory of executive power, and inherent power, which set out an intelligence system without legislated authority, you expected and believed that the Congress would never legislate authority to commit such wrongs.

The evil of it was not merely that it did not have legislative sanction and it was not enacted into law, but that it was fundamentally in violation of our Constitution, of the first, the fourth, and the fifth amendments. It was a suspension of our Constitution in the area of political rights.

I am sad to say that this bill, in effect, legislates and gives congressional sanctions and authorizes the intelligence system to do the very things that were condemned by the Church committee. This does not serve our national interests. It destroys the whole concept of a Government of checks and balances, where you have a powerful secret force, an arm of Government accountable to no one. Then you do not have a democratic republic under our Constitution, the way I see it.

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I say in this respect, too, without dealing—I touch upon a number of the specific causes in my statement, that this does grievous harm to the United States and its national interests.

I have traveled over the world. I have spoken to people in many countries, and we have the strange phenomenon that so many of them know things that many people in the United States don't know and which they attribute to the CIA, and the CIA, rather than our Ambassador, becomes the representative of this Nation, for the very reason of secrecy here. On many occasions, they accuse the CIA of doing things it never did, because the whole aura of secrecy never permits evaluation and intelligent discussion, and knowing what our Government represents and does.

The sad fact is, particularly in South America, in Africa, and in Asia, we are looked at, because of certain associations of CIA acts, as representatives of forces of repression and reaction, which is not to our national interest, which imperils our security in the much more profound sense than the alleged disclosure of secret information.

Just one last thing: I have, in going through the bill, in the definition of terms, in the descriptions of authority, I believe—and I don't wish to have to test it or have anybody else test it—that there are substantial constitutional infirmities because of the breadth, the vagueness of the terms and the definitions, and the purported limitations have so many loopholes as to destroy any meaning they may have had.

If we are going to make accountability and the people's right to know exist, I am afraid that interest will best be served by a rejection of this legislation in its present form, and there is much need for an extensive consideration and hearings on this matter. This is not the moment to rush to conclusion.

Senator HUDDLESTON. Mr. Perlin, I find it difficult to agree that there is anything in this bill that restricts congressional oversight or congressional access to activities.

Mr. PERLIN. I believe that the 142—I have the sections. The reportage is to the Select Committee, the Intelligence Committee of the House and the Senate.

Senator HUDDLESTON. Of covert activities?

Mr. PERLIN. Of covert activities, and there is other reporting and giving notice that there are restrictions on the dissemination of that information to other Members of Congress.

Senator HUDDLESTON. Those proscriptions do not prevent dissemination. They provide a way to do it, but not only that, under Senate Resolution 400, we are obligated to make that information available to the public.

Mr. PERLIN. But I would say it deters the initiative of the oversight committee to be dashing to the full Congress under that power to discuss it in full. The very reason that they seek to amend the Hughes-Ryan bill is that 200 people in Congress, our representatives, may know what the CIA and the intelligence system are doing. If you are going to have to have a special secret session, to tell other Members of Congress that we felt to be telling all too many people and be-

fore anyone does that telling, there will be bills to prevent even that disclosure.

Senator HUDDLESTON. We have confidence in that. We are purposely informing all the other Members of the body, but aside from that, each Member individually any time can go to the office of the committee and see the information that the committee has available.

Mr. PERLIN. What troubled me——

Senator HUDDLESTON. Let me ask you another question. You are concerned that we are rushing on this particular bill. Again, I would say there are some of us who do not feel we are exactly rushing in this procedure. Is it better to have nothing? Is it better as we are now?

Mr. PERLIN. It is an appropriate question, and one that I thought about and feel that I would like to give my answer on, and that is, it is better right now to have nothing, because the claims are, the right to engage in certain activity is based upon the claim of inherent power, executive power, which is highly questionable. It has been subject to certain judicial limitations.

This would give an aura of legitimacy to many things which are, I think, of questionable validity.

Senator HUDDLESTON. That is what it is intended to do.

Mr. PERLIN. Yes, but I feel it would injure us.

Senator HUDDLESTON. Ms. Meyer, we will hear your testimony.

[The prepared statement of Katherine A. Meyer follows:]

PREPARED STATEMENT OF KATHERINE A. MEYER, DIRECTOR, FREEDOM OF INFORMATION CLEARINGHOUSE

Mr. Chairman and Members of the Committee:

Scientific, technological, or economic matters relating to the national security; federal government programs for safeguarding nuclear materials; and other matters related to national security. Exemption 2 allows the agency to withhold information solely related to internal personnel rules and practices of the agency. Exemption 3 allows the agency to withhold information which is specifically exempt from disclosure by another statute. Accordingly, under Sections 403(d)(3) and 403(g) of the National Security Act (50 U.S.C. § 401, et seq.), the agency can withhold information which if released would reveal CIA sources and methods, and information which identifies agency personnel or structure. Exemption 5 of the FOIA exempts inter- and intra-agency memoranda from disclosure. Exemption 6 permits the agency to withhold personnel, medical, and similar files which, if disclosed, would constitute a clearly unwarranted invasion of privacy.

Moreover, Mr. Chairman, the courts have adopted special procedures in FOIA cases involving the CIA, which provide additional protections for any documents claimed to be exempt. If the CIA demonstrates that a public airing of its legal claims could itself reasonably be expected to damage our national security. the agency has been permitted to present the specifics of its arguments in camera affidavits to the court. The courts have even sanctioned to some extent the filing of portions of legal opinions and orders under seal. Although such procedures raise concerns about the proper adversarial functioning of our judicial process, they demonstrate that the courts have been especially solicitous of the agency's efforts to protect its legitimate secrets.

Thus, Mr. Chairman, Section 421(d) would not curtail the release of information which is damaging to our national security. The present FOIA exemptions already protect the confidentiality of such information. Indeed, the CIA cannot point to a single instance where release of information under the FOIA has endangered our national security. Rather, the CIA's position, as expressed by Deputy Director Frank Carlucci in recent testimony before the Subcommittee

on Government Information in the House, is that the CIA must be exempted from the FOIA for two reasons: (1) to cure a misperception on the part of foreign agents and intelligence sources that the FOIA is responsible for the disclosure of sensitive information; and (2) to excuse the agency from an administrative burden which is said to produce little benefit to the public.

As to the first argument, although Mr. Carlucci acknowledged that "under the current Freedom of Information Act, national security exemptions do exist to protect the most vital intelligence information," he stressed that the "key point" in seeking the exemption was that certain intelligence sources upon whom the agency relies have a different (and erroneous) perception.

We are frankly astonished that the CIA's solution for dealing with the misunderstanding of the FOIA by those living in societies where secrecy prevails is to impose greater secrecy in our country concerning CIA activities. In our view, any erroneous perceptions on the part of those in foreign countries, concerning either the scope or the administration of the act, should be corrected, rather than used as a means of depriving the American citizenry of its right to scrutinize the activities of its government.

With respect to the agency's second argument, concerning the administrative burden involved in complying with the FOIA, Mr. Carlucci conceded at three different points in his testimony before the House Subcommittee, that enactment of Section 421(d) would reduce the CIA's workload by only about 15 to 20 percent. This would not be a significant enough reduction in agency time to warrant depriving the public of access to information to which it is otherwise entitled. Furthermore, the desired objective may very well be achievable by streamlining the CIA's administrative procedures for processing FOIA requests.

The CIA's claim that the public realizes no significant benefit from CIA disclosures under the FOIA is not true. The CIA is hardly in a position to decide what the public needs to know about its activities. As the list compiled by the Center for National Security Studies demonstrates, numerous publications have been written on the basis of documents released under the FOIA. These publications have made an invaluable contribution to public debate about this country's foreign and domestic policies. Through its use of the FOIA, the public has obtained important information about the CIA's behavioral modification drug testing on humans, its domestic surveillance activities, its covert actions in foreign countries, and the CIA's manipulation of the American press. All of this information is vital to the interests of a free democratic society.

Congressional oversight alone is insufficient to assure public accountability by the CIA. In the first place, Congressional concerns are not often coextensive with those of the public, press, historians, or researchers who use the FOIA extensively. Congress plainly does not have the time to pursue every topic which merits attention, especially when the inquiry relates to historical events or other matters not requiring immediate legislation. Second, because the Congress is specifically exempt from the requirements of the FOIA, there is no assurance that the public will ever be able to bring to bear its own independent judgment on matters of important public concern. Moreover, we find it puzzling that the CIA continues to tout Congressional oversight as a substitute for direct public accountability through the FOIA while it is vigorously resisting attempts to expand and improve Congressional oversight of its activities.

If Congress is going to heed President Carter's State of the Union pledge to insure that past abuses of the CIA do not recur, it must not jeopardize the public's only immediate avenue for checking such abuses—the FOIA. Furthermore, it is the position of the Clearinghouse that any legislation which will affect the public's right of access under the FOIA should be dealt with through amendments to the FOIA itself, under the leadership and expertise of those committees with appropriate oversight jurisdiction, rather than in piecemeal fashion.

The Justice Department has already undertaken an exhaustive study of alleged problems with the FOIA and the need for revisions to the Act. Indeed, in a recent speech before the Federal Bar Association's Government Information and Privacy Committee, Associate Attorney General John H. Shenefield opposed Section 421(d) as being "vastly overbroad and . . . in stark contrast to the spirit and philosophy of the [FOIA]." (Washington Post, March 29, 1980). We concur in that assessment of the provisions, and urge the members of this Committee to delete Section 421(d) from the final legislation.

ATTACHMENT 1

(Subject: List of books and articles based entirely or partially on CIA documents declassified through the Freedom of Information Act.)

CIA ACTIVITIES WITHIN THE UNITED STATES

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Thomas, Jo. "C.I.A. Reporting on Student Group After Cutting Off Financial Help," New York Times, 12/18/77.
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Hersh, Seymour M. "C.I.A. Papers Indicate Broader Surveillance Than Was Admitted," New York Times, 3/9/79.
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Bernstein, Barton J. "The Policy of Risk: Crossing the 38th Parallel and Marching to the Yalu," Foreign Service Journal, March 1977, Vol. 54, no. 3.
Bernstein, Barton J. "The Bay of Pigs Reconsidered," unpublished paper, 1980.
Burnham, David. "C.I.A. Said in 1974 Israel Had A-Bombs," New York Times, 1/27/78.
Pelz, Stephen. "When the Kitchen Gets Hot, Pass the Buck," Reviews in American History, December 1978.
Pelz, Stephen. "Truman's Korean Decision—June 1950." for International Security Studies Program, Woodrow Wilson International Center for Scholars, Smithsonian Institution.
Wittner, Lawrence S. "American Policy Toward Greece During World War II," Diplomatic History, Vol. 3, Spring 1979.

BEHAVIOR CONTROL AND TESTING OF DRUGS AND BIOLOGICAL WEAPONS

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TESTIMONY OF KATHERINE A. MEYER, DIRECTOR, FREEDOM OF INFORMATION CLEARINGHOUSE

Ms. MEYER. Thank you, Mr. Chairman.

I am the director of the Freedom of Information Clearinghouse, which was established in 1972 as part of Ralph Nader's Center for the Study of Responsive Law to assist the public and the press in the effective use of laws granting right of access to Government held information.

On behalf of the clearinghouse, I thank you for this opportunity to testify on the proposed National Intelligence Act of 1980, and to register our vigorous opposition to section 421(d) of the bill, which would largely exempt the Central Intelligence Agency from the disclosure requirements of FOIA.

With all due respect, I submit to you that the concepts behind this section are, to borrow a phrase from CIA Deputy Director Frank Carlucci, totally alien, frightening, and indeed contrary to our democratic society, which is dedicated to the principles of an informed citizenry and an open and accountable Government.

The FOIA already amply provides for legitimately sensitive information. Exemption 1 exempts from disclosure matters that are authorized by Executive order to be kept secret in the interest of national defense or foreign policy. Thus, as long as such information is properly classified pursuant to the Executive order, the CIA can withhold information concerning military plans, weapons, or operations; foreign government intelligence activities, sources or methods; foroign relations or activities of the United States, scientific, technological or economic matters relating to the national security; Federal Government programs for safeguarding nuclear materials; and other matters relating to national security.

Exemption 2 allows the agency to withhold information solely related to internal personnel rules and practices of the agency. Exemption 3 allows the agency to withhold information which is specifically exempt from disclosure by another statute.

Accordingly, under sections 403(d)(3) and 403(g) of the National Security Act—50 U.S.C., 401, et seq.—the agency can withhold information which if released would reveal CIA sources and methods, and information which identifies agency personnel or structure.

Exemption 5 of the FOIA exempts inter- and intra-agency memorandums from disclosure. Exemption 6 permits the agency to withhold personnel, medical, and similar files which, if disclosed, would constitute a clearly unwarranted invasion of privacy.

Moreover, Mr. Chairman, the courts have adopted special procedures in FOIA cases involving the CIA, which provide additional protections for any document claimed to be exempt. If the CIA demonstrates that a public airing of its legal claims could itself reasonably be expected to damage our national security, the agency has been permitted to present the specifics of its arguments in *in camera* affidavits to the court. The courts have even sanctioned to some extent the filing portions of legal opinions and orders under seal. Although such procedures raise concerns about the proper adversarial functioning of our judicial process, they demonstrate that the courts have been especially solicitous of the agency's efforts to protect its legitimate secrets.

Thus, Mr. Chairman, section 421(d) would not curtail the release of information which is damaging to our national security. The present FOIA exemptions already protect the confidentiality of such information. Indeed, the CIA cannot point to a single instance where release of information under the FOIA has endangered our national security.

Rather, the CIA's position, as expressed by Deputy Director Frank Carlucci in recent testimony before the Subcommittee on Government Information in the House, is that the CIA must be exempted from the FOIA for two reasons: One, to cure a misperception on the part of foreign agents and intelligence sources that the FOIA is responsible for the disclosure of sensitive information; and two, to excuse the agency from an administrative burden which is said to produce little benefit to the public.

As to the first argument, although Mr. Carlucci acknowledged that "under the current Freedom of Information Act, national security exemptions do exist to protect the most vital intelligence information," he stressed that the "key point" in seeking the exemption was that certain intelligence sources upon whom the agency relies have a different—and erroneous—perception.

We are frankly astonished that the CIA's solution for dealing with the misunderstanding of the FOIA by those living in societies where secrecy prevails is to impose greater secrecy in our country concerning CIA activities. In our view, any erroneous perceptions on the part of those in foreign countries, concerning either the scope or the administration of the act, should be corrected, rather than used as a means of depriving the American citizenry of its right to scrutinize the activities of its Government.

With respect to the agency's second argument, concerning the administrative burden involved in complying with the FOIA, Mr. Carlucci conceded at three different points in his testimony before the House subcommittee, that enactment of section 421(d) would reduce the CIA's FOIA workload by only about 15 to 20 percent.

This would not be a significant enough reduction in agency time to warrant depriving the public of access to information to which it is otherwise entitled. Furthermore, the desired objective may very well be achievable by streamlining the CIA's administrative procedures for processing FOIA requests.

The CIA's claim that the public realizes no significant benefit from CIA disclosures under the FOIA is not true. The CIA is hardly in a position to decide what the public needs to know about its activities. As the list compiled by the Center for National Security Studies demonstrates, numerous publications have been written on the basis of documents released under the FOIA.

These publications have made an invaluable contribution to public debate about this country's foreign and domestic policies. Through its use of the FOIA, the public has obtained important information about the CIA's behavioral modification drug testing on humans, its domestic surveillance activities, its covert actions in foreign countries, and the CIA's manipulation of the American press. All of this information is vital to the interests of a free democratic society.

Congressional oversight alone is insufficient to assure public accountability by the CIA. In the first place, Congressional concerns are not often coexistent with those of the public, press, historians, or researchers who use the FOIA extensively. Congress plainly does not have the time to pursue every topic which merits attention, especially when the inquiry relates to historical events or other matters not requiring immediate legislation.

Second, because the Congress is specifically exempt from the requirements of the FOIA, there is no assurance that the public will ever be able to bring to bear its own independent judgment on matters of important public concern. Moreover, we find it puzzling that the CIA continues to tout congressional oversight as a substitute for direct public accountability through the FOIA while it is vigorously resisting attempts to expand and improve congressional oversight of its activities.

If Congress is going to heed President Carter's state of the Union pledge to insure that past abuses of the CIA do not recur, it must not jeopardize the public's only immediate avenue for checking such abuse—the FOIA. Furthermore, it is the position of the clearinghouse that any legislation which will affect the public's right of access under the FOIA should be dealt with through amendments to the FOIA itself, under the leadership and expertise of those committees with appropriate oversight jurisdiction, rather than in piecemeal fashion.

The Justice Department has already undertaken an exhaustive study of alleged problems with the FOIA and the need for revisions to the act. Indeed, in a recent speech before the Federal Bar Association's Government Information and Privacy Committee, Associate Attorney General John S. Shenenfield opposed section 421(d) as being "vastly overbroad and * * * in stark contrast to the spirit and philosophy of the [FOIA]." I am quoting from the Washington Post of March 29, 1980.

We concur in that assessment of the provision, and urge the members of this committee to delete section 421(d) from the final legislation.

Thank you.

Senator HUDDLESTON. Thank you very much.

I think we will reserve any questions to submit to you, if that is satisfactory, because of the time element. We have other witnesses that we want to hear this morning. Thank you.

Our next panel is Ms. Melva Mueller, Ms. Ethel Taylor, Mr. Brennon Jones, and Mr. Peter Weiss.

You may proceed.

[The prepared statement of Melva L. Mueller follows:]

PREPARED STATEMENT BY MELVA L. MUELLER, EXECUTIVE DIRECTOR, U.S. SECTION OF THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Mr. Chairman and Members of the Committee, I am pleased to appeal before you to offer the comments of the Women's International League for Peace and Freedom on S. 2284, the National Intelligence Act of 1980. The WILPF is a worldwide organization known since 1915 for its nonviolent activities on behalf of world peace. Because of these activities we of the U.S. Section have found ourselves subject to snrveillance since 1922, both as individuals and as an organization, by the various United States intelligence agencies. We have also, over the years, been keenly interested in the foreign policy of this country and therefore in the activities of the intelligence agencies as they relate to foreign policy. For both of these reasons we have a serious concern with the contents of the Intelligence Act.

We agree that there should be a careful definition of the authority of every intelligence agency and we welcome the restrictions that are contained in this bill. The knowledge that outrageous abuses by the intelligence community have occurred should caution us to exercise the utmost care in defining both the limits of authority and providing for the agencies' accountability.

One of the stated purposes of the proposed charter is to assure that the intelligence agencies "are accountahle to the President. the Congress, and the people of the United States. . . ." Yet Section 421 of the bill would emasculate the provisions of current law which best provide for accountability of the CIA to the people: this is the Freedom of Information Act. Onr own experience with this Act convinces us of its usefulness, despite its limitations.

Under the FOIA we have received over 10,000 pages of intelligence files, including over 70 separate items from the CIA. Prominent among the latter are letters passing between us and contacts, which include our traveling members, in the Soviet Union. From 1956 until 1973, the CIA conducted the illegal HTLINGUAL program, involving wholesale interception and opening of mail to and from the U.S.S.R.—all without benefit of consent, court order, or any

discrimination as to targets of surveillance. Without the FOIA, we would not have learned of this massive invasion of our privacy.

The proposed charter does place some welcome restrictions on the activities of the intelligence agencies. But how is the public to know that the restrictions are being adhered to, without the FOIA? Congressional oversight is not the answer. Despite the best of intentions, the few people involved in this oversight—to be far fewer under S. 2284—cannot possibly keep up with the workings of the vast intelligence network. Furthermore, the bill itself recognizes the need for accountability to the people, as well as to Congress.

To exempt the CIA from the provisions of the FOIA, except for individuals seeking their own records, would deny the files not only to organizations such as ours but also to responsible scholars and journalists. Books and articles which have already revealed to us shameful intelligence activities, such as the drug testing, mind control and assassination programs, have resulted primarily from FOIA requests. It is not a pretty picture presented by these writings, but it is one which is necessary to a democratic people's understanding of the intelligence process and its relationship to our foreign policy.

The issue here is surely broader than exemption of the CIA from the full scrutiny of the FOIA. We know that other intelligence agencies have recently asked this committee for similar exemptions, which will be difficult to deny if Section 421 becomes law. As we envision a relentless march toward government secrecy, we ask ourselves what has happened to the post-Watergate zeal for intelligence reform which spawned this Charter?

The intelligence community is, of course, claiming that the FOIA is too expensive and bothersome. We are convinced that the public oversight provided is well worth the expense and bother. We also reject the claim that the FOIA forces the CIA to release information important to this nation's security.

The CIA has argued that it is running into difficulties in securing cooperation abroad and ascribes these troubles to fear on the part of would-be collaborators that their confidentiality would be breached, whether or not the fear is groundless. Exemption from the FOIA, it is argued, would alleviate this problem. Anyone who has ever had an FOIA request filled knows that the CIA interprets broadly its authority to withhold "sources and methods." In all of our records received from this agency, there is no inkling as to any sources. Surely we do not want to hold our rights as citizens of a democracy held hostage to any would-be collaborators' unreasonable fears of disclosure.

Furthermore, our experience with people in many countries has taught us that the CIA has a most unsavory reputation abroad. Surely such a reputation would be at least as likely to impede cooperation as would the FOIA. A more careful observance of people's rights, such as is promoted by the FOIA, would improve the CIA's image, thereby easing its work.

In regard to Congressional oversight under the Charter, we would like to stress our approval for the requirement of advance notice to the congressional committees. Even though the committees are given no veto power over intelligence plans, they should have the opportunity to scrutinize those plans before they are put into effect in order to register any substantial objections.

In addition to our concern about accountability, we wish to comment on two grants of authority which especially trouble us. In connection with our work for world peace we spend a good bit of time abroad, attending conferences and participating in delegations and other meetings. Under Title II of S. 2284 we believe we would be subject to the collection of intelligence anytime, anyplace overseas, whether or not there was reason to believe a crime was involved.

The bill's definition of "foreign intelligence" is extremely broad, including as it does information pertaining to the activities of any foreign organization or individual. We could hardly fail to have such information when we meet with individuals and organizations abroad.

We find it shocking to think that we could be subjected to wiretaps, burglaries, mail openings and buggings because of our activities designed to promote mutual understanding, without the application of a standard requiring probable cause that a crime has been committed.

We are not comforted by the requirement of a court order, which we believe past experience shows can be more a formal than an actual restriction on the intelligence agencies. The three-day emergency provision permitting surveillance before obtaining a court order could be easily abused. Indeed, a court order is not required for activities directed against United States citizens abroad which

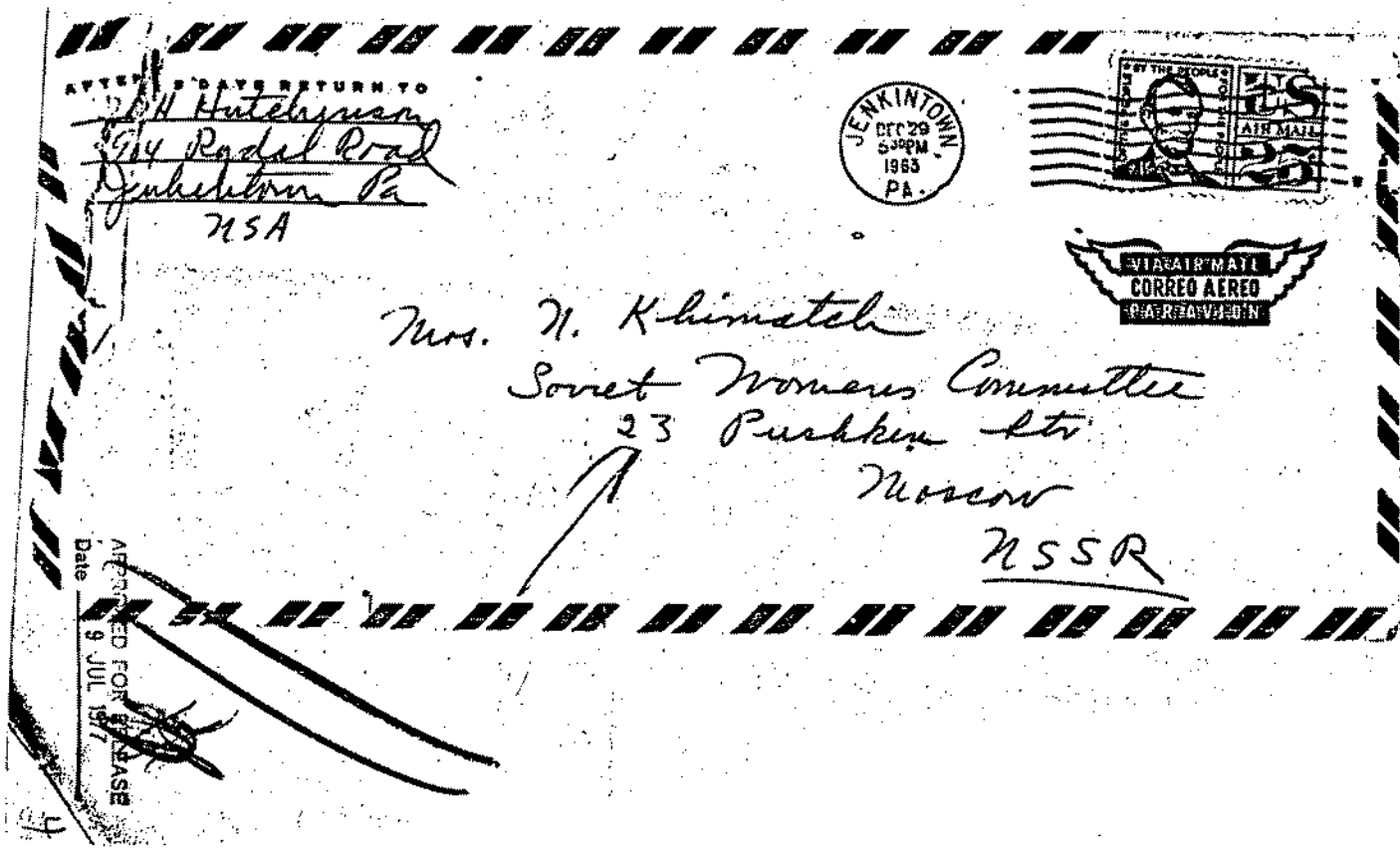
do not involve "extraordinary techniques." These exceptions would include use of such methods as informants, mail covers, and infiltration of organizations. Since our records received under the FOIA reveal that we have been subjected to most or all of these methods of surveillance in the past, we know firsthand the importance of safeguards against such unwarranted intrusions.

We are also most disappointed that the charter legitimizes "special activities." We are all too familiar with the "special activities" of the past: United States involvement in Cambodia, the overthrow of Allende in Chile, the reinstatement of the Shah in Iran, the Bay of Pigs invasion, to name a few of the most notorious. We cannot agree that legitimate intelligence activities include intervention in the internal affairs of another country. Covert operations are contrary to the principles of democratic process.

"The history of covert action indicates that the cumulative effect of hidden intervention in the society and institutions of a foreign nation has often not only transcended the actual threat but it has also limited the foreign policy options available to the United States government by creating ties to groups and causes that the United States cannot renounce without revealing the earlier covert action."

The Women's International League for Peace and Freedom is basically opposed to the use of any covert operations, for the above reasons. A standard which permitted covert operations should the very survival of our nation be at stake, which has been suggested, would be understandable. The present standard of "important to national security" is meaningless.

In conclusion, we urge this committee to reject S. 2284 and turn again to the vital task of defining the limits of the intelligence agencies' authority in such a way that the rights of Americans are not violated. Past abuses must not be allowed to recur, and public scrutiny of our policy-making and intelligence activities must be encouraged. Secrecy in government is the enemy of us all.


AFTER 5 DAYS RETURN TO
D H Hutchyson
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Mrs. N. Khimatch
Soviet Womens Committee
23 Pushkin str
Moscow
USSR
APPROVED FOR RELEASE
Date 9 JUL 1997

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM
UNITED STATES SECTION
JANE ADDAMS HOUSE
LOCUST 8-7110
LONG DISTANCE CODE: 215
2006 WALNUT STREET
PHILADELPHIA 3, PA.
CABLE ADDRESS: WILIB

Dec. 29, 1963

My dear Mrs. Klimetch -
Although it will be late
I enclose my Christ-
mas greeting - a plea to Nation
of our three granddaughters
by my husband. And please
accept also my very best wishes
for 1964. May it bring peace
for all the little ones of this
troubled world!
Thank you so much
for your card and for the
enclosed little amber dove -
symbol of the Peace for
which we all work
We of the WILPF are

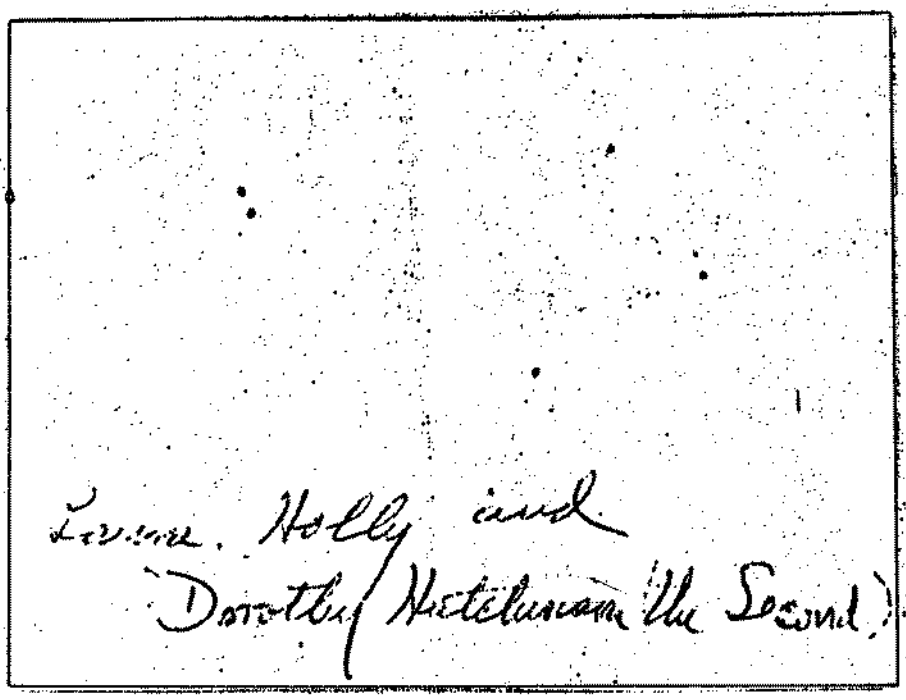
Carefully examining Pres. Johnson's
words and acts and, so far, feel
that he is believing with firmness
in support of many of our policies.
The cut backs in military spending
and the passage of the foreign aid
bill are encouraging.

Please convey my good wishes
to Nina Kirkland and other friends,
if you see them.

Cordially yours,

Dorothy Hutchinson

MERRY CHRISTMAS



TESTIMONY OF MELVA L. MUELLER, EXECUTIVE DIRECTOR, U.S. SECTION, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Ms. MUELLER. Mr. Chairman, I am Melva Mueller.

I am pleased to appear before you here today to testify on behalf of the Women's International League for Peace and Freedom on the National Intelligence Act of 1980. We are a worldwide organization known since 1915 for its nonviolent activities on behalf of world peace. We are a membership organization with branches in approximately 100 cities.

Because of these activities we of the U.S. section have found ourselves subject to surveillance since 1922, both as individuals and as an organization, by the various U.S. intelligence agencies. We have also, over the years, been keenly interested in the foreign policy of this country and therefore in the activities of the intelligence agencies as they relate to foreign policy. For both of these reasons, we have a serious concern with the contents of the Intelligence Act.

We agree that there should be a careful definition of the authority of every intelligence agency, and we welcome the restrictions that are contained in this bill. The knowledge that outrageous abuses by the intelligence community have occurred should caution us to exercise the utmost care both in defining the limits of authority and in providing for the agencies' accountability.

One of the stated purposes of the proposed charter is to assure that the intelligence agencies "are accountable to the President, the Congress, and the people of the United States. * * *" Yet section 421 of the bill would emasculate the provisions of current law which best provide for accountability of the CIA to the people: this is the Freedom of Information Act. Our own experience with this act convinces us of its usefulness, despite its limitations.

Under the FOIA we have received over 10,000 pages of intelligence files, including over 70 separate items from the CIA. Prominent among the latter are letters passing between us and contacts which include our traveling members in the Soviet Union. From 1956 until 1973, the CIA conducted the illegal HTLINGUAL program, involving wholesale interception and opening of mail to and from the U.S.S.R., all without benefit of consent, court order, or any discrimination as to targets of surveillance. Without the FOIA, we would not have learned of this massive invasion of our privacy.

I would like to show you just one example of the kind of thing that was intercepted and opened under this program. I have here a letter postmarked in 1963 from our president, Dorothy Hutchinson, to a Mrs. N. Khimatch of the Soviet Women's Committee. Here we have a handwritten letter containing Christmas greetings, and attached to it is a lovely picture of Mrs. Hutchinson's grandchildren. This is the kind of thing that we have been spending our money on, to intercept these.

The proposed charter does place some welcome restrictions on the activities of the intelligence agencies. But how is the public to know that the restrictions are being adhered to, without the FOIA? Congressional oversight is not the answer. Despite the best of intentions, the few people involved in this oversight—to be far fewer under S. 2284—cannot possibly keep up with the workings of the vast intelligence network. Furthermore, the bill itself recognizes the need for accountability to the people, as well as to Congress.

To exempt the CIA from the provisions of the FOIA, except for individuals seeking their own records, would deny the files not only to organizations such as ours but also to responsible scholars and journalists. Books and articles which have already revealed to us shameful intelligence activities, such as the drug testing, mind control, and assassination programs, have resulted primarily from FOIA requests.

It is not a pretty picture presented by these writings, but it is one which is necessary to a democratic people's understanding of the intelligence process and its relationship to our foreign policy.

The issue here is surely broader than exemption of the CIA from the full scrutiny of the FOIA. We know that other intelligence agencies have recently asked this committee for similar exemptions, which will be difficult to deny if section 421 becomes law. As we envision a relentless march toward Government secrecy, we ask ourselves what has happened to the post-Watergate zeal for intelligence reform which spawned this charter?

The intelligence community, of course, is claiming that the FOIA is too expensive and bothersome. We are convinced that the public oversight provided is well worth the expense and bother. We also reject the claim that the FOIA forces the CIA to release information important to this Nation's security. The exemptions available to the CIA have already been testified to here this morning.

The CIA bas argued that it is running into difficulties in securing cooperation abroad and ascribes these troubles to fear on the part of would-be collaborators that their confidentiality would be breached, whether or not the fear is groundless. Exemption from the FOIA, it is argued, would alleviate this problem. Anyone who has ever had an FOIA request filled knows that the CIA interprets broadly its autbority to withhold "sources and methods." In all of our records received from this agency, there is no inkling as to any sources. Surely we do not want to hold our rights as citizens of a democracy hostage to any would-be collaborators' unreasonable fears of disclosure.

Furthermore, our experience with people in many countries has taught us that the CIA has a most unsavory reputation abroad. Surely such a reputation would be at least as likely to impede cooperation as would the FOIA. A more careful observance of people's rights, such as is promoted by the FOIA, would improve the CIA's image, thereby easing its work.

In regard to congressional oversight under the charter, we would like to stress our approval for the requirement of advance notice to the congressional committees. Even though the committees are given no veto power over intelligence plans, they should have the opportunity to scrutinize those plans before they are put into effect in order to register any substantial objections.

In addition to our concerns about accountability, we wish to comment on two grants of authority which especially trouble us. In connection with our work for world peace we spend a good bit of time abroad, attending conferences and participating in delegations and other meetings. Under title II of S. 2284, we believe we would be subject to the collection of intelligence any time, any place overseas, whether or not there was reason to believe a crime was involved.

The bill's definition of "foreign intelligence" is extremely broad, including as it does information pertaining to the activities of any foreign organization or individual. We could hardly fail to have such information when we meet with individuals and organizations abroad. We find it shocking to think that we could be subjected to wiretaps, burglaries, mail openings, and buggings because of our activities designed to promote mutual understanding, without the application of a standard requiring probable cause that a crime has been committed.

We are not comforted by the requirement of a court order, which we believe past experience shows can be more a formal than an actual restriction on the intelligence agencies. The 3-day emergency provision permitting surveillance before obtaining a court order could be easily abused. Indeed, a court order is not required for activities directed against U.S. citizens abroad which do not involve "extraordinary techniques." These exceptions would include use of such methods as informants, mail covers, and infiltration of organizations. Since our records received under the FOIA reveal that we have been subjected to most or all of these methods of surveillance in the past, we know firsthand the importance of safegnards against sucb unwarranted intrusions.

We are also most disappointed that the charter legitimizes "special activities." We are all too familiar with the "special activities" of the past: United States involvement in Cambodia, the overthrow of Allende in Chile, the reinstatement of the Shah in Iran, the Bay of Pigs

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invasion, to name a few of the most notorious. We cannot agree that legitimate intelligence activities include intervention in the internal affairs of another country. Covert operations are contrary to the principles of democratic process. How can we condone CIA involvement in activities such as torture, sabotage, kidnaping, and the overthrow of legitimate governments? None of these are prohibited by the bill.

As the Church committee found:

The history of covert action indicates that the cumulative affect of hidden intervention in the society and institutions of a foreign nation has often not only transcended the actual threat but it has also limited the foreign policy options available to the United States Government by creating ties to groups and causes that the United States cannot renounce without revealing the earlier covert action.

The Women's International League for Peace & Freedom is basically opposed to the use of any covert operation, for the above reasons. A standard which permits covert operations should the very survival of our Nation be at stake, which has been suggested, would be understandable. The present standard of "important to national security" is meaningless.

In conclusion, we urge this committee to reject S. 2284 and turn again to the vital task of defining the limits of the intelligence agencies' authority in such a way that the rights of Americans are not violated. Past abuses must not be allowed to recur, and public scrutiny of our policymaking and intelligence activities must be encouraged.

Secrecy in government is the enemy of us all. Thank you.

Senator HUDDLESTON. Thank you, Ms. Mueller.

Ms. Taylor?

[The prepared statement of Ethel Taylor follows:]

PREPARED STATEMENT OF ETHEL TAYLOR

Mr. Chairman: I come here today with a sad feeling of deja vu. On July 11th, 1978 I presented testimony before this Committee against Senate Bill 2525 which was then the proposed Intelligence Charter. At that time a member of this Committee told me that if S. 2525 didn't pass quickly, he feared a much worse Bill would replace it. How right he was!

I said then that I felt that the credentials of Women Strike for Peace to testify were impeccable because we had been spied upon, and perhaps still are, not only by the CIA, but by the FBI, the DIA, State Department Intelligence and Army, Navy and Air Force Intelligence.

Under Part C421 (d) of S. 2284, my organization would not be permitted to request material under FOIA authority since release of information seems to be limited to only United States citizens or permanent resident aliens.

It was through information obtained under the FOIA that much of the CIA's illegal and unconstitutional activities in the past were revealed. The organization that I represent was itself a victim of such improper activities, many of which were revealed by the files we obtained. Yet even this material was so extensively censored that some pages were completely blank to protect the rights of informers and agents. It is truly an Alice-in-Wonderland concept to think that the rights of informers aud agents engaging in illegal activities need to be protected by the blanket of "national security" while the rights of Americans and orgaulzations openly exercising their constitutional privileges should be violated and kept hidden by an Intelligence Agency.

Extensive studies by the Subcommittee on Evaluation of the House Select Committee on Intelligence and the Church Committee have clearly shown that the potential of the release of information under FOIA has not had any detrimental effect on the agency's abiilty to perform its statutory responsibilities—the gathering of intelligence and producing useful intelligence reports.

It would appear, therefore, that the agency's need to he exempted from the FOIA is more to protect itself from the embarrassment of the revelations of its mistakes, its illegal activities, and its failure to properly evaluate intelligence information. While I do not believe that the existing FOIA role is perfection, I strongly urge that S. 2284 not further weaken it.

Under S. 2284 "covert action" is referred to as "special activities", a euphemism which really takes the sting out. Part D Section 131 which deals with Limitations on Intelligence Authorities Prohibition on Assassination the Bill states —"No person employed by or acting on behalf of the United States Government shall engage or conspire to engage in assassination." That's all its says about that!

The previous Bill E. 2525 prohibited assassinations under punishment of "years to life". That Bill not only prohibited assassinations but also prohibited creation of epidemics, floods—the use of chemical or biological warfare—the violent overthrow of democratic governments—the torture of individuals—creation of water shortages—the support of any action which violates human rights conducted by the police, foreign intelligence or internal security forces of any country. In case of a Congressional declaration of war or a Presidential decision three of these prohibitions could be waived.

But I am forced to conclude that the special activities prohibited in S. 2525 and not mentioned in S. 2284 are not out of bounds in the latter.

The overthrow of the Mossadegh government by the CIA and his replacement by the Shah are root causes of the turmoil in Iran today. There is no doubt the present turmoil contributes to the hysterical pressure to unleash the CIA. This is Catch 22 at its worst.

The overthrow of the democratically elected Allende government in Chile, the role of the CIA in Indochina and the inhuman manipulation of the Iraqian Kurds which resulted in the massacre of thousands of them when the Shah decided he was no longer interested in an internal rebellion in Iraq, are all examples of an unrestrained CIA which cannot forget its OSS origin.

The CIA drug pushing program which resulted in one death we know of and the poison testing in cities should have resulted in the arrest and conviction of those guilty of the crime. But instead these excesses appear to be allowed in this Statute since they are not specifically disallowed and with the proposed restrictions on FOIA disclosures such illegality and immorality will be hidden from public view.

I believe that Section 214 (a) of S. 2284 would be more fitting for a police state than a democracy. It states—"Counterintelligence and counterterrorism intelligence activities may be directed against United States persons (persons in this Bill may refer to persons and/or organizations) without the consent of the United States person concerned only on the basis of facts or circumstances which "reasonably indicate" that the person "is or may be" engaged in clandestine intelligence activity on behalf of a foreign power or international terrorist activity. Phrases like "basis of circumstances"—"reasonably indicate"—"is or may be" indicate a fishing expedition that would authorize surveillance of innocent Americans and could involve burglarizing their homes, reading their mail. Infiltrating their organizations or bugging conversations.

An individual and a member of an organization that was and perhaps still is, under illegal surveillance, I find this Section particularly offensive and frightening. The CIA knew the surveillance of Women Strike for Peace was illegal. The ploy used was to infiltrate groups in order to determine if they were getting support from foreign sources. After involving all field services of the CIA clandestine services and every branch of the intelligence community over a period of years and and using the FBI as its main source of information. the CIA study revealed no evidence of foreign involvement by the U.S. peace movement.

So, in order to justify continued surveillance, we were targetted to be infiltrated so that the CIA could get advance warning of demonstrations against their installations. If the CIA can allege, as it did, that it "believed" that Women Strike for Peace represented a "clear threat" to its Langley installation then we can truly be concerned about the reliability and value of the Agency's assessments. An Intelligence agency that sees a "clear threat" in an organization such as ours, and many others, which legitimately exercises its constitutional rights, should be of grave concern to this Committee.

It is not far-fetched to project this scenario. Women Strike for Peace attends many international women's conferences—some in Communist countries. According to this Bill and Section 214 (a) the CIA could assume that our organization

is or may be engaged in "clandestine activities on behalf of a foreign country." This certainly would have a chilling effect on our attempts to promote peace and understanding.

I do not come before you as a legal expert. I come before you as a victim of an agency which is too often against people exercising their constitutional rights in a democratic society. When the exercising of these rights come in conflict with the philosophy of government, then Intelligence agencies react without any regard for the constitution or the democratic process. We are concerned that there are those who feel that sometimes it is necessary to curtail civil liberties in order to fight the enemies of civil liberties. This is why an Intelligence Charter must not be the instrument for that kind of change but must be restructured to take the delicate line between apprehending those who would harm us and our institutions while protecting those who exercise their constitutional rights. We fervently hope for a Statute that will do this. In our opinion S. 2284 is not such a statute.

Mr. Chairman, on behalf of my organization I wish to thank you and the Committee for the opportunity to present my testimony.

TESTIMONY OF ETHEL TAYLOR, NATIONAL COORDINATOR, WOMEN STRIKE FOR PEACE

Ms. TAYLOR. I am Ethel Taylor, national coordinator of Women Strike for Peace.

I should like at the outset to say, Senator Huddleston, that I regret the absence of other members of the committee. For me it has kind of a chilling effect. I hope it does not indicate their lack of interest, and I am very grateful that you are here for the whole session.

I come here today with a sad feeling of deja vu. On July 11, 1978, I presented testimony before this committee against Senate bill 2525, which was then the proposed Intelligence Charter. At that time a member of this committee told me that if S. 2525 did not pass quickly, he feared a much worse bill would replace it. How right he was.

I said then that I felt that the credentials of Women Strike for Peace to testify were impeccable because we had been spied upon, and perhaps still are, not only by the CIA, but by the FBI, the DIA, State Department Intelligence and Army, Navy, and Air Force Intelligence.

Under Part C, section 421(d) of S. 2284, my organization would not be permitted to request material under FOIA authority since release of information seems to be limited to only U.S. citizens or permanent resident aliens.

It was through information obtained under the FOIA that much of the CIA's illegal and unconstitutional activities in the past were revealed. The organization that I represent was itself a victim of such improper activities, many of which were revealed by the files we obtained. Yet even this material was so extensively censored that some pages were completely blank to protect the rights of informers and agents. It is truly an Alice in Wonderland concept to think that the rights of informers and agents engaging in illegal activities need to be protected by the blanket of "national security" while the rights of Americans and organizations openly exercising their constitutional privileges should be violated and kept hidden by an intelligence agency.

Extensive studies by the Subcommittee on Evaluation of the House Select Committee on Intelligence and the Church committee have clearly shown that the potential of the release of information under FOIA has not had any detrimental effect on the Agency's ability

to perform its statutory responsibilities—the gathering of intelligence and producing useful intelligence reports.

It would appear, therefore, that the Agency's need to be exempted from the FOIA is more to protect itself from the embarrassment of the revelations of its mistakes, its illegal activities, and its failure to properly evaluate intelligence information. While I do not believe that the existing FOIA role is perfection, I strongly urge that S. 2284 not further weaken it.

Under S. 2284 "covert action" is referred to as "special activities," a euphemism which really takes the sting out. Part D, section 131, which deals with limitations on intelligence authorities prohibition on assassination, the bill states, "No person employed by or acting on behalf of the U.S. Government shall engage or conspire to engage in assassination." That is all it says about that.

The previous bill, S. 2525, prohibited assassinations under punishment of "years to life." That bill not only prohibited assassinations but also prohibited creation of epidemics, floods, the use of chemical or biological warfare, the violent overthrow of democratic governments, the torture of individuals, creation of water shortages, the support of any action which violates human rights conducted by the police, foreign intelligence or internal security forces of any country.

In case of a congressional declaration of war or a Presidential decision three of these prohibitions could be waived, but I am forced to conclude that the special activities prohibited in S. 2525 and not mentioned in S. 2284 are not out of bounds in the latter.

The overthrow of the Mossadegh government by the CIA and his replacement by the Shah are root causes of the turmoil in Iran today. There is no doubt the present turmoil contributes to the hysterical pressure to unleash the CIA. This is catch-22 at its worst.

The overthrow of the democratically elected Allende government in Chile, the role of the CIA in Indochina and the inhuman manipulation of the Iraqian Kurds which resulted in the massacre of thousands of them when the Shah decided he was no longer interested in an internal rebellion in Iraq, are all examples of an unrestrained CIA which cannot forget its OSS origin.

The CIA drug pushing program which resulted in one death we know of and the poison testing in cities should have resulted in the arrest and conviction of those guilty of the crime. But instead these excesses appear to be allowed in this statute since they are not specifically disallowed and with the proposed restrictions on FOIA disclosures such illegality and immorality will be hidden from public view.

I believe that section 214(a) of S. 2284 would be more fitting for a police state than a democracy. It states, "Counterintelligence and counterterrorism intelligence activities may be directed against United States persons"—persons in this bill may refer to persons and/or organizations—"without the consent of the United States person concerned only on the basis of facts or circumstances which 'reasonably indicate' that the person 'is or may be' engaged in clandestine intelligence activity on behalf of a foreign power or international terrorist activity."

Phrases like "basis of circumstances," "reasonably indicate," "is or may be" indicate a fishing expedition that would authorize surveillance of innocent Americans and could involve burglarizing their

homes, reading their mail, infiltrating their organizations or bugging conversations.

As an individual and a member of an organization that was and perhaps still is under illegal surveillance, I find this section particularly offensive and frightening. The CIA knew the surveillance of Women Strike for Peace was illegal. The ploy used was to infiltrate groups in order to determine if they were getting support from foreign sources.

After involving all field services of the CIA clandestine services and every branch of the intelligence community over a period of years and using the FBI as its main source of information, the CIA study revealed no evidence of foreign involvement by the U.S. peace movement.

So, in order to justify continued surveillance, we were targeted to be infiltrated so that the CIA could get advance warning of demonstrations against their installations. If the CIA can allege, as it did, that it "believed" that Women Strike for Peace represented a "clear threat" to its Langley installation, then we can truly be concerned about the reliability and value of the Agency's assessments. An intelligence agency that sees a "clear threat" in an organization such as ours, and many others, which legitimately exercises its constitutional rights, should be of grave concern to this committee.

It is not far-fetched to project this scenario. Women Strike for Peace attends many international women's conferences, some in Communist countries. According to this bill and section 214(a) the CIA could assume that our organization is or may be engaged in "clandestein activities on behalf of a foreign country." This certainly would have a chilling effect on our attempts to promote peace and understanding.

I do not come before you as a legal expert. I come before you as a victim of an agency which is too often against people exercising their constitutional rights in a democratic society. When the exercising of these rights comes in conflict with the philosophy of government then intelligence agencies react without any regard for the Constitution or the democratic process.

We are concerned that there are those who feel that sometimes it is necessary to curtail civil liberties in order to fight the enemies of civil liberties. This is why an intelligence charter must not be the instrument for that kind of change but must be restructured to take the delicate line between apprehending those who would harm us and our institutions while protecting those who exercise their constitutional rights. We fervently hope for a statute that will do this. In our opinion S. 2284 is not such a statute.

Mr. Chairman, on behalf of my organization I wish to thank you and the committee for the opportunity to present my testimony.

Senator HUDDLESTON. Thank you very much. I appreciate your testimony.

I believe there is a vote on. I see some lights. I am sorry to say. We have five bells. I want to check to make sure. If there is, we will have to recess for a very short time while I run over and vote.

Can you wait another few minutes?

Mr. WEISS. Certainly, Mr. Chairman.

Senator HUDDLESTON. We will recess then for 10 minutes.

[Whereupon, a brief recess was taken.]

Senator HUDDLESTON. The committee will come back to order and hear the remaining witness.

TESTIMONY OF PETER WEISS, VICE PRESIDENT, CENTER FOR CONSTITUTIONAL RIGHTS

Mr. WEISS. Thank you very much, Mr. Chairman.

I know that despite the recess, you are fairly anxious to wind up these hearings. I will not impose on you a full reading of my 15-page prepared statement with all of its citations and legal authorities, but I would appreciate it if it could be inserted in the record.

Senator HUDDLESTON. It will be in the record in its entirety.

[The prepared statement of Peter Weiss follows:]

PREPARED STATEMENT OF PETER WEISS ON BEHALF OF THE CENTER FOR CONSTITUTIONAL RIGHTS

Mr. Chairman and Members of the Committee: My name is Peter Weiss. I have been a member of the New York Bar for nearly thirty years and have been concerned even longer than that with international law as a way of promoting peace and justice.

I should like to point out, in passing, that, as a member of Military Intelligence during World War II and as a senior partner in a New York law firm representing U.S. corporations in their domestic and international transactions, I have some acquaintance with what some people are pleased to call "the real world". I have also given a fair amount of time to pro bono work in foreign affairs, constitutional law and human rights with a number of public interest organizations, including the Center for Constitutional Rights, a major public interest litigation group in New York, which I serve as Vice President and volunteer attorney and on whose behalf I appear before you today.

With a current staff of eight full-time and a number of volunteer lawyers, the Center has, for nearly fifteen years, been engaged in the application of law to questions of social policy.

I have read and reread S. 2284 with interest and I must say considerable dismay. I appreciate that the purpose of this particular bill is not to "unleash" the CIA and other components of the intelligence community but to strike a balance between the legitimate need for national security and the legitimate fears of the American people that their civil liberties will be sacrificed to that need. In doing so the sponsors of this bill have pursued a worthy purpose but one which seems to me as incapable of achievement as the proverbial squaring of the circle.

For reasons ably expounded by previous witnesses, particularly Morton Halperin and Jerry Berman on behalf of the American Civil Liberties Union, this bill does not safeguard the constitutional rights of Americans. It does attempt, valiantly, to guard against the worst excesses of which the CIA has been guilty in the past. At the same time, it sanctions many intolerable infringements of constitutional rights, and, worse still, it makes the chief legal officer of this country, the Attorney General, into the chief dispenser of illegality. In this it is reminiscent of the situations in many totalitarian countries, whose constitutions contain high-sounding guarantees of fundamental freedoms while their practice is characterized by habitual violations of those freedoms.

Indeed, in giving the Attorney General the power to permit intrusions into the lives and freedoms of Americans which, absent such permission, would be clearly unconstitutional, the bill comes perilously close to adopting, for the United States, the abhorrent system of "suspension of constitutional guarantees" which characterizes the practice of many foreign countries. It is worth noting, incidentally, that in many of these countries, such as Argentina, Chile and the Philippines, the suspension of constitutional guarantees is constantly justified on the basis of national security, a peculiarly American constribution to the lexicon of international political science, and one badly in need of reexamination and redefinition. The Pinochet government of Chile, for instance, probably the most brutal government in power today, has been careful to "justify" its wholesale theft of the liberties of the Chilean people by a series of official decrees, including some which

automatically categorize all previous decrees as being in conformity with the Chilean constitution for no better reason than that the Junta says that they are.

But a law which legalizes an illegal act is the ultimate perversion of law, and an Attorney General who is charged by law with the duty to sanction law-breaking is forced into the position of violating his solemn oath to uphold the Constitution and laws of the United States. I fail to see how this can be a sound development either for the rule of law in this country, or for the mental health of the Attorney General.

But the focus of my testimony is not on the domestic aspects of the bill. I propose, rather, to examine the implications of the proposed CIA Charter for the United States as a country committed to a continuing and expanding role for international law as a cornerstone—or, to put it more modestly and realistically, as a building block—of international peace, at a time in history when preserving the peace has become literally synonymous with preserving human life on this planet.

That there is such a commitment, at least on a rhetorical level, hardly needs documentation. If it did, any number of Law Day speeches by the President or the Secretary of State could be adduced in evidence. Indeed, the increasing reliance on international law is one of the positive achievements of this Administration, whether it be the law of diplomatic immunity in relation to the hostage crisis in Iran, the newly emerging law of human rights in relation to the internal exile of Andrei Sacharov, or the law of war and peace in relation to the invasion of Afghanistan. What people in other countries frequently want to know is whether international law, as interpreted by the United States, is strictly a one-way street, or whether we are prepared to live by the same rules which we criticize others for breaking.

With this backgrounnd, let us take a closer look at the proposed National Intelligence Act of 1980. Its very first section 101, confronts us with a paradox exemplifying the problem to which I wish to draw attention. In par. (1), Congress finds that intelligence activities should provide the information and analysis necessary for the conduct of the foreign relations of the United States. It is clear from the outset, then, that the entire 172-page document will deal primarily with activities conducted abroad, since there is a limit on the amount of foreign-relations intelligence which can be conducted within the United States. A few lines later, in par. (3), Congress finds that "supervision and control are necessary to ensure that intelligence activities . . . do not abridge rights protected by the Constitution and the laws of the United States".

The question arises, "Whose rights?" Since aliens not resident in the United States are not generally thought to be protected by the Constitution and laws of the United States—although, as will be shown later, they may, in fact, be entitled to such protection in certain circumstances—it is reasonable to assume that the drafters of the bill were concerned only with the rights of "United States persons" as defined in Sec. 103(21), i.e., U.S. citizens, lawfully resident aliens and U.S.-based corporations and incorporated associations not openly acknowledged to be directed by a foreign government.

Here, then, is a bill purporting to create a statutory basis for "the national intelligence activities of the United States", the vast majority of which are, of necessity, directed at foreigners living in their own countries, expressing great and commendable concern for the rights of "United States persons" which may be violated in a minor and incidental way by such activities, and no concern whatsoever for the rights of the primary targets of such activities, i.e., non-United States persons.

It may be objected that this statement, and the criticism which it implies, are too harsh. There is, after all, Sec. 131, which provides that "No person employed or acting on behalf of the United States Government shall engage or conspire to engage in assassination". Presumably, this accords even non-resident aliens the right not to be deprived of life without due proces of law by the CIA or, for that matter, any employee or agent of the U.S. government. The trouble with this objection is the old rule, dear to the heart of statutory interpreters, of inclusio unius exclusio alterius or, in plain English, "what you don't prohibit, you allow".

Why assassination has been singled out as a prohibited practice raises fascinating questions of ethics and psychology, which are beyond the scope of this testimony. Suffice it to say that it should not be too difficult for a professor of moral philosophy to make a plausible case for the proposition that the torture of an innocent person for the sake of, say, obtaining "foreign intelligence", is

less justifiable, from a moral point of view, than the assassination of, say Adolf Hitler.

Let us, however, be grateful for small favors. Assassination should be completely outlawed, if only because one President's nuisance is another President's arch-villian. But what is disturbing, from a moral and legal point of view, is the range of objectionable practices as to which there is no prohibition in this bill.

Part C authorizes the conduct of "special activities", which are defined in Sec. 103(18) as "activities conducted abroad . . . designed to further official United States programs and policies abroad and . . . planned and executed so that the role of the United States Government is not apparent or acknowledged publicly". In other words, "covert activities"; less euphemistically known as "dirty tricks".

In the past, such activities have included:

(a) the overthrow or attempted overthrow of foreign governments by force or subversion;

(b) physical and psychological torture and instruction in the use thereof;

(c) interference with democratic processes through the forging of documents, the organization of fake demonstrations, the unacknowledged financing of political groups, etc.;

(d) the use of mind-altering drugs;

(e) experiments with environmental interference, such as cloud-seeding;

(f) the poisoning of livestock and adulteration of agricultural commodities;

(g) the organization or encouragement and subsequent abandonment of national liberation struggles and other political movements, often with disastrous consequences to the participants;

(h) the use of slander and entrapment to discredit public personalities;

(i) massive invasions of privacy through mail-interception, bugging, wiretapping and other surveillance techniques;

(j) a variety of common crimes including kidnapping, arson, theft, burglary, physical assault, etc.;

(k) currency manipulation, labor unrest and other fiscal and economic "destablization measures";

(l) sabotage; and

(m) the recruitment and activation of mercenaries and private armies.

Some of these activities constitute clear violations of International law. All such activities presumably constitute crimes under the laws of the countries concerned.

SPECIAL ACTIVITIES AND INTERNATIONAL LAW

There are at least two major areas of international law in which the proposed CIA Charter implicitly sanctions, or at least fails expressly to prohibit, illegal activity. They may be defined broadly as "aggression" and "human rights".

a. Aggression

As to the first, Article 2(4) of the United Nations Charter states that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

The binding force of this prohibition against aggression is recognized, although not always observed, by all members of the United Nations, including the United States.

Certain General Assembly Resolutions, unanimously or overwhelmingly adopted, amplify the fundamental principle of Article 2(4) and are generally considered to be binding rules of international law, as constituting authoritative interpretations of the Charter, which itself has the force of a treaty.

One of these is General Assembly Resolution 2131(XX) of 1965, which provides that "No state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed toward the violent overthrow of the regime of another state, or interfere in civil strife in another state."

Another General Assembly Resolution is 2625(XXV) of 1970, also known as the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States, which declares it to be the duty of every state not to intervene in matters within the domestic jurisdiction of any other state, and affirms that "Armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political,

economic and cultural elements, are in violation of international law" and that "No State may use or encourage the use of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."

Given the definition of "special activities" in Sec. 103(18), and the nature of such activities in the past, Part C would seem to constitute an open license for the wholesale violation of precisely those precepts of international law which are essential to a peaceful world order.

What is even more alarming is that this license is not only granted in blanket terms to the CIA in the first sentence of Sec. 122(a), but that the balance of this section extends this license to the Department of Defense in the circumstances defined in Sec. 123(c), and to any department or agency of the United States Government, subject only to a Presidential determination that this is "more likely" (than what?) to achieve "the United States objective" (what objective?). Note, in this connection, that the definition of "departments and agencies" in Sec. 103(7) is broad enough to include the National Endowment for the Humanities, the Inter-American Foundation and the Nuclear Regulatory Commission, not to mention the Civil Rights Commission, the Tennessee Valley Authority and the Railroad Retirement Board.

The only restrictions on special activities are those enunciated in Sec. 121. In other words, they must be "in support of important national security interests", "consistent with the aims, values and policies of the United States" and such that "overt or less sensitive alternatives would not be likely to achieve the intended objectives" and that "the anticipated benefits (would) justify the foreseeable risks and likely consequences": four criteria, surely, which vie with each other in the race for first place in vagueness and open endedness.

The "aims, values and policies" standard is worth a closer look. Does this include observance of international law? If so, why does not the Charter, a document aimed at bringing the intelligence community within the rule of law, say so? Even if it be argued, for instance, that the overthrow of foreign governments by force or subversion is against the "aims, values and policies" of the current Administration, what about future administrations? What if Dr. Kissinger, who is on record as believing that foreign peoples have to be saved by United States intervention from their own imprudence, returns to Foggy Bottom?

b. Human Rights

There is today a widely recognized body of international human rights law, based on the UN Charter, the Universal Declaration, the UN Conventions, various regional compacts, judicial precedents, the writings of respected commentators and other traditional sources of international law. There are, admittedly, differences as to the scope of this new body of law, but not as to its existence. The United States Government is on record as regarding it as binding on itself and on other nations. Certain "special activities" e.g., torture for the sake of extracting confessions, kidnapping, hijacking and other forms of terrorism, have frequently been branded violations of international law by the President and the Secretary of State.

Foreign governments, particularly those which have been the targets of such charges, might well wonder about a document such as the one before us, which implicitly authorizes conduct of this type by "any department or agency or the United States".

Indeed, one may well argue that, if foreign governments are to be held to a standard prescribed by international law in the treatment of their own nationals, such a standard should, a fortiori, be observed by the United States government in the treatment of foreign nationals. And it will not do, obviously, for the United States to try to justify such activities on the ground that its targets are only "terrorists" or "spies" or "subversive elements", since that is the customary excuse offered by foreign governments for their human rights violations.

SPECIAL ACTIVITIES AND INDIVIDUAL AND STATE RESPONSIBILITY

In the preceding section, I have suggested that a bill which seeks to place legal restraints on the activities of the American intelligence community, without including international law as a source of such restraints, is bound to be highly detrimental to the image of this country as an adherent and proponent of a world order based on the rule of law. I have not argued that violations of

international law per se entitle the individual victims of such violations to seek redress for the wrongs inflicted upon them in national or international tribunals. Under the present state of international law—subject to certain exceptions discussed below—that is not necessarily the case.

This is not to say, however, that the "special activities" authorized by this bill would not give rise to legal actions which could be highly damaging to the reputation of this country, as well as costly to its Treasury. It is somewhat puzzling to me that the revelations about the past activities of the CIA which emerged from the Rockefeller Commission, the Church and Pike Committees and various books about the CIA by former CIA agents and others, have not led to a spate of lawsuits by the victims of these activities or their survivors. But I can see no reason why such suits should not be prosecuted in the future, in United States as well as foreign courts, and perhaps even the International Court of Justice, as a result of the "special activities" authorized by this bill.

Under general principles of tort law and under specific statutes, the victim of a tort conceived in the United States and committed abroad by agents of the United States government is entitled to sue for damages in the courts of this country. If the action is brought against the individual tortfeasor, it may lie in a state court, provided the defendant is found and served within that court's jurisdiction. Or, it may be brought in a federal court under 28 U.S.C. 1350, the Alien Tort Claims Act, if it involves a tort in violation of international law. The fact that the tort was authorized by the defendant's superiors, even by the President of the United States, will not be a valid defense, so long as the act constituting the tort is clearly illegal.

An action may also lie against the United States Government, in appropriate circumstances, under the Federal Tort Claims Act or, again, under the Alien Tort Claims Act.

Needless to say, such an action, whether against individual defendants or the United States Government and its agencies, could also lie in the courts of the foreign state in which the tort was committed.

As to the possibility of a defense of sovereign immunity being raised either by an individual defendant or by the government, I call the Committee's attention to 28 U.S.C. 1605(a)(5), the Foreign Sovereign Immunities Act of 1976, which provides that "a foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment."

This section was interpreted as recently as March 11, 1980, by Judge Joyce Hens Green of the Federal District Court for the District of Columbia, as failing to immunize the Government of Chile from a wrongful death action brought by the widow and widower of Orlando Letelier and Ronni Karpen Moffit for their assassination in Washington, allegedly at the instigation of the Chilean Government. It is noteworthy, in this connection, that in disposing of the Chilean Government's suggestion that, despite the plain language of 28 U.S.C. 1605(a)(5), it was entitled to immunity under the "directionary" exemption contained in 28 U.S.C. 1605(a)(5)(A), the court held that "Whatever policy options may exist for a foreign country, it has no "discretion" to perpetrate conduct designed to result in the assassination of an individual or individuals, action that is clearly contrary to the percepts of humanity as recognized in both national and international law." (*Isabel Morel de Letelier et al.* v. *The Republic of Chile et al.*, D.D.C., Civ. No. 78-1477, Slip Opinion dated March 11, 1980, p. 14.)

Finally, a word should be said about the possibility of litigation in the International Court of Justice resulting from the "special activities" authorized by this bill. The United States is currently a litigant in that court against The Islamic Republic of Iran. This is as it should be, since the taking of the hostages constitutes a grave violation of international law committed by one state against another. But what will the United States do if another country hauls it before the I.C.J. for any of the myriad violations of international law contemplated by the continuance of the "special activities" of the past? (It could, of course, follow the example of Iran and refuse to appear, but that would merely be compounding its disregard for the rule of law).

Such a case, incidentally, need not necessarily arise only out of a state-level action, such as the launching of a mercenary army or a major effort at "destabilizing" a foreign government. There is, in international law, a developing

doctrine of "state responsibility", under which action against foreign individuals or groups could conceivably be raised to the level of action against a foreign state.

"Whoever ill-treats a citizen", says Vattel, the great 18th century codifier of international law and practice, "indirectly injures the state".

That may be putting it a little sweepingly, but, despite the unfortunate result in the *Barcelona Traction* case, I.C.J. Reports (1970), the notion of a state acting as the vindicator of the wrongs done to its citizens by another state appears to be here to stay. Note, for instance, Sec. 212 of the Restatement of the Foreign Relations Law of the United States 2d (1965) : "The Government of the United States has discretion as to whether to espouse the claim of a United States national".

"State Responsibility", incidentally, can also work the other way around, i.e., the action of citizens in one state, resulting in harm to another state, can rise to the level of a harm inflicted by the former state upon the latter. Professor Greig, the author of one of the more recent texts on international law, having, perhaps, read too many CIA novels, gives the following example of an indirect wrong committed by one state against another, in violation of international law: "A shipbuilding company in state A constructs a vessel which is subsequently fitted out as a warship and used by rebels against the government of state B . . . State A will . . . be responsible under international law if it can be inculpated in what happened by a failure to take due care to prevent what occurred. D. W. Greig, International Law," 2d Ed., 1976, p. 522.

If I have dealt at some length on the possible consequences of "special activities" in terms of litigation, it has been because the bill seems singularly unaware of such consequences or their gravity. Thus, Sec. 431(b)(4)(A) provides for the payment of a death gratuity, equal to one year's salary at the time of death, to the surviving dependents of a CIA officer or employee who dies as a result of injuries sustained outside the United States by hostile or terrorists activity, or "in connection with an intelligence activity having a substantial element of risk."

What if the same officer or employee is sued by the surviving dependents of some foreign citizens who die as a result of injuries suffered at *his* hands and he is found liable? No provision for reimbursement in such an eventuality is made in any of the sections of the bill dealing with appropriations and expenditures.

CONCLUSION

This bill is obviously the result of much careful work and of genuine concern to avoid in the future a repetition of the excesses of the past, to have no more rogue elephants and no more of what a former Attorney General, in another but similar context, used to refer to as "The White House Horrors." There is hardly a page of this 172 page document which does not refer to law, to legal counsel and legal opinions, to the safeguarding of rights. It is, in many ways, an earnest and conscientious work. In balance, however, it fails to convince me or my organization, the Center for Constitutional Rights, that it advances the cause either of law or of national security, properly understood.

In attempting to safeguard the rights of Americans, it allows for too many exceptions. It perverts the constitutional scheme by providing for its partial suspension and by saddling upon the Attorney General and the President, both of whom should be devoted to the preservation of the Constitution with every fiber of their being, the task of determining the circumstances of such suspension. Rather than assent to a legislative license for such a wholesale infringement of constitutional rights, we at the Center would prefer to take our chances on litigating such infringements on a case-by-case basis, as we have done in the past.

As for the international aspects of the proposed Charter, its shortcomings are almost without redeeming features. As we look back on the Declaration of Independence today, it seems almost incomprehensible that this classic of human liberty should, in retrospect, be found to have excluded blacks, Indians and women from its definition of men created in equality and endowed with inalienable rights. Similarly this Charter, if adopted, will surely be found some day to be embarassingly deficient in its lack of concern for the rights of the 3,800,000,000 people living outside the borders of the United States and in its failure to recognize international law as a part of the law.

There is, perhaps, one redeeming feature after all. It is well settled that "International law is part of our law, and must be ascertained and administered by

the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana*, 175 U.S. 677, 701 44 L.Ed. 320, 328 (1899)

If this bill does become law, as we hope it will not, we at the Center will look forward to an opportunity to ask the courts to determine whether the Intelligence Oversight Board in advising the President on "questions of legality" under Sec. 141(c)(1), or the general counsel of the various intelligence agencies in reviewing activities for their conformity with "the Constitution and laws of the United States" under Sec. 141(d), or the various Inspectors General in investigating "alleged wrongdoing" and "matters of equality" under Sec. 141(c), or the Attorney General looking into "significant violations of law" or "serious questions of law" under Sec. 141(f), have taken due note of something called "international law", even though these words appear nowhere in this bill.

Thank you, Mr. Chairman.

Mr. WEISS. My name is Peter Weiss. I have been a member of the New York Bar for nearly 30 years. I should also like to point out that I was a member of military intelligence in World War II, and that I do a considerable amount of legal work for representing U.S. corporations in their dealings abroad. I mention that only because some of the people who are critical of this bill have been accused of having no connection with the real world, as it is sometimes called.

I appear here on behalf of the Center for Constitutional Rights, which is a public interest litigation group in New York with eight full-time staff lawyers and which for the past 15 years has engaged in some fairly important litigation on the relationship between law and questions of social policy.

Since there has been much talk this morning about the need for openness, I would like to be open with you, Mr. Chairman, and state my prejudices. I have a prejudice against the CIA, born partly of the fact that when I got my FOIA file, they showed that in 1973 an undisclosed number of CIA agents followed my wife and me and all our children around Europe on a trip which was designed to visit medieval castles because two of my teenage children at the time were interested in that subject.

It was a lovely trip and took about 2 weeks. It took us to Belgium and Holland and Austria and France.

About 6 years later, we discovered that every place we went the CIA reported back that we had come and then reported that we had gone. I assume it had something to do with the fact that my wife was active in the antiwar movement, but apart from the fact that they missed one of our children—they reported that there were two of them instead of three, which doesn't say very much for their efficiency [general laughter], it does leave a very bad taste in my mouth. It kind of casts a pall over the memory of what was one of the most pleasant periods that my family had together.

I might say that at the end, in the final report, the agent stated his conclusion that in retrospect the trip appeared to have been for the purpose of tourism.

The second reason I have something of a prejudice against the CIA is that Orlando Letelier and Ronnie Karpen-Moffit, who were assassinated in this city on September 21, 1976, were very close and dear friends of mine. I think the whole story of the CIA's relationship to that assassination, whether by commission or omission, has not yet been told. What has been told clearly on the record emerging from the trial is that the murderers were originally trained by the CIA to

commit murder. They were not trained specifically to commit these particular murders, but once you engage in that kind of activity, that is the kind of result that follows, and I find it very hard to forget.

Another and the last prejudice that I will mention is that I am a fan of John le Carré. I thank John le Carré more than anyone else makes the case against covert activities, or special activities as they are called in this bill.

I am all in favor of intelligence. I think intelligence is important to the national security of any nation. There are many new ways to collect intelligence, many efficient ways. The CIA itself does a very efficient job in its open intelligence collection operations. But covert operations are quite another matter, and as those novels of John le Carré show better than anything else I know, they tend to waste enormous amounts of energy and human potential on activities which are sordid and ultimately counterproductive.

The spies engaged in those covert activities ought to stay out there in the cold, and perhaps if the light of FOIA is allowed to continue to shine on those activities, they will eventually just go away.

My organization, Mr. Chairman, is very concerned with the U.S. constitutional rights aspects of this bill, but that is not the focus of my testimony, so in respect to those I merely wish to say that we do feel very strongly that while a serious effort has been made to safeguard them, that it is not adequate, and for purposes of my testimony I simply wish at this point to subscribe to and endorse the very careful analysis presented to this committee by Morton Halperin and Jerry Berman of the ACLU.

As to the FOIA question, I agree with Mrs. Mueller that unless the FOIA remains unrestricted, there will be no effective check on the operations of the CIA and other intelligence agencies of this Government. The attempt to cut down on the scope of FOIA strikes me as extremely dangerous, not only in the context of this particular bill, the National Intelligence Act of 1980, but because it may be the first nail in the coffin of FOIA generally.

The argument based on foreign objections is not very impressive to me, Mr. Chairman. I think that argument ought to be turned around. FOIA is one of the great contributions that this country in its history has made to the technique of democracy in the world. That technique is available to other countries. It is not the first time that this country will have done something, will have created a new legal or social institution which other countries can adopt. Nobody had the kind of antitrust laws that we had for 60 years until the European Economic Community adopted them in the early sixties. Nobody had our antidiscrimination laws until other countries followed suit. To some extent, we are the only country not to have prior consorship, and as an American lawyer, Mr. Chairman, I am proud of that. I don't think there is any need for the United States to run its democratic institutions and principles down to the level of other countries.

I think it would be very nice if the American members of the Interparliamentary Union were to push the idea of FOIA in other countries, instead of cutting down FOIA in deference to the fact that other countries do not have it.

Now, the main concern of my testimony, Mr. Chairman, is in the area of international law. I was struck in reading and rereading this bill

by its numerous references, commendable references, to the need to safeguard constitutional rights and to abide by the laws of the United States; by the numerous procedural safeguards created in terms of legal counsel to the various agencies, Inspectors General, the role of the Attorney General, and so forth, and, in contrast to this, by the complete absence from this document of the concept of international law. The covert operations of the CIA, which are called special activities in this bill, have an obvious impact on international law and must in the view of my organization be measured by international law standards.

As Mrs. Taylor has pointed out, the only specific prohibition on the foreign activities, the special activities, of the intelligence agencies in this bill, is the prohibition on assassination, and even the so-called laundry list of section 135 of S. 2525 has now been omitted.

I understand the problems with that. I understand that any so-called laundry list will still leave some operations that might be in violation of international law permitted under this bill, but I see no reason why the bill should not show some sensitivity to the fact that a great deal of what the CIA has done abroad in the past 25 years has been in gross violation of international law, and that this has created very serious problems for us.

I don't know why there shouldn't be some hint, some mandate, to the various officials asked to exercise legal supervisions over the activities of the intelligence community, that international law is one branch of law to which they ought to pay attention.

There are two principal areas in which international law impacts on special activities. One is the area of aggression; the other is the area of human rights. As to the first, I think it is clear from article 2(4) of the United Nations Charter, which prohibits the threat of force or the use of force by one state against another, and from various other General Assembly resolutions and legal principles which have been derived from the charter and which are based on the same concept as article 2(4), that massive interference in the democratic processes of another country, whether by force or in some other way, is not only a technical violation of international law, but is striking at the cornerstone of a peaceful world.

I am not very confident that merely asking the President to certify that a given operation is important to the national security really takes account of the gravity of the potential continuing threat to world peace that is posed by the open license given to the CIA to continue such operations as Chile, Guatemala, and in more recent times Grenada and so forth.

The second major area on which international law impacts is that of human rights. There can be no doubt that many of the past activities—and I cant' talk about the present activities of the CIA, because we don't know much about them—but many of the past activities of the CIA have been in gross violation of precisely those standards of human rights which this administration has made a cornerstone of its foreign policy and which it has adopted as binding on the world community.

I firmly believe, Mr. Chairman, that there should be, not necessarily a "laundry list" in this bill, but some statement saying we expect the

intelligence communities to abide by the generally recognized standards of international law, and perhaps to say in particular the international law of human rights.

Let me just say that in addition to the policy question involved here, the question of the image of the United States as a potential lawbreaker sanctioned by an act of Congress, there is also a question to which relatively little attention has been paid in the past, but which could assume considerable importance in the future. That is the question of legal liability.

I don't quite understand why the CIA has not been sued by more people around the world, but as I say, as I explain in some detail in the paper, there is no reason why it should not be. There is no legal reason why it should not be. There is every reason to believe that if it continues to inflict wrongs on citizens of foreign countries, not only the individuals involved will be sued and may be found liable for very considerable sums of money—for which, incidentally, there is no compensation provided under this act—but the Government may be sued.

What if some country which feels that it has been destroyed by a CIA operation or that its democratic process has been destroyed were to sue the United States, say, in the International Court in the Hague? What price do you put on a country? I don't know. It will be an interesting question when it comes up.

This bill, Mr. Chairman, is obviously the result of much careful work and general concern to avoid in the future a repetition of the excesses of the past. In attempting to safeguard the rights of Americans, it allows too many exceptions.

As to the international aspects of the proposed charter, its shortcomings are almost without redeeming features. As we look back on the Declaration of Independence today, it seems almost incomprehensible that this classic of human liberty should in retrospect be found to have excluded blacks, Indians, and women from its definition of men created in equality and endowed with inalienable rights. Similarly, this charter if adopted will surely be found someday to be embarrassingly deficient in its lack of concern for the rights of the 3.8 billion people living outside the borders of the United States, and in its failure to recognize international law as a part of law.

There is perhaps, and this is my final point, one redeeming feature after all. It is well settled that, in the words of Mr. Justice Gray, in "The Paquete Habana":

> International law is part of our law, and must be ascertained and administered by the courts of justice as often as questions of right depending upon it are duly presented for their determination.

If this bill does become law, as we hope it will not, we at the center look forward to an opportunity to ask the courts to determine whether the Intelligence Oversight Board, in advising the President on questions of legality under section 141(c)(1), or the general counsel of the various intelligence agencies in reviewing activities for their conformity with the Constitution and laws of the United States under section 141(d), or the various Inspectors General in investigating alleged wrongdoing and matters of equality under section 141(c), or the Attorney General looking into significant violations of law or

serious questions of law under section 141(f), have taken due note of something called international law, even though those words appear nowhere in this bill.

Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you very much, Mr. Weiss, for your excellent testimony.

Again, I think because of the time it is going to be necessary to submit questions that we may have to you, if that is agreeable to you witnesses. I am sure that the members of the committee will be interested in following up on some of these statements that have been made.

So, I want to thank each of you for your participation in our hearing. Thank you very much.

Mr. WEISS. Thank you, Mr. Chairman.

Senator HUDDLESTON. The committee then will stand adjourned until tomorrow morning, when we will continue. Thank you very much.

[Whereupon, at 1:30 p.m., the committee was adjourned, to reconvene the following morning.]

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WEDNESDAY, APRIL 2, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met at 10:12 a.m., pursuant to notice, in room 5110, Dirksen Senate Office Building, Senator Walter D. Huddleston (chairman of the committee) presiding.

Present: Senators Huddleston, Moynihan, Jackson, Garn, Chafee, and Wallop.

Senator HUDDLESTON. The committee will come to order.

We will continue our hearings into the National Intelligence Act of 1980 and other proposals relating to the intelligence community and the operation thereof.

We are delighted to have this morning as our first witness Dr. James R. Schlesinger, who is now a consultant in residence at the Georgetown Center for Strategic and International Studies and is a former Secretary of Defense, former Director of Central Intelligence, and who has been very helpful to this committee in previous deliberations.

Jim, welcome to the committee this morning.

Mr. SCHLESINGER. Thank you, Mr. Chairman.

Senator HUDDLESTON. Unless my colleagues have some comment, we will hear——

Senator CHAFEE. Well, he wore another hat. He was also Secretary of Energy.

Senator JACKSON. Chairman of the Atomic Energy Commission, Assistant Director of the Budget, in charge of everything but inflation. [Laughter.]

Mr. SCHLESINGER. It seems to be untended these days, Mr. Chairman [Laughter.]

Senator HUDDLESTON. You may proceed, sir.

TESTIMONY OF JAMES R. SCRLESINGER, CONSULTANT IN RESIDENCE, GEORGETOWN CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

Mr. SCHLESINGER. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, it is a special pleasure for me today to appear before the Senate Select Committee on Intelligence, created in the years since my own tenure as Director of Central Intelligence, to comment on the proposed National Intelligence Act of 1980.

I believe I can be most helpful to you by focusing on the capacity and the general health of American intelligence—and how these vital elements may be affected by the enactment of a detailed, supposedly comprehensive, legislative charter. The question before this committee and

the Congress is not whether American intelligence should have a charter or enabling legislation. Such legislation has existed in skeletal form since the National Security Act of 1947.

The question before you is whether to repeal the existing legislation and to replace it with a lengthy and detailed charter specifying countless do's and don'ts—establishing, until such legislation is again changed, the criteria, limits, and obligations not only for the intelligence community and the American people but for the entire international audience as well.

I submit that the proper path to follow to have an effective intelligence community for the United States is to retain the skeletal form and to amend it as necessary. Repealing the existing legislation will, by itself, create confusion by wiping out over 30 years of court decisions. Substituting a detailed charter will restrict future flexibility, severely handicap liaison relationships and agent recruitment, and grossly curtail special operations capabilities.

For reasons developed below, I believe a detailed charter is an inherently bad idea—that would permanently damage the intelligence capability of the United States.

The ultimate goal of the Congress, and the purpose for which this committee was established, is to help foster, strengthen, and preserve an effective intelligence establishment for this Nation. I urge the members of the committee to focus on this larger purpose as it examines the proposed legislation. Oversight, ideally, is a positive function assisting Federal agencies better to achieve national purposes. It requires a delicate balance of that review necessary to avoid undesired or inappropriate activities, yet not so heavy or onerous that the functions for which the executive agency was created begin to shrivel. I am persuaded that the passage of this detailed, comprehensive legislative charter for intelligence would have the latter effect.

While virtually all democratic states maintain intelligence establishments, it is significant that other democracies have not seriously considered this type of legislation. The comprehensive legislative charter is an idea that was germinated in the investigations and exposures, much of it ill-advised, that started in 1975.

The comprehensive charter is an idea whose time has passed—I believe beneficially passed. Much has been said in recent months about the desirability of easing the restrictions that have been placed upon the CIA in recent years. It is sometimes suggested that the charter would assist in that process. Regrettably, it would not. A charter would intensify restriction. And more restriction, by any other name, is still more restriction.

In the last 5 years, incalculable damage has been done to the U.S. intelligence establishment. While we have been engaged in a quest for purity and in extended discussion of the meaning of righteousness, or of self-righteousness, the intelligence instrument itself has been deteriorating.

Morale has declined. Recruitment, internal and external, has suffered. The capacity for intelligence gathering has suffered concomitantly; both special operations and counterintelligence have been severely damaged. Our actions have been viewed with amazement by foreign intelligence agencies and foreign governments—with regret and apprehension by our friends and sheer *schadenfreude* by our

enemies. Thus, the immediate goal for this Nation—and for this committee—should be the rebuilding and revitalization of the intelligence establishment.

Above all, it is time to stop the self-abuse. The practice of self-flagellation is not confined to Shiite Muslims in the month of Moharrain. [General laughter.]

The United States has spent much of the last decade indulging in self-flagellation; much of it, though certainly not all, at the expense of the intelligence community.

Developments in the Middle East have underscored that the decade ahead promises to be as perilous as anything the United States and her allies have faced since the darkest days of World War II. The balance of power has deteriorated from our standpoint. The so-called Third World is highly volatile, and trends are moving against the free world. Our military capabilities have deteriorated, and continue to deteriorate, relative to those of the Soviet Union.

Circumstances of this gravity underscore the enhanced need for the most precise intelligence gathering, as the margin of error is reduced; and for an effective capability for special operations should they need to be employed.

I urge the committee to keep foremost in mind these parlous conditions—rather than the debates, smacking of national self-indulgence, of the last 5 years. Above all, I urge that no action be taken under the guise of reform that would further cripple the intelligence capacity of the United States.

Mr. Chairman, before examining certain implications of a comprehensive intelligence charter, I should like briefly to review certain fundamentals regarding intelligence.

Intelligence operations are, in their very nature, quite delicate. At best, they are subject to countermeasures. At worst, they are subject to exposure and to collapse that places at risk the lives of those who, in one way or another, serve this Nation.

Their success may provide the prospect of national survival. Their exposure provides the material for national embarrassment. Secrecy is the only environment in which intelligence operations can flourish. The risk of discovery is, in itself, sufficiently large that it should not be heedlessly enlarged. Clandestine intelligence is a delicate growth. Any exposure tends to stunt that growth. Too much exposure will kill it. The risk of exposure must be carefully guarded against and should not be casually enhanced.

To avoid unnecessary exposure, strict discipline must be maintained. Complex and farflung activities—the U–2 flights and the Glomar Explorer, for example—were carried out under severe and reliable discipline. Such discipline depends upon high morale, among other things.

I need not spell out to this committee that discipline has declined dramatically in the United States in recent years. The revival of discipline—and of morale—depends upon national understanding and support for the necessary procedures.

In a democracy, morale and discipline depend, even more importantly, upon widespread public support of the mission of intelligence in which those who serve national intelligence, sometimes at peril and always at sacrifice, can bask. The creation of an environment in which

discipline can be buttressed and morale can flourish once again is a task for this committee and for this Nation in the decade ahead.

Mr. Chairman, I have mentioned the essentiality of secrecy in intelligence operations. We must, as a democratic nation, face the issue without flinching, for it is a difficult one. In the postwar period, despite a searing recollection of Pearl Harbor, this society examined with some trepidation the matter of secret intelligence. There was concern that an intelligence agency might become too powerful. That, in the intellectual ambience of those years, it might result in a Gestapo-type organization. Thus, there was recognition of a tension between secret intelligence and open democratic institutions.

That tension has never disappeared. Nor has the need disappeared for a balanced judgment acknowledging the requirements of secret intelligence and the protection of democratic institutions. The dilemma is still there. It must be squarely faced. In 1947, it was wisely decided that the preservation of democratic societies required the acceptance of compromises regarding secret intelligence. That judgment not only remains valid today, it has become increasingly valid.

Yet, that judgment also implies that a certain latitude, a certain discretion, must be granted for intelligence operations. In recent years there has been a sense of surprise regarding these older problems and judgments. There have been reservations regarding the necessarily different treatment of intelligence institutions and of other institutions.

Intelligence agencies must operate in a penumbra of jurisprudence, in the gray area of the law. Much effort—misguided effort—has been devoted to attempting to compress all intelligence operations within a narrowly defined framework of law. To the extent that such efforts are pushed to their logical conclusion, it will inevitably result in intelligence operations far purer than the world's experience indicates is practicable—and far less effective than this Nation requires.

What are the implications of these fundamentals—the delicacy of all intelligence operations, the need for secrecy and for discipline, and the balancing with the legal framework—for a comprehensive intelligence charter?

I suggest that such a charter is difficult to reconcile with the requirement for flexibility and delicacy, will tend further to weaken both morale and the sense of mission within the intelligence community, and leans away from the balance required toward a self-defeating attempt to squeeze intelligence into a rigid, predetermined legal mold.

Let me start with these larger and general difficulties and then turn later to certain specific problems raised in the proposed legislation.

One: Any detailed charter makes insufficient allowance for the flexibility required to deal with unforeseen contingencies. No one is sufficiently clairvoyant adequately to anticipate the future or to anticipate what measures one might wish to employ at some future date.

Adaptability—under proper oversight—is the key to intelligence effectiveness. A detailed charter effectively precludes such adaptability. A supposedly comprehensive charter can never be sufficiently comprehensive to deal with the many different circumstances which will emerge in the future. Consequently, whatever list of restrictions and authorities is prepared today will be judged to be inadequate in the future.

At that future date, even those who had earlier desired such legislation would prefer that it be somewbat different, allow certain activities, provide for different arrangements. A written charter remains a Procrustean bed by which all future intelligence actions would be measured, stretched, or foresbortened. We sbould not now constrain the actions that a future generation may wish to take by bringing down upon them the dead weigbt of unduly rigid law.

To provide flexibility in the future, a change in the law would be required. Yet, in those contemplated circumstances, the last thing that we would want would be an extensive, public congressional debate on an alteration of the intelligence law—or the long delays that would inevitably accompany such an attempt at amendment. The obvious inference is the necessity to avoid the imposition of these specific constraints and to maintain a more skeletal framework with its inherent flexibility.

Two: A detailed and lengthy charter is, in effect, a written constitution for the intelligence community. The consequence of such a written constitution will be the appearance of "strict constructionists" and "loose constructionists" regarding whether or not specific activities are permissible. In all probability, certain actions would be challenged in the courts on the basis that the CIA has exceeded its prescribed authorities. This is a nation extraordinarily given to litigation.

Indeed, it would have further effects. It would reinforce the already existing tendency for prospective operations to be extensively debated or deferred awaiting the judgment of the new specialists in intelligence law. The General Counsel's Office has, in recent years, been one of the few growth industries within intelligence. It would further reinforce the debilitating tendency for intelligence to become inward-looking, dealing with domestic constraints and debates rather than devoted to external actions.

Three: The detailed charter represents something akin to moral elephantiasis, based explicitly on the unstated premise that U.S. law is superior law placed above that of other nations. The charter, in effect, publicly and explicitly states the general conditions in whicb agents of the United States are authorized to violate the laws of other nations. Indeed, it has even been suggested that the domestic law on wiretapping be extended to provide Federal judges with the authority to authorize electronic surveillance overseas even when it is prohibited by the laws of other nations.

In part, it is this obvious element of moral megalomania that, in the past, led other nations to be less than explicit regarding the conditions under which their intelligence establishments were permitted to operate. There are reasons for this veil of decency. I trust that the United States will not be the first nation to tear down this veil. Contrary to the current fashion, reticence is not invariably a vice.

Similarly, there remain advantages in deniability. Intelligence officers are institutionally expendable: Not so, judges, Members of Congress, or Presidents. It is still advantageous that specific intelligence operations cannot be tied directly to judges any more than to elected officials.

Reflecting these broader considerations, I conclude tbat the quest for tablets of stone by which to guide the intelligence community is

both misguided and self-defeating. In itself it suggests a misunderstanding of the intelligence function—and a distrust of intelligence personnel that would weaken both the sense of mission and morale in a period in which they must be strengthened.

Since I do not believe that a comprehensive charter represents wise policy, I do not feel it appropriate to offer detailed commentary on the specific provisions of the proposed legislation. Nonetheless, there are several salient issues posed by this legislative proposal on which I think it necessary to comment.

First, I would hope that the issues of "prior notification" of intelligence activities and of congressional access to "all and any" information can and should be resolved in a manner that avoids a constitutional confrontation. Neither branch of Government wishes to surrender what it regards as its essential rights. Yet, both branches of Government can accommodate one another in a satisfactory and pragmatic fashion. Existing methods of oversight are working adequately. Time will tell whether the Congress should demand more through specific legislative requirements. I would think that the issue of prior notification can be handled on the basis of "fully and currently informed" as under the old Atomic Energy Act. I would hope that the Congress would not insist on legislative access to any and all information, for this would inevitably dry up many external sources of information. This last issue can be handled pragmatically through the exclusion of sources, thereby retaining some degree of foreign confidence, and by an appropriate definition of methods.

Second, I would hope that there would be no legislated exclusions of categories of professions or persons that cannot serve American intelligence. Such action would lead to continuing pressures for additional exclusions. No American should be denied the right to serve the United States in this sphere simply because of his membership in a particular group. Moreover, it would be ironical to deny to American intelligence access to groups that in principal remain open to foreign intelligence services, for example, the KGB. Here is an area in which the principle of uniformity seems appropriate—without "benefit of clergy"—or restriction of clergy—in whatever guise.

Third, I see no benefit, and potentially serious consequences, in introducing GAO personnel without restriction into intelligence operations. The use of confidential funds has been well established, since the start of the republic. Members of oversight committees can be informed on such matters without the large-scale introduction of personnel from congressional agencies. In this area, the delicacy of intelligence operations requires the continuation of special protections.

Fourth, I can see little advantage in establishing separate structures and staffs for the Directors of National Intelligence and the Director of the Central Intelligence Agency. This would not lead to the strengthening of the community, but rather to a dilution of strength and to diffusion of effort. At this time, what American intelligence most requires is structural stability rather than radical and potentially harmful surgery.

Mr. Chairman, in recent years oversight has grown as it properly should. There is the enhanced role of the designated congressional committees. There is the President's Oversight Board. There is expansion of the activities of the General Counsels' offices. There is enhanced

activity of the Department of Justice. It is increasingly necessary, it seems to me, to have a sense of restraint regarding the burdens of oversight. A comprehensive charter is the example in hand.

In the case of military procurement, the steady expansion of controls has probably doubled the cost of equipment sold to the Federal Government. But it is only an increase in cost. In the area of intelligence, the cost may be more than dollars. It may mean the crushing of vital operations and even the initiative that is the prerequisite for such operations.

In applying statistical controls, Mr. Chairman, we have long since learned to distinguish between two types of errors. Type I errors, in such circumstances, imply insufficient control to detect those outputs that are clearly defective. But type II errors reflect a set of controls so costly and so onerous that the process becomes severely handicapped through endless and potentially crippling reviews. For U.S. intelligence today, I doubt that the risks are those of the first category of error.

Undoubtedly the better balancing of review and oversight should be welcomed, though it should not be pushed to the point that we come to neglect the fact that the fundamental purposes of U.S. intelligence are the production of timely and accurate intelligence and the conduct of operations that serve the national interest. These are increasingly dangerous times, and in such times the tools of national purposes should not be denied to this Nation as a consequence of an excess of zeal.

This committee has that creative role to play in the larger national interest. What the intelligence community today requires is time and the room for maneuver in which to rebuild. It requires stability. It requires a renewed sense of mission. It requires a clear and continuing indication of public support.

In these matters, Mr. Chairman, I hope that this committee can guide the way.

It is now time to stop the self-abuse.

It is the time to provide the necessary foundation for the restoration of intelligence operations and for an increasingly effective intelligence establishment.

Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you, Dr. Schlesinger.

In spite of the fact that you and I disagree on virtually every point that you have made, I would like to say that our objectives and goals are not in variance.

I would just point out that the present CIA director, Admiral Turner; former director Colby; the head of the FBI, Judge Webster; the director of the National Security Agency, Admiral Inman, all say that charters are required to give officers of the intelligence agencies standards by which to operate to insure needed authorization, to insure oversight and accountability.

I don't know whether you want to comment on those statements or not. Maybe you do.

Mr. SCHLESINGER. Yes, sir. I have a number of comments on that.

I think those in official positions today fully understand that it has been the policy of this administration to move toward legislative charters, and to a greater or lesser extent they have attempted to accommodate that desire within the administration.

I have looked at some of the testimony, and it is correct that such testimony has been nominally supportive, but not entirely enthusiatic about the prospect of a legislative charter.

I have talked to Mr. Helms. I have a call in to Mr. McCone.[1] I think it is probably fair at this time to say that, at best, there is divided opinion among the ex-directors, the former directors of the CIA.

In my judgment, Mr. Colby's views on this matter are novel among former officials of the administration, of the intelligence community. I have talked to many people, present and past, in the intelligence community, and I must say, Mr. Chairman, I find no great sentiment for a charter. A charter as a substitute for a strong endorsement by the Congress of intelligence, of the intelligence mission, is unsatisfactory.

If we want to provide support for intelligence personnel, we can do so more readily by something like a joint resolution of the Congress. You will get a much more lively response to that than to a charter.

Senator HUDDLESTON. What bothers me some about it is often we speak as if the past procedures are the standards by which we ought to be looking to the future. We hear all kinds of statements about how in the last few years the intelligence operations have been shackled. The intelligence failures are pointed out.

"We didn't know what was happening in Iran." "We didn't know about the Afghanistan invasion," which we did, incidentally. "We didn't know about the brigade in Cuba," which we also did, incidentally.

We missed a number of things. In the Vietnam war our intelligence was not perfect. I know, of course, that it's never going to be perfect. I know what some of the problems are in trying to be precise; but I would like to dispel the idea that somehow we have got a system that is perfect and to do anything with it, to tinker with it, is going to somehow put undue restrictions on the intelligence operations.

I don't believe that is true. I know we have attempted to do that. I have yet to hear any witness before this committee indicate a single activity that could in any way thought to be proper on the part of the intelligence operations which is prohibited by this charter.

Now, it makes it tougher, and would you agree that special activities or covert activities are of such a nature that there ought to be a considerable amount of care taken before such activities are initiated, and there ought to be a finding that they are at least important to us.

Mr. SCHLESINGER. I certainly agree with that. I agree with your comments in general, Mr. Chairman. I would certainly not try to create any image of a golden age that existed before 1975.

Intelligence operations are always inherently risky, and intelligence estimates have a medium probability of success. The question is whether the augmentation of restrictions will increase the probability of success in these inherently risky areas.

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[1] [Since the day of testifying, I have spoken to both Mr. McCone and Admiral Raborn. Both men feel that a lengthy charter adds unduly to complexity, is debilitating overall, and generally is the wrong way to proceed. Thus, four ex-directors feel strongly on this matter. I did not contact Mr. Bush because he has been preoccupied with a greater test in the political arena, though I believe that he would agree with us. Thus, Mr. Colby stands by himself in his views on the desirability of a legislative charter.]

I wholly endorse the increase in oversight by the Congress. That is something that has always been at the option of the Congress. I think that it will preclude hasty entry into special operations.

I am sure, Mr. Chairman, that the consequence of the developments since 1975 has been a decimation of special operations, of covert operations. To a considerable extent that may be desirable, but it reflects a number of things. Amongst them, under the circumstances of today, given the current climate of opinion, there is great hesitancy in suggesting such operations. On the part of the administration there is an even greater reluctance to proceed with them, given the fact that they would have to be exposed before the Congress.

I do not object in any way to review. I think that in order to proceed with special operations, what is required is a certain boldness on the part of the administration, any administration, in presenting these matters to the Congress. But I don't think that a written, detailed charter is necessary to achieve your objective in that regard, Mr. Chairman.

Senator HUDDLESTON. Special activities, of course, have never ceased and are going on today and have been every day, as far as I know, since the time that we had committees to be knowledgeable about those things.

I agree. I think they probably have changed a considerable amount in nature, which may be good; it may not be good. But I think there are two things to think about that. One is, as you have indicated and as I think history would sustain, that these activities are of such a nature that they ought to be entered into with a considerable amount of caution and care.

The second thing is that the world is different today, and where special activities might have been appropriate and possible in some countries in the past, today the risks are considerably greater and the potential damage to the country is potentially greater.

The wave of nationalism that has pervaded Third World countries makes certain types of operations that we took as routine a few years ago much more dangerous and much more less productive. So I think for that reason we have seen a decrease in the level of special activities.

The committee recognized that we ought to have the authority to conduct covert activities and provide for that, also provide a mechanism, a framework within which those decisions would be made, that would do a couple of things: first of all, provide a system of accountability, and second, make sure that all of the risks and all of the dangers that are of potential harm to the country are taken into account before such activities are undertaken.

It may be some question as to whether or not that is unduly restrictive. You see no value to the intelligence operator, the man who is out there on the front line to having a description of what his authorities are, what the perimeters are within which he should operate.

As far as giving him more confidence, it seems to me, and there have been some who suggest this, this is a way to increase his morale. He knows what he can do and what he is supposed to do. If he sees some instruction and goes too far afield, he knows he can be on solid ground by raising questions about that.

It seems to me that might prevent getting into the situation where some time in the future he finds himself hauled into court and having to answer for actions that he performed in the service of his country.

You don't think that is of any significant importance?

Mr. SCHLESINGER. I think it has limited utility, reflecting the uncertainties about intelligence operations that are the result of the climate, particularly in the last 5 years. Intelligence officers, unlike FBI officers, for example, are operating in foreign countries. They are not going to be hauled into court for reasons similar to those that might cause FBI officers to be hauled into court; and therefore, the do's and the don'ts are of much less utility.

In my judgment they are suffering from lack of confidence, but I believe the Congress could do far more to rebuild that confidence simply by passing a joint resolution taking note of the fact that this country needs a strong intelligence establishment. It could take note of the dissensions of the last 5 years and state as the goal of the Congress the desire of the Congress that the vigor and initiative that existed in past years be at least in some respect restored.

I think that would do far more than this detailed charter, which is by and large restrictive.

Senator HUDDLESTON. Just one other area, the area of collection of intelligence which I think our capacity has continued to improve in, and we have a great capability.

As far as I can determine, there are no restrictions that have been placed on the intelligence community by the Congress, none in this legislation, on intelligence collecting.

Mr. SCHLESINGER. Mr. Chairman, I believe that there are severe restrictions that are placed on intelligence-gathering by this legislation; but they are implicit restrictions. As you say, there are no explicit restrictions. Indeed, our intelligence has improved, in large degree because of satellite photography. But even our technical marvels are at risk today simply because of the leakage which is no fault of the Congress. It is a fault of the times, which has affected the Rhyolite system and engendered revelations regarding our new photographic satellite to the Soviet Union.

Where we are falling short is in our failure to recognize that any foreigner, any foreign individual or any foreign agency in liaison relationship with the United States that has limited confidence that what it provides to this country will not be exposed, is going to refrain from providing us with information. The problem lies not in the area of technical collection, but lies in the area of human intelligence and intelligence exchanges. And in that area, Mr. Chairman, I think that this legislation implicitly, indirectly would damage even intelligence gathering.

Senator HUDDLESTON. I thank the members of the committee who will try to adhere to the 10-minute rule here to give each member a chance to get some questions.

Senator Garn.

Senator GARN. Thank you, Mr. Chairman.

I would just like to apologize for not being here for your testimony. I did have a Banking Committee hearing with homebuilders there which are a little bit difficult not to listen to right now.

I do appreciate your testimony very much. I agree with a great deal of it, but because I came in late I do not want to use my seniority position to delay the Senators who have been here for a long time. So with that I will defer to the chairman and my other colleagues.

Senator HUDDLESTON. Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Mr. Secretary, to my knowledge you are the only man in American history to have served in three successive cabinets. That may or may not speak well f r your judgment, but it says a great deal about your talents. [Laughter.]

Mr. SCHLESINGER. Different Senators have various ideas about where my judgment went astray. [Laughter.]

Senator MOYNIHAN. But before that, you were a distinguished academic and gave a good deal of your time to organizational questions; and I would like to speak in these terms.

I was struck by your analogy to statistics: There are situations where insufficient controls have made it impossible to detect outcomes that are clearly defective, and there are opposite situations where the controls become so elaborate that no conclusions are ever reached.

I think you can range across disciplines, in economics, sociology, and political science, where you see situations which get stalemated because the controls get ever more elaborate, and nobody ever agrees. Every article is followed by a rebuttal. This contrasts with areas where the practitioners have agreed to settle for any error rate of 0.001 and leave it there and see if they can move ahead, and they in fact have been more progressive.

I think what I wondered if you want to comment on—obviously I am leading you in this direction—is this, aren't we seeing here a very general phenomenon: The process of bureaucratization? The National Security Act devoted five paragraphs to the Central Intelligence Agency, such that any citizen or any CIA employee or anyone else who would like to know what the Central Intelligence Agency does or should do can read it, and as a matter of fact, you will. Five paragraphs is about the limit of most persons' attention span.

This is the Tax Code, 172 pages. I would not want to poll the committee to see how many members of the committee have read this. [Laughter.]

Honestly, I haven't. I read in it. It keeps saying "Thou shalt not." Every so often it says, "Thou shall coordinate."

No citizen would know what the CIA was authorized to do if handed this document. They would not read it. It is not something comprehensible. It is a lawyer's document.

And the point I'm trying to make, and I'm taking too long, is that the process of bureaucratization is basically one which seeks predictability in behavior and uniformity of outcome.

That is why, for example, as you mentioned, in the Attorney General's office there is now a body of law known as intelligence law. Its chief practitioner gives speeches in which he says it is a very promising field and young men and women should get interested in it. We already have a big bureau here, and it's going to get bigger.

Do I take it to be, if you will accept my judgment of bureaucracy as seeking uniformity of behavior and predictability of outcome, I

do take it to be your judgment that those characteristics are not appropriate in an intelligence agency and that you want to avoid them if you can?

Mr. SCHLESINGER. Particularly inappropriate in an intelligence agency. It is a characteristic, I think, of all bureaucracies that the individual bureaucrats will normally want to reduce risks for themselves.

Senator MOYNIHAN. Yes.

Mr. SCHLESINGER. And the consequence has been, as I mentioned in the case of the Department of Defense, that through procurement procedures, manuals and manuals, to deal with past mistakes and to establish check forms and lists to go through to avoid those past mistakes, we have succeeded in reducing risks for the bureaucrats.

None will ever be hauled up again before Senator Proxmire, caught doing something wrong. And we have doubled the cost of military equipment. And in the establishment, we do not give those who are prepared to run risks sufficient protection. It is why intelligence analysis all too frequently comes out as mushy—on the one hand, and on the other hand it is possible that all things will occur. This is also the tendency in operations.

The tendency in recent years has been to cut off the high risk operations, even if they may be highly rewarding.

Senator MOYNIHAN. I want to press you on this point. I hope my colleagues might hear me. The normal concern of an oversight body is to make sure that a bureaucratized process does take place. That a naval officer should wish for Navy regs is not surprising. We have had two centuries of that, and knowing them is how you get to be an Admiral.

But what is normally to be desired, bureaucratic, uniform, predictable behavior, even though costly (the avoidance of risk being a deep-set concern of actors in the system), is what you don't want in an intelligence system. You want persons who are risk-taking. It is by nature a risk-taking enterprise, isn't it?

Mr. SCHLESINGER. It should be.

Senator MOYNIHAN. It could be turned into a legislative reference service.

Mr. SCHLESINGER. If it is going to be of any use to you, it has got to be a risk-taking enterprise to some extent. What this document does, since you mentioned Navy regs, is to create a whole new generation of sea lawyers. Every new recruit at the CIA—I see Captain Roach laughing at that reference to the Navy—but you have a whole new generation of recruits at the CIA who have practiced themselves in this code. They will devote endless discussions to how to skirt the code or where to avoid risk, and thus and thus, and what they should be doing or might be doing in the back alleys of the world.

Senator MOYNIHAN. Mr. Chairman, that is really all I have to say. But I want to make the point, which may or may not be acceptable to other members, that we may be proceeding here in a manner appropriate to most Government activities, and quite inappropriate to ours. As a matter of fact, even the military has often found that there is a pretty good rule that people who get promoted in peacetime are disasters in wartime because they don't take risks. Orwell writes on that subject.

But we will leave that aside. We are not trying to produce a normal organization here. Maybe it could only have lasted one generation. It may be the CIA can never survive this, that it will gradually subside. It is out there in McLean, and it will become a legislative reference service slightly more sluggard farther off. Maybe we can revive it. I don't know. But I do think there are different objectives, and we should keep that in mind. I just offer that thought.

I thank you for what I think is superb testimony. If I leave, it is because I have to rush upstairs to cut some of your former budgets. The Budget Committee is meeting. [Laughter.]

Mr. SCHLESINGER. Thank you very much, Senator.

I must say that the CIA can survive, and can survive as an effective institution, but time is getting short. We are going to have to revitalize that institution quickly.

Senator MOYNIHAN. I should then take the liberty of expressing a viewpoint of a member of the organization who said that to me the other day in just such words. He said we can still survive, but 2 more years at the rate we are going, you might as well turn us over to the Department of Agriculture. [Laughter.]

Those were the words of a serious man.

Senator HUDDLESTON. Senator Chafee?

Senator CHAFEE. Thank you very much, Mr. Chairman.

Mr. Secretary, I would like to congratulate you on your statement. I think it is an excellent one.

As the chairman pointed out, we are in something of a quandry here. We have heard from Mr. Colby whose views you described as novel. Nonetheless, I think we all have a great deal of respect for him, and his views which are somewhat contrary to yours.

In his statement Mr. Colby said he had a series of objections to the charters, but that if he couldn't get those objections clarified or removed from the bill, he would nonetheless support the bill because he feels it is so important to have a charter. He was very strong on this point.

Now, Mr. Helms testified when we had our first hearing about 1 year ago, and he shared your view. The basic framework is good enough and should be left alone. I must say the divergence of view here puts us, who are trying to arrive at the best conclusion, in a difficult situation.

But I must say I agree with you. I believe that—what does Admiral Rickover say—there are too many checkers and too few doers.

We can get a system in which there are no mistakes, but the only trouble is nothing happens. That is similar to trying to eliminate all scandal in Government. You may eliminate all scandal, but you may not have much government at the same time.

I am not here coming out in favor of scandal. [Laughter.]

But I think that we just can't have everything doublechecked or triple checked. Let us look at some specifics.

Section 131 of S. 2284 contains a series of specific prohibitions: "No person employed by or acting on behalf of the United States Government shall engage or conspire to engage in assassination."

Now, I am not sure I am in favor of that. Everybody says we got in a lot of trouble because we wanted to assassinate Castro; but I am

not sure that there might not be times when we might not want to engage in or conspire to engage in assassination.

Do you have any thoughts on that?

Mr. SCHLESINGER. Generally speaking, I am against assassination. [Laughter.]

Senator CHAFEE. We are all generally against assassination.

Mr. SCHLESINGER. Nonetheless, I think that is wrong to put that in legislation. It seems to me highly ill-advised to put that in legislation. Until the Pike and Church hearings I didn't know it was an area for discussion overseas, whether or not the United States might under some circumstances contemplate the possibility—and I use my words very carefully since there were no assassinations—contemplate the possibility of assassination.

I think it is even odder, to say the least, that the United States may feel impelled to put into the Federal code "Thou shalt not assassinate."

Senator CHAFEE. Let's move to the next prohibition, and this is one we have had a good deal of discussion on; that is, the integrity of private institutions.

Section 132 states that:

> No entity of the intelligence agency may use for the purposes of establishing or maintaining cover for any officer of that entity to engage in foreign intelligence activity or special activities, any affiliation, real or ostensible, with any United States religious organization, United States media organization, United States educational institution, Peace Corps, or any United States government program designed to promote education, the arts, humanities, or cultural affairs through international exchanges.

As a member of academia, what do you think of that one?

Mr. SCHLESINGER. Well, they are leaving little left other than the business community. I gather somebody is now trying to introduce that exclusion.

Senator CHAFEE. Senator Weicker did suggest that we not permit the use of any corporations except CIA proprietary corporations.

Mr. SCHLESINGER. I think that that is once again a proscription for the limitation of intelligence. I think that every American has not only the responsibility but the right if he should want to serve in some such capacity, and it is feasible that it should not be precluded by law. It may be precluded by the choice of Harvard University, for example, but it should not be precluded, in my judgment, by law.

Such legal proscription raises certain questions, for example, about the restrictions on the liberty of the press. Now, it is true that various press organizations will come forward and say we want this particular proscription.

It raises questions once again about the benefit of clergy. Every American should have the possibility, if he should so desire, of serving the intelligence community.

Senator CHAFEE. The next paragraph says——

Mr. SCHLESINGER. At this time——

Senator CHAFEE. "Nothing * * * shall prohibit voluntary contacts or * * * exchanges." In other words, if a member of the clergy wants to look around while he is in Iran, or the Soviet Union, or wherever it might be and report back, that is all right. But he can't be on the CIA payroll.

Mr. SCHLESINGER. That is right. He can be on the Soviet payroll, by the way. [Laughter.]

There are no exclusions that cut out the KGB.

Senator CHAFEE. But can he be on the CIA payroll?

Senator HUDDLESTON. I think there is a good deal of misunderstanding. All this does is prohibit a CIA officer from posing as a clergyman or posing as a journalist and using that as cover in carrying out his responsibility. It does not preclude any kind of arrangement that any journalist wants to make with the CIA or any clergyman or any academic.

There were suggestions in the beginning that we have absolute prohibition, but it is not written into this legislation.

Senator CHAFEE. Well, I—the Chairman has given the rule on that. It doesn't seem to me that it is crystal clear from paragraph 132(b) that people in these professions are free to collect information for the CIA, but if that is the interpretation, let's keep going then.

Mr. SCHLESINGER. I would say it does not seem crystal clear from the phrases that you read, Senator. I would say once again that, in my experience, it is very helpful for all organizations to be prepared to assist the U.S. Government in intelligence-gathering, and that they should not be precluded, if they should so desire, by placing a CIA employee, if that is what it is, into the institution. Harvard may choose not to do so, but other institutions may be prepared to do so.

It seems to me to be ill-advised, both in terms of the moral climate and patriotic climate, and in terms of the efficacy of intelligence-gathering, that we would want to preclude these large areas and make them "off limits" to our country's intelligence services.

Senator CHAFEE. I couldn't agree with you more. It seems to me we could easily have a situation where, in order to obtain vital information, it would be necessary to send a CIA agent in under the guise of a newspaperman, or a clergyman.

Mr. SCHLESINGER. The strict constructionists, since the passage of the Executive order, have to my knowledge eliminated certain sources of information—as a result of this—that they ought not to, in my judgment, eliminate. And I agree with what you have said, sir.

Senator CHAFEE. Thank you, Mr. Chairman.

Senator HUDDLESTON. Senator Jackson.

Senator JACKSON. I have been around here since the National Security Act of 1947, and I am convinced, looking back and having been involved in some of the oversight activities, that some of the greatest mistakes made in the intelligence area could have been avoided if the Congress had not failed to set up a Joint Committee on Intelligence.

It is Congress that has failed through the years—until just recently, that is until 1975—to audit the CIA. I joined with Senator Mansfield in doing that which was heresy by proposing the establishment of a Joint Committee on Intelligence, patterned after the Joint Committee on Atomic Energy.

I am convinced that when you analyze all of the problems experienced by the intelligence community, they get down to people. There is no substitute for qualified and ethical people.

You mentioned that other democracies do not have a statute, but that they preserve freedom, certainly in the mature democracies, by having a written constitution. I think the greatest tragedy that we face in this country in the field of ethics is that now we have to go look up in a book what we can do and what we can't do.

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We have applied that to the Congress, and we have been to Sunday school. We learned about what is right and what is wrong. I think it is a real sad commentary on where we are at this moment.

I believe very firmly that what we need is a Joint Committee on Intelligence to keep, as the statute provided in the old Atomic Energy Act, the Congress fully and currently informed. Further, I believe that Congress should be given prior notification of covert activities.

You do those two things, and it seems to me that you have the best unwritten constitution. The British have a very good intelligence institution, and in Britain when it comes to knowing what your rights are, you don't have to go look it up in a book because everyone growing up in that country is aware of their rights. You are always in trouble on fundamental issues of right and wrong when you have to go look anything up in a book.

Am I right in understanding, and you alluded to it, that in all of the democracies, hardly without exception, there are none that have a charter or a detailed statute on the subject of intelligence?

Mr. SCHLESINGER. Yes, sir. That is correct. None of them that we know of has even contemplated this kind of arrangement. That includes democracies like the Scandinavian democracies—Norway, Sweden, Denmark, Switzerland, the Dutch, the British, the French, Israel. None of them have felt that it is necessary to write such matters down——

Senator JACKSON. In stone.

Mr. SCHLESINGER. In stone, or even openly codify these kind of restraints.

I might say, Senator, that I agree with your comment with regard to the unwritten constitution. For what it is worth, that has been—with respect to intelligence—what my recommendation would be on such matters; I think you will recall that the Joint Atomic Energy Committee never had any difficulty whatsoever finding out what it wanted to find out.

Senator JACKSON. I served on that committee all but 2 years of its existence, and we never had a leak. The real danger of leaks coming, I find, is in the other branch of Government, the executive branch, where there is such enormous access to information.

It does seem to me that we must get down to "people." There are risks in this. There are risks in intelligence. That is its nature. There is a risk in having the Congress involved, but I think it is minimal. And if it is held to a small number, and if there is an honest sharing of the burden, I think any good head of CIA is going to work very closely with the Congress.

Would you agree on that?

Mr. SCHLESINGER. Yes, sir.

Senator JACKSON. In order to get the job done and to share the burden. But Congress refuses to share the burden on intelligence. We tried, but oh, no, this is the Congress that said we don't want to know; we don't want to get into this. So I want to make that point as strongly as I can.

We tried in years gone by. But I disagree completely with the listing of "do's and don'ts."

Let's illustrate the situation. Suppose there was a situation in the hostage problem in Iran in which in order to have a real good cover

to obtain intelligence on the status of the hostages, we would have to run afoul of the proposed statute.

Wouldn't it be a bit embarrassing that we had to rush through Congress legislation that would make legal a certain move? I know that the American people right now would want to use clergymen. They would want to use professors.

Is that a valid point?

Mr. SCHLESINGER. That is absolutely correct.

Senator JACKSON. I mean, to make it a real good cover and to get involved in the payment of expenses and to bring other people in. If the American people found out that we had to change the intelligence law in order to do that, which might be essential to get those people out——

Mr. SCHLESINGER. Or even worse, not doing anything because of law. I might say that under the Executive order, Senator Jackson, and in the absence of the passage of this legislation which enshrines the Executive order in statute to a large degree, the United States could not have done what the Canadians did in removing Americans from Iran. It is precluded.

I do not want to go into details in an unclassified session, but that is precluded. We could not have done what the Canadians did.

Senator JACKSON. What the Canadians did for us?

Mr. SCHLESINGER. Yes. What the Canadians did for us.

Senator JACKSON. I'm wondering what our friends in the long-lived democracies must think of the United States, doing what someone once characterized as: "Wouldst mine enemy only write a book," "Wouldn't my enemy only write a book spelling out in detail what he's going to do." It would be a disaster.

I want to get to the central issue that disturbs me, and that is the clarity and relevance of intelligence analysis today. What can we do to really improve the quality of the product by getting more scholars involved, or by encouraging them to go into the agency? If there ever was an organization, it seems to me, that needed the wisest and the best, the true scholars, it is the intelligence community.

We have this genius of American technology being able to gather incredible information. We put it out on the table, and then we ask the $64 question: what does all this mean? I mean, the outpouring volumetrically is incredible. But what I have noted is the decline in the quality of analysis relative to the amount of information collected.

People who are indeed the experts and the scholars have been reluctant to go into intelligence. What can we do to restore that imbalance? And would you agree that this is one of the overriding concerns?

Mr. SCHLESINGER. Yes, sir.

Senator JACKSON. In the intelligence community.

Mr. SCHLESINGER. Yes, sir. I am in total agreement witb that. I think that there are many things that could be done, but they are difficult things to do.

I think that the United States, in contrast to the climate of opinion that exists—and has existed for at least the last 5 years—must reestablish public respect for intelligence analysis as one of its highest callings in order to draw personnel into that system.

At this juncture first-rate analysts are drifting away. Indeed, they are drifting away far too rapidly. I think that one needs to have a structure of challenge. One needs to have a system of devil's advocacy with regard to intelligence judgments within the agency; and that will require continued support from the director and his principal subordinates, simply because in the life of any institution, as Senator Moynihan was observing, the tendency is to go along with the party line. You have to create structures that will support devil's advocacy.

That has been done in the past, but they have tended to fall away.

Senator JACKSON. But are we doing that or have we done that? That is, encourage dissent? I think the greatest single intelligence and diplomatic failure of this country was the failure to understand the intensions of the Chinese leadership, starting in 1949. I think that was the greatest intelligence failure in our history, the massive nature of it; because we had a climate—and I was here—in which the McCarthy period made it intolerable to dissent lest you be labeled a traitor.

I have always said the right of free speech includes the right to be a fool, but we ought to protect that individual, make sure that he or she is not going to be hurt because he might offer views that are totally out of harmony with the conventional thinking of the time.

Can that climate be established and maintained so that people can be encouraged to state their best judgments without being subjected to punitive actions?

Mr. SCHLESINGER. I think it can. It will require the unremitting support of this committee and the Director, and the administration. As a matter of fact, what you are referring to is similar to the point that Senator Moynihan was making about the avoiding of risk. We do not need a long list of thou shalt nots.

Perhaps the thing that this committee could do that would most improve intelligence would be to establish a system of rewards for exceptional intelligence service done at risk, and ultimately proved to be right, despite the current climate of opinion.

I was about to observe to Senator Moynihan that we don't have a House of Lords here but we must find, if I may use the phrase, the "moral equivalent of the House of Lords"——[Laughter.]

In order to provide the appropriate recognition, encouragement to the kinds of acts of intellectual courage or other courage that you referred to, Senator.

Senator JACKSON. Thank you Mr. Chairman.

Senator HUDDLESTON. Mr. Wallop?

Senator WALLOP. May I add my support for the testimony you have given us. I would point out however, one small fault in what you said. There is in fact one democratic country in the world which has adopted a detailed intelligence charter. That country is Italy, where a long detailed charter not unlike the one proposed here has absolutely destroyed their capability, where terrorism is rampant and their ability to penetrate it has been weakened. Our own ability to assist them has also been weakened by our own regulations.

Mr. Schlesinger, does the public, in your estimation, know what intelligence is for?

Mr. SCHLESINGER. No, sir. I think the public view is some amalgam of James Bond and the Bay of Pigs.

Senator WALLOP. Could the public, or indeed the intelligence community, find out what intelligence was for by reading the proposed legislation?

Mr. SCHLESINGER. The public could only get, I think, a glimmer of what intelligence was for through the prohibitions, all the things that are up for exclusion.

Senator WALLOP. And could the community find the mission or purpose or performance standard against which its own activities could be measured?

Mr. SCHLESINGER. They would find a mission there, and the mission would basically be "don't run risks. Always be careful not to stray across the line. Get the advice of your friendly lawyer before doing anything." I think they would infer that mission, but a proper intelligence mission? No, sir.

Senator WALLOP. Could we serve the public and the community by trying to draft some kind of a mission that was clearly understood so the public realized that it was not the intelligence community that was the enemy, that perhaps the enemy is the Soviet Union and others who are working against us?

Mr. SCHLESINGER. I think that would be an invaluable service. It could be most helpful, along with a bill of particulars in a joint resolution of Congress in praise of the intelligence community.

Senator WALLOP. I get the sense from reading this bill, that it identifies the wrong enemy. I notice the last sentence on your first page, in which you note that the bill specifies countless do's and don'ts, that it establishes the criteria, limits, and the obligations, which the intelligence community must follow not only with respect to the American people but with regard to the entire world as well.

The bill says that nothing in this act authorizes any entity of the intelligence community to conduct any activity for the purpose of depriving any person of any rights, privileges, or immunities secured by the Constitution or laws of the United States.

From your experience, is it appropriate that we invest the average Soviet citizen with privileges which the U.S. Constitution grants to our citizens?

Mr. SCHLESINGER. It is an act of extraordinary generosity, sometimes at the cost of this Nation.

Senator WALLOP. On page 13 of your testimony you're trying to describe the fundamental purposes of U.S. intelligence. You mention the production of timely and accurate intelligence and the conduct of operations that serve the national interest—would you add to that in any way?

Mr. SCHLESINGER. Yes, sir. I think that I might have mentioned counterintelligence. Explicitly I think that we have, partly because of the climate of opinion, opened ourselves significantly to penetration in the course of the last decade, let's say. I think counterintelligence is a major function and is not understood.

Senator WALLOP. Do you think the public has any idea of the extent of the penetration that has taken place?

Mr. SCHLESINGER. Occasionally there is a glimmer, but there is no understanding of the extent of that penetration.

Senator WALLOP. If you had one thing above all which we could do now to improve the climate for and performanec of the intelligence community, what would that be?

Mr. SCHLESINGER. Senator, my instant response—and it is not a reflection of any later than 4 or 5 this morning when I got up—is that the thing for the Congress to do, instead of passing this charter, is pass a joint resolution that simply expresses the gratitude of the United States to those who have served as intelligence officers over the course of the past three decades and wipe away, by that action, some of the disillusionment, the disenchantment of recent years. In that same resolution, the Congress could beneficially put forward the things Senator Jackson and Senator Moynihan have mentioned—the need for initiative, the need on occasion to take risks—and give that kind of acknowledgement.

That would be a positive act, more constructive than worrying whether the enemy within intelligence agencies may get out of hand and not worrying very much about the function of the agencies in protecting this Nation in a perilous time.

Senator WALLOP. Regarding the proposal now before us, would you say that it sets virtually in concrete the intelligence community structure which now exists, which structures would have to be changed should we find that it was not in the best interest of the country in the perilous times ahead?

Mr. SCHLESINGER. Yes, sir. I think that inflexibility is undesirable, too.

Senator WALLOP. Thank you very much for your statement.

Thank you, Mr. Chairman.

Senator HUDDLESTON. There is one thing you said, Dr. Schlesinger, that I hesitate to challenge because of the nature of it, but I happen to know that it is not so. That is, that the United States would not have been precluded from the kind of action taken by Canada or any other action that would have been necessary to relieve the American citizens who were held in the Canadian embassy. We can't argue that here obviously, but perhaps in a closed session we can go into that a little more.

Mr. SCHLESINGER. Yes, sir. I would be happy to.

Senator HUDDLESTON. Any other questions of Mr. Schlesinger? We have another panel to appear.

Thank you very much. I appreciate your testimony.

Mr. SCHLESINGER. Thank you, Mr. Chairman.

Senator HUDDLESTON. We have Mr. William Harris, Dr. E. Drexel Godfrey, Newton S. Miler, and Engen Burgstaller.

[Brief recess.]

Senator HUDDLESTON. The committee will return to order.

Who are we short here? OK. Here we go.

I want to point out for the record that Mr. Harris is a consultant to the Senate Select Committee on Intelligence. He is a member of the research staff at the Rand Corp., a member of the New York Bar.

Dr. Godfrey is a former official——

Senator CHAFEE. Would these gentlemen identify themselves as you go along?

Mr. HARRIS. Yes.

Senator HUDDLESTON. Mr. Godfrey is a former official of the CIA, director of the master's of public administration program at Rutgers University.

Mr. Miler has served with the Central Intelligence Agency from 1947 to 1974, currently in a happy state of retirement.

And Mr. Burgstaller served with the Central Intelligence Agency from 1948 to 1979, also retired.

Gentlemen, we welcome any statement that you may care to make individually and whatever members of the committee want to inquire about.

I guess we can start in the order that we listed you here.

Mr. Harris, any comments you want to make?

[The prepared statement of William R. Harris follows:]

WILLIAM R. HARRIS

Mr. Harris is currently a consultant to the Senate Select Committee on Intelligence. He serves as a member of the Research Staff of the Rand Corporation in Santa Monica, California. Mr. Harris is a member of the New York Bar.

From 1966 to 1969, Mr. Harris was an instructor in the Harvard National Security Policy Seminar under Professors Henry Kissinger and Barton Leach. Mr. Harris taught a section of the seminar on Intelligence and National Security.

In 1968, Mr. Harris was the one-man staff for the Franklin Lindsay Task Force on Foreign Intelligence Activities of the United States. From 1974 to 1975, he served as a consultant to and supervised the contract research for the intelligence panel of the Murphy Commission on the Organization of the Government for the Conduct of Foreign Policy.

In the mid 1970s, Mr. Harris conducted a study for the Arms Control and Disarmament Agency on verification of the SALT II treaty.

PREPARED STATEMENT OF WILLIAM R. HARRIS, SUBMITTED TO THE UNITED STATES SENATE SELECT COMMITTEE ON INTELLIGENCE—APRIL 2, 1980

Mr. Chairman and Members of the Committee. Thank you for this opportunity to testify on legislative charters for intelligence agencies of the United States. I have been asked to consider, in particular, the impact of alternative legislative charters upon the effectiveness and accountability of counterintelligence activities.

I appear today in my personal capacity, and not as a member of the research staff of The Rand Corporation, nor as a Consultant to this Committee.

What are the critical problems of counterintelligence? How would the National Intelligence Act of 1980 (S. 2284) or alternative legislation affect this nation's capacity to meet those problems?

At the outset it should be noted that counterintelligence is much more than information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document, or communications security programs.

This is the definition of counterintelligence in Executive Order 12036 of February 28, 1978. This conception of what might be called the "old counterintelligence" emphasizes protection against human mischief. It protects against human penetrations, it guards against unreliable or deceptive information through human sources, it protects against acts of malevolence through human hands.

Both the National Intelligence Act of 1980 (S. 2284) and the Intelligence Activities Act of 1980 (H.R. 6820) adopt a more contemporary definition of counterintelligence. These definitions are set forth in Section 103 of S. 2284 and Section 401 of H.R. 6820. "To counter or protect" against the intelligence, deception, or other covert activities of foreign governments defines the "new counterintelligence."

There are practical reasons not to limit a definition of "counterintelligence" to espionage or other clandestine or covert actions of humans. The technological revolution in intelligence has established a new domain for deception and its detection. Technical collection diminishes the relative role of humans in the strategic deception of U.S. intelligence and those whose decisions rely upon it.

If intelligence charters are to anticipate future needs rather than codify outmoded concepts of the past, there must be room for all-source counterintelligence. Counterintelligence must evaluate, correlate, protect and counter threats to all sources of foreign intelligence, not just human sources. Otherwise, predictable and partially-compromised intelligence systems will be increasingly vulnerable to a double-cross system by national technical means.[1]

The National Intelligence Act of 1980 (S. 2284) can be streamlined and amended to provide a positive mandate to ensure that counterintelligence information relating to foreign intelligence is more effectively utilized.

What are the critical needs of U.S. counterintelligence?

First, the bridge between counterintelligence analysis and foreign intelligence production must be strengthened. Without application of counterintelligence methods—monitoring, experiments, etc.—analysts of foreign intelligence are increasingly vulnerable to foreign countermeasures that are not understood. Techniques of information denial and deception can be turned into indicators of strategic purpose.

The present draft of S. 2284, sections of which are reproduced as an Appendix to this testimony, would inadvertently weaken the bridge between counterintelligence analysis and foreign intelligence production. Counterintelligence is defined to include "processing, analysis, and dissemination" of counterintelligence [Sec. 103(3)]. But "foreign intelligence" that the Director of National Intelligence shall coordinate is defined, contrary to common sense, to exclude "counterintelligence" in Section 103(8). The DNI has no mandate to coordinate counterintelligence relating to foreign intelligence. Counterintelligence activities conducted abroad may be coordinated by the proposed Director of National Intelligence [Sec. 304(b)(2)]. The Director of the Federal Bureau of Investigation is designated the principal officer of the Government for the conduct and coordination of counterintelligence activities and counterterrorism intelligence activities within the United States. [Sec. 503(a)(1)]

Under the existing National Security Act of 1947, the Director of Central Intelligence has the flexibility to coordinate analysis, training, and resource allocations for counterintelligence relating to foreign intelligence. New legislative charters should ensure that the Director of National Intelligence is responsible for coordination of counterintelligence (other than collection in the U.S.) relating to foreign intelligence. Section 304(b) of the National Intelligence Act should be modified to reflect this responsibility. If U.S. capabilities to cope with strategic deception in peacetime are inadequate, the oversight committees of the Congress should leave no ambiguity about who is primarily responsible. To scatter responsibility among the Attorney General, the Director of the FBI, the DNI, and the D/CIA would be to defeat the central coordinating concept of the National Security Act of 1947. The National Intelligence Act of 1980 can be simplified, yet assure this coordination between counterintelligence and foreign intelligence.

The Director of National Intelligence, and the Central Intelligence Agency as executive agent for the DNI, are best situated to link the production of foreign intelligence and the application of counterintelligence methods to all sources of national intelligence.

A second critical need of U.S. counterintelligence is the strengthening of the analytic capabilities of the Federal Bureau of Investigation. Collection is an easy, but unsatisfactory substitute for analysis. Those who are committed to an expanded zone of personal privacy should support a renewed emphasis upon analysis of counter intelligence information. To the extent that Bureau efforts to develop positive intelligence from CI assets is a success, the National Intelligence Act of 1980 encourages that result. Section 505(a) of the Act provides for FBI production of foreign intelligence, and is an example of future-directed charter drafting that is to be commended.

A third critical need of U.S. counterintelligence is a continuing separation of powers, so that no single agency accumulates a power that is inimical to the freedoms of this society. The National Intelligence Act of 1980 achieves that objective. A conceptual underpinning of the charter's allocation of counterintelligence duties is a territorial basis for jurisdiction. If the activity must be

[1] The Phrase is adapted from John C. Masterman, "The Double-Cross System in the War of 1939 to 1945," Yale University Press, 1972, and SALT I/II.

condncted at home, tiie FBI shall coordinate under review of the Attorney General. If the activity must be conducted abroad, the Director of National Intelligence shall coordinate. The anomaly of counter-intelligence analysis at home respecting events abroad has been earlier noted, and is readily soluable.

A fourth critical need is to provide inteiligible and practical standards for the initiation of investigations, collection and dissemination of counter-intelligence information. Here, Title II of the Act serves an important purpose.

The National Inteiligence Act provides investigative standards for counter-intelligence that are below the standards for prosecutorial investigations. This is as it should be. The Act provides collection standards, investigative procedures, and Congressional access to executive guidelines. If enacted, S. 2284 would reinforce already strong incentives to respect the privacy of U.S. persons and to comply with lawful process in the collection of inteiligence. A simplification of the Bill and shortening of its length can make these quite reasonable standards more inteiligible. Those in the field who will ultimately apply standards should be provided as brief and simple a statute as can convey, without ambiguity, the standards that the Congress intends. S. 2284 can be amended to provide unambiguous standards in briefer form.

A fifth critical need is to extend the coverage of Title VII to protect against intentional disclosure of classified information respecting national inteiligence systems. While it is offensive that persons in a fiduciary capacity have disclosed names of case officers or informants abroad, it is even more damaging that such persons have jeopardized national inteiligence systems, thereafter degraded, disrupted, denied, or deceived. If all-source counterinteiligence is to be effective in beating the double-cross system by national technical means, it is essential to increase the proportion of national inteiligence collection that is derived by unexpected means or analyzed by unexpected techniques. The test should not be whether there was an intention to injure the United States. The scope of protection should be strictly limited to persons employed in fiduciary capacity, with a duty to protect sensitive inteiligence information. But this nation must do better, first to assure reliable intelligence when it is most needed, and also, to protect returns on capital-intensive investments of the federal taxpayer.

In this connection, a few illustrations of the importance of protecting inteiligence sources and methods might be helpful. None of the examples will be selected from the last decade. To do so would be to compound the problem while addressing it.

Several strategic deception programs in peacetime have been noted in the literature on inteiligence and verification. Efforts by the Soviet government to facilitate U.S. overestimates of Soviet bomber production in the 1950's were defeated by the U–2 collection program. That program was both swift and unexpected in capability, so that countermeasures were not available before vital inteiligence was in hand. Later collection by technical means allowed Deputy Secretary of Defense Gilpatrick to indicate firm U.S. knowledge that the number of deployed Soviet ICBM's was substantially lower than suggested by Soviet politicians. Once again, the technical capabilities of the United States were not adequately anticipated.

Nevertheless, during the 1960's, just as U.S. inteiligence analysts were growing confident that the Soviets over-represented capabilities, and that we could catch them every time, just the opposite happened. With an understanding of the technical indicators and methods of U.S. estimation of ballistic missile accuracy, the Soviets managed to under-represent the accuracy of intercontinental ballistic missiles. The earlier bluffing upward corresponded to decisions not to invest in nuclear-armed rockets early, while seeking silo-killing capabilities. U.S. Defense Secretary Harold Brown has recently indicated that the Soviet SS–9 ICBM was always aimed at the launch control centers of the Minuteman missile complexes.[2] Only systematic biasing of technical indicators would produce the apparently-large errors in guidance and the actually quite-limited errors needed to justify attack on so hardened a set of military targets.

What are the consequences of a capability to manipulate the technical indicators that are critical to inteiligence estimates of an adversary?

First, if the accuracy of a Soviet ICBM is underrepresented, then its probable mission is likely to be misunderstood, and countermeasnres either neglected or delayed.

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[2] See W. R. Harris, A SALT Safeguards Program, Paper P–6388, September 1979, p. 16.

Second, if the accuracy of components of one system will be utilized to estimate performance of other systems, these too may be misunderstood, and lower-cost countermeasures either neglected or delayed.

Third, if perceptions of targeting requirements affect estimations of future ICBM deployments, systematic errors in out-year estimates of deployment may continue despite better information as to the recent past. The continuing expectation that the Soviets would slow the pace of ICBM deployments in the 1960's owes much to a concurrent expectation that the SS–7 and SS–11 of that period were not particularly valuable as a counter-silo system of attack.

Thus, if the Soviets reinforced U.S. perceptions that the Minuteman and Titan II systems were invulnerable, they would also reinforce incentives to defer silo upgrading or ABM investments or launch-on-warning policies.

Moreover, if only the SS–9 played a role in attacking U.S. land-based missiles of intercontinental range, then the U.S. acceptance of SS–11's and later SS–19 replacements would not, during SALT I negotiations, be viewed as a threat to land-based missile survival.

Once the systems of technical collection are understood, the further understanding of the role of technical indicators in analysis can lead to deception vulnerabilities that affect international security. In the 1970's U.S. analysts have made significant progress in coping with strategic deception in peacetime. By increasing the unexpected sources of collection and analysis, quality assurance efforts and cross-correlation of indicators of deception are more practical. The technical indicators can aid in assessment of human source reliability. The human sources can aid in evaluation of the technical means of collection.

The protection of our technical systems of national intelligence depends in part upon a broadening of awareness that no system of intelligence collection is immune from deception vulnerabilities. World War II intelligence innovations included: systematic aerial reconnaissance, used only intermittently in World War I; radar, as a night-sensing collector; and computers, available for communications intelligence. The incidence of surprise and the intensity of surprise, as measured by casualty ratios, were greater in World War II than in World War I.

There is no reason to assume that a marginal innovation in collection capabilities results in a marginal increase in the reliability of strategic warning.

The National Intelligence Act of 1980, or its streamlined successor, must provide for a strengthened link between counterintelligence and the production of foreign intelligence. Without an understanding of the deception vulnerabilities and an application of counterintelligence techniques to all sources of national intelligence, the United States will remain, fascinated by its technological genius and disturbed by its intelligence performance. The Charters before this Committee provide a solid foundation. With paring and amendments that anticipate future needs, the National Intelligence Act of 1980 can enhance the effectiveness of U.S. intelligence. And finally, the Charters provide a duty to inform the Congress. This is a guarantee of at least the opportunity for an accountability to the American people.

Excerpts From S. 2284, National Intelligence Act of 1980

Sec. 103. (2) The term "counterintelligence" means information pertaining to the capabilities, intentions, or activities of any foreign power, organization, or person in the fields of espionage, other clandestine intelligence activity, covert action, assassination, or sabotage.

(3) The term "counterintelligence activity" means—

(A) the collection, retention, processing, analysis, and dissemination of counterintelligence; and

(B) any other activity, except for personnel, document, physical and communications security programs, undertaken to counter or protect against the espionage, other clandestine intelligence activity, covert action, assassination, or sabotage, or similar activities of a foreign government.

(8) The term "foreign intelligence" means information pertaining to the capabilities, intentions or activities of any foreign state, government, organization, association, or individual, or information on the foreign aspects of narcotics production and trafficking, but does not include counterintelligence, counterterrorism intelligence, or tactical intelligence.

DUTIES AND AUTHORITIES OF THE DIRECTOR [OF NATIONAL INTELLIGENCE]

SEC. 304. (a) The Director shall serve, under the direction of the National Security Council, as the principal foreign intelligence officer of the United States.

(b) The Director shall be responsible for—

(1) the coordination of national intelligence activities of the entities of the intelligence community;

(2) the coordination of counterintelligence activities of the entities of the intelligence community that are conducted abroad; and

(3) the coordination of counterterrorism intelligence activities conducted abroad by the entities of the intelligence community and the coordination of those activities with similar activities abroad by other departments and agencies.

(c) The Director shall be responsible for evaluating the quality of the national intelligence that is collected, produced and disseminated by entities of the intelligence community and shall, on a continuing basis, review all current and proposed national intelligence activities in order to ensure that those activities are properly, efficiently, and effectively directed, regulated, coordinated and administered.

(g) The Director shall ensure the appropriate implementation of special activities and sensitive foreign intelligence, counterintelligence, and counterterrorism intelligence activities outside the United States designated under section 124 of this Act.

(j) The Director shall be responsible for the protection from unauthorized disclosure of intelligence sources and methods and shall establish for departments and agencies minimum security standards for the management and handling of information and material relating to intelligence sources and methods.

SEC. 414. (b) The Agency shall—

(1) conduct foreign intelligence activities including collection by clandestine means;

(2) conduct counterintelligence and counterterrorism intelligence activities including activities by clandestine means;

(7) act as the agent of the Director of National Intelligence in the coordination of counterintelligence activities, counterterrorism intelligence activities, and clandestine collection of foreign intelligence, conducted outside the United States by any other entity of the intelligence community;

(d) Within the United States the Agency may conduct counterintelligence and counterterrorism intelligence activities by clandestine means only with the approval of the Director of the Federal Bureau of Investigation or a designee, made or confirmed in writing, and shall keep the Federal Bureau of Investigation fully and currently informed of any such activities, in accordance with section 504(d) of this Act.

TITLE V—FEDERAL BUREAU OF INVESTIGATION

SEC. 502. (b) All intelligence functions of the Bureau shall be performed under the supervision and control of the Attorney General. In exercising such supervision and control, the Attorney General shall be guided by policies and priorities established by the National Security Council and shall be responsive to foreign intelligence collection objectives, requirements, and plans promulgated by the Director of the National Intelligence.

DUTIES OF THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

SEC. 503. (a) It shall be the duty of the Director, under the supervision and control of the Attorney General, to—

(1) serve as the principal officer of the Government for the conduct and coordination of counterintelligence activities and counterterrorism intelligence activities within the United States;

COUNTERINTELLIGENCE AND COUNTERTERRORISM INTELLIGENCE FUNCTIONS

SEC. 504. (a) The Bureau shall, in accordance with procedures approved by the Attorney General—

(1) collect, produce, analyze, publish, and disseminate counterintelligence and counterterrorism intelligence;

(2) conduct such other counterintelligence and counterterrorism intelligence activities as are necessary for lawful purposes; and

(3) conduct, in coordination with the Director of National Intelligence, liaison for counterintelligence or counterterrorism intelligence purposes with foreign governments.

(b) All Bureau counterintelligence and counterterrorism intelligence activities outside the United States shall be conducted in coordination with the Central Intelligence Agency and with the approval of a properly designated official of such agency. All requests for such approval shall be made or confirmed in writing. Any such activities that are not related directly to the responsibilities of the Bureau for the conduct of counterintelligence or counterterrorism intelligence activities within the United States shall be conducted only with the approval of the Attorney General or a designee, made or confirmed in writing.

(c)(1) The Bureau shall be responsible for the coordination of all counterintelligence and counterterrorism intelligence activities conducted within the United States by any other entity of the intelligence community.

FOREIGN INTELLIGENCE FUNCTIONS

SEC. 505. (a) The Bureau may, in accordance with procedures approved by the Attorney General—

(1) collect foreign intelligence within the United States in the course of authorized collection of counterintelligence or counterterrorism intelligence;

(2) conduct activities within the United States in support of the foreign intelligence collection programs of any other entity of the intelligence community; and

(3) produce, analyze, and disseminate foreign intelligence in coordination with the Director of National Intelligence.

TITLE VI—NATIONAL SECURITY AGENCY

DUTIES OF THE DIRECTOR

SEC. 613. (a) It shall be the duty of the Director to—

(20) evaluate, based, as appropriate, upon guidance from the Attorney General, the vulnerability of United States communications to interception and exploitation by unintended recipients and, under the supervision of the Secretary of Defense and in accordance with policy guidance from the National Security Council operating pursuant to section 142 of this Act, institute appropriate measures to ensure the confidentiality of such communications;

(23) provide the Director of National Intelligence with such information on the activities of the Agency as the Director of National Intelligence requires to fulfill his statutory responsibilities;

(24) provide technical assistance to any other entity of the intelligence community engaged in lawful intelligence activities;

TESTIMONY OF WILLIAM R. HARRIS, CONSULTANT TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE; MEMBER OF THE RESEARCH STAFF, RAND CORPORATION; MEMBER OF THE NEW YORK BAR

Mr. HARRIS. Thank you, Mr. Chairman, and members of the committee.

I do want to note that I appear today in my personal capacity, not as a member of the research staff of Rand, nor as a consultant to the committee.

I have submitted for the record some testimony on the effectiveness of U.S. counterintelligence and its congressional oversight under the National Intelligence Act of 1980, which I will just proceed to summarize, I think, rather than to restate it in full.

I was asked to consider the effects of charters on the effectiveness and the accountability of counterintelligence. My first concern was that the traditional scope of counterintelligence—the protection of human intelligence, the protection from penetrations and mischief of humans—didn't reflect either the past or the prospective problems that the United States faces, particularly those threats to the doubling of our national technical needs of collection and verification for arms control agreements, so that any charters, if they were to anticipate the future, should anticipate the need to extend the counterintelligence jurisdiction to all sources of intelligence, and to insure that someone—under S. 2284 the Director of National Intelligence; under other bills it would be the Director of the CIA—someone was responsible for coordinating and insuring that the testing of our sources, the monitoring experiments with respect to that proceeding so that we could do a better job to insure a more reliable warning, notwithstanding some compromises and vulnerabilities of our technical systems.

I found in looking over S. 2284 that it inadvertently would appear to weaken this bridge between counterintelligence and foreign intelligence production due to a concern that foreign intelligence might impinge upon the rights of Americans.

I think that could be remedied by a positive mandate providing the Director of National Intelligence or the Director of the CIA to coordinate and evaluate counterintelligence relating to foreign intelligence, and that that need not be inconsistent with the mission of the FBI, nor abridge the rights of Americans.

Beyond that I thought that the charter that is before this committee in S. 2284 would benefit from a substantial simplification and a shortening wherever possible, and that this would be possible to do, and that we might be able to have the intelligence standards as found within title II of the act shortened, but completed so that the nation could get on to the primary job of looking outward, not inward, and getting on with better intelligence collection and production.

I think the concept in S. 2284 and the division between the FBI and CIA is satisfactory in that it supports the FBI analysis; to the extent the FBI can contribute to foreign intelligence production, that is provided for under section 505 of this act. Since we need a separation of powers in counterintelligence so as not to concentrate too much in one agency, we find that in this act. We find the FBI coordinates counterintelligence in the United States for collection in the United States, and the CIA abroad.

But there was one other problem I see with this bill with respect to the protection from disclosures of sensitive sources and methods. There has been a special effort to protect against disclosures respecting informants abroad, and there has been an understandable reason to do that.

It is so obvious that where there is a threat to a human life, it is tangible, it is understandable, and it has been proposed to protect

against it. It is so much more difficult to understand the need to protect against the compromises of the technical systems that can be understood, that have been deceived in the past and in significant ways that may also require protection against disclosure by persons in a fiduciary capacity. That means not covering members of the press but just those who have taken their obligation of secrecy.

And I believe we need not have to show an attempt to injure the United States to provide that protection in the statute.

So, in summary, I find that we could, with minor changes, make sure there is a positive mandate to link counterintelligence to the production of foreign intelligence, and we could simplify the standards, and I think we could cut this act by a third to a quarter in length if we really did the best we could to do it and still have the standards and have them mandate to improve performance and end the inward-looking and go back to the outward-looking needs that Secretary Schlesinger has just discussed.

I would like also to just point out that I do indicate in the prepared statement that we have suffered some significant deceptions across these technical systems. One in particular I mentioned involves an underrepresentation of the accuracy of Soviet ICBM's in the 1960's. It led us to an expectation that Minuteman's survivability was far into the future. We did not understand the mission of the SS–9 and 11. We did not understand they were aiming them, even in the 1960's, at our land-based missiles.

So when we went into SALT I, we felt that by limiting the numbers of these missiles, of the SS–9, we would not have problems which we then thought we had as we saw the Soviets deploying SS–19's and 11 silos. As a kind of example, it is just technical assistance principally, but it is very, very important, and we have to do a better job of protecting them.

I think the committee can assist by providing a modern mandate for counterintelligence.

Thank you.

Senator HUDDLESTON. Dr. Godfrey.

[The prepared statement of E. Drexel Godfrey, Jr., follows:]

E. DREXEL GODFREY

Dr. Godfrey is currently the Director of the Masters of Public Administration Program at Rutgers University in New Jersey.

Dr. Godfrey served in the Intelligence Directorate of the Central Intelligence Agency from 1957 to 1970. From 1966 to 1970, he was the Director of Current Intelligence. Before joining the Agency, Dr. Godfrey was a Professor of Political Science at Williams College in Massachusetts.

Dr. Godfrey is the author of The Politics of the Non-Communist Left in Post War France and of The Government of France.

PREPARED STATEMENT OF E. DREXEL GODFREY, JR., SUBMITTED TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE ON APRIL 2, 1980

Gentlemen: Two years ago I appeared before this Committee and testified in very broad terms in favor of the concept of a charter for the Intelligence Community. At that time the draft was a heavy, somewhat ponderous affair; no one was fully satisfied with it, a few witnesses were alarmed by certain provisions.

I, too, found some aspects of this early version to criticize, but by and large, I was enthusiastic because of what I detected as the spirit underlying the proposed legislation. It seemed to me that the draft represented a whole-hearted commitment by the members of the Committee and by representatives of the

administration to correct flagrant evils of the past and to promise a system of exacting accountability for the future. My enthusiasm was strengthened by the prospect that the reforms envisioned could produce a favorable climate for the most essential element of intelligence—the analytic process.

It is my belief that the most significant contribution the intelligence community can make to national security is to clarify foreign situations for policy makers and to give early and effective warning of impending perils for the U.S. position abroad. I further believe past operational scandals and misadventures not only put in question the ethical fitness of some elements of the Intelligence Community, but in so doing, undercut the credibility of the analytic and warning functions. Accordingly, I was overjoyed at the prospect—clearly delineated in the early draft of the charter—that operational activities would be, if not eliminated, at least brought under strict controls.

What about the final version before us? It is clearly a much tighter document, many ambiguities have been eliminated. It no longer attempts the impossible task of addressing every conceivable evil that could arise. For all this the Committee deserves warm praise.

At the same time there are unmistakable signs that the Iranian and Afghanistan crises have encouraged a counter pressure against the safeguards of the new version. For two reasons I find this counter pressure distressing. First, it is, I think, based on the wistfully romantic notion that had CIA operatives been fully deployed when these crises situations erupted, somehow the Agency might have successfully resolved them. This, of course, is nonsense. Secondly, the pressure to soften safeguards tends to obscure the original reasons for undertaking the delicate business of putting together a charter in the first place. Those reasons were, as I recall, to draw the intelligence entities of our government back under effective statutory control and to elaborate for them a framework emphasizing limits, not license.

The counter pressures now building would, in my opinion, weaken the Charter by beginning an erosion of its spirit. The Committee is being asked to write exceptions and exemptions into the legislation, or in other words to de-emphasize limits and underwrite new licenses. If these pressures are not rebuffed, they will surely be followed by further efforts to undo the restraints now envisaged in the Charter.

Specifically, I feel it is essential that the Congressional committees involved in Intelligence monitoring retain the right to be informed of planned operations prior to their initiation. S. 2284 requires only that the Committees be informed; it does not provide for a veto of planned operations. To remove prior notification would be, in quite foreseeable circumstances, to nullify the Congress' role in these matters completely.

Moreover, I do not see the necessity for authorizing the Director of National Intelligence to exempt certain files of any Intelligence Community entity from the reach of the Freedom of Information Act (FOIA). The safeguards for national security considerations contained in the FOIA are sufficient to protect those technologies, operations and sources as may legitimately require special treatment. If disclosure of technologies, operations and sources is not inimical to national security then public disclosure of them will do little damage. Over and beyond the legalistic arguments involved, I fear the intent behind this request for exemptions. To me it is a familiar old refrain which says, in effect, "trust us as Intelligence professionals to know what is best to release to the public and what we must keep close to the vest." Intelligence officials have not distinguished themselves in making these distinctions in the past. That may be one of the reasons we have a FOIA. It is certainly one of the reasons the Congress and the Administration have insisted on a Charter.

In conclusion, let me say that I sincerely hope the Committee's resolve to preserve the Charter in the spirit in which it was orginally drafted will remain firm. It is our best hope of providing a context in which intelligence professionalism can flourish; even more important it will rid the profession—perhaps only slowly—of the taint of past misadventures. Punching more holes in the charter will only encourage further backsliding. I would recall that candidate Jimmy Carter told the public in 1976 that the US had gone astray abroad when policies were decided and implemented in secret. That observation seems just as fitting today as it was then.

I thank the Committee for the opportunity to present these observations and stand prepared to answer any questions.

TESTIMONY OF E. DREXEL GODFREY, JR., DIRECTOR, MASTER'S OF PUBLIC ADMINISTRATION PROGRAM, RUTGERS UNIVERSITY

Dr. GODFREY. Mr. Chairman, I did file a small, short statement with the committee. I won't burden the committee with reading it, but I would like to make some observations drawn from it very briefly.

First of all, I am of the school that believes that the most significant contribution that the intelligence community can make is to clarify foreign situations for policymakers and to give early and effective warning of impending peril of U.S. positions abroad.

I also feel—and I think my point here goes to some of the questions that Senator Jackson was asking—I also feel that past operational scandals, if you will, misadventures, have put, have undercut, the credibility of the analytic and warning functions.

Mr. Schlesinger was asked what about the analytic function. How can we get the best analysts? How can we have access to the best minds and so forth?

My feeling is that until some of the difficulties of the past can be cleansed—and perhaps this act will go some ways to do that—we are not going to have access to the best of minds. We are not going to have the cooperation of the scholarly community to the extent that we should.

I think this is going to impinge on our capability to do the kinds of analysis, to do the kind of early warning that is absolutely essential.

I came from the academic community before I was in the CIA. I returned to it after I left after 15 years. The climate in the period when I left in which is was quite a desirable, patriotic, useful and effective thing to do, to go serve at the CIA; when I came back 15 years later after some of the extraordinary events of the 1960's and 1970's began to creep into the headlines, it was entirely different—and it still is different.

For that reason, and there are other reasons, too, but for that reason I would welcome a charter, and I would hope that the committee, as my statement says here, I would hope that the committee stays firm on the charter, that it does not entertain kinds of attempts to impose exemptions and exceptions that have been proposed by the administration recently.

I hope it is there to set up a series of limits instead of licenses. I think we have suffered from the license of the past, and we will not recover unless we begin to set up some forthright limits.

It is very easy to forget, I think, kinds of embarrassments, the illegalities that were part of the history of the intelligence community in the 1960's and 1970's in the kind of climate that we are now in.

We feel desperately the need to do something about Iran and about Afghanistan, perhaps. Maybe this is a means of doing it or a weapon to do it. But we are paying some of the pipers of the past, I think.

As far as specific changes in the charter, I would like to add only one thing to the statement that I made. I hope the committee will resist the temptation—and this is in direct opposition to what Dr. Schlesinger said—to allow the use of various professionals in the work of the agency.

It seems to me that this is directly contrary to what will produce a

climate in which good minds and effective analysts, and so on, will get into the analysis of the warning function.

I think I will stop there.

Senator HUDDLESTON. Thank you, Dr. Godfrey.

Mr. Miler.

[The prepared statement of Newton S. Miler follows:]

PREPARED STATEMENT OF NEWTON S. MILER SUBMITTED TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE ON APRIL 2, 1980

Mr. Chairman, I appreciate your Committee's invitation offering me this opportunity to present my views about the proposed National Intelligence Act of 1980 (S. 2284) and to suggest possible means to improve our national counterintelligence capabilities.

The most important point I will make again and again through my testimony is the important fact that until and unless CI is given priority attention and support no other function of the intelligence system will be improved significantly or for long.

Unfortunately neither this proposed Act, E.O. 12036 nor some other existing and proposed legislation indicates that either the executive or the Congress have grasped that CIA is the essential base upon which a nation constructs its effective intelligence system. The defense of the nation starts within itself—the task of CIA is the internal defense of the nation.

Despite the continuing efforts from within the executive and specifically the CIA, since 1973 and by some in the Congress since 1975 to treat CI as a separate and exceedingly touchy—if not dangerous function in the intelligence system, there has been a great deal of public and private testimony illustrating the inextricable interrelationship among three functions: clandestine collection, covert action and counterintelligence. I have observed that most people concerned with intelligence now accept this fact. I also think there is a growing realization that CI, although maligned in the past is necessary. We do, indeed, face an unremitting and increasing hostile foreign espionage threat from services whose governments direct their efforts to deceive, manipulate and, even subvert us because of their policy that we are the "main enemy."

For many years there has been a lack of understanding about what else a true national CI program can provide to the analytical and estimative process and, thereby, add another dimension or perspective to foreign policy and defense considerations. CI information and analysis can help reassure the government that is human, technical and sigint collection products are untainted by deception; that its sources and methods are secure, and, that its institutions are free from foreign penetration and manipulation.

An effective national CI program, whether it stems from one agency or, as is quite proper in the United States, several agencies, departments and the military services, produces information about our foreign and domestic enemies which gives our government a better ability to assess and neutralize threats to national security.

But to understand the proper role I must play in our intelligence system we must recognize that the most serious—the only real threat—to American liberties comes today, as in the past from our enemies at home and abroad. To believe that our allies and even less our own intelligence services are working to do us in is to indulge in hallucination, or worse, to do the enemies' work.

There must be a decision about what we want our intelligence system to do. There must be an assessment of the real threats to our freedom: a determination of the types and kinds of intelligence information we need: an estimate of the resources we may need for CA or special activities, and, of course, an estimate of the resources required to implement a national intelligence program.

Only when this is done—when there have been substantive in depth public and closed hearings—when a national intelligence program has been formulated can the government and the people decide the type of legislation required to give us a first rate intelligence system.

A national intelligence program has not been formulated. Our nation has not determined what its intelligence is to do and how it is to fit into our foreign and defense policies.

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S. 2284 is not the answer to our intelligence problems: it will not basically nor substantively improve our intelligence capabilities. It is no substitute for an intelligence program.

A great part of our nation's strength has been the resilience of our democratic institutions to correct abuses and aberrations in the exercise of power without overreaction. Our democratic system also compensates for ineptness without overreaction.

S. 2284 is an overreaction.

At least I hope it is an overreaction because if it is not and if S. 2284 is, in fact, what the executive and the Congress are forcing upon the American people, our country is in deep trouble.

If the American people, who, I suggest, are much more concerned about our intelligence problems—our failure to know what is going on in the world and our inability to control espionage and subversion—than may be apparent here in Washington, are led to believe that S. 2284 will give them the intelligence system they deserve they will be deluded. Edmund Burke said, "The people never give up their liberties but under some delusion."

S. 2284 does not reflect a perceived positive national intelligence purpose and it will not enable us to create a system to cope with the increasingly perilous threat to our true freedom and liberties.

I say create because this is the situation we face today after nearly seven years of sustained weakening of our intelligence capabilities:

We have lost and continue to lose an inordinate number of experienced intelligence personnel.

We have lost resources necessary for special activities.

We have lost intelligence collection resources.

We have lost the faith and cooperation of allied intelligence services.

We have imposed legislation which restricts our investigative and collection capabilities.

We have lost the centralized CI framework esssential to an overview of the threat from enemy intelligence and security services.

We have no real assurance that our intelligence is untainted and that our analytical and estimative ability is complete, apolitical, and equal to the need because—from the daily headlines—we are reacting to unpredicted events and engaging in post-mortems about what went wrong—whether it be Iran, Columbia, or Afghanistan.

Most significantly we have demonstrated that S. 2284 will not give us the intelligence system we need because, since January 1978, the intelligence community has been operating under essentially the restrictions, guidelines and provisions of S. 2284—E.O. 12036.

The Congress and certainly this Committee cannot be held totally responsible for not producing legislation to support its avowed and evident purpose to improve our intelligence system.

On the public record alone it is obvious that the executive, which controls the intelligence community, has failed to formulate an affirmative national intelligence program for the future for its own purposes or to present to the Congress and the people.

The executive apparently sees little need for a focused integrated intelligence system. A system which gives overall flexibility, can accommodate to differing needs, is designed to give the intelligence and counterintelligence officer the greatest possible legal leeway and which will function smoothly under reasonable NSC guidelines and congressional oversight.

The executive also continues to overreact about the need for definitive legislation: for specific legal standards of conduct, specific prohibitions and the detailed guidance it needs to attempt to answer every potential conflict or major contingency when national security requirements override the individual rights of a citizen or resident alien. In the real world of conflict which we face intelligence requires flexibility. The executive appears to agree with those who oppose all covert action, clandestine collection and counterintelligence insinuating that it knows that the intelligence community will be untrustworthy and will do wrong. Is the executive asking us to protect us from ourselves?

Intelligence services can be effective under good guidelines—they will atrophy completely if there is a law—a manual—for every function and contingency.

S. 2284 definitely is designed to prevent "wrongdoing."

Unfortunately it also makes it extremely difficult, if not almost impossible, for the professional intelligence officer to do some things "right" in the sense of increasing his capability to collect intelligence and counterintelligence.

The core consideration of any intelligence legislation, guideline, directive, management policy and coordination requirement should be to make the intelligence officer's job more professionally effective. S. 2284 does not do this—it insures that the legal counsels of the intelligence community will continue to play the predominant, if not totally intrusive, role in the planning and implementation of virtually every non-technical non-estimative intelligence activity and, most specifically, in CI. To plagiarize—every case officer will need a lawyer for a partner—at least until the government retreads enough lawyers to supplant the intelligence officers.

No one but an experienced government lawyer will be able to plot his way through the S. 2284 labyrinth of inter and intra-departmental and judicial coordination considerations necessary to implement serious action and at the same time attempt to avoid charges for failing to understand or properly interpret the terms "significant," "significant anticipated intelligence activity" and "indirect encouragement" or what constitutes a "substantial" number of United States citizens or permanent resident aliens, to qualify for an association to be considered a United States person.

My point that the executive has failed this Committee and the people because it has not evolved a national intelligence program for congressional consideration was graphically illustrated on February 21 when Senator Stevenson failed to get a comprehensible response to his request for suggestions about how the charters could be improved to either consolidate responsibilities for CI or to improve cooperation and coordination between agencies with responsibility for CI.

Senator Stevenson cut right to the heart of S. 2284 and a root cause which produced S. 2284. Can the executive tell us what kind of a CI program we need and help us clear up at least some of the confusion, misunderstandings and the real or imagined concerns about CI which have plagued the Congress, the executive and the public for five years. Have we done right by CI?

I hope the executive's failure to respond was because it has not focused on the problem and not because it is satisfied that S. 2284 will give it a national CI program.

In addition to certain specific provisions in S. 2284 which bear directly and adversely on future CI capabilities it should have been noted to this Committee there is other legislation which affect CI. Some of these relate to personal privacy and are aimed at protecting civil liberties but may have the opposite effect in a national context and may permit more latitude to foreign services than to our own.

For example, two profound but seemingly minor bits of legislation crippling to CI are the so-called McGovern amendments to the August 1977 Department of State appropriations bill and the Foreign Relations Authorization Act of 1978—the first permits any Communist free entry to the US unless the Secretary of State personally disapproves entry while the second enables certain aliens, previously barred from the US, entry even when the FBI advises that they might be involved in espionage or terrorist activities.

If our CI capabilities, if our overall intelligence capabilities, are to be improved the Congress must be asked to consider, re-examine if you will, each piece of legislation which adversely affects the intelligence community from the standpoint of a comprehensive explanation of how and why that legislation weakens the community's ability to do its job. I recognize S. 2284 amends the Foreign Surveillance Act of 1978 but I was unable to compare this with original Act. However, I note we still need a warrant to wire-tap a foreign intelligence officer—a basic CI investigative tool.

Some of the specific problems S. 2284 will pose for the counterintelligence community might well have included the following:

(Although you noted to me Mr. Chairman that Titles I and II have major CI implications I also found other titles had CI implications. Although in this presentation I make no reference to titles, sections or subsections I can document these separately.)

1. It virtually destroys any CI program before it gets started by the requirement (Title II Part B Sec. 211(d)) that information about any U.S. person may be retained and disseminated if the information does not identify that person.

The exceptions about retention and dissemination of the identity of U.S. persons do not appear to provide for CI responsibilities. CI deals with identifying people and their activities usually over a period of time. A CI file is people!

2. It fails to provide or continue to provide for a central CI file maintained as a service of common concern. This responsibility was mandated to the CIA in the 1940s, and functioned as such until partially dispersed and disrupted by the CIA in 1973. It is indispensable to the conduct of national CI.

3. It fails to provide a responsibility for the centralized CI research and analysis essential to effective CI.

4. It fails to make the CIA responsible for a centralized CI function including research, analysis and non-public dissemination of CI information.

5. It arbitrarily separates the problem of terrorism from CI, perhaps for politically expedient reasons, but this separation of linked substantive intelligence will breed increasing duplication of effort and resources, compound coordination problems and make analysis of foreign intelligence activities and CI more complicated. There is apparently confusion about countering terrorism and the collection of information about terrorism and its possible use by enemy intelligence services. This failure to see terrorism realistically may also be an overreaction to a possible CIA management mistake when responsibility for terrorism was separated from centralized CI.

6. It fails to provide authority for centralized direction of national CI and outlines procedures and authorities for approvals and coordination which overlap and are confusing. It gives the NSC responsibility for CI policy and direction but then vitiates this as well as the CIA's responsibility for CI by assigning to the Attorney General a series of certifications and approval, which cut across operational and investigative lines. It fails to definitively designate a CI adjudicator.

7. It is confusing because it substantively excludes CI from the definitions of the terms "national intelligence activity" and "foreign intelligence" particularly in the context of precluding CI from analysis and dissemination.

8. It makes the federal courts responsible for determining the legitimacy of some CI activity; attempts to extend a spurious legality to overseas activities, and, imposes legal standards of interpreting what "indirect encouragement" may mean on intelligence officials to the end that relationships with foreign intelligence and security services are bound to be seriously impaired.

9. It fails to provide adequate security protection to sources and methods essential to either US intelligence or liaison services.

10. It provides no guidelines about what constitutes a "voluntary association." This could be a severe handicap to CI agencies which will be concerned about the great number of Soviet bloc intelligence officers covered by organizations and programs proscribed to US intelligence.

11. It establishes the FBI as a separate entity to produce, analyze, publish and disseminate CI intelligence without defining the scope of this intelligence providing for the coordination or control of other agency or liaison information to protect sources and methods. In fact, it omits provision for the elementary precaution—the third agency rule. Is it the intent to make the FBI responsible for the national CI product?

12. It fails to make a specific provision for FBI supervision and control of all CI (or CT) investigation of US persons. This is important to insure adherence to Attorney General procedures governing investigation of US persons to protect both civil rights and the possible process of prosecution.

13. It continues, if it does not intensify, the artificial jurisdictional division between the CIA and the FBI with respect to international CI operations—not investigations. CI knows no geographic boundaries. Every enemy intelligence activity originates in CIA's jurisdiction but this should not preclude active coordinated FBI operational activity overseas.

14. It creates unreasonable interpretive dilemmas for the intelligence community and, more importantly, for the working intelligence officer who, by this Act, may be held responsible for an error in judgment (this Act will increase the prevailing stultifying caution among intelligence officers—it may help them understand the risks but it will not encourage them to take risks). Examples:

A. This act would preclude (Sec. 133 Title I):

(1) Publication, without acknowledging US government sponsorship, the writings of another Solzhenitsyn who requires protection while he remains in the Soviet Union.

(2) Assistance to a cooperative KGB officer, under Tass cover, whose articles are re-played in US publications.

(3) Release of information about Soviet spies at the UN from a GRU defector, whose association with the US could not be acknowledged for political or operational reasons, since, even if released would "knowingly cause" influence on US public opinion.

B. What is "indirect encouragement?" (Sec. 135 Title I):

(1) Is it "indirect encouragement" to accept from a liaison service information from a wire tap of a KGB officer, not previously known to associate with Americans, detailing the passage of classified information from an American, previously unknown to US intelligence, to the KGB officer? There has been no court order to obtain "foreign intelligence" or "counterintelligence information" by electronic surveillance. Under this Act the information must be destroyed (Sec. 211 (d) and (e)) unless the officer receiving the information is willing to risk an adverse interpretation of "indirect encouragement."

(2) Is it illegal to encourage a KGB officer in Moscow who is cooperating with the CIA to photograph the documents, passport, etc., of any previously unknown, American visiting Moscow for the purpose of receiving KGB instruction? How are the legal and minimization procedures handled? What happens if the CIA case officer fails to be sufficiently explicit in his directions to the KGB officer about the CIA case officer's responsibility to protect the rights of US persons?

These examples may appear to be extreme and a legal counsel may well be able to sort through the provisions of S. 2284 to chart a safe operational course for the intelligence officer to follow in cases such as these but two points should be noted:

1. S. 2284 is not enabling legislation in the sense that it will permit the intelligence and particularly the CI community to easily do its job, and

2. It does not reflect very much, if any, understanding of what the intelligence business is all about from the practical operational standpoint.

The real concern—how to improve our CI capabilities is not easily answered—particularly in the context of this proposed Act.

Fundamental long term improvement of our CI capabilities must be based on a perception of CI in terms of what we want it to do for us to counter enemy threats and how it is an integral part of the intelligence system. It is not an independent isolated function—what CI does affects all other functions just as intelligence collection and estimates affect what CI is asked to do. CI is not just catching spies and neutralizing subversives—it is operational security and analysis of the enemies intelligence and security service capabilities and methodology—it is an overview of what the enemy is trying to do to us and how we can "do unto him."

S. 2284 will not fundamentally enhance our CI capability because it starts from the wrong premise about the CI function. Tinkering or patch-work efforts to correct this Act because of the problems I mentioned or other unlisted examples will not give us what we need.

The executive with the Senate and House Select Intelligence Committees must formulate a comprehensive national intelligence program and specifically a comprehensive national CI program.

A comprehensive CI program will permit the Congress to assess and evaluate existing legislation to better determine what legislation needs to be enacted, amended or repealed to permit increasing the efficiency of our national CI capabilities.

But to do this the executive must outline for the Congress a CI purpose—the objectives of the program—and specify what it needs to do the job. It may well be that very little if any legislation is required. Maybe the Congress will insist on some legislation, perhaps only amendments to existing charters is necessary. But if it does it should at least be totally aware of what the community needs and if it is to impose inhibiting restrictions this should be done on the basis of fully understanding what they may mean to our CI capabilities.

I believe this Committee can help improve our CI capabilities by gaining a better substantive idea of what a comprehensive CI program involves and resolving some of the questions which have distorted understanding of CI for many years but particularly during the past seven years.

The first and most basic way to improve our CI capabilities is to make certain that CI is centralized as a community function and within the CIA. This does not require legislation and the Congress may not be able to see it done. The

executive has the authority to institute centralization and internally solve most, if not all, of the specific problems I have listed which S. 2284 creates or fails to solve. The executive can rescind E.O. 12036 and issue guidelines which will permit it to frame a national CI program.

If this national CI program framework lacks authorities or suffers because of existing legislation the Congress can take remedial legislative action.

This Committee can help improve the CI capability by assessing the relative merits of centralized CI against the results of decentralized fragmented CI and advising the executive of its findings.

This Committee can help improve CI by gaining a better understanding of what CI officers need to do their job. This would involve providing a forum for experienced intelligence officers and FBI agents.

In conclusion, Mr. Chairman, I wish to emphasize I am not opposed to legislation to govern the intelligence community our democracy requires as well as internal guidelines.

I am opposed to legislation which does not enable us to have first rate intelligence services.

I have discussed briefly a concept of centralized CI which is certainly not new. It has been tested and was good by no means—but demonstrably better than any other system and it can be even better.

I have not gone into detail about this to save your time today. I urge this Committee to explore the need for centralized CI further.

While preparing my testimony I resurrected two papers which explain in considerable detail my concept and the need for centralized national CI.

To my dismay I found these papers to be as basically valid today as when I submitted them to the then Senate Select Committee on Intelligence in February 1976.

I would like to resubmit them to this Committee for consideration since they expand on my testimony today. They concern CI functions and organization and a comparison of CI programs—centralized and dispersed.

Thank you again.

TESTIMONY OF NEWTON S. MILER, SERVED WITH CENTRAL INTELLIGENCE AGENCY FROM 1947 TO 1974, CURRENTLY RETIRED

Mr. MILER. Thank you, Mr. Chairman.

I have been invited to present my views about this proposed charter and to suggest possible means to improve our national intelligence capabilities.

As a way of background I have approached this from the standpoint of 28 years in the CIA before I was retired in 1974. I was a working case officer and operations officer. I had 14 years overseas, 14 years in the United States. I functioned as an intelligence collector, covert action officer, chief of station, and primarily as a counterintelligence officer and executive. I was Chief of Operations of the CIA CI staff when I was retired.

The most important point which I want to make over and over again is the fact that until and unless counterintelligence is given priority attention and support, no other function of the intelligence system will be improved significantly or for long. Unfortunately, this proposed act, Executive Order 12036, and some existing and proposed legislation indicates that neither the Executive nor the Congress has grasped that counterintelligence is the essential base upon which a nation constructs its effective intelligence system.

The defense of the Nation starts within itself. The task of counterintelligence is the internal defense of the Nation. Despite the continuing efforts from within the executive, and specifically the CIA since 1973, and by some in the Congress in 1975 to treat counterintelligence

as a separate and exceedingly touchy, if not dangerous, function of the intelligence system, there has been a great deal of public and private testimony illustrating the inextricable interrelationship among three functions: Clandestine collection, covert action, and counterintelligence. I have observed that most people concerned with intelligence now accept this fact. I also think there is a growing realization that CI, counterintelligence, although maligned in the past is necessary and that we do, indeed, face unremitting, increasingly hostile foreign espionage from services whose governments direct their efforts to deceive, manipulate, and even subvert us because of their avowed policy that we are the "main enemy."

For many years there has been a lack of understanding about what else a true national counterintelligence program can provide to the analytical and estimating process, thereby adding another dimension or perspective to foreign policy and defense consideration.

Counterintelligence information and analysis can help reassure the Government that its human, technical, and strategic collection products are untainted by deception, that its sources and methods are secure, and that its institutions are free from foreign penetration and manipulation. An effective national counterintelligence program, whether it stems from one agency or, as is quite proper in the United States, several agencies, departments, and the military services, produces information about our foreign and domestic enemies which gives our Government a better ability to assess and neutralize threats to national security.

But to understand the proper role that CI must play in our intelligence system, we must recognize the most serious, the only real threat to American liberties comes today, as it has in the past, from our enemies at home and abroad.

To believe that our allies and even less our own intelligence services are working to do us in is to indulge in hallucination, or worse to do the enemy's work. There must be a decision about what we want our intelligence system to do. There must be an assessment about the real threats to our freedom and a determination of the types and kinds of intelligence information we need; an estimate of the resources we may need for covert action or special activities, and, of course, an estimate of the resources required to implement a national intelligence program.

Only when this is done, when there have been substantive, in-depth public and closed hearings, when the national program has been formulated, can the Government and the people decide the type of legislation required to give us a first-rate intelligence system. A national intelligence program has not been formulated. Our Nation has not determined what its intelligence is to do and how it is to fit into our foreign and defense policies.

S. 2284 is not the answer to our intelligence problems. It will not basically or substantively improve our intelligence capabilities. It is no substitute for an intelligence program.

A great part of our Nation's strength has been the resilience of our democratic institutions to correct abuses and aberrations of the exercise of power without overreaction. Our democratic system also compensates for ineptness without overreaction. S. 2284 is an overreaction.

At least I hope it is an overreaction, because if it is not and if S. 2284 is in fact what the executive and the Congress are forcing upon the American people, our country is in deep trouble.

If the American people, who I suggest are much more concerned about our intelligence problems, our failures to know what is going on in the world, our inability to control espionage and subversion than may be apparent here in Washington, are led to believe that S. 2284 will give them the intelligence system they deserve, they will be deluded. Edmund Burke said the people never give up their liberties but under delusion.

This act does not reflect a perceived positive national intelligence purpose. It does not enable us to create a system to cope with the increasingly perilous threat to our true freedom and liberties.

I say "create" because this is the situation we face today after nearly 7 years of sustained weakening of our intelligence capabilities: .

We have lost and continue to lose an inordinate number of experienced intelligence personnel.

We have lost resources necessary for special activities.

We have lost intelligence collection resources.

We have lost the faith and cooperation of allied intelligence services.

We have imposed legislation which restricts our own investigative and collection capabilities.

We have lost the centralized counterintelligence framework essential to an overview of the threat from enemy intelligence and security services.

We have no real assurance that our intelligence is untainted, and that our analytical and estimating ability is complete, apolitical, and equal to the need; because from the daily headlines we are reacting to unpredicted events and engaging in postmortems about what went wrong, whether it be Iran, Columbia, or Afghanistan.

Most significantly, we have demonstrated that S. 2284 will not give us the intelligence system we need, because since January of 1978 the intelligence community has been operating under essentially the restrictions, guidelines and provisions of S. 2284, in other words, Executive Order 12036.

Congress, certainly this committee, cannot be held totally responsible for not producing legislation to support its avowed and evident purpose to improve our intelligence system. In the public record alone it is obvious that the Executive, which controls the intelligence community, has failed to formulate an affirmative national intelligence program for the future for its own purposes, or to present to the Congress and the people—the Executive apparently sees little need for a focused, integrated intelligence system, a system which gives overall flexibility, can accommodate the differing needs, is designed to give the intelligence and counterintelligence officers the greatest possible legal leeway, and which will function smoothly under reasonable NSC guidelines and full congressional oversight.

The Executive also continues to overreact about the need for definitive legislation, for specific legal standards of conduct, specific prohibitions, and the detailed guidance that attempts to answer every potential conflict or major contingency when national security requirements possibly override the individual rights of the citizen or resident alien.

In the real world of conflict which we face, intelligence requires flexibility. The Executive appears to agree with those who oppose all covert action, clandestine collection and counterintelligence, insinuating that it knows that the intelligence community is untrustworthy and will do wrong. Is the executive asking us to protect us from ourselves?

Intelligence services can be effective under good guidelines. They will atorphy completely if there is a law, a manual, for every function and contingency.

This act is definitely designed to prevent wrongdoing, but, unfortunately, it also makes it extremely difficult, if not almost impossible, for the professional intelligence officer to do some things "right," in the sense of increasing his capability to collect intelligence and conduct counterintelligence.

The core considerations of any intelligence legislation, guideline, directive, management policy and coordination requirement, should be to make the intelligence officer's job more professionally effective. This act does not do this. It insures that the legal counsels of the intelligence community will continue to play the predominant, if not totally intrusive role, in the planning and implementation of virtually every nontechnical, nonestimating intelligence activity, and most specifically counterintelligence. To plagiarize, every case officer will need a lawyer for a partner, at least until the Government retrains enough lawyers to supplant the intelligence officers.

No one but an experienced Government lawyer would be able to plot his way through S. 2284, the labyrinth of inter- and intradepartmental and judicial coordination considerations necessary to implement serious action, and at the same time attempt to avoid charges for failing to understand and properly interpret the term "significant," "significant anticipated intelligence activity" and "indirect encouragement," or what constitutes a "substantial" number of U.S. citizens or permanent resident aliens to qualify an association to be considered a U.S. person.

My point is that the executive has failed this committee and the people because it has not evolved a national intelligence program for congressional consideration. This was most graphically illustrated on February 21 when Senator Stevenson failed to get a comprehensible response to his request for suggestions about how the charters could be improved to either consolidate responsibilities for counterintelligence or to improve cooperation and coordination between agencies with the responsibility for counterintelligence.

Senator Stevenson cut right to the heart of S. 2284 and the root cause which produced S. 2284: Can the executive tell us what kind of a counterintelligence program we need to help us clear up at least some of the confusion, misunderstanding, and the real or imagined concerns about counterintelligence which have plagued the Congress, the executive, and the public for 5 years. In other words, have we done right by counterintelligence, in this act?

I hope the executive's failure to respond was because it has not focused on the problem and not because it is satisfied that this act will give it a national counterintelligence program.

In addition to certain specific provisions in the act which bear directly and adversely on future counterintelligence capabilities, it

should have been noted to this committee there is other legislation which affects CI. Some of these relate to personal privacy and are aimed at protecting civil liberties but may have the opposite effect in a national context and may permit more latitude to foreign services than our own.

For example, two profound but seemingly minor bits of legislation crippling to counterintelligence are the so-called McGovern amendments to the August 1977 Department of State appropriations bill and the Foreign Relations Authorization Act of 1978.

The first permits any Communist free entry into the United States unless the Secretary of State personally disapproves entry. The second enables certain aliens previously barred from U.S. entry, even when the FBI advises they might be involved in espionage or terrorist activities, to come into our country.

If our counterintelligence capabilities, our overall intelligence capabilities, are to be improved, Congress must be asked to consider and examine each piece of legislation which adversely affects the intelligence community from the standpoint of a comprehensive explanation of how and why that legislation weakens the community's ability to do its job.

I recognize, however, that this act amends the Foreign Surveillance Act of 1978. I was unable to compare this with the original act. However, I note that we apparently still need a warrant to wiretap foreign intelligence officers, which is a basic counterintelligence investigating tool.

Some of the specific problems that this act will pose for the counterintelligence community might well have included the following:

One, it virtually destroys any counterintelligence program before it gets started by the requirement that the information about any U.S. person may be retained and disseminated if the information does not identify the person. Exceptions about retention and dissemination of the identity of U.S. persons does not appear to provide counterintelligence responsibilities. Counterintelligence deals with identifying people and their activities, usually over a long period of time. A counterintelligence file is people.

Two, it fails to provide——

Senator CHAFEE. Mr. Chairman, Mr. Miler, I have to leave fairly soon. This is a good statement. Is it much longer? What is the arrangement for questions?

Mr. MILER. I could cut this down.

Senator CHAFEE. I wonder if you might, because we have another meeting which is about to begin. Mr. Chairman, what are your plans for the next appointment?

Senator HUDDLESTON. I had hoped we would finish here as rapidly as possible. The committee has another meeting going on right now.

Senator CHAFEE. And we do want to hear from Mr. Burgstaller.

Obviously we will include your remarks in the record, Mr. Miler, because there are some excellent points which you have here. It is just that we are under a time constraint. The problem is with us, not with your testimony.

Mr. MILER. All right. Thank you.

Senator CHAFEE. I didn't want to cut you off. You were just going into some specific recommendations.

Mr. MILER. Yes, sir, I was.

Senator CHAFEE. Could you maybe just summarize them for us?

Senator HUDDLESTON. I think we ought to hear those, Senator. If you would, Mr. Miler.

Mr. MILER. I was speaking as to what the act fails to do. It fails to provide or continue to provide for a single counterintelligence file maintained as a service of common concern. This responsibility was mandated to the CIA in the 1940's and functioned as such until partially dispersed and disrupted by the CIA in 1973. It is indispensable to the conduct of national counterintelligence.

Three, it fails to provide a responsibility for the centralized counterintelligence research and analysis essential to effective counterintelligence.

It fails to make the CIA responsible for research and analysis and the nonpublic dissemination of counterintelligence information. It arbitrarily separates the problem of terrorism and counterintelligence, perhaps for politically expedient reasons. This separation of linked substantive intelligence would create increasing duplication of effort and resources, compound coordination problems and make analysis of foreign intelligence activities and CI more complicated.

There is apparently confusion about countering terrorism and the collection of information about terrorism, and its possible use by enemy intelligence services.

It fails to provide authority for centralized direction of national counterintelligence, and outlines procedures and authorities for approvals and coordination which overlap and are confusing.

It gives the National Security Council responsibility for CIA policy and direction but then vitiates this, as well as the CIA's responsibility for counterintelligence, by assigning to the Attorney General a series of certifications and approvals which cut across operational and investigative lines.

It fails to definitively designate the counterintelligence adjudicator.

It is confusing because it substantively excludes counterintelligence from the definition of the terms "national intelligence activity," "foreign intelligence activity," and "foreign intelligence."

It makes the Federal courts responsible for determining the legitimacy of some counterintelligence activity.

It attempts to extend a spurious legality over overseas activity.

It poses legal standards interpreting what "indirect encouragement" may mean on intelligence officers to the end that relationships with foreign intelligence security services are bound to be seriously impaired.

It fails to provide adequate security to protect sources and methods.

It continues, if it does not intensify, the artificial jurisdictional division between the CIA and the FBI with respect to international counterintelligence operations, not investigations.

It provides no guidelines about what constitutes a "voluntary association." This could be a severe handicap to counterintelligence agencies.

It establishes the FBI as a separate entity to produce, analyze, publish, and disseminate counterintelligence without defining the scope of this intelligence, or providing for the coordination and control of

other agency or liaison information to protect sources and methods. In fact, it omits provisions for the elementary intelligence precaution, the third agency rule.

It implies that the FBI is responsible for a national counterintelligence product. Most importantly, it fails to make a specific provision for FBI supervision and control of all counterintelligence or investigations of U.S. persons. This is important to insure adherence to Attorney General procedures governing investigation of U.S. persons and to protect the civil rights and the possible process of prosecution.

I have more, Senator, but I will stop there and just say in conclusion I am obviously not opposed to legislation to govern the intelligence community. Our democracy requires this, as well as internal guidance. I am opposed to legislation which does not enable us to have a first-rate intelligence service.

The concept of a centralized CI, which I have discussed briefly, not as extensively as I had hoped, is not new. It has been tested and was good. It was by no means perfect but demonstrably better than any other system, and it can be even better.

While preparing my testimony I resurrected two papers which explain in considerable detail my concept and the need for national, centralized counterintelligence. To my dismay, I found these papers to be as basically valid today as when I submitted them to the then Senate Select Committee on Intelligence in February 1976.

I would like, Mr. Chairman, to resubmit them to this committee for their consideration, since they expand on my testimony today.

Senator HUDDLESTON. We will be glad to have them for the record.

Mr. MILER. They concern counterintelligence functions and organization and a comparison of counterintelligence programs, a centralized program as opposed to a dispersed one.

Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you, Mr. Miler.

[The two papers submitted by Newton S. Miler to the Senate Select Committee on Intelligence in February 1976 follow:]

PAST AND PRESENT—CIA COUNTERINTELLIGENCE PROGRAMS

There are very fundamental and major differences between the present CIA CI program and the CIA CI program which evolved between 1954 and 1973 and was finally killed in December 1974.

The most significant and fundamental difference between the two programs is the perception of what a CI program should do for the nation and the CIA. This fundamental difference leads to glaring differences in implementation even when the new program includes some of the functions to be expected in any CI program. The significant difference between the programs is that the present program does not include functions and responsibilities normally found in any CI program.

At the risk of oversimplifying the difference in perception of the concept of CI, and what the responsibilities and functions of a CI program should be, it is fair to state that the pre-1973 CIA CI program was designed around and based upon activities to counter penetration of the USG and its Western allies. The actual program was considerably more than this but a central purpose was to neutralize penetration because it was recognized that no intelligence service or CI program can succeed if enemy agents are operating from within the government.

The present CIA CI program appears to be almost exclusively a design to conduct "aggressive" CI operations overseas by increasing Double Agent operations or activities and attempting to penetrate enemy services by recruiting their

intelligence officers essentially by the technique of having CIA officers cultivate and confront enemy officers face to face.

The previous CIA CI program was based on the understanding that true national security depends upon assurance our government is free from enemy penetration and subversion. The purpose of any CI program is to neutralize enemy agents and their influence and help sharpen the perception of the government to threats to its security and stability and thereby assist it in formulating domestic and foreign policies. A significant contribution to this purpose was the internal CI program in the CIA designed to try to insure that intelligence collection activities, and, even, covert action operations when CI is properly used, are secure and the product untainted by enemy deception and disinformation. The program was also designed to provide maximum support to other CI agencies and departments and to the military services during the Vietnam war. A natural corollary objective of this CI program was to undertake appropriate "aggressive" action to initiate operations and investigations, collect and collate CI information, conduct Double Agent activities and penetrate by recruitment foreign intelligence services. However, all these activities were undertaken on the basis that there was the centralized direction and control necessary to subject each compartmented operation to the master litmus of knowledge about the enemy, i.e., the collated files, to try to insure that the CIA was not being manipulated or deceived. It is important to note that CI activity was initiated only after calculating the risks to determine that the potential gain outweighed any possible damage to the nation and/or other intelligence or CI activity. Integral to this CI program was a high standard of security which was designed to protect our knowledge and program or operational intentions from the enemy. It was judged that only good security would give success to the CI program and, incidentally, create an atmosphere of trust so that other services and, even, an enemy intelligence officer could feel confident that cooperation with the CI Staff meant secrets were safe.

The present CIA CI program is based on concepts about the responsibilities and functions of both CI and intelligence services which are radically different from, if they are not diametrically opposed to, all the time tested experience proven fundamental concepts about what successful intelligence activity requires. Since 1973 the CIA has been marching to a different drummer and the beat has led the CI program away from the responsibilities and functions accepted and practiced by the previous CI Staff and other USG and Western CI services.

The present CIA CI program apparently is based, in philosophy, practice and fact, on the concept that freedom from penetration is *not* the sine qua non for any CI and intelligence service; that CI can be decentralized; that CI operations are devisable and can be run independently and unilaterally from other CI and intelligence service activities; that research and analysis in depth is unnecessary; that there are no historical imperatives to understanding the enemy; that CI officers need not be familiar with cases; that ad hoc analysis and isolated decisions will not have important adverse bearing on the national perception of the enemy threat; that strict security and compartmentation of CI and other operational activity is unnecessary; that any CIA officer is ipso facto capable of conducting any CI activity, including unbackstopped and unguided person to person relationships with a Soviet intelligence officer; that CI does not afford a means to evaluate and protect intelligence and covert action operations; that CIA CI activities can be run virtually independently of national CI interests and objectives and other agencies responsible for CI; that CI does not afford a method to assess enemy deception and disinformation; that assessment of intelligence and CI information sources, including defectors, is not a vital CI responsibility; that the CIA which possessed and should still have largely extant the most extensive and comprehensive CI file in the Western world does not have a responsibility to exploit this information and support with positive leadership a national and Western CI effort.

An additional factor which has colored CIA's perception of CI and distorted the present CIA CI program is the imposition of a management by objectives system which is antithetical to a CI program. CI programs and operations cannot be judged realistically by quantitative standards or arbitrarily imposed production goals. Most certainly CI operations cannot be initiated nor conducted on the basis that within X period of time Y number of operations will demonstrate that the program is moving, objectives are being accomplished and CI

officers are performing according to instructions and assigned tasks to initiate and conduct operations. A CI program based on false concepts and constructed around a management by objectives core not applicable to the long term patient secure solution to CI problems will soon rot from within and taint national CI efforts and, in fact, the national intelligence collection and estimative effort.

Counterintelligence—Functions and Organization

Counterintelligence (CI) is the base upon which a nation constructs it effective intelligence service (s) contribution to national defense. A nation which does not have a sound CI program suffers weakness in its intelligence collection and estimative responsibilities which, too often, may distort political, economic and military perceptions of the true situation facing the nation. Foreign policy decisions and actions, and related domestic considerations, made without the benefit of CI information will lack perspective.

This fundamental reason our nation needs a solid CI program is not overstated. Effective national CI, whether it stems from one agency or, as is the situation in the United States, several agencies, departments and the military services, produces information about our foreign and domestic enemies which adds dimension and permits the government to better perceive, assess, control and neutralize the threat to our freedom. Direct and analytical CI information permits policy makers and national intelligence and security estimators to better analyze and interpret information produced by the overt, covert and scientific intelligence collection programs. CI information can help measure the government that its intelligence collection product is untainted by deception and that its institutions are free from foreign penetration and, therefore, its defense and political secrets are safer, CI operations provide a positive access and channel to the enemy.

These assertions about what a solid CI program can do for the nation may well introduce a concept of CI which even many CI practitioners in the government have failed to fully understand. Certainly the majority of intelligence collectors and several current CIA managers, who supported Mr. Colby when he virtually destroyed the then major and most centralized U.S. CI program, do not have a realistic concept of CI or the potential inherent in a true CI program.

A true CI program is not just counter-espionage, counter-subversion, counter-sabotage, double-agents and protection of state secrets. Quite obviously these responsibilities are primary functions of the CI program. But true CI is and must be much more if the nation is to realize full profit from its investment in the diverse agencies now engaging in various CI programs. Each of these agencies now working essentially without central direction and purpose to partially fulfill one or more of what are really national CI objectives never see the full spectrum of national CI requirements. Therefore, they seldom, individually or as a group, realize their full potential for their parent authorities or the nation.

In 1973, when the CIA CI program was decentralized, and its responsibilities and functions drastically altered, the nation lost not only the best means to protect its principal intelligence collection agency but also its primary source of national CI overview and coordination.

The net effect of this loss still must be understood by the government. Realization of what the CIA actually perpetrated on national CI efforts has been slowed because the CIA has not understood the CI problems, has been in disarray for a year and has not yet had to account for its CI program to the other CI agencies which have also been preoccupied with investigations. Additionally, the proceedings and publicity generated by the various investigations have helped the media, following the initial CIA endorsed publicity, continue to confuse issues with respect to CI and legitimate CI authorities and activities. As a result national CI is struggling for breath in an atmosphere where both the legitimate and the illegal and improper CI activities are condemned without distinction. The need for CI is being questioned at the same time there are self-destructive cries from the left questioning the need for any intelligence capability. Even though the demise of our intelligence institutions is unthinkable there is a danger we will fail to understand the kind of atmosphere required if we are to nurture a national CI effort.

Today the nation apparently is unable to discern its enemies clearly. We have been and are being deluded and befuddled about true Soviet intentions. We are being misled as we swallow Soviet disinformation and by anyone who

helps us to interpret Soviet motives, strategy and tactics as reflections of our own image, beliefs and hopes. For the past several years we have let our domestic problems distort our view of foreign problems. Foreign and domestic problems are related but we have not properly equated the relative dangers nor fully assessed or perceived the actual relationship between the foreign problem and certain manifestations in our domestic problems.

We have taken steps to eliminate certain domestic dangers to our freedom. However, in the process, during the past year we have largely lost sight of the fundamental problems which should concern us. We have been led, sometimes intentionally and sometimes inadvertantly as the media and certain politicians seek headlines, into a situation where we cannot see the forest for the trees. We need to regain our perspective and acknowledge that the U.S. faces an implacable foreign foe—the Soviet Union.

We have virtually lost sight of our real problems and the real purpose of the catharsis of the investigations as we have been led into a too sanctimonious orgy of mea culpa about our foreign policy and intelligence service activities. We now need to face reality and decide to take constructive action because our nation cannot do without a good CI program which can legally and properly help insure our freedom. We have to bring our perception of what we need from our intelligence services and, specifically, our CI services, back to the real world.

This will not be easy. It will involve compromise from both liberal and conservatives as the Congress and the Executive Branch move to provide guidelines which will give our nation better intelligence services and an effective CI program. In particular it will be necessary for the Congress to recognize and face up to the fact that there is a foreign threat supported by domestic enemies which we must control. This means that the CI service(s) must be able to undertake certain functions and activities which may be an anathema to the liberal and an unpalatable but necessary evil to the conservative. The Select Committee which has been at the helm a great deal of the time can correct the course of the CI ship by recognizing there are rocks and shoals ahead which must be navigated even though there are risks.

It is a fact that we have spies and subversives in the country. We share political and defense secrets with many countries penetrated by spies and persons influenced by the Soviets. We need to know our enemy through his machinery which nurtures his spies and subversives, promotes his disinformation and supports his political and economic policies. We need a perception of the enemy not reflected solely by diplomacy, scientific and cultural exchanges and the scientific and usual human intelligence collection practices and which is not unduly influenced by liberal academic and journalistic interpretations and analysis.

The compromises required to establish a solid national CI program means that the nation will have to accept the fact there cannot be total and complete individual privacy. Certain information about our citizens will have to be collected and centralized. Certain investigation will be necessary. The nation will have to be reassured that these sacrifices of certain individual civil and privacy rights are necessary and justified, and that these and attendant CI functions will be legally conducted and the information collected will be protected from misuse.

The vast majority of our citizens, who are probably more perceptive about the real threat to the nation than we have been led to believe by the media and certain politicians in the past year, will see the need for a legally authorized, competently guided and conscientiously administered CI program. The vast majority will recognize that to remain a free nation in this day and age certain rights of privacy may have to be infringed but not destroyed. These sacrifices will be acceptable if not abused. Just such a program can be established. If the nation does not get such a CI program the government will have failed the people.

In 1954 the CIA began to build a centralized CI program to give control, overview and coordination to efforts to use CI to oppose our enemies. The purpose was to fulfill both statutory and Executive Branch, National Security Council, directed responsibilities and, most importantly and significantly, the perception of the government and the then CIA management that the nation must have a solid CI program if its intelligence collection and covert action activities were to succeed and the nation was to effectively counter and neutralize foreign threats.

The perception of these CIA leaders was validated many times over during the next 20 years as the CIA produced CI policy and doctrine and information

which uncovered spies, protected institutions in the U.S. and among its Western allies from penetration, helped insure the security of other intelligence service activity and provided a perspective to enemy strategy and tactics which could only come from centralized CI. The CIA also was able to use its centralized collated information to give advice and guidance to other domestic and foreign services, coordinate CI operations overseas and lead an alliance of Western intelligence and security services.

Most significantly it must be stressed that this centralized CIA CI program was organized and conducted on the basis of statutory and directed authorities guaranteeing protection of the rights of all U.S. citizens and the most stringent security and compartmentation of information about Americans. Unauthorized domestic or foreign CI activities were not initiated by this CI Staff and its policy was to coordinate every action involving Americans with the FBI and other agency as appropriate. In fact one of the primary reasons CI was decentralized in CIA in 1973 was the decision by Mr. Colby that the stringent security and compartmentation practices of the CI Staff was unnecessary and unwarranted. The 20 year record, however, shows that it is possible for an agency and the nation to centralize CI information and CI activities under secure conditions and thereby guarantee civil rights are protected and that there is no leakage and/or misuse of information. This record is also a demonstration that CI programs can be directed with integrity.

The program was not an unqualified success. Mistakes were made and often there was a lack of authority and resources and the usual internal and interagency bureaucratic problems which detracted from performance and created security and operational problems. In fact, there was not full integration and centralization of all CIA CI authority and action or, even, oversight in this CI Staff. Other CIA CI activities, as has been recently publicized, which were primarily undertaken by components outside the Deputy Directorate for Operations (Plans), were not known to the CI Staff.

By 1973, however, the program had produced a centralized body of knowledge about the Soviet Bloc and other foreign intelligence services and case histories of espionage and subversion unequalled in the West. A solid approach to CI operations and investigations had been developed and there was integration of the research and analysis function with the operational responsibility. The program tied together information about international Communism, foreign espionage, disinformation and deception and an operational security review of CIA intelligence collection operations. It produced reports and studies, set CI training standards and requirements and participated in internal and external CI training courses for both domestic and foreign CI services.

One of the most important centralized functions of pre-1973 CIA CI program was the conduct of CI liaison with domestic and foreign intelligence and security services. Significantly the latter liaison often provided political information and access to other governments which could not have been acquired without the CI exchange and cooperation. The commonality of interests as the U.S. worked with foreign services to oppose the Soviet Bloc threat often produced information of national import which otherwise might have been denied.

CI liaison with domestic agencies; the FBI, the NSA, Treasury, the Secret Service, the military services, DIA, the Office of Security—Department of State, and the AEC, to name the most important, had a purpose and cohesiveness only centralization can provide. Maintaining strict compartmentation and security, i.e., observing the "Third Agency rule", while implementing the directive to centralize CI information in the CIA as an intelligence community service, the CI Staff was able to support and channel inter-agency CI activities so that each agency helped contribute more to a coordinated national CI effort. Obviously it was sometimes difficult to meld the efforts of independent agencies to produce fully coordinated effective action. No national mechanism exists to adjudicate differences between agencies with distinct responsibilities to make sure that bureaucratic or personal foibles don't interfere with action to complete a CI effort national in scope. There is no third party, for example at the NSC level, to force a reconciliation of CI differences, such as evaluations of the penetration problem and sources or action recommendations, and bridge the gap, for example, between the FBI's view of its domestic responsibilities and the CIA's view based on its overseas and international responsibilities.

It will be argued that in 1954, when the CIA established the CI Staff to provide centralized CI, the nation had identified and decided the Soviet Union was a

very real threat. We were indeed faced with a more visible cold war and, therefore, decisions were simpler and more straightforward. The nation recognized its enemy. CI has continued to recognize the enemy. It will be argued also that CI services are in themselves a threat to the country, perhaps greater than any foreign threat because a few CI practices and activities led to illegalities, excesses and improprieties which violated certain civil rights, invaded privacy, harassed citizens and therefore threatened the very freedoms of speech and political choice which the CI program is designed to protect. Out of context and as particularized isolated activities, which is how the majority of the CI abuses have been presented to the public, it would appear that all CI activities of the FBI and CIA were dangerous to the country, unnecessary to catch real spies and totally out of phase with any true CI program. It is largely true that the activities which have been so properly condemned were all of these things and more because they were a tangential if not completely unnecessary aberrations and not a basic part of the true CI program.

However, any fair judgement of the reasons for the aberrations, even though there can be no mitigation of the condemnation, must consider the actions in the context of the times and the events and circumstances which caused the actions. If judgements about the need for a national CI program, and what functions must be performed to implement that program, are made solely on the basis of reaction to the aberrations the nation will fall into a trap. Just as those who judge the need for a CI program need to cut through the fog created by revisionist history of U.S.-Soviet relations to understand the real threat to the nation, so also do they need to focus on the essentials of what a CI program must do for the country.

There must be recognition that everyone in the United States, including unfortunately some citizens, is not dedicated to preserving the nation from foreign subversion. There is treason even though this becomes increasingly hard to define and there are espionage activities which are difficult to detect and control particularly by prosecution. Standards of security have been warped as individuals have assumed and been encouraged to practice a moral attitude that makes any individual the sole arbiter of what national secrets he will decide to protect.

These and other factors in our society including advocates of absolute individual freedom while, in fact, the nation moves toward more governmental control over the individual, tend to seriously confuse us about what we need to do to preserve our democracy. At this time the vast majority of the people want to know that at least the government understands and will oppose a foreign threat to their freedom. The people see a need for a good intelligence and CI Service(s). There is realization that, in fact, a properly directed intelligence effort is essential to their freedom.

The Congress, specifically this Select Committee, can truly serve the people by bringing balance to its investigations and recommending to the President certain fundamental steps necessary to give the nation a good CI program. The statutory and Executive authorities necessary to establish and implement effective CI exist. The Executive Branch must organize the CI effort and establish both the inter-agency and intra-agency disciplines necessary to insure that the CI job is done purposefully, efficiently and legally.

A national CI program must be based on the following general steps:

1. A Presidential statement of a national CI policy and objective(s) and the formulation of operating guidelines and authorities by the NSC, in conjunction with the President's Foreign Intelligence Advisory Board (PFIAB).

2. A reaffirmation by the President that the FBI, operating more directly under Department of Justice supervision, is responsible for and will coordinate all domestic CI and that the CIA is responsible for and will coordinate all CI overseas and that the CIA will manage the national CI file.

3. Appointment of a CI overseer at the NSC who can regularly monitor CI activities to insure there is focus on objectives and compliance with the guidelines and authority standards set by the NSC and adjudicate, or cause to be adjudicated, interagency differences about CI policies, activities and coordination.

4. Specific clear NSC guidelines to each agency engaged in or responsible for any aspect of CI concerning its role in the national CI effort.

5. Certain reorganizations of each CI agency and military services to insure there is compatibility and complementary action to fulfill national objectives as well as the parochial needs of each agency.

6. Reestablishment of a centralized CI program in the CIA and the allocation of sufficient resources to implement the program.

The reinstitution of centralized CI in the CIA is a priority concern. The framework, i.e., the doctrinal and organizational guidance, necessary to reestablish the program exists in CIA and NSC documents and is known to the PFAIR. The informational files are largely extant. The greatest problem the CIA will have is to reassemble the few remaining knowledgeable CI officers, train new personnel and re-adjust its operational and security philosophies to give substance not just form to centralized CI. The change in CIA CI can best be made as new management takes over and there are other adjustments in CIA practices and procedures. True CI must become once again an integral CIA responsibility and function.

Senator HUDDLESTON. Mr. Burgstaller.

TESTIMONY OF EUGEN BURGSTALLER, SERVED WITH THE CENTRAL INTELLIGENCE AGENCY FROM 1948 TO 1979; CURRENTLY RETIRED

Mr. BURGSTALLER. Please excuse my voice. I happen to have a cold right now.

I was an operations officer from January of 1951 until my retirement last year. I should like sincerely to testify here to my own growing acceptance of congressional oversight. As one of the old school, it was a new kind of cat to me. When I first encountered it, I was uncomfortable with it and through my exposure to many of the gentlemen here, both among the staff aides and the Senators themselves, as well as certain Members of the House of Representatives, I am now a convinced believer in it.

I think we really have evolved something fundamentally very sound here. I would, on the other hand, like to associate myself with many of the points made by Dr. Schlesinger with respect to the frequent advantages one finds in some kind of unwritten constitution, if you will, for the operations and activities of the intelligence services of this country.

I think it is evident that in foreign policy it is often desirable not to identify to the potential enemy what you will and will not do in certain situations. I might offer a thinly disguised, but what is substantially a very truthful account of how this can work.

In the years that I served as COS in Beirut, Lebanon, we had an operation involving contact between one of my officers and a young KGB officer, a rather unusual KGB officer simply because he was undisciplined, and this, of course, is what led us to him. He drank too much. He gambled.

The relationship between my subordinate and this officer seemed to be going along quite well, when all of a sudden the KGB officer vanished from Beirut, and we felt, OK, fine, you win some, you lose some, but this one obviously must have come to their attention, or perhaps he was simply brought back home to Moscow because of his visible lack of discipline.

Some months later a very senior KGB officer whom I had met earlier returned from Moscow to Beirut, invited me to lunch, and began to tell me a very strange sort of story in which he said "his organization," without ever naming it, understood that a zealous young CIA officer might well wish to score some successes against his organi-

zation. This was all part and parcel of the world of espionage and counterespionage, but that there were two schools of thought within the KGB as to how they should react.

One, he said, was the "soft, flexible school," to which he said he was personally a subscriber; namely, that possibly one could toss this young man "a few bones" to assist him in his career with our agency in return for his possibly tossing them something as a compensation. Then he went on to say—this gentleman spoke English reasonably fluently, but very slowly and with quite a heavy accent—he said to me, "There are others, Mr. Burgstaller, whom we might call the hard-line school, who favor other types of action, and if we cannot, we of the soft-line school, cannot convince our superiors that our way is the way to handle it, the hard-liners may win out."

Well, at a certain point after listening to this I said, "May I ask, are you threatening executive action against this young officer? Are you threatening to take physical action against him?" I said, "Because if you are, I would like to make clear to you that we have never done this, neither your service nor ours. If you were ever once to start that, it could become a two-way street."

I simply mean here the fact that the Soviets cannot exclude in this particular instance that we might not in retaliation assassinate one of theirs. It is simply part of that flexibility which derives from not telling your enemies what it is you're going to do and what it is you're not going to do.

A few ideas I would like to offer without commenting on the bill. They are based on experience and somewhat, you might say, over 30 years of clandestine operations, both at home and in the field.

The first is that any potential source at the point of recruitment, at that point where, let us say, he becomes fully aware, and we admit it, that we represent the Central Intelligence Agency, or the U.S. government, that we desire his clandestine cooperation, is predictably in at least 99 out of 100 cases going to say, "But how can I be sure that my collaboration with you will not ultimately become known?"

The response to this is, "Well, it won't. We can assure you your collaboration will be known only te a very limited number of very senior people, et cetera."

I think, therefore, that the language which suggests that the committee should have access to any and all information does pose a very genuine danger that can easily be interpreted as meaning the revelation of the identities of sources of covert collaborators, if you will.

I think that any language which offers that possibility is in fact an extremely inhibiting, would be an extremely inhibiting element in the continuing ability of the agency overseas and elsewhere to perform its functions in the field of operations.

It may interest you to know that as chief of a very large station, with somewhat certainly sources and collaborators in the three-digit figures, I never found it necessary to know the true identity of those sources to whom we always obviously alluded by code names than in perhaps more than 5 to 10 percent of the cases. In fact, the operation had already been validated.

I knew, of course, a description of that source, in short, what kind of access did he have, where generally did he fit into the scene. I made it a

practice, not consciously, perhaps inadvertently, never to find out what that gentleman's true name was. I don't think it inhibited my ability to run an operational plant. I think there are frankly very few occasions where the specific identity of a source would be required to be known. Of course, there are exceptions.

I offer those thoughts simply because, having dealt also with a great number of intelligence and internal security service officials of various ranks, I agree with the point made by Dr. Schlesinger that some of what you put into this will have impacts outside the United States.

In every Western European country, certainly, must reading for all the senior intelligence and internal security services is a very fine newspaper known as the International Herald Tribune. One foreign intelligence service officer once said to me, "Mr. Burgstaller, you know the local antiestablishment press accuses me of all sorts of horrors, of being a CIA agent, of being in the American pay." He said, "This is not important at all because no one of any consequence in my country pays any attention to those sort of gross accusations."

"On the other hand," he said, "were an authoritative-sounding leak to appear on the front page of the Herald Tribune, I would be receiving a call from the President of my country within 10 minutes telling me to distance myself from you people."

This official is a good friend of the United States, and I say that quite objectively. He has made it very clear to me and other members of my organization that he definitely, as a result of events over the past 4 or 5 years, to which he has paid very close attention, quite frankly does not today tell us information about certain intelligence gained by his service that he would have told us about 5 or 6 years ago.

So, again, I simply offer these personal vignettes, whicb I think probably have some degree of overall applicability to what you are trying to achieve here with the bill.

I would also say that the belief that these events have produced an inhibited atmosphere is quite justified. In my own personal experience in Lebanon in 1967 in a span of 2 or 3 weeks following the outbreak of the Six-Day War, we ran more special operations of covert political activity in that country, starting with the evacuation of U.S. dependents down to a relative normalization of the situation.

Some of these involved the expenditure of funds, and in one case the approval for an operation proposed by myself with the enthusiastic coordination, and indeed I might even say at the request of the then chargé d'affaires, was approved within 17 hours. In other words, I had the approval back on my desk. The chargé, a very fine foreign service officer, said, "I've never seen the U.S. Government work that fast before."

In short, again, there are situations, they are not perhaps the norm, but they will arise, they have arisen in the past, they will arise in the future, where speed and flexibility is of the essence. Apart from that I can only say again I certainly wholeheartedly support the concept of close oversight.

I found myself down to my last working day infinitely more comfortable with that than I did with the system in the early 1950's, where you knew that many Members of Congress who could have had oversight and insight were saying in effect, we don't want to know.

We have, I think, in this specific connection, you and other people who have been concerned with it, made a very real contribution. And if such an act is in the general opinion necessary and desirable, I would simply like to ask that all of you who work on it keep in mind some of these nuances, if you will, that can arise from these unfavorable effects that can arise from a too specific statement of all the things we can and cannot do.

I think it can create problems, and I think the problems by and large would be unnecessary.

Thank you very much.

Senator HUDDLESTON. Thank you very much.

The time situation being what it is, I am sure we would like to ask a number of questions. I know that you have come from some distances, all of you, and I appreciate that fact, and I appreciate your giving us the benefit of your experience and your thinking which will be very helpful to us.

I would like to suggest that probably we and others of the committee might want to expand on some of your comments and request from you further statements, if that is agreeable to you.

Did you have something?

Senator WALLOP. No, Mr. Chairman. Perhaps we might be able to submit a few questions in writing, but I think it would be extremely helpful if these gentleman who are no longer under the constraints that are legitimate and obvious of service for a commander-in-chief, but who have experience which can be of benefit to this committee, might be asked to work with the staff on some recommendations that might ease the path through some of this that they have pointed out.

Senator HUDDLESTON. I feel surely—in fact, I think the staff has been in touch with most of you on occasion, and we can certainly continue to do that and have from them their suggestions on any aspects of the legislation. I think that would be appropriate.

With that then, let me thank you for your appearance. We will recess the committee until our next called meeting session.

Thank you very much.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

WEDNESDAY, APRIL 16, 1980

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met at 3:10 p.m. in room 5110, Dirksen Senate Office Building, Hon. Walter D. Huddleston presiding.

Senator HUDDLESTON. The committee will come to order, and we will continue our hearings on the National Intelligence Act of 1980.

We have two witnesses today that the committee looks forward to hearing from. First is Mr. Jack C. Landau, the director of the Reporters Committee for Freedom of the Press.

Mr. Landau, we have your written statement which will be placed in the record in its entirety. You may proceed.

[The prepared statement of the Reporters Committee for Freedom of the Press and the National Newspaper Association submitted by Mr. Jack C. Landau follows:]

STATEMENT OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND THE NATIONAL NEWSPAPER ASSOCIATION

I—INTRODUCTION

A coordinated CIA–FBI attempt to mutilate the FOI Act

Mr. Chairman and Members of the Committee: I would like to thank you for this opportunity to present the views of The Reporters Committee for Freedom of the Press on the dangerous impact of these two bills will have on the freedoms of the reporters, editors, authors and scholars to keep the public informed about activities of our government.

My name is Jack C. Landau, and I am the Director of The Reporters Committee for Freedom of the Press and the Supreme Court reporter for the Newhouse Newspapers. I am accompanied by Peter C. Lovenheim, Society of Professional Journalists (Sigma Delta Chi) Research Attorney, and the Project Superivsor for the Freedom of Information Service Center, a joint project of the Society of Professional Journalists and The Reporters Committee on state and federal Freedom of Information Acts.

We were assisted in the preparation of this testimony by Arthur B. Shackler, General Counsel of the National Newspaper Association, a national organization of 5,500 newspapers with members in all 50 states.

As you may know, The Reporters Committee has a special interest and expertise in this area because we have filed the two Freedom of Information Act cases which probably have involved more national security information than all Freedom of Information Act cases put together.

The Reporters Committee, along with the American Historical Association, the American Political Science Association and eleven individual historians, political scientists and journalists filed the original Freedom of Information Act case claiming that President Nixon's 42 million White House documents and tapes were public property covered by the FOI Act; and obtained the original injunction issued under the Freedom of Information Act prohibiting Mr. Nixon from taking possession of these papers as his private property. (*See Reporters Committee for Freedom of the Press* v. *Nixon.*)

We appeared in this case and in the affiliated case, *Nixon* v. *Sampson*, before the U.S. District Court, the United States Court of Appeals, and the United States Supreme Court. Our counsel participated extensively in the drafting of

the Presidential Recordings and Materials Act and then in the Government Services Administration regulations on the access to the Nixon-White House materials.

Subsequently, we filed under the Freedom of Information Act, *The Reporters Committee* v. *Kissinger*, claiming that the 30,000 transcript pages of Mr. Kissinger's official diplomatic conversations compiled by government secretaries on government time and used extensively by Mr. Kissinger in the performance of his government duties were public records covered under the Federal Freedom of Information Act and were not, as Mr. Kissinger claimed, "private diaries" for his exclusive use only.

The U.S. District Court and the U.S. Court of Appeals upheld our claim, ruling that Mr. Kissinger had illegally removed government property covered by the Federal Freedom of Information Act. However, the Supreme Court, this term, reversed those decisions, stating that Congress had not intended to give scholars, journalists and others under the Federal Freedom of Information Act any cause of action to obtain access to government records—even those illegally removed—because they were not physically in the possession of the government agency.

So I think you can see we have had extensive experience with the Freedom of Information Act requests involving vast amounts of material covered by the national security exemption of the Federal Freedom of Information Act.

As you know, the Federal Freedom of Information Act was passed in 1966 primarily, it was hoped, to give the public access to information about its government.

The premise of the Act is that all records of all federal agencies are presumed to be initially available unless they fall under one of nine exemptions. While there have been a number of bills passed excluding narrow categories of documents from disclosure through incorporation by reference, Congress has never passed legislation exempting an entire agency from the operation of the Act—but that is exactly what the CIA Charter, Admiral Turner's suggested amendment, and the Intelligence Reform Act would do; and the Justice Department proposal (as reported in the press) is not much better.

In fact, Senator Moynihan's bill, Admiral Turner's amendment and the proposal of the Director of the FBI would exempt totally the CIA, the FBI and the foreign and counterintelligence activities of the Departments of Treasury, Defense, State, Energy, and of any other federal agency's records Admiral Turner chooses to designate as "Classified."

Therefore, what we are witnessing is a well-coordinated and carefully-planned attack, lead by the CIA and the FBI (and substantially backed by the Administration) to virtually exempt themselves from any public accountability for the operation of intelligence and counterintelligence activities both here and abroad, regardless of whether the information sought under the Freedom of Information Act would pose any significant danger to the national security of the United States.

II—CIA HAS BROAD FOI SECRECY POWERS NOW

As you know, the CIA does have, in existing law, several broad exemptions which it frequently uses successfully to prevent public and press access to information because disclosure of this information is "specifically authorized . . . by an Executive Order to be kept secret in the interest of national defense or foreign policy . . . ." Under the current Executive Order, all the CIA must show is that disclosure of a broad range of information "could be expected to cause at least identifiable damage to the national security."

It is important to note here that this exemption is extremely sweeping and that the government only has to show some expectation of damage in the future and is not required to carry any heavier burden.

In addition to this "national security exemption," the CIA uses the other exemptions permitting it to withhold information relating to "internal personnel rules," "inter-agency or intra-agency memoranda," "investigatory records compiled for law enforcement purposes," records the disclosure of which would be "a clearly unwarranted invasion of personal privacy," records which would "disclose the identity of a confidential source," and records which would disclose "investigative techniques and procedures."

Now it seems inconceivable, given these broad exemptions, that the CIA does not, under existing law, have all the powers it needs to protect this nation from

any damage to its national security in response to requests made under the FOI Act.

III—CIA GIVES NO EXAMPLES OF FOI ACT DAMAGE

In fact, one can read Admiral Turner's testimony and find no cited examples of where the agency was forced to disclose under the Act information which damaged the national security.

This conclusion is born out by a letter of March 7 by the American Historical Association in which its Director, Mr. Mack Thompson, states: "We can find no evidence that the FOI (Act), as it has been applied to the CIA and the other agencies now attempting to secure examptions from its provisions, has been seriously detrimental to national security . . ."

Furthermore, according to the Center for National Security Studies, there is no instance since 1966, in which an appeals court has issued a final order under the FOI Act requiring the CIA to release information which the agency has claimed was a danger to national security.

If the CIA has released information which would damage the national security in FOI Act cases which have not been litigated, then the release was completely voluntary by the Agency and the damage to the national security can be traced to its carelessness and not to any existing provisions of the Federal Freedom of Information Act.

Therefore, it appears perfectly clear that whatever problems the CIA is facing in terms of protecting the national security, these problems do not stem from the FOI Act; or if they do, we should like Admiral Turner to give us some examples.

What are some of the more important newsworthy articles which have resulted from disclosures about the CIA? I refer you to a summary done by the Center for National Security Studies and only name a few:

(1) The illegal domestic intelligence activities, including opening citizens mail;

(2) the Huston Plan to establish what amounted to an internal secret police operation;

(3) clandestine operational activities within the United States against foreign targets, including plans to assassinate foreign politicians;

(4) the use of Army counterintelligence information to obtain information on domestic political groups;

(5) drug experimentation on human "guinea pigs";

(6) and, of particular interest to us, of course, the use of journalists and academics by the CIA and the investigation by the CIA of certain journalists, including Jack Anderson.

Some of this information was initially released in response to FOI requests and some was released by news articles and later confirmed through FOI requests.

Far from damaging the national security of the United States, this information has helped the national security of the United States. It has informed the public about the abuses of the intelligence community and has helped to remind our intelligence officials that they, too, must obey the Constitution and the laws of this nation.

IV—THE CIA IS COST-FACTORING THE CONSTITUTION

What is Admiral Turner's next complaint? He has mentioned that processing Freedom of Information Act requests is costly for the CIA, as it is for other federal agencies. According to an Agency spokesman, in 1978, FOI requests had cost the CIA about $3 million.

In effect, what the CIA appears to be arguing here is that it is too expensive to process FOI Act requests. We have no way of knowing, of course, whether this is accurate for that year or for any total 1980 figures which Admiral Turner may disclose. For example, how many times is one document reviewed and is the CIA wasting manpower?

This conclusion is born out by a recent report of the Comptroller General saying that he questioned the accuracy of reported cost data submitted by selected federal agencies on the financial burdens of processing FOI Act requests.

But perhaps more importantly, what was the dollar worth to the American public to stop the CIA from opening its mail? Can Admiral Turner put a dollar figure on the harm suffered by victims and their families who were subjected to human "guinea pig" experiments? What would be the CIA's budgetary figure

to compensate our constitutional system had the Huston Plan been put into effect? Can the CIA put a dollar budgetary figure on the First, Fourth, Fifth and Sixth Amendments?

V—THE ILLUSORY DAMAGE PERCEIVED BY FOREIGN SOURCES

Well, what is left of Admiral Turner's argument at this point? As stated by the Deputy CIA Director Frank Carlucci before the House:

"(I)n their (foreign agents') minds the CIA is no longer able to absolutely guarantee that information which they provide the U.S. Government is sacrosanct. . . . (W)e believe we can keep it so, but it is, in the final analysis, their perception—not ours—which counts."

Now this is a most remarkable statement. The CIA is asking that information which poses no danger to the national security of the United States be denied to citizens of the United States because an informant in the French foreign office or an undercover Iranian agent has a "perception" that the CIA is not trustworthy. Is Congress really going to believe this argument which is rooted in the mystique of foreign intelligence witchcraft?

In his appearance before the American Society of Newspaper Editors recently, Admiral Turner has added yet another afterthought. While he conceded that no court had ever ordered the CIA to disclose national security information against its wishes under the FOI Act, he said that there was a possibility that some future court might make such an order—and therefore, based on this speculative possibility, his suggestion to exempt the CIA is justified.

We would hope that this is a totally inadequate justification for this Committee. Perhaps, Admiral Turner might suggest that the Congress suspend habeas corpus today because it is possible in the future that an armed rebellion might occur.

I think what has happened is that the CIA and the other members of the government intelligence community, sensing an increased concern in the Congress and the public over the threats to our national security from the Soviet Union, have decided to capitalize on our nation's patriotism in an effort to exempt themselves from public accountability under the Federal Freedom of Information Act.

VI—NO MODIFICATION WARRANTED WITHOUT FACTUAL EVIDENCE AND HEARINGS

We are certainly prepared to concede—if given some accurate evidence—that the national security exemptions in the FOI Act, as it is now written, might be modified to help the CIA protect our nation from significant and identifiable dangers to its national security from FOI Act requests.

If the CIA actually has a case it can present for modification of the exemptions, then Congress could have hearings on one or more of the exemptions, as they apply to the CIA.

But certainly the Congress should not give the CIA and the other intelligence agencies in the federal government a wholesale exemption from public accountability based on a series of "straw man" arguments unsubstantiated by any facts.

Therefore, given the broad coverage which the CIA already has and the lack of any examples which have been posited so far, we can only conclude that whatever damage has occurred to the CIA in the past by the disclosure of information does not come from the FOI Act but comes from internal leaks or carelessness within the agency itself.

VII—THE SPECIFIC FOI PROVISIONS OF THE CIA CHARTER (EXEMPTING THE CIA ONLY)

S. 2284 would guarantee the CIA a wholesale exemption from the FOI Act under § 421(d) by stating that "No provision of law shall be construed to require the Director of the Agency or any other officer or employee of the United States to disclose information concerning the organization or functions of the Agency. . . . In addition, the Agency shall also be exempted from the provisions of any law which require the publication or disclosure . . . of information in files specifically designated to be concerned with . . . the collection of intelligence . . . intelligence operations . . . (and) intelligence and security liaison arrangements. . . ."

The one exception to this blanket secrecy provision does permit American citizens and permanent resident aliens to obtain from the CIA information which

the CIA has compiled about that individual; but once again, only if release of that information does no damage to national security, violate a third person's right to privacy, disclose confidential sources, etc.

VIII—THE SPECIFIC FOI PROVISIONS OF S. 2216 (EXEMPTING THE CIA, FBI, STATE DEPARTMENT, ETC.)

S. 2216, Senator Moynihan's proposal, is of course much broader and is supported strongly by Admiral Turner and Judge Webster. It would give a blanket exemption, not only to the CIA, but to the FBI, the Justice Department, the Treasury Department, the Department of Energy and to any other federal agency in any of their myriad activities collecting foreign intelligence or counterintelligence information in this country or abroad. It would do this by exempting from the Federal Freedom of Information Act all information involving "special activities and foreign intelligence or counterintelligence operations" conducted by any federal agency if the Director of the CIA certifies that the information should not be released.

Under this provision, not only would the CIA be exempted from disclosing its activities in violation of federal law, but the FBI would never have had to disclose its counterintelligence program, COINTELPRO; its surveillance of Dr. Martin Luther King, Jr.; its illegal break-ins of dissident political groups suspected of having some foreign connections; its organization of a private law enforcement intelligence unit to gather information on political groups; its infiltration of black groups, new left organizations, communist party organizations, white hate groups, etc.

Once again, as we pointed out earlier, under existing law the CIA, FBI and other agencies have available all of these broad exemptions for national security, privacy and confidential informants which they have frequently and successfully used to protect their information.

And once again, Admiral Turner, Judge Webster, Mr. Carlucci and Vice Admiral Inman offer no evidence that the Act in its present form is not perfectly adequate. Indeed, one might argue that existing law gives more protection than is necessary; and it would be most worthwhile for this Committee to review in a confidential manner the requests which the CIA has turned down on the alleged grounds of national security and which have never been litigated because the citizen requesting the information could either not wait that long or did not have the financial resources to challenge the agency's determination. This Committee is being asked to engage in the wholesale mutilation of the FOI Act without a single fact before it to justify that mutilation. It should investigate the CIA and FBI responses to denials of information to evaluate whether, utilizing the time factor and the great finances in their favor, they are not, in fact, violating the Act everyday.

We do not make this suggestion lightly. Some of the litigated cases show how irrational the federal government can be on the record. Take the *Glomar Explorer* case: Mr. Colby visited at least seven newspeper offices in Washington that we know of disclosing in great detail the facts of the *Glomar Explorer* case and asking that the newspapers withhold publication of the story—a tactic which some have suggested was designed in fact to encourage them to publish the story; and then, having disclosed the information in great detail all over Washington, the CIA opposed a FOI Act request for documents about the case.

A reading of the cases shows how broadly the exemption is applied. In 1974, for example, information about military operations in World War II were still being withheld from historians as a danger to the national security, including, for example, information about the repatriation of Soviet citizens.

IX—THE JUSTICE DEPARTMENT PROPOSAL

We, unfortunately, were not able to obtain a complete text of the Justice Department's proposal. However, Associate Attorney General John H. Shenefield in a speech, and the Washington Post in a subsequent article, has at least pinpointed what appears to be the main provisions particularly applicable to the CIA and other intelligence agencies.

According to the Washington Post article of April 5, by George Lardner, Jr., any federal agencies involved in intelligence or counterintelligence would be permitted to automatically block broad categories of information from disclosure under the Federal Freedom of Information Act if the agency certifies that the

request covers—"Intelligence information obtained from sources other than employees of the United States government," "Information identifying or tending to identify a source or potential source of information or assistance to an intelligency agency," and "Information about scientific or technical systems for the collection of intelligence so long as these systems do not involve a risk to human life or health." Judicial review is prohibited.

Obviously, without the specific language available to us at the time this testimony was drafted, it is a little difficult to be precise, but several points do emerge.

First, the CIA and the other intelligence agencies under the Administration Proposal would be engaged in the most self-serving type of censorship because it would be they and they only who could decide whether an act of Congress is being followed.

X—CONCLUSION

In conclusion, the operation of the Act since its passage has been more than adequate, perhaps overbroad, to protect the legitimate interests of national security and no case has been made for any changes at this time.

In effect, this proposal puts the CIA above the law.

Second: Like Admiral Turner's suggestion, the CIA Charter and the Intelligence Reform Act, the Administration Proposal would exempt entire categories of information without any showing that the information would cause any danger to the national security.

This blanket exemption would apply to any information obtained from non-government employees which one can speculate is probably more than half of the information obtained; no information tending to "identify" a source or potential source of information or assistance—a category which is so broad that it would probably be easier to list what is not covered than what is; and information about scientific or technical systems, which we assume also includes compnters, which store all information today.

And, of course, as in the case of the other bills, the Justice Department did not inform Mr. Lardner of a single case it has lost in the courts under the Freedom of Information Act which it claims was a danger to the national security.

XI—CRIMINAL PROVISIONS

Identification of intelligence sources

The CIA Charter, Senator Moynihan's proposal and Admiral Turner's suggested amendment all contain criminal penalties for the disclosure of the names of intelligence agency employees and sources.

The CIA Charter proposal basically is designed to punish government employees who, having had access to classified information, identify themselves, other government employees or non-government persons—both American citizens and foreign nationals—as intelligence informants or sources.

Senator Moynihan's bill and Admiral Turner's proposal would additionally punish the press, scholars and other citizens who identify intelligence employees or sources based on leaks or other unauthorized access to classified information.

Senator Moynihan has, we understand, subsequently disavowed this provision of his bill, but it is still before this Committee, and it is so close to Admiral Turner's proposal that we think it warrants discussion during these hearings.

Admiral Turner argues that "An area of even more serious concern is the failure of S. 2284 to effectively proscribe unanthorized disclosures of the identities of intelligence officers, agents and sources." He supports the Moynihan proposal and offers a similar "preferred Administration" proposal to punish "disclosnre by anyone of the classified identities of our intelligence officers, agents and sources."

Existing law would appear to be adequate

It would initially appear that existing laws should be adequate to cover this problem. 18 U.S.C. § 793 (a), (b), (c), (d), (e) and (f) authorizes criminal prosecution against any person for releasing classfied intelligence information whether access to the information is authorized or unauthorized. It is true that in this section the government must prove an individual acted with "intent or reason to believe that the Informaion is to be used to the injury of the United States or to the advantage of any foreign nation" (Subsections (a)–(e)).

However, subsection (f) also authorizes criminal prosecution for disclosure of national security information by any government employee "in violation of his

trust," and it specifically authorizes conspiracy prosecutions which would apply to government or non-government persons.

There is also 18 U.S.C. § 794 which covers the disclosure of national defense information to foreign governments. But more importantly for our discussion, there is 18 U.S.C. § 798 which is a very broad criminal statute authorizing the prosecution of any person who "communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information . . . obtained by the process of communication intelligence from the communications of any foreign government. . . ."

Admiral Turner very carefully has avoided any mention of these existing statutes and particularly why they are inadequate to deal with the problem. Most of these laws have been in effect, in one form or another, since 1917, although there were substantial amendments in 1940 and again in 1948. Therefore, the United States has fought two world wars, the Korean War, the War in Vietnam and the Cold War under existing criminal penalties prohibiting the disclosure of classified information. Once again, Admiral Turner offers no facts, no analysis, nothing to justify calling for an Official Secrets Act for Intelligence sources except his conclusion that he wants the law changed.

We are, of course, aware that in previous testimony, Admiral Turner has alluded to the fact that the identities of agents have been disclosed by certain publications of limited distribution. But he offers no guidance on what must be, in his view, the inadequacy of present law.

But, giving Admiral Turner the benefit of the doubt—that, apparently for unknown reasons existing criminal law is not adequate—we would agree with him that the CIA certainly should have whatever legal powers it needs to stop government employees from disclosing the identity of agents and sources, if this disclosure would cause or could cause any significant danger to the national security; and, as long as there is not an overwhelming "public interest" in the information because it would disclose violations by the CIA of the Constitution, laws and regulations of the United States or would show violations of stated government policies.

As far as agents and employees of the United States are concerned, the problem would appear to break down into two categories: the agent like Frank Snepp who leaves the agency and then would like to exercise his prerogative to disclose mismanagement or otherwise inform the public about the operation of the agency and in doing so identifies himself; and the former and present employee who discloses the identity of other agents.

The author agent problem (Snepp v. U.S.)

When one talks about an agent disclosing his own identity, very important First Amendment considerations come into play. What this bill amounts to is a five-year ban on a person who was a CIA agent—or is now a CIA agent—from disclosing his own identity and from exercising his First Amendment rights to criticize the agency or inform the public of matters which he thinks are important.

Under this bill, a current employee of the CIA could be thrown in jail for writing a letter to the Washington Post disclosing his employment status and complaining about the quality of food in the CIA cafeteria, or taking issue with Admiral Turner's testimony on the necessity for a broader exemption to the FOI Act.

In this case, we think that the existing criminal laws should be sufficient and that any other provisions would violate the First Amendment. At a minimum, we think the government should not be able to prosecute a man for merely disclosing his own employment with the CIA unless the government can show that this disclosure of his identity has intended to cause, and in fact did cause, a direct, immediate and irreparable injury to the national security of the United States.

Government employees, whether they be employees of the CIA or any other agency, have rights under the First Amendment to write about public affairs based on their government employment as long as the content of what they write does not violate any law of the United States. An essential ingredient of this First Amendment right to criticize the CIA certainly is the right of the author to identify himself as having been employed by the CIA. Otherwise, his book

would have to be published anonymously and would have probably very little credibility in terms of its veracity.

These efforts to restrict intelligence agents from expressing their views about our intelligence operations breaks into two categories: efforts to suppress publication by use of civil law—such as the contract and prior restraint injunction upheld by the Supreme Court in *Snepp v. United States;* and efforts to use the criminal law to prosecute and jail agents for disclosing their own identity under the CIA charter provision, Sec. 701, and Senator Moynihan's proposal.

Unfortunately, we do not have the time here to take up the *Snepp* civil law contract problem except to state that we are flatly opposed to the Supreme Court decision because it authorized a prior restraint on publication and deprives an American citizen of his right to criticize the government without any showing at all by the CIA that the information published by the author was classified. In fact, the CIA conceded in the *Snepp* case that no classified information was released.

The CIA Charter and Senator Moynihan's bill would make *Snepp* v. *U.S.* immaterial because, rather than having to go through the lengthy procedure of obtaining an injunction and seizing royalties, they could simply throw Mr. Snepp in jail.

We do not think that Congress, under the criminal law, should restrict the First Amendment rights of citizens as a condition of public employment. We think there is ample Supreme Court authority for this—at least in the prior Supreme Court. *Elrod* v. *Burns*, 427 U.S. 347 (1976), *Shelton* v. *Tucker*, 364 U.S. 479 (1960), *Torcaso* v. *Watkins*, 367 U.S. 488 (1961).

The 1978 Copyright Act

But we would also like to bring to the committee's attention what we think is an effort both under *Snepp* v. *U.S.* and under these bills to destroy a statutory right that Congress has specifically given to government employees to write about their government employment.

What Admiral Turner and the CIA Charter are suggesting is that the government has some type of proprietary or ownership interest in government information—such as the identity of an agent—and that it may enforce this proprietary right either under the common law theory of trusts as articulated in *Snepp* v. *U.S.* or under the criminal law of conversion of government property as first suggested by the government in *U.S.* v. *Ellsberg.*

The assertion of a proprietary right in government information was rejected in both the 1909 and in the 1976 Copyright Acts. The 1976 Act flatly protects a government employee's right to utilize information obtained in his government employment—certainly including his own identity—by stating: "Copyright protection under this title is not available for any work of the United States Government . . ."

The legislative history of this Act further states that the Act "means that as far as the copyright law is concerned, the government could not restrain the employee or official from disseminating the work if he or she chooses to do so."

Congressman Kastenmeier, who was primarily responsible for the passage of this bill has stated that this provision of the Act was intended to insure that government employees have the right to publish information obtained during the course of government employment, free from any prior restraints or post-publication relief based on any theory of government ownership.

Therefore, having protected by law the right of a government employee to use information obtained during the course of his employment to write a book, it would appear contrary to this whole principle of the free discussion of public affairs to jail him for identifying himself.

XII—THIRD PARTY AGENT DISCLOSURE

The second part of the problem involves the agent who like Philip Agee discloses not only his own identity but the identity of other agents or sources. Once again, we find it difficult to understand why the existing law is not adequate, especially Section 798, which prohibits communication of "any classified information."

But assuming for reasons which are not disclosed to us that this statute does not solve the problem, we might agree that the CIA might need some additional criminal sanctions to stop a former or present employee from disclosing the

identity of other agents and sources whose identities he learned only because he was given access to classified information.

We disagree with Admiral Turner's provisions and the Moynihan Bill because we think they go much too far to permit automatic conviction and jail sentence for the disclosure of any agent or source without the government having to show some minimum burden of proof that the disclosure would cause some measure of harm to the national security or the intelligence apparatus.

If the CIA cannot show any damage at all, how can it justify sentencing a person to jail? For example, last year the CIA made an effort to stop the publication in a small magazine of an article entitled, "I was Idi Amin's Basketball Czar," by a man who was a former employee of the CIA.

Therefore, while supporting, in general, Admiral Turner's effort to protect the identities of agents from unauthorized disclosure, we think he goes too far. We think the solution is much too extreme and is contrary in many ways to the public interest.

What concerns us is the whistle blower: the agent who discloses that a fellow agent or source was involved in a conspiracy to assassinate a foreign leader; or was involved in attempting to overthrow a foreign government in Latin America; or was involved in some type of grotesque medical experiment on human subjects; or was involved in a plan to suspend the Constitution; or was provided with a wig to facilitate breaking into the homes of citizens; or was wiretapping American journalists in Paris; or was taking actions secretly "tilting" the United States toward a Southeast Asian government while publicly the United States was denying any such "tilt."

Therefore, we think prosecution should not be permitted for disclosing the activities of an agent if that information shows that the agent or intelligence source is (1) violating the Constitution, laws or regulations of the United States or shows (2) that the agency or the agent is secretly implementing a policy which is in violation of the published policy statements of the President, the Secretary of State or other official Administration spokesmen.

As far as Admiral Turner's worry that publication of a CIA agent's identity will subject him to harm, all the CIA has to do in that instance is to move him away. That is the Agency's responsibility and it is easily done.

It is very much like the Justice Department's efforts—which have been struck down by the courts—to refuse to identify confidential informants in court proceedings on the grounds that they would be subjected to bodily injury or death. Certainly, the CIA knows the moment that manuscript is published, and like the Justice Department could set up an "alias program" without too much difficulty.

XIII—A SOMEWHAT POINTLESS EXERCISE

Of course, this whole exercise to criminally prosecute agents for disclosing their own identities or disclosing the identities of other agents in books and publications is somewhat pointless. If a former or present employee of the CIA wishes to disclose the identities of current agents or sources, all he has to do is drop an anonymous letter in the mail box addressed to the Soviet Embassy or make an anonymous telephone call from a pay telephone booth.

Therefore, if Admiral Turner's concern is to stop agents and former agents from disclosing identities of intelligence sources to hostile governments, his whole suggestion falls flat because it simply won't accomplish that goal for the agent who is determined to make the disclosure.

What we are left with, then, is a system of criminal penalties designed exclusively for former agents who wish to write books and inform the public of information which presumably both foreign and hostile intelligence sources already know, a rather pointless goal at best.

XIV—PROSECUTION OF THE PRESS

The other part of this approach, the administration "preferred" proposal and Senator Moynihan's original bill, as it applies to the press, authors, and scholars is, of course, completely unacceptable. It would subject any citizen to ten years in jail for publishing information leaked to him identifying intelligence officers or sources without any showing at all that the disclosure damaged the national security.

If, as four justices of the Supreme Court seemed to indicate in the *Pentagon Papers* case, the government cannot restrict publication of the materials without showing a "direct, immediate and irreparable danger" to the national security of the United States, then certainly the Congress should not permit editors, reporters and scholars to be jailed unless the government can show that they intended to cause, and in fact did cause a direct, immediate and irreparable injury to the national security.

Therefore, we flatly oppose this provision and suggest that the government be content with the existing provisions of the Espionage Act.

We must sympathize with Admiral Turner's problems of attempting to run a secret intelligence service within a framework of a free society. Certainly, the KGB has an easier job, but this tension between protecting the national security on the one hand and guaranteeing freedom of expression on the other hand would be destroyed by the suggestion of Admiral Turner and the Administration.

One is forced to speculate that if a reporter can find out the identity of a CIA agent or an intelligence source, then certainly the KGB or another foreign intelligence agent can find out the same thing with ease and that is a problem which the CIA simply must live with and work out internally.

XV—USING JOURNALISTS AS COVER

We support the general thrust of Section 132 to protect the independence and integrity of private news media organizations from being utilized as intelligence sources for the Central Intelligence Agency.

We think it is essential that members of the public at home and abroad who deal with the press have confidence that journalists are not in effect information collection arms of the government.

This problem breaks down into at least two areas: First, we do not believe that any press organization should be infiltrated, used or exploited by the Central Intelligence Agency. Second, we do not think that the CIA should be permitted to enter into voluntary and knowing arrangements with a news organization to provide cover for intelligence activities because the integrity of all of the news media is affected when the integrity of one member of the news media community is compromised.

Section 132b seems to achieve that goal by flatly prohibiting any "entity of the intelligence community" from using any "United States media organization" as a "cover for any officer of that (intelligence) entity." However, by specifying that only an "officer" is covered, the section permits journalist's covers to be used by "employees" of intelligence entities and by non-employees recruited on a contract basis to infiltrate the news organization.

Of course, there will always be situations were reporters are given background information by the CIA and may, on occasion, trade off bits and pieces of information in developing stories. These "voluntary" relations are protected by the CIA and we have no particular problem with this provision.

The third problem which has developed but which is probably taken care of in the existing bill is the situation where the CIA poses as a journalist from an artificial or front publication set up only for that purpose and which is in effect a press creature of the CIA.

While this would appear to be covered by the prohibition against using journalists as cover, we don't think that the CIA should be permitted to establish a phony publication and then utilize it to collect information from an unsuspecting public. We think that the recent exchange between A. M. Rosenthal, Executive Editor of The New York Times and Admiral Turner illustrates the point when Mr. Rosenthal said: "Do you think it's worthwhile . . . to cast into doubt the ethical and professional position of every foreign correspondent?

He added that when CIA's ties with journalists were disclosed in the past, "there was an understandable uproar. Journalists throughout the country felt this endangered not only the ethics of our work but the physical existence of our foreign correspondents. Certainly, as an editor of a paper with a large network of foreign correspondents and as a former foreign correspondent, I felt that was the case."

Subsequently, it was reported in the press that President Carter backs the organizational use of news organizations as covers for the CIA. We think this is most unfortunate, and would hope that the Congress would agree with us.

Thank you.

TESTIMONY OF JACK C. LANDAU, DIRECTOR, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ACCOMPANIED BY ARTHUR SACKLER, GENERAL COUNSEL, NATIONAL NEWSPAPER ASSOCIATION; PETER LOVENHEIM, SOCIETY OF PROFESSIONAL JOURNALISTS

Mr. LANDAU. Senator, I wonder if we could have permission to have Mr. Arthur Sackler, who is the general counsel of the National Newspaper Association and who helped us on this testimony, and Mr. Peter Lovenheim, who works on a freedom of information project which the Reporters Committee and Sigma Delta Chi run.

Senator HUDDLESTON. We are very happy to have them join you.

Mr. LANDAU. We are going to save you time.

I think, maybe, since there are so few witnesses and in the interest of time perhaps we might just make a few points and you might like to ask a few questions.

I suppose, as far as the charter is concerned, Admiral Turner's testimony, Mr. Ingram's testimony, Mr. Carlucci's testimony, the administration proposal all seem to raise one problem. We cannot find a single case, Senator, which they cite, showing that the CIA has lost any final order in any Federal court under the Freedom of Information Act. It is somewhat like trying to joust with a ghost because they come up and are asking you to amend the act, and yet they have never lost a case.

Senator HUDDLESTON. In fact, they are more concerned with relieving themselves of the burden of complying with the act than they are with the actual secrets that they might lose.

Mr. LANDAU. That is true, sir. That, of course, is a complaint that is increasingly common in all the agencies. Judge Webster has complained about it at the FBI. Mr. Brown has complained about it at Defense. Mr. Vance has complained about it at State, even the FTC has complained about it.

So, it would seem that if the problem here is the administrative burden of complying with the act and the cost, then the way to approach this is to perhaps have a set of hearings on the administrative problem and the procedures under the act if they apply to all the agencies, rather than taking this approach of simply exempting the CIA from the operation of the act when they cannot show that the act is any more burdensome to them than any other agency in terms of the substantive results that they have had in court.

Now, his second argument—and of course, we do not know what the CIA budget is—his second argument, I believe, is that it is costly. That it has cost them $3 million. I believe that is the latest estimate. Mr. Carlucci made an estimate of $2.4 million in his testimony, but we called the Agency up last week and they said they thought that $3 million would be a more accurate figure.

Since I do not know what the budget is, we have no way of knowing whether that is a considerable burden in view of the appropriation or not. I think you could make a somewhat advocative argument in view of some of the things that have legitimately come out under the act, that $3 million may be somewhat of a cheap price to pay to have your mail safe, and things of that nature.

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His last argument that he has made in his testimony, which is that while the act itself may never have resulted in the disclosure of any national security information, it is the perception of foreign sources. I do not know how you deal with that, Senator. I find it a little bizarre that an executive agency comes to Congress to ask for an amendment to an act based on the fact that some unnamed foreigner believes that the act is making them untrustworthy, when in fact they can point to no incident when the act has done that.

At the American Society of Newspaper Editors' Convention he surfaced yet a fourth argument, one that is not in his testimony or Mr. Carlucci's testimony. He said, "Well, it is conceivable that some judge in the future, utilizing the act as it exists today, would interpret the act to force them to disclose national security secrets." Once again, I do not know how to deal with that. That is very much like them coming up here saying, "Well, we want you to suspend habeas corpus on the theory that there might be a rebellion some time in the future."

In short, what we suggest is that there may be some problems with the act which the Agency feels, due to national security considerations, it cannot talk about in public. It certainly has not lost anything on the public record. Perhaps the committee might want to make some type of investigation of the internal problems that the Agency is facing and maybe come to a better evaluation. But I think as far as public witnesses are concerned, we and all the other people involved in these hearings are somewhat at a loss to know how to deal with this because we cannot find anything they have lost under the act. Perhaps you know something we do not know. If they could come up with it, it would be helpful.

The Justice Department position, unfortunately, we have not had access to the text. I understand that Congressman Preyer introduced the administration bill yesterday, but the bill clerk does not have a copy in the House, so we were not able to get a copy.

That is an almost similar approach. What they want to do in the Department now, they want to—as we understand it—let Admiral Turner in effect decide what can be released, and then prohibit any judicial review whatsoever; in effect, put themselves up above the act as it is currently written.

Once again, without any cases to deal with, I do not know how we can deal with this suggestion.

The criminal provisions are probably somewhat stickier to deal with. Basically, they are not designed for content. None of the proposals in the criminal provisions are designed for the content of the information, they are only designed to protect the identity of intelligence sources or agents. This, of course is not a charter proposal now. We are talking about the Moynihan bill and Admiral Turner's proposed amendment which he phrases, I believe, as the "preferred administration position" although there is apparently no administration bill yet on this. It is quite close to the Moynihan provision. It really breaks down into two problems.

One problem is stopping the agent himself from identifying himself and writing a book. "My name is Smith. I was an agent, and I disagree with American foreign policy in Afghanistan," or whatever. Now, he would be prohibited under either of these proposals from dis-

closing his own identity in writing a book or article. We think that just violates the first amendment very clearly. Now, we are not talking about content, we are not talking about what he says in the article, but merely his ability to identify himself.

The second part of the proposal—you have seen this in the testimony—but I would like to point out another curious legislative problem, Senator. We have a whole set of statutes now that have been on the books basically, in one form or another, since 1918, the espionage clause. They were amended in 1940 and again amended in 1948.

Admiral Turner in his testimony, supporting Senator Moynihan's bill, and in his own proposal, does not mention anything about the existing criminal law and why it is inadequate.

I think it might be useful for the committee to ask the CIA to at least say why they want Conrgess to amend the Federal Criminal Code. We faced another problem in trying to offer you any kind of assistance in this area because we do not know what they maintain are the problems under 18 U.S.C. now, and would they preserve the existing Espionage Act; would they want 798 expanded; how is this all to be done and what are the problems under the existing law. I mean, we have lived through two World Wars, the Korean war, the cold war and so forth, under the existing statutes. It would be helpful, I think, for the Agency to tell us what prosecution problems they have.

Now, I am not talking about the "gray mail"(?) problem, that is being dealt with.

Senator HUDDLESTON. That is true. The problem, I think, they are really concerned about is an area that probably would not come under the espionage laws which generally deal with working for a foreign power. A former employee who writes a book or in some other manner reveals information that he had obtained in the course of his employment probably would fall through the cracks under that kind of a law.

Mr. LANDAU. Not in this bill. In this bill they are only talking about the identification of an agent.

Senator HUDDLESTON. Right.

Mr. LANDAU. If they mean that identifying the agent—not the author agent but identifying the third-party agent—is the problem they cannot deal with, section 798 is fairly broad. It says, "Whoever knowingly communicates to any unauthorized person, or publishes in any manner prejudicial to the safety or interests of the United States any classified information, concerning information from foreign governments, intelligence activities of the United States."

Senator HUDDLESTON. Our interpretation is that this relates only to communications intelligence and not the broad range of intelligence activity that the CIA is engaged in.

Mr. LANDAU. It says, "Concerning the communications, intelligence activities of the United States, or obtained by the process of communications intelligence."

Senator HUDDLESTON. Yes.

Mr. LANDAU. That seems extremely broad.

Senator HUDDLESTON. I think it was designed to relate to our technical communications collections system.

Mr. LANDAU. It says bere, "Tbe term 'communications intelligence'

means all procedures and methods." Now, an agent, or informant, or source—at any rate, I think that is the problem we are facing.

Senator HUDDLESTON. Your point is well taken.

Mr. LANDAU. It would be helpful if the agency would tell us that is how they read the act, and that an agent or informant is not a communication source.

Senator HUDDLESTON. Your point is well taken and we will investigate that ourselves.

Mr. LANDAU. The last point, I guess, we would like to make is the third-party agent disclosure problem. I am not talking about the civil law problem, just the criminal law problem. I think that at least our committee might be in favor of supporting some increased power, but certainly not what Admiral Turner is asking for. I think the main problem that gets involved here is the whole whistleblowing problem. If Agent X writes a book saying that Agent Y conspired to assassinate a foreign leader; or Agent Y was involved in secretly tilting toward Pakistan when the government is saying publicly we are not titling toward Pakistan; or Agent Y is involved in helping a rovolution or so forth and so on, that you would have to put some protection in here for the disclosure that the agent has provided somebody with a wig to break in somebody's house. It seems to me you would have to provide some protection along the line Senator Kennedy has suggested in his "Whistle Blower" bill last year, that if the disclosure shows a violation of the Constitution or the laws of the United States, or the regulations of the Central Intelligence Agency; or that in fact the agent secretly is doing something which contradicts a public policy statement of the administration or the State Department, that you cannot automatically throw the man in jail unless, it would seem to us, you have to show some real intent under the Espionage Act to harm the United States or help a foreign power, and that this is a substantial damage to the national security.

Senator HUDDLESTON. Now, the subcommittee approach on that is somewhat different from what Admiral Turner was asking for. We narrow it to those who have been employed by an intelligence agency and who knowingly reveal the names of agents. We do not try to reach out and get news people or others who may be writing for publication. We have tried to avoid any First Amendment pitfall in the committee's bill.

The agency—and there are others, too—prefer some way to get at, for instance, the *Covert Action Information Bulletin*. But frankly, we have not found any way to do that constitutionally.

Mr. LANDAU. The only thing I am trying to point out is, I think our committee would be in sympathy with an effort to not have the names of these agents disclosed, but not if it means throwing Agent X in jail for saying Agent Y is helping the agency break into people's houses.

Senator HUDDLESTON. Well, it depends on where he would say it, I suppose. We provide protection for any employee who wants to report any kind of activity that he thinks is illegal to our committee, to the general counsel of the agency, to the Justice Department, or to a court.

So, we try to have that whistleblower protection. That is built into the charter.

Mr. LANDAU. But this is of course nothing that the public would be able to know.

Senator HUDDLESTON. Well, if he goes public, then that is a different matter.

Mr. LANDAU. I think one could make an argument for that.

Senator HUDDLESTON. Well, if you permit that, then what protection do you have? Who knows at the outset whether it is illegal or not? Sometimes a court has to make that decision. So, if as an example he is permitted to do it on his own assumption that it is illegal, then, it seems to me, you have no protection at all against unauthorized disclosure of classified information.

Mr. LANDAU. Well, that brings up a question that occurred to us, which we pointed out on page 24. That is, if the goal of the criminal provision is to protect hostile nations or even friendly nations from finding out the identities of our agents, any current or former CIA agent who wants to blow the cover of one of his former coworkers can simply do that by going to a pay phone booth and calling up the Russian Embassy.

Senator Huddleston. Yes. Then he is committing espionage.

Mr. LANDAU. But I say, if the goal is to protect the identity of the agent from a foreign power, that can be done by an anonymous letter or anonymous telephone call, which any determined person, I suppose, could do if he has the information.

So, if that is the goal, this legislation is not going to stop that agent from dropping that anonymous letter in the mailbox. So, the goal has to be to deprive the public of precisely the same information the agent is giving to the Russian Embassy.

Senator HUDDLESTON. Obviously, if he gave it directly to a foreign country, he is then involved in espionage against the United States. If he were to put it in a news story, it would have the same effect, but he is not committing espionage, I do not believe, under the law. Whereas, under our approach, he would be guilty of a crime.

So, you get one more opportunity to get him. If he wants to become a spy or an espionage agent for a foreign power, then of course you cannot write a law that will prevent him from doing that. You can write a law to prosecute him if you catch him doing it, and that is about all.

Mr. LANDAU. But the difficulty with the Moynihan approach and with Admiral Turner's approach is that he is automatically prosecuted for disclosing the identity of an agent, even if this other agent is breaking the law; even if this other agent is violating the Constitution. And, the CIA has to show no danger at all to the national security.

Now, we had a very funny case here which I mentioned in our testimony to show you how sometimes the CIA might be sort of overreacting. We had a little magazine in Oregon, I believe it was last year, that published a wonderfully funny story from a man who had formerly been a CIA agent called, "I was Idi Amin's Basketball Czar," and the CIA tried to stop that from being published on the grounds it would jeopardize the national security. At that time the regime in Uganda had been eliminated, and so forth and so on.

To automatically send a man to jail for something like that seems to me wrong.

Senator HUDDLESTON. Well, their intention there, of course, was to

enforce a contractural arrangement which gives them an opportunity to review.

Mr. LANDAU. But of course, you will not need the contract any more if you have the provisions in the Moynihan bill and Admiral Turner's. You do not have to worry about trying to seize their royalties and get injunctions; you can just throw them in jail. It is a much more convenient way to handle the problem.

But that, of course, is the essence of an Official Secrets Act. The essence of an Official Secrets Act is to prosecute people automatically for the disclosure of information, without any showing that the information poses a danger to the national security. You simply take a whole category of information and say:

If you publish another agent's name, regardless of how important it is; regardless of what this other agent has done in violation of the Constitution or the regulations of the CIA, you automatically go to jail.

Senator HUDDLESTON. Right, but our approach in S. 2284 is that we do provide the procedure for any employee to report any suspected violation of law, or anything that he thinks is contrary to guidelines that are established, and he is protected if he does that. We put the responsibility for protecting the names of agents on those people who have held a position of trust and have come upon those names, know them because they were in fact an employee of the agency. Instead of requiring them to sign a contract when they come into the agency, it is made illegal to reveal the identities of agents learned while working that are secret and classified—to reveal them publicly or to reveal them to a foreign source.

We think our approach is better than Senator Moynihan's or Admiral Turner's.

Mr. LANDAU. Well, I guess, being a reporter, one has a certain amount of cynicism about having complaints about Government executives breaking the law be confined to the walls of the executive or legislative branch, as much as we respect them.

Senator HUDDLESTON. I understand that. In most agencies of Government, I think, the protection ought to extend to an employee who goes public, goes to a reporter or whatever to report a wrongdoing. But intelligence just happens to be kind of a different ball game.

Mr. LANDAU. We have not taken up this problem in our testimony, but one of the problems that it does raise, of course, is if the agent decides to go to a newspaper and disclose either his own identity or the identity of another agent in a newsworthy story, let us say, paying off the King of Jordan, and then, since this is a criminal statute, you would have a grand jury investigation and the reporter would be subject to a subpena for the source which, of course, would raise yet another whole series of problems.

Senator HUDDLESTON. We have not felt compelled to try to deal with all the problems reporters have with the courts in this particular legislation. We want to deal with the guy who went to the reporter and violated his trust. From then on, our legislation does not touch the reporter.

Mr. LANDAU. That is true.

Senator HUDDLESTON. I understand that if you go to trial, the reporter may be subpenaed as a witness.

Mr. LANDAU. The last two points we made are, I guess, rather brief. We, of course, agree with Senator Moynihan's disavowal of this bill, that this would raise very serious constitutional problems to try to prosecute the press under this provision.

Senator HUDDLESTON. Well, it was his bill that he was disavowing.

Mr. LANDAU. The last point is a point that has come up quite recently and I think once again Admiral Turner, and I believe the President has now commented on this, and that is using journalists as cover. Of course, these are all kinds of situations this can arise in.

Basically, I think we are in favor of the provision in the charter which says that any type of voluntary information exchanges or contacts between the press and the CIA are permitted. There is a lot of that, especially by reporters who work in foreign countries. But the one thing that we think ought to be prohibited is any paid relationship whatsoever, either the CIA sending an agent or a third-party contractor in to infiltrate a newspaper; or attempting to induce or purchase an existing newspaper employee to be a paid information because, I think as Mr. Patterson, who is the editor of the St. Petersburg newspaper, and Mr. Rosenthal from the New York Times, pointed out at the American Society of Newspaper Editors Convention last week, when you have a paid ongoing relationship between the CIA and the press, it undermines the ability of all reporters because foreign governments and foreigners tend to look at the American press across the board and do not say, "Well, this newspaper did it, but this newspaper will not," and so forth and so on.

It looks as if—and I am not very clear about that—but it looks as if you have tried to do that for educational institutions by a special provision in the charter which, if I read it correctly, absolutely prohibits the agency from doing this in terms of educational institutions and educational exchange programs. Is that correct; do we read that properly?

Senator HUDDLESTON. No. We leave a loophole there, too, I am afraid. You may be aware of the history of how this was developed. Some of us on the subcommittee started from the position that you take—that there should be no paid arrangement with bona fide members of the press, the academia, nor religious institutions. Both the President and the agencies objected very strenuously to that, and preferred to operate under guidelines. They have guidelines established now, as you know, and the guidelines are very good—except for the fact that they can be waived by the Director of Central Intelligence himself. He has indicated that he has in fact approved the waiving of them on at least three different occasions, although I understand none of those waivers were ever actually implemented.

So, where we came down is somewhere in between. We prohibit the use of journalists as cover by the CIA. We do not specifically prohibit paid arrangements between journalists and the CIA. The reasons that you have expressed are those that persuaded some of us that we probably should move in that direction, but we did not quite come down on that up to this point.

What is your response to the oft-made suggestion that this is an area that could best be left to the institutions themselves. They can establish their own standards and code of ethics, and they can preclude their

members from entering into any kind of arrangement or agreement with the CIA or any other agency of Government?

Mr. LANDAU. Well, I suppose it breaks down into two problems. One problem is the person who engages in this without disclosing it to his employer, and the person who does it with the consent of his employer. One is a kind of unknowing, I guess, arrangement where they are trying to infiltrate the paper through either inducing an existing employee to act as an agent, or having somebody apply for a job who is in fact a contractor. The other is the employer, it comes from the other side. I think that they both should be prohibited—both because, very much like a law firm, if you had in a law firm a lawyer who unbeknown to the other partners was acting as a source for the CIA, and feeding to the CIA all the information that came into the law firm, you would certainly have all hell break loose inside the law firm. And if you had a law firm which was holding itself out in Washington to be engaged in the practice of law and all of a sudden it turned out that they in fact were not really engaging in the practice of law but really collecting information for the CIA, you would have every other law firm in town screaming saying: "Our clients now are not trusting us."

So, I think that in terms of the institution of the press it would probably be best to prohibit this completely.

Senator HUDDLESTON. What do you think of a requirement that they could not enter into any kind of an arrangement with a member of the press without advising, or getting the approval of that individual's superior, or the editor or publisher of the publication?

Mr. LANDAU. Well, as I say, we have not actually discussed that in too much detail inside our committee, but it would seem to me that if, like a law firm, a publisher decided to turn his newspaper into a collection agency for the CIA, that he would be undermining the credibility of not only his paper, but all of the other newspapers. While that might happen, it probably would be best to prohibit it.

Senator HUDDLESTON. Well, I am sure there is going to be a lot more discussion on that provision before we finally wrap it up.

The recent proposal from the Justice Department, as I understand it, on revisions to the Freedom of Information Act allows the DCI to certify material relating to the identity of agents, to material from these agents and informants, and to our technical systems. He certifies these, I assume, at the outset. Once he has certified the material, it is beyond court review. The court cannot review the decision or the certification itself.

So, that does not give a whole lot of flexibility in the case of those who are seeking information through the FOIA.

Mr. LANDAU. Well, but there you come back to the first point I made, they want to exclude the courts from the process. And yet, they cannot point to a single court that has ruled against them.

Senator HUDDLESTON. I understand. We have had historians here before us, indicating their difficulty with any restriction on the Freedom of Information Act. Time is not necessarily as much of the essence for an historian as it is with a reporter who may be working with a particular story. The process you have to go through now can be quite lengthy. What use can the reporter have for information received under the FOIA?

Mr. LANDAU. Well, one of the reasons—and this is a general problem and not one that is limited to the CIA—one of the reasons you have had not as many people in the press using the act as we had hoped when it was originally passed, is because of the time problems involved. Most reporters work on somewhat currency, they want the information in several days; they do not want it in several months. Of course, if it gets litigated it can be quite a while, although there have been some very newsworthy stories that have come out from using the act by the press. The whole original counter-intelligence program of the FBI came from Cross Turner, NBC's law suit. He waited, but was eventually able to get quite a story out of it. There have been several other actions like that.

But that is a general problem with the act and is not particularly a problem of dealing with the CIA. Of course, the problem is with CIA, they have never lost.

Senator HUDDLESTON. Well, given that fact, that they have not yet lost a case, they probably never are going to lose a case. What is your judgment as to whether or not they ought to be able to categorize this kind of information and remove it from the reach of the act so that they do not have to go through the procedure of searching the files and finally making the statement that they cannot release it?

Mr. LANDAU. Well, the fact that they have never lost does not mean they have never produced information in response to a Freedom of Information Act inquiry.

Senator HUDDLESTON. I understand that, yes.

Mr. LANDAU. They have apparently been sensible enough to give information out properly when it has been disclosed. But to give that a unilateral veto—I mean, they have given it out under the knowledge that if they made a wrong decision, internally, they would be taken to court and might lose.

Senator HUDDLESTON. As regards information relating to their technical systems, it is almost always clearly a case where they are not going to be forced to release the information.

Mr. LANDAU. But the administration bill is substantially broader than that. It says: "Information identifying or tending to identify a source or potential source of information." So, it is information which identifies any person or government.

Senator HUDDLESTON. I understand that.

Mr. LANDAU. Information the CIA is collecting, it is not limited to code, cryptographic material, satellite monitoring, a source is a human being, and it covers all people.

Senator HUDDLESTON. I understand. I was looking for some way to discuss a category of information where there has been enough experience to demonstrate that a court is not going to order them to release information that lies in that category. How can they avoid having to go through the process of searching and going to court on those items?

Mr. LANDAU. Well, you might go back to the old 1917 Espionage Act, which is quite narrow and talks about cryptographic information, photographic negatives, group prints, maps and models, instruments and appliances.

Senator HUDDLESTON. There may be a list of types of instruments.

Mr. LANDAU. There is quite a detailed list in 794 of, I think, the type

of information you are talking about, which is basically the type of mechanical equipment they utilize.

Senator HUDDLESTON. Right.

Mr. LANDAU. But I am not sure that makes a case for unilateral "why not let a court look at it" if in fact somebody pushes it. The courts seem to be protecting them anyway.

Senator HUDDLESTON. But if it is foregone conclusion they are going to get that protection, why should they have to go through the motions? I am just trying to find some way to accommodate both sides, I guess. That is hard to do in this business.

Mr. LANDAU. One thing is, of course, the courts have in looking over this stuff in camera required even the intelligence agencies to segregate out from the file information which would be covered by the act, and information that would not. So, one possibility of abuse, I would think, would be that they would start to classify the whole file rather than engaging in the segregation that the courts have required in this field.

Also—and perhaps this is somewhat suspicious—but I see no reason why the CIA feels it has to be above the courts as a matter of principle, when the courts have treated them so well.

Senator HUDDLESTON. Do you see any change that would be appropriate in the Freedom of Information Act that would address itself to what the agency sees as a problem for them?

Mr. LANDAU. Well, it depends upon which problem you are talking about. Certainly, the substantive exemptions in the act have proved to be 100 percent effective as far as they are concerned because they have not lost a case. If you are talking about the money question, I do not know enough about the budget, about the budgets of other agencies, as to whether maybe some system should be instituted to make this less burdensome, if in fact it is.

If you are talking about the perception of somebody abroad, they do not understand how our law operates. I cannot see that as a reason for doing it. Their "crazy judge" theory, I do not know how to answer that one. Those are the only four reasons they have given so far, at least publicly.

Senator HUDDLESTON. Do you see any analogy between the CIA and its sources, and the reporter and his sources?

Mr. LANDAU. Yes; one major distinction, the press is not covered by the Freedom of Information Act.

Senator HUDDLESTON. You would not want to operate under that kind of a system where you had to reveal your source?

Mr. LANDAU. Well, I think the Constitution might raise some problems if you tried to cover us with the Freedom of Information Act.

Admiral Turner has made this argument, as you know, before the Press Club last year. But what Admiral Turner, I think, failed to point out is that he is a government entity and the press is an independent, non-governmental entity, and there is a difference.

Senator HUDDLESTON. If we had prohibition against the use of journalists would you see any circumstances under which there should be an exception, or a waiver procedure; or should it be an absolute ban?

Mr. LANDAU. Well, I think that is a difficult question to answer.

Senator HUDDLESTON. It is, but the agencies will cite actual instances where a particular journalist may be the only possible source, or the only possible person that could make a contact. It might be something that is fairly vital.

Mr. LANDAU. If you are a one-time situation——

Senator HUDDLESTON. That is what I am talking about.

Mr. LANDAU [continuing]. Where you have a national emergency or some enormous situation.

Senator HUDDLESTON. Hypothetically, let us just say something to do with the hostages in Iran.

Mr. LANDAU. Since, under the charter and under the position we have taken, a reporter who on a one-time voluntary basis wants to aid the agency, that could be done. What we are talking about is paid.

Senator HUDDLESTON. Well, suppose they had to send that reporter halfway around the world and wanted to pay his expense, then it becomes a paid contact.

Mr. LANDAU. Yes, then he becomes a paid contact. I do not know the answer to your question. I would say that at a minimum—and I am certainly not talking for our committee now because we have not dealt with that—I would say as a minimum, since the press raises as its minimum protection in both the criminal area and the prior restraint area direct, immediate, and irreparable injury to the national security of the United States. I suppose that at least as a matter of talking, if you wanted to use the Pentagon Papers standard, that might be a place at least to begin thinking about it since, if the argument is that the press would be damaged by the use of these sources on any less standard, certainly, the press is damaged by a prior restraint on any less standard.

Senator HUDDLESTON. That is the kind of consideration we sometimes have to deal with in these things.

Mr. LANDAU. One of the problems, of course, is that the Government all too easily gives those affidavits. They gave the affidavit of direct, immediate and irreparable injury in the Pentagon Papers Case, and of course the Supreme Court said they had not proved it. They gave their affidavit in the Progressive Case, and of course there was the dispute as to whether it was valid.

So, I do not know what type of oversight procedure you would want to impose if you adopted this standard. But certainly, they should not be able to make a mistake more than once.

Senator HUDDLESTON. Well, presumably that would come under the heading of "significant intelligence activity" which the committee would be advised of.

Mr. LANDAU. But I do not think the "40–40" committee would be sufficient. I do not think that an internal executive branch committee should be the one.

Senator HUDDLESTON. I think we would agree with that, it ought to be a congressional committee.

If you had an absolute prohibition, do you think it ought to cover all members of the press, cameramen, editors, copywriters, proofreaders and anybody connected with the media?

Mr. LANDAU. Oh, yes, I think so.

Senator HUDDLESTON. Well, thank you very much, Mr. Landau, we appreciate your testimony.

Mr. LANDAU. Thank you for your time, Senator, we very much appreciate it.

Senator HUDDLESTON. Our next witness is Mr. W. William Wilson, an attorney from St. Louis. Mr. Wilson, we have your statement which you have submitted to us, also, and we appreciate that. You may go ahead in whatever manner you consider appropriate.

[The prepared statement and attachments of W. William Wilson follow:]

PREPARED STATEMENT OF W. WILLIAM WILSON

Senator Huddleston and Members of the Committee: My name is W. William Wilson. I am an attorney representing the parents of Gary Acker who is currently a prisoner in Angola, and Sheila Gearhart, Michael Gearhart, Gail Gearhart, Justin Gearhart, and Kevin Gearhart—the widow and four children of Daniel Francis Gearhart, who was executed before a firing squad in Luanda, Angola on July 10, 1976.

Mr. Chairman, I wish to thank you for this opportunity to appear before the Committee.

Frequently it is well to begin an analysis of a complex problem by separating those elements which are not in dispute.

Senator Moynihan has urged the "reconstruction of our intelligence community. . . ."

There is little disagreement concerning the need for reconstruction.

Indeed the chief executive officers of the CIA have publicly admitted the agency's inability to perform effectively.

As a result the Director has sought to address the causes of the CIA's problems.

". . . Public disclosure statutes like the FOIA seriously damage the agency's ability to do its job." [1]

Deputy Director Carlucci also blames the books written by former employees without proper clearance [2] and the power of the courts to "second guess" the professional judgment for the CIA.[3]

Whether any of the above have actually contributed to the CIA's failure is now being seriously questioned.

The CIA's ineffectiveness is a fact and not misperception as both the Director and Deputy Director of CIA would suggest. The CIA is accurately perceived as ineffective and not worthy of confidence.

You have already heard ample testimony concerning CIA intelligence and operational failures but it must be emphasized that the agency is very prone to reveal the identities of its agents through negligence alone. The agency's abandonment of its people in Vietnam is the most frequently cited example. Even the most cursory examination of the CIA's record will reveal that neither the FOIA nor Stockwell and Snepp are the responsible parties. Incompetent officials are to blame. The proposed legislation would merely hide their incompetence without addressing the real problem.

CIA VS. THE REALITY OF THE TOTALITARIAN STATE

Senator Moynihan when introducing S. 2216 suggests that the realities imposed on us by the totalitarian states must be met by a revitalized CIA.

While I favor an end to CIA bungling, I must point out the fallacy in Senator Moynihan's argument or perhaps Senator Domenici in his supporting statement does as well when referring to the Soviet menace:

". . . if their form of covert activity fails to persuade the local citizenry of its questionable merits, they will send in tanks, armament, and men to secure the prize."

After all the KGB didn't take Angola. Russian tanks and Cuban soldiers did it. The KGB didn't take South Vietnam. Russian tanks and North Vietnamese soldiers did. The KGB didn't take Ethiopia or Afghanistan either.

Vietnam was lost in spite of the efforts of the United States Marine Corps and President Carter admits that the Marines (as well as the rest of our military) would be unable to stop the Soviets in the Middle East without the use of nuclear weapons.

[1] Statement of Frank C. Carlucci, Deputy Director of Central Intelligence, before the House Subcommittee on Government Information and Individual Rights, Feb. 26, 1980, p. 7.
[2] Ibid.
[3] Ibid, p. 14.

The Soviet military machine has been winning the victories and it is naive to suggest that our civilian intelligence agency, however reconstructed, will ever stop it.

CIA CRIMINAL ACTIVITY AND MISCONDUCT

I am presenting into evidence a letter on CIA letterhead from its General Counsel, John S. Warner, to Mr. Kevin Maroney, Deputy Assistant Attorney General of the Justice Department's Criminal Division. The letter provides a list of crimes committed by CIA personnel within the United States and refers to a secret agreement whereby such criminal activity would not be prosecuted. Murder, narcotics trafficking and embezzlement of government funds are among the offenses. The letter demonstrates that the CIA has a long history of concealing actual crimes.

I have also included clippings and documents describing the CIA's harboring of Nazi war criminals, the CIA's conduct of biological warfare experiments against United States' cities, CIA experiments to induce cancer and whooping cough. I could easily create a lengthy list.

The CIA is our intelligence agency and I believe we are all saddened and shamed for them when we hear such stories.

I perhaps along with you would like to forget these incidents. I might even prefer that they not be exposed if repetition were not so certain.

I represent several clients who have been the victims of the CIA's "official" violation of the law.

For two years my clients and I have stated that the CIA was responsible for the recruitment of the Americans who were captured and imprisoned or executed in Angola in 1976. Our charges were met with official denial.

I must inform you that John Stockwell, the CIA's Angola Task Force Commander, has for the first time reluctantly admitted that the CIA did fund the covert recruitment of Americans while in the United States to fight in Angola.

If Mr. Stockwell's account is true then many officials of the Justice Department, the State Department and the CIA have given less than truthful accounts to Congressional committees, to the families of the victims and to the courts.

Their false denials may also have contributed to the execution of Daniel Gearhart. They served as additional accusations against him before and during his trial.

The Foreign Enlistment Act and the Neutrality Act apparently must be added to the list of criminal statutes ignored by the CIA.

This official indifference to the plight of Gary Acker and the suffering of Sheila Gearhart and her four children, is especially disturbing in light of President Ford's statement that the captured Americans had violated neither United States' law nor international law.

Nevertheless just last month the State Department admitted that they have never even asked for Gary's release. This after four years of assurances that they were doing everything possible to bring the young man home.

In the last several days I have been confronted with evidence of new serious wrongdoing on the part of the CIA. A report by the Chicago Defender, a daily Chicago newspaper, states that Phillip Blakey, a trusted aide of Jim Jones who was sent to Guyana in 1974 to establish the Jonestown settlement, was working in 1975 for the CIA. While a member of the Peoples Temple he reportedly served as a mercenary in Angola and recruited mercenaries for the CIA financed Union for the Total Independence of Angola (UNITA).

We are trying to find out if his recruitment activities were connected with the covert operation described by John Stockwell. According to the Chicago Defender, a former top administrator in the Guyanese government and other sources have identified Blakey as an employee of the CIA in Angola.

According to testimony provided to the House subcommittee on International Operations by Joseph Holsinger, Administrative Assistant to the late Representative Leo J. Ryan,

> "There are credible reports that it (the CIA's operation) included covert support for him (Jones) as an ally of Forbes Burnham. Specifically, the Peoples Temple provided funds to the Burnham group and also acted as a terrorist organization to intimidate the opponents of the Burnham regime."

Richard Dwyer, the Deputy Chief of Mission at the United States Embassy in Guyana, was identified in the San Mateo Times of December 14, 1979, as the CIA's Chief of Station in Guyana.

Dwyer's connection with the CIA is also reported in a 1968 publication Who's Who in the CIA.

A tape recording is presently in the possession of the FBI which places Dwyer at the scene of the mass death.

Holsinger in his testimony charges,

> "It seems almost certain now that our intelligence sources were aware that charges that American citizens were being held in bondage were true, and that they allowed that condition to continue in the interests of their mission. They also withheld that information from Members of Congress, including Leo Ryan, and from desperate relatives who pleaded for government assistance for their loved ones."

Mr. Holsinger apparently suspects that the CIA may have been involved in Congressman Ryan's murder.

After the recent hearings on the Jonestown massacre, the House Foreign Affairs Committee sent a letter signed by its chairman, Congressman Clement J. Zablocki, and Congressman Dante B. Fascell, and Congressman William S. Broomfield, and Congressman John Buchanan, requesting the Permanent Select Committee on Intelligence to review allegations related to CIA involvement and to report its findings.

Obviously these charges should be thoroughly investigated before any decisions are made concerning the removal of restraints on the CIA.

RECOMMENDATIONS FOR RECONSTRUCTION OF THE CIA

With respect to the FOIA, the provisions of S 2216 and S 2284 respectively, should be replaced with those of HR 6820—Congressman Les Aspin's proposed charter bill.

With respect to the Snepp/Agee provisions, language should be added to eliminate any penalty for an agent's decision to reveal his own identity.

Language should be included to allow the exposnre of personnel guilty of criminal or gross misconduct.

I would also recommend that language be included similar to that suggested by the ACLU, in its testimony before this Committee, to provide a civil remedy for those seeking redress for wrongs inflicted upon them by the CIA.

In closing, I would further recommend that you examine the early history of the CIA. The 1947 Act and the 1949 enabling legislation make it clear that the CIA was conceived primarily as an intelligence coordinating agency which would rely on the military for intelligence gathering and for the conduct of operations. I would suggest that you hear testimony from military men concerning the feasibility of a return to the original concept. General Lyman Lemnitzer or Col. Fletcher Prouty should be able to evalnate the merits of this recommendation.

Because of the CIA's poor record in every category I urge you to consider the possibility of returning the responsibilities of the CIA's clandestine services to the military where at the very least the concepts of duty, honor and country still have a meaning that we can all recognize.

Thank you, Mr. Chairman and Members of the Committee, for this opportunity to testify.

[Telegram]

Washington, D.C., July 10, 1976.

MRS. DANIEL GEARHART,
Lanham, Md.

I was deeply saddened to hear of the execution of your husband in Angola. Daniel Gearhart's death was a barbarous act contrary to the law of nations and unjustified by any evidence of crime or wrongdoing. Such an act can have no sanction among civilized nations.

Many nations and organizations around the world joined us in appealing to President Neto to spare your husband's life. We can only regret that these appeals were not successful.

I hope you and your children will accept my sincerest condolences at your tragic loss.

Sincerely,

GERALD R. FORD.

[From the San Francisco Chronicle, Dec. 17, 1979]

WHOOPING COUGH DEATHS AND THE CIA

WASHINGTON, D.C.—The CIA may have conducted open-air tests of whooping-cough bacteria in Florida in the mid-1950s when, state medical records show,

a whooping cough outbreak killed 12 persons, according to an analysis of agency records.

The Church of Scientology said its analysis of about 150 pages of financial records released in recent years by the CIA indicates that the agency conducted at least one open-air biological test along Florida's Gulf Coast in 1955.

In a report the Scientologists are scheduled to make public today, the group said the CIA documents show that, shortly before the test, someone in the intelligence agency signed out a specimen of whooping-cough bacteria known as Hemophilus pertussis from the Army's biological warfare center at Fort Detrick, Md.

The bacteria apparently were used in tests conducted around the Tampa Bay area near Sebring, Fla., the Scientologists said.

According to state medical records that were examined by the group, the number of whooping-cough cases recorded in Florida jumped from 339 and one death in 1954 to 1080 and 12 deaths in 1955. A spokesman for the Scientologists said the Tampa Bay area was one of three places that showed a sharp increase in 1955.

"It is our hope that the outbreak and the testing is a mere coincidence," the Scientologists said.

A spokesman for the CIA said the agency would have no comment on the Scientologists' report.

American Citizens for Honesty in Government, a Scientologist research group, has been active in recent months in analyzing chemical and biological testing programs run by the Army and possibly by the CIA in the 1950s and 1960s.

Earlier this month the Scientologists said their analysis of financial records that were part of the CIA's MK–ULTRA testing program showed the agency conducted open-air tests around New York City.

The same heavily censored records also contain fragments of information that indicate the CIA reimbursed a physician, whose name is deleted, $4 for the bacteria withdrawn from Ft. Detrick on Jan. 26, 1955.

A few days later, according to receipts from the CIA, the intelligence agency paid for pairs of boots contaminated during testing. The boots were purchased in Sebring, according to copies of the receipts.

The CIA records also show reimbursements for Jeeps, lumber, several test animals and long-distance calls "regarding security set up" at "field test sites." Several other entries at the time indicate the team was testing some type of biological agent.

According to the records, several test animals were killed and buried, and a "biological specimen" was shipped by air to an unnamed location by the researchers. CIA petty-cash vouchers show a one-way railway ticket was purchased March 6, 1955, for $54.99. A Seaboard Railroad chart from that time indicates $54.99 was the fare from Sebring to Washington, D.C.

The Scientologists said they checked Florida state medical records and found whooping-cough cases jumped 300 percent over previous years, with the highest incidence recorded in July, 1955.

Earlier this year Army records indicated that a biological-warfare test conducted in San Francisco in 1950 may have been responsible for the death of a hospital patient there.

Brian Anderson, a spokesman for the Scientologists, said that the evidence they gathered indicated a need for the release of all government biological-warfare test files. The CIA says most of its chemical and biological test files were destroyed in 1973 at the order of former CIA Director Richard Helms.

[From the Cleveland Press, Dec. 3, 1979]

Was New York CIA Guinea Pig?

Bacteria Tests in City Streets; 'Powder or Gas' Was Spread

(By Daniel F. Gilmore)

Washington (UPI).—The CIA and U.S. Army apparently collaborated in bacteriological and chemical "open air" tests in the streets and vehicular tunnels of New York City in 1956, according to an analysis of secret documents made available today.

The analysis, the result of a four-month study by a Church of Scientology investigative group, shows that U.S. government agencies, without warning to the

public, loosed unknown substances from aerosol devices concealed in suitcases and from the exhaust of a specially modified 1954 Mercury.

The latest findings are contained in a report to be made public tomorrow with copies sent to pertinent congressional intelligence and armed services committees, the Pentagon and the CIA. United Press International obtained an advance summary of the report with much of the raw material on which it is based.

Original records of the New York testing, code named "Operation Big City," have either been destroyed or are still shielded under top secret classification.

Previously released documentation and congressional hearings showed the CIA and the U.S. Army's "special operations division" at Fort Detrick, Md., carried out a series of tests between 1949 and 1968 apparently designed to gauge the valunerability of American metropolitan areas to possible Soviet chemical and bacteriological warfare.

Early this year, a San Francisco lawyer released Army doucuments obtained under the Freedom of Information Act describing a 1950 test in which a bacteria cloud which was sprayed from a ship off the Golden Gate Bridge wafted inland to cover the entire Bay area.

"We feel that the public has a right to know of every incident where U.S. citizens may have been the target of chemical and or biological warfare testing," said Church of Scientology spokesman Brian Anderson.

Since no definitive documents have been released on "Operation Big City," church investigators worked from hundreds of expense vouchers that have been made available under Freedom of Information Act requests.

They pieced together such items as car washes for "decontamination," "install dual pipe muffler, pipe dissem, Big City," "suitcase samples," a "toy dog" for "air contamination test," and "dissemination device."

From the 75 pages of receipts, the investigators were able to conclude:

"Equipped with test animals, the CIA-Army team experimented with a variety of devices capable of disseminating a powder or gas into the air under covert conditions. Battery-driven "dusters' were installed in suitcases that had been soundproofed to muffle the noise.

"Similiar devices were also constructed to sample the air to determine the effectiveness of the test. Personnel were protected with, at least, nasal filter pads.

"The primary test occurred Feb. 11-15, 1956, in the New York City area when a 1954 Mercury with tail pipes extending an extra 18 inches traveled only 80 miles but covered four turnpikes and tunnels. When the test car returned it was washed to handle 'contamination' and washed again a few days later."

A church spokesman said, "We would like to know, and are sure the people of New York would like to know, what the Army-CIA used in 'Operation Big City.'

U.S. Ignored Atrocities in Recruiting Nazi Scientists

Washington.—In the nightmare that was Nazi Germany, the most unforgiveable criminals of all were the men of science who put their skills and knowledge at the service of Adolf Hitler and his insane genocidal theories.

Trained to serve humanity, they should have had a better grasp of right and wrong than the homicidal, moronic thugs of the SS who did the actual butchering. Yet it was German scientists who developed the mass murder techniques the SS used and who performed unspeakable "experiments" on Jews, Russian prisoners of war and other helpless victims.

Ironically, the politics of the Cold War gave these scientists the best chance of any Nazi criminals to escape punishment for their actions. Their expertise was a salable commodity in the East-West competition that sprang up before the ashes of defeated Germany were even cool.

Suppressed Government documents detail an outrageous program, code-named "Paperclip," under which hundreds of Nazis—including alleged war criminals—were welcomed into the United States with no regard for their past service to Hitler. The documents were turned up by Sen. Max Baucus, D-Mont., whose judiciary subcommittee is looking into "Paperclip" and related programs.

The intent of the "Paperclip" program was to recruit German scientists and technicians before the Soviets snared them. Ostensibly, strict background checks were to be run on the recruits and their families to make sure no war criminals were given sanctuary in this country.

In fact, however, the secret documents indicate—and other sources have confirmed—that in many cases no security checks at all were made. This laxity by federal authorities enabled Nazi criminals to settle in the United States, secure from prosecution for their atrocities. A few of these scientists have been accused of performing pseudomedical experiments on Jews, inside sources told our associates Gary Cohn and Jack Mitchell.

In some cases, derogatory information on a particular scientist-recruit was simply overlooked because the government considered him too valuable to risk losing to the Russians—or to a war crimes court.

"'Paperclip' was a calculated, cumulative effort by the U.S. government to bring some of the worst kinds of Nazis into the United States regardless of their backgrounds," a congressional investigator told us after examining the suppressed documents.

A less extreme view was given by another knowledgeable source, who said the intent of the operation was benign—to expedite the clearance of needed scientific talent—but the way it was carried out was a disaster. "It was an error of judgment," he said.

Whether "Paperclip" was deliberately used to smuggle known Nazi criminals into this country, or was merely bungled, the fact remains that federal authorities violated immigration laws in their zeal to recruit the German scientists.

One restricted document, for example, states: "Frankly, we reached the conclusion, as a matter of fact, they are being brought here as civilians without regard to the immigration laws."

When the government official made the reasonable suggestion that the German scientists should be permitted to come here only on regular visas, he was quickly overruled on grounds of "expedience," the documents show. Hundreds of scientists and their families, some with neither passports nor visas—and some with well documented ties to Nazi activities—were ferried to the United States on troopships carrying American GIs home. Others were brought to Canada and Mexico and sneaked into the United States.

In one instance cited in the documents, an American escorting officer pulled a gun and threatened a government official who questioned the propriety of allowing a group of German scientists into the United States.

Once in this country, the German scientists were given lucrative jobs in American industry. Some even received security clearances to work on sensitive defense projects.

The suppressed "Paperclip" files raise disturbing questions about a report last year by the General Accounting Office, which concluded that there was no widespread conspiracy to obstruct investigation and prosecution of Nazi war criminals.

The GAO report did acknowledge that the CIA, the FBI and the Defense and State Departments had arranged for suspected Nazis to gain refuge here, and then used them as sources of information. But the GAO report played down this use of war-crimes suspects by U.S. agencies.

[From the Honolulu Advertiser, Apr. 2, 1979]

NEWLY RELEASED CIA DOCUMENTS DISCUSS ISSUES OF INDUCING CANCER

WASHINGTON (UPI).—At the height of the Cold War, the CIA looked into ways to "knock off key guys" through such "natnral causes" as cancer and heart attacks, it was disclosed yesterday.

Heavily censored CIA documents from a quarter-century ago show that the agency even considered performing experiments on terminal cancer patients under the guise of "legitimate medical work."

The documents do not indicate, however, whether the talk about inducing cancer and heart attacks ever got past the memorandum stage.

The papers—released under Freedom of Information Act requests—were researched by Martin Lee of the Washington-based Assassination Information Bureau.

The Central Intelligence Agency project apparently started with an undated, unsigned note indicating concern about the vulnerability of U.S. leaders to assassination by "natural causes."

The memo referred to studies by the Office of Strategic Services, the World War II predecessor of the CIA.

"Knock off key people," the heavily censored document said "How knock off key guys . . . ? Natural causes. Method produce cancer. Heart techniques. . . ."

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The next pertinent document was a Feb. 4, 1952, "draft" memorandum from "Chemical Branch, Research & Development."

The paper reported inspecting a lah for possihle use in "medical research involving physiologically active chemical compounds."

"Human suhjects would be availiable for work that could be carried out as legitimate medical research," it said. "Extensive animal facilities exist for other kinds of research."

The memo discussed the use of beryllinm, a metallic element said to have "extreme toxicity" capable of inducing tumors.

It suggested "a study of the effect of inhaling small amounts of beryllium in the lungs and other studies to evaluate the potentialities of beryllium as a covert weapon."

A document dated Aug. 4, 1954, showed that the project was still receiving serious consideration at the time.

"Methylcholanthrene is now recognized as probably the most potent known carcinogen (cancer-causing agent) in the production of tumors of various types," the memo said.

It snggested using "normal constituents of the human organism" to produce methylcholanthrene in the body "through a process of abnormai metabolism."

[From the Rocky Mountain News, May 21, 1979]

CIA SOUGHT NAZI BEHAVIORAL DATA—REPORT

WASHINGTON (UPI).—The CIA in its infancy sought information from the files of the Nuremberg War Crimes Trials on how the Nazis used "drugs, narcoanalysis and special interrogation techniques," according to a newly released, 29-year-old document.

The American spy agency was, in 1950, less than 3 years old but already had begun "Project Bluebird," the first of a continuing series of top secret experiments in mind and behavior control.

On May 9, 1950, a month after "Bluebird" research began, a CIA memo was drafted calling for the collection of information on "speech indncing drugs; narcoanalysis and hypnotism."

It occurred at the height of the Cold War when U.S. authorities feared that the Soviets and their then-allies, the Chinese, were using "brainwashing" and mind control methods.

The memo, apparently drafted by the Office of Scientific Intelligence, snggested that these techniques might be turned around as "a method of unconventional warfare."

The iightly-censored memo obtained from the CIA by the Church of Scientology under a Freedom of Information Act request, was explicit.

"(Blank) will arrange with the surgeon general of the Army to place on the search list of the Nuremberg Trials papers request for information on drugs, narcoanalysis and special interrogation techniques."

The memo also requested a study of "Soviet and satellite trials wherein it is suspected that (speech inducing drugs, narcoanalysis and hypnotism) were used on the defendants or other special drugs or interrogation."

"Upon development of the above collection activity," the memo said, "consideration will be given to estimates on this field as a method of unconventional warfare.

Congressional investigative bodies in the 1970s were able to show that "Project Bluebird" mushroomed into a significant secret operation that continued for many years and included testing of drugs and techniques on both willing and unwilling civilians, members of the military, prisoners and hospital patients.

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., July 21, 1975.

KEVIN MABONEY, ESQ.,
Deputy Assistant Attorney General,
Criminal Division, Department of Justice, Washington, D.C.

DEAR KEVIN: On July 8, 1975, I sent you a letter detailing 16 cases in which violations of criminal statutes were reported to the Department of Justice during the existence of the so-called 1954 Agreement. Our records search has continued

and we have found five additional cases. We have also found two errors in the July 8 letter. We characterized the offense in Case No. 3 as "Improperly importing firearms." It would be more accurate to ssy "charged with various firearm offenses." Case No. 2 should not have been included at all. It had not been reported in January, but in July 1975 and, therefore, was not a case which was resolved during the existence of the Agreement.

Enclosed is an updated and corrected list of cases. A newly discovered case has to be included as Case No. 2, and cases 17 through 20 have heen added.

In our letter dated July 16, 1975, to Mr. Ingram, Staff Director of the House Subcommittee on Government Information and Individual Rights, of the Committee on Government Operations, we reported that we have discovered 30 cases which were covered during the existence of the Agreement. In 19 of these cases the matter was referred to Justice for judicial prosecution. In two cases the matter was referred to another government agency in accordance with 28 U.S.C. 535. In the remaining nine cases there was no referral. The enclosure to this letter contains 20 rather than 19 cases. This twentieth case was located in our files after the letter to Mr. Ingram had already been sent.

Sincerely,

JOHN S. WARNER,
General Counsel.

Enclosure.

This information should not be given out hy the Department of Justice without prior clearance with CIA.

Below is a brief snmmary of 20 cases in which violations of criminal statutes were reported to the Department of Justice between 1954 and 1975. This is not a complete list as the search of our files is not yet completed.

Case No. 1.—Classified documents were found in garage in Rosslyn and there was concern about a possible violation of the espionage statutes. We notified Leon Schwartz of the FBI in a memorandum dated 7 February 1975.

Case No. 2.—An Agency employee admitted submitting claims and heing paid for medical expense benefits of $15,408.29 more than he was entitled. The case was referred to Department of Jnstice in a letter to Henry E. Petersen, Assistant Attorney General, on 28 November 1973, forwarded to the U.S. Attorney in Alexandria on 20 February 1974, for whatever action determined appropriate.

Case No. 3.—This case involved an employee charged with various firearm offenses. The case was discussed with Mr. Kracov, Deputy Chief, Criminal Division, U.S. Attorney's Office in October 1974. The case was prosecuted hut resulted in a hnng jury.

Case No. 4.—This case involved narcotics charges against one of our agents. We discussed this case with the U.S. Attorney's Office in Chicago in June 1973, and April 1974 and with Henry E. Petersen, Criminal Division on 15 April 1974. At our request charges were dropped against this individual to protect intelligence sources and methods including the identities of employees and agents and ongoing operations.

Case No. 5.—This case involved a forgery by one of our employees in connection with a credit unlon loan. The case was discussed with Carl Belcher, Chief of the General Crimes Section of the Criminal Division. Department of Justice and with Samuel J. Papich of the FBI on 15 April 1964. Mr. Papich said he would keep this Agency informed of any contemplated actlon, but our records do not indicate the final disposition of the case.

Case No. 6.—This involved the theft of $2,000 of government fnnds. We informed Carl Belcher of this case on 17 April 1964. Mr. Belcher said that given the security aspects involved he would not take action until he heard from us. Our records do not indicate that we asked the Department of Justice to prosecute.

Case No. 7.—This case involved a husband and wife, both Agency employees, accused of misusing $2,700 of Agency funds. We discussed the case with Carl Belcher on 3 October 1963. Mr. Belcher said that he could not prosecute unless we were willing to release sensitive classified information about an Agency proprietary. We were unable to release such information and no prosecution occurred.

Case No. 8.—This case concerned the removal and retention of classified documents by an employee. Our records indicate that we discussed this case with the Department of justice probably in June 1963. Justice decided not to prosecute.

Case No. 9.—This case involved embezzlement of approximately $20,000 in Agency funds hy an employee. We discussed this case with Mr. Belcher on 10 August 1962, indicating that national security interests precluded prosecution.

Case No. 10.—This case involved the theft of a two-way radio. We discussed the case with Robert Rosthal of the Criminal Division who stated that in view of the security problem involved, prosecutive action would be inadvisable.

Case No. 11.—This case involved the embezzlement of Agency funds. It was discussed with Frederick Curley, Civil Division, and with Marvin Helter and E. Lamar Sledge of the Criminal Division, Department of Justice on 21 September 1979. The Department of Justice indicated that because of the security considerations involved they would leave it to us to decide whether to prosecute. Our records do not include a decision to prosecute.

Case No. 12.—This case involved an attempt by an Agency employee to defraud the U.S. Government by filing a false death benefits claim with the Veterans Administration. On 22 September 1960, the Veterans Administration referred the case to the U.S. Attorney for the District of Columbia who declined to prosecute on jurisdictional grounds. He stated he would not have prosecuted in any event because only $70 was involved. The Veterans Administration then submitted the case on 24 October 1960, to the U.S. Attorney for the Eastern District of Virginia who declined to prosecute because the case was too minor.

Case No. 13.—This case involved an Agency employee who was indicted 31 May 1955, in the U.S. District Court, Southern District of Florida, for violation 22 U.S.C. 452. We asked William Foley, Executive Assistant, Internal Security Division, Department of Justice to drop the case on national security grounds in a memorandum dated 19 December 1957. We were advised that the case was *nol-prossed* on 13 January 1958.

Case No. 14.—This case involved the theft of $418.20 of government funds by an Agency employee. We discussed this case with Mr. Schauer, Chief, General Crimes Section, Criminal Division, Department of Justice on 10 January 1957. According to our records Grand Jury action was to take place on 13 March 1957. We have located no further information about the disposition of the case.

Case No. 15.—This case involved a violation of 18 U.S.C. 1001—falsification of official government papers relating to the application for federal employment and for a clearance. This case was discussed with Walter Yeagley, Internal Security Division, Department of Justice and Emanuel Kosack, Chief, Fraud Section of of the Criminal Division, Department of Justice. Mr. Kosack reported that Justice was considering an indictment, but that there was serious doubt as to whether they would prosecute because certain security information might have to be released. He indicated that the Department would keep us informed, but our records do not indicate the final disposition of the case.

Case No. 16.—This case involved a murder which took place outside the United States. Allegations were made that two Agency employees helped dispose of the body. The DCI discussed the case with the Attorney General in October 1955. The Attorney General's Office did not take any action "due to the legal jurisdictional restrictions involved."

Case No. 17.—An Agency employee impersonated a military officer. The case was discussed with Justin W. Williams, Assistant U.S. Attorney on 2 August 1971.

Case No. 18.—A conflict of interest charge was raised against an Agency employee involved in a government contract. The case was discussed with Mr. Cregar, FBI Liaison Officer, on 9 August 1966.

Case No. 19.—An Agency employee admitted theft of $1,700 of government funds. The case was discussed with William E. Foley and James P. O'Brien, General Crimes Section, Criminal Division on 1 February 1961.

Case No. 20.—A CIA employee embezzled several thousand dollars over a period of 16 months. The case and the attendant security problems were discussed with the Criminal Division, Department of Justice on 24 February 1967.

[Additional details concerning these 20 cases appear in the appendix.]

ATTACHMENT 2

[From the San Mateo Times, Dec. 14, 1979]

CIA AGENT WITNESSED JONESTOWN MASS SUICIDE

(By Rick Sullivan and Karen Petterson)

An agent of the U.S. Central Intelligence Agency traveled to the Guyanese jungle colony of Jonestown immediately following the assassination of Rep. Leo

J. Ryan and witnessed the murder/suicide ritual orchestrated by the maniacal Rev. Jim Jones, The Times has learned.

Government sources have confirmed that a CIA agent assigned to the U.S. embassy in the Guyanese capital arrived at the commune as People Temple members collapsed and died of the lethal cyanide/softdrink concoctions.

State Department officials acknowledge that a CIA agent was dispatched to Jonestown within minutes of the airstrip assault. However, they will not disclose how the agent got there, his specific assignment or his identity.

But The Times has learned that the FBI has a tape recording recovered from the agricultural commune that apparently places Richard Dwyer, deputy chief of the U.S. embassy, inside Jonestown while more than 900 Americans died.

As second in command at the embassy, Dwyer reportedly was the CIA agent in charge of all intelligence activities in Guyana.

Dwyer took charge of the San Mateo congressman's fact-finding party upon their arrival in Georgetown, briefed the party on Jonestown activities, arranged for planes to transport the group to and from the jungle colony, and escorted the group to the commune.

The deputy chief was at the Port Kaituma airstrip Nov. 18, 1979, when Peoples Temple assassins opened fire, killing Ryan, three newsmen and a temple defector. Dwyer was one of 10 persons injured in the attack. He was wounded slightly in the leg.

A source concludes that Dwyer left those who had survived the ambush sometime after the shooting, went back to Jonestown and then returned to the group.

Millbrae investigator Joseph Mazor, who has been delving into People's Temple activities for three years, says the tape recording held by the FBI contains a statement about Dwyer by Jones during the suicides.

Mazor quotes Jones on the tape as shouting repeatedly over the din and confusion of the ghastly death ritual "Get Dwyer out of here!"

Mazor is an expert in analyzing voices on tapes. He has served as a consultant in this field to various law enforcement agencies.

Mazor would not reveal under what conditions he listened to the tape.

FBI agents in San Francisco and George R. Berdes, staff consultant for the House Committee on Foreign Affairs and director of the investigation of the Ryan assassination, independently confirm that federal authorities have a tape on which Jones says, "Get Dwyer out of here."

Berdes, however, does acknowledge that much of the tape recording is inaudible and confusing, mixed with loud music and screaming in the background.

Although Berdes and FBI agents agree that the "Dwyer" Jones refers to is, indeed, the deputy embassy chief, they do not believe Dwyer was actually at the compound.

Dwyer, reached today by The Times at the U.S. Embassy in Guyana, said he knew of the existence of the tape but denied that he returned to Jonestown after the airstrip ambush.

"Jones was obviously mistaken he said. "I was shot, you know."

Dwyer said that he had made an arrangement with Jones to stay overnight at the compound after Ryan's party was to have left Nov. 18 to await a plane the following day to take People's Temple defectors back to Georgetown.

"He (Jones) apparently thought that I was still there at the compound when he made his comment."

The deputy embassy chief said he spent the night with the wounded at the Port Kaituma airstrip and did not leave until around 5 p.m. Nov. 19, when the wounded were transported to the Guyanese capital.

In his two-inch thick investigative report presented to the 34-member Committee on Foreign Affairs last May, Berdes made no reference to the portion of the tape on Dwyer about the Jones comment.

The FBI has not questioned Dwyer either. The deputy chief remains today at the embassy in Guyana, and government officials there refuse to allow FBI agents into the country.

Berdes says that at the time his investigators interviewed Dwyer, they were not aware of the existence of the tape. Later, when the tape was given to him, he says he listened to it and concluded that Jones was mistaken.

"We thought it (questioning Dwyer again) would be pointless," said Berdes. "I think what happened was that Jones mistook someone else for Dwyer (who had visited the commune several times before the massacre). He (Jones) was under extreme pressure, he only thought he saw Dwyer."

FBI agents proffered the same theory that Jones was delirious and that Dwyer could not have been present at the camp.

Berdes argues that there is "credible evidence" that Dwyer stayed with the survivors after the airstrip shooting and spent the night with them.

But ambush survivors, including Ryan's aide, Jackie Speier, are not convinced that Dwyer could not have somehow returned to Jonestown.

Miss Speier, who was wounded in the attack, said that Dwyer's leg injuries were not debilitating, that he was able to walk with little difficulty and, in fact, left the group on several occasions.

Another survivor, who asked not to be named, recalls that Dwyer left "two or three times" after the airstrip shooting, saying the would attempt to make radio contact with the embassy.

"I would say," the survivor offers, "That Dwyer was gone more than he was there with us."

The survivor notes that there was a truck at Port Kaituma, but cannot remember Dwyer used it. The Jonestown camp is approximately four miles from the airstrip.

Miss Speier also tells of several incidents which she claims raise questions about Dwyer and his role in Jonestown.

She explains that when embassy officials briefed the Ryan party on activities at the colony, a slide show was presented and conducted by Dwyer. One slide, she recalls, shows a smiling Dwyer in Jonestown with his arms around Jim Jones and his wife, Marceline.

"It was like a family photo, and I remember thinking how strange it seemed that a professional U.S. embassy official should be acting this way."

The former Ryan aide also say he still is annoyed at the disappearance of tape recorders and tapes belonging to her and Ryan.

Miss Speier says that Ryan and she taped and took notes of interviews they conducted with temple members after they were allowed into the commune by Jones. The recorder, the tapes and the notes were placed in briefcase, also containing $1,000 in cash and other documents.

When Ryan and his party departed Jonestown for the airstrip, the congressman, Miss Speier recalls, gave the briefcase to Dwyer.

Miss Speier says that when the briefcase was later returned to her, the tapes, the notes and the recorders were missing. The cash and other paper remained enclosed.

Dwyer counters Miss Speier's account, claiming Ryan never gave him the briefcase, but that he picked it up off the airstrip after the ambush.

"I don't recall seeing any tapes in the case, but I think I remember a small recorder—I'm not 100 percent sure.

"I suppose that someone got in the briefcase very quickly. The only time it was out of my sight is when I helped load the wounded onto the plane," says Dwyer.

The deputy embassy chief said he gave the briefcase to Jim Schollaert, a member of the House Foreign Affairs Committee, when he returned to Georgetown.

FBI agents, Miss Speier says, questioned her twice when she returned to the United States.

"All they wanted to know about was the tape recorders and the tape."

The Justice Department will not confirm if they have located the tapes or if they have custody of them.

State Department sources acknowledge that a CIA agent did travel to Jonestown immediately following the airstrip assault, but they emphatically deny that the agent was Dwyer.

Department sources instead say that an agent, whom they would not identify, was dispatched from inside the U.S. embassy in Georgetown to the jungle commune, but only after word was received from the airstrip that Ryan and others had been murdered.

That word came within minutes of the ambush, and sources claim it was one of the airplane pilots hired by embassy officials who radioed the information.

Statements linking U.S. embassy officials with the Peoples Temple were made as early as May 1978, when a temple defector took her story to government officials.

Debbie Blakey, who deserted the temple commune, charged that embassy officials in Georgetown were "extremely close" to Jones. She said that the one embassy officer, Richard McCoy, who is currently assigned to the Guyana desk at

the State Department, warned her not to take her assertions of oppression and possible mass suicide in Jonestown to the press.

A few days after that warning, she said, she received a letter, apparently from Jones, that referred to conversation with McCoy and threatened her life if she took complaints to the press.

Mrs. Blakey is the sister of cult member Larry Layton, the only person facing charges stemming from the airstrip massacre. Layton was recently ordered to stand trial in Guayana on murder and conspiracy charges.

Allegations of a close alliance between U.S. officials and temple members were also made by Mazor, who made several trips to the jungle outpost. His clients were local parents of temple members.

He also says he took warnings to the embassy on the activities around Jonestown, specifically that there were weapons in the camp.

Mazor contends that Dwyer gave a copy of his (Mazor's) report to temple members during a cocktail party at the temple's Georgetown home.

"I know he did it because (temple member) Tim Carter called me from Georgetown and read me the report—my report to the consul general referring to the guns and a lot of other things," Mazor reports.

Carter, a top Jones aide, escaped from the jungle massacre scene and is now living in Idaho.

ATTACHMENT 3

WHO'S WHO IN CIA

[Published by Julius Mader, 1066 Berlin W. 66, Mauerstrasse 69]

A biographical reference work on 3,000 officers of the civil and military branches of the secret services of the USA in 120 countries.

Dwyer, Richard Alan; b.: 3, 5, 1933; L.: French; from 1957 in Department of State; from 1959 work for CIA; OpA: Damascus, Cairo (2nd Secretary), Washington.

STATEMENT OF JOE HOLSINGER, ADMINISTRATIVE ASSISTANT TO THE LATE REPRESENTATIVE LEO J. RYAN

I would like to express my appreciation to Chairman Fascell for convening these oversight hearings. I know that Leo Ryan had the highest personal regard for Mr. Fascell. He considered him to be his mentor on this committee and his friend.

I also want to thank Rep. Bill Royer for his role in pressing for these hearings. His efforts have earned him the respect of everyone who was touched by the tragedy in Guyana in November, 1978. It is an irony of fate that this subcommittee is one on which Leo Ryan served and worked closely with members who are here today.

The conduct of this open Congressional hearing can help to determine if our government withheld vital information from Rep. Leo Ryan, and if his death and the death of over 900 persons could have been averted.

Leo went to Guyana in a last ditch effort to determine the validity of serious charges made about Jim Jones and the Peoples Temple in Jonestown. Rep. Ryan had received detailed allegations that at least some of the more than 900 Americans there were being held against their will under brutal, inhuman circumstances. He would not have led a Congressional delegation there if the facts could have been determined any other way.

Rep. Royer's office has informed me that the purpose of these oversight hearings is "to determine what the State Department has done to implement the recommendations contained in the Foreign Affairs Committee staff report and the State Department report on the performance of the State Department in the Jonestown matter".

The recommendations appear to be useful and, if implemented properly, they should improve the quality of State Department performance overseas. One of the most difficult areas is that of review of exemption provisions under the Privacy Act and the Freedom of Information Act. It is clear that the Privacy Act was interpreted by the State Department to deny Representative Ryan access to pertinent information concerning Jim Jones and the Peoples Temple in Guyana.

It is also clear that the Freedom of Information Act was interpreted by State Department personnel in such a way as to provide complete access to Jim Jones about inquiries or actions concerning Jones and the Peoples Temple. Our experience in the Ryan office in that regard is detailed in the attached news story in the San Mateo Times of 12/6/78. "Somehow the Word Would Get to Peoples Temple" (Exhibit A). That free flow of information to Jones from the State Department, and the reasons for it, have never been properly addressed. Was it de-facto State Department policy or was it the work of a few key officials with close ties to Jim Jones?

A major issue that has escaped scrutiny is the emphasis placed by the State Department on promoting American Commercial interests overseas as its first priority, to the detriment of the problems of individual U.S. citizens abroad. That issue was raised by Rep. Paul McCloskey in an interview published in the San Mateo Times on 12/8/78 "McCloskey Slams State Department" (Exhibit B).

The following is an excerpt from that news story:

"A congressional investigation of the Jonestown massacre is likely to show that the U.S. State Department was more concerned with promoting exportation of natural resources from Guyana than exposing injustices within Peoples Temple or protecting Americans visiting that country, Rep. Paul McCloskey told The Times Thursday.

The Republican congressman from Menlo Park who had worked with his slain colleague, Rep. Leo J. Ryan, for State Department intervention in the Jonestown commune, stated:

"I think an investigation will bring out that the Guyanese government had a relationship with (the Rev. Jim) Jones and that the U.S. Embassy (in Georgetown) knew about it, accepted it and didn't try to intrude.

"Based on my dealings with the State Department, I think it is apparent that the department was more concerned with getting along with the Guyanese . . . and promoting exports from that country than it was in protecting U.S. Citizens."

The most important mineral resources in Guyana are bauxite and manganese. Gold and diamonds also are mined. Bauxite is the principal source of aluminum.

McCloskey said it is the "inherent mission" of all U.S. embassies, as representatives of the president, to place more emphasis on maintaining an amiable relationship with a host country and promoting exports than looking after the interests of citizens abroad.

He said it is his hope that the investigation will result in an order by the House International Relations Committee that embassies take a "stronger position" on the well-being of Americans."

I find nothing in the State Department recommendations that remotely touches on this matter.

One of the State Department recomendations most pertinent to the Guyana tragedy was Item G (1) which stated:

"G. The Department should strengthen its support for Congressional delegations travelling overseas. We endorse the current efforts of the Department to provide: (1) more definitive threat assessments in areas to be visited by Congressional groups;"

Threat assessments, to be effective, must necessarily include current intelligence data from the area involved. The question is whether the results of such intelligence data will be shared with Congressional delegations or withheld from them. The record shows that no such intelligence data was made available to Leo Ryan concerning Guyana. In fact, the State Department denied knowledge of any intelligence data concerning the Peoples Temple in Guyana in its report of 12/13/78 from Douglas Bennet, Assistant Secretary for Congressional Relations, to Rep. Clement Zablocki, Chairman of the International Relations Committee. Question #8 from Chairman Zablocki asked:

"Were the activities of the Peoples' Temple Church investigated by the FBI and/or other U.S. Government agencies and, if so, were their findings made available to the Department of State?"

The State Department response was;

"The Department of Justice has informed the Department that it conducted no investigations of the Peoples' Temple prior to the death of Congressman Ryan. We have been informed that the Federal Communications Commission investigated use of amateur radio stations by the Peoples' Temple to determine whether that use violated the Federal Communications Act of 1934.

The Department is unaware of any other investigations that may have been

conducted by other U.S. Government agencies of the Peoples' Temple or its activities other than the single report of the Customs investigation noted in our response to Question 7 above."

That response can be true only if you believe that U.S. government intelligence operations in Guyana were completely shielded from the State Department. Our government did have an intelligence presence in Guyana prior to Leo Ryan's trip there. I know that an agent of the Central Intelligence Agency witnessed his death. On the afternoon of November 18, 1978, I received two phone calls in California from Washington, D.C. The first was from the Carribbean Desk at the State Department. I had been in touch with them several times that day because of my concern over Leo's presence at Jonestown and the potential danger there.

The State Department caller told me that they had just received a report from the American Embassy in Georgetown of a shooting incident at the Port Kaituma airstrip. The report said that three people had been killed and fifteen wounded, and that Rep. Ryan may have been one of those killed.

Within fifteen minutes, I had a second phone call, this time from a member of the White House staff whom I know personally. He told me that five people had been killed, including Leo. When I said that his information differed from that which I just received from the State Department, he responded, "Joe, our information is correct. We have a CIA report from the scene".

The White House aide then asked my assistance in identifying the other four persons by describing their roles. Because of my familiarity with the mission, I was able to identify Don Harris and the TV newscaster, Bob Brown as the TV cameraman and Greg Robinson as the still photographer.

Since a CIA agent was present at the assassination of Congressman Ryan, it seems reasonable to assume that our government had received prior reports on the Peoples Temple.

Further confirmation of CIA activities in Guyana are contained in a San Mateo Times news story of 12/14/79, "CIA Agent Witnessed Jonestown Mass Suicide," (Exhibit C), I have been informed that House rules forbid specific charges against named individuals in open session, but I am ready to discuss such charges against more than one individual in Executive Session if this Committee chooses to hear them.

I believe that the tragic consequences of withholding intelligence data from Leo Ryan in Guyana should serve as a warning to all future Congressional delegations abroad. Unless the Congress insists on the inclusion of such data in State Department threat assessments, the ability of Congress to fulfill its fact-finding and investigative responsibilities will be at the mercy of the Executive Branch of the government.

It also appears that existing law may have been broken by the Central Intelligence Agency in failing to report to the appropriate Committees in Congress on its covert activities in Guyana. In December of 1974, as an amendment to the Foreign Aid Act, Congress approved a provision sponsored by Harold Hughes of Iowa in the Senate and by Leo Ryan of California in the House. This is what it said:

"No funds appropriated under the authority of this or any other act may be expended by or on behalf of the CIA for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the president finds that each such operation is important to the national security and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress."

The CIA did have an operation in Guyana, in addition to the obtaining of necessary intelligence. That operation was specifically designed to support the government of Prime Minister Forbes Burnham, and there are credible reports that it included covert support for Jim Jones as an ally of Forbes Burnham. Specifically, the People's Temple provided funds to the Burnham group and also acted as a terrorist organization to intimidate the opponents of the Burnham regime. And the Burnham government was cooperative with our commercial interests and with the policy of the U.S. State Department in promoting the exportation of natural resources from Guyana.

It seems almost certain now that our intelligence sources were aware that charges that American citizens were being held in bondage were true, and that they allowed that condition to continue in the interests of their mission. They also withheld that information from members of Congress, including Leo Ryan, and from desperate relatives who pleaded for government assistance for their

loved ones. The Department of State consistently reassured such relatives that all was well at Jonestown. A typical example is the State Department response of 6/16/78 to Sherwin Harris of Lafayette, California, (Exhibit D).

By the time that Leo Ryan led the Congressional delegation to Guyana in November, 1978, the difficult question posed for our government was whether or not it should admit to Ryan that:

1. A covert intelligence operation existed in Guyana that had not been reported to appropriate committees in Congress as required by law;

2. American citizens were being held in Jonestown against their will;

3. Our government was using Jim Jones as an ally of the Burnham government to maintain its control of Guyana.

Someone, or some group, made the decision to "stonewall" the Ryan delegation. That was a fatal mistake, although at the time it must have appeared that Leo's mission would fail since it was obvious that neither our government, the government of Guyana nor Jim Jones wanted him in Guyana, or especially in Jonestown. Under those circumstances, it appeared very unlikely that one lone Congressman would be able to "kick down the doors", to use one of Leo's pet phrases. On the other hand, it was likely that if Leo Ryan had been given intelligence data indicating that American citizens were being held against their will under brutal circumstances, he would have used that information with the appropriate committee in Congress to force our government to free those people. Leo would not have had to go to Guyana. And all those deaths would have been averted.

News accounts from Georgetown at the time of the Ryan mission there said that Leo was winning the media or public-opinion battle against Jim Jones. Before Leo's departure for Guyana, he and I discussed his plan to go up to the gates of Jonestown, in the presence of the media, and request permission to enter. If such permission were refused, Leo would then return to Congress with proof that Jonestown was a closed settlement. If he was allowed to enter, he intended to assess the situation there fairly, but to insist on talking alone to specific people and to personally escort any one out who wished to leave.

When it became obvious that Leo Ryan was going to Jonestown even without prior agreement by Jim Jones, our government had its last chance to disclose the true nature of the situation there to Leo. Someone decided at this juncture to take the chance that Jones would be able to put on a show that would convince the Ryan group that all was well in Jonestown. It seems incredible to me that our government, knowing what it did about the situation inside Jonestown and the potential for violence there would take that chance. It is a terribly harsh question to ask, but is it possible that even the terrible tragedy that occurred was preferred over disclosure of our covert operation in Guyana?

In reviewing the adequacy of the recommendations from the State Department, the most significant omission is that of the presence of CIA personnel in key roles within the State Department. Their existence is known to our allies and to our potential enemies alike. It is a secret only from the American public. I believe that the CIA serves a vital and essential purpose in our national interest. I also understand that its personnel operate under orders from the National Security Agency and the President. Their work is often dangerous and they must be protected. It may be necessary under some circumstances for CIA personnel to use the cover of the State Department employees. However, such usage should be kept to an absolute minimum since it can obviously create radical mutations in policy and endanger the lives of American citizens abroad unless great care is taken.

If, as seems probable, our State Department policy towards the Peoples Temple and Guyana was dominated by the CIA operation there, the Department's laxness and indifference to petitions and complaints from refugees (or defectors) and from concerned relatives becomes more understandable. Some of the major petitions and affidavits which were ignored or "lost" included:

1. The Concerned Relatives' petition of May 10, 1978 to the Secretary of State; which included sworn notarized affidavits concerning the abuse of human rights by Jones.

2. The April 10, 1978 affidavit of Yolanda D. A. Crawford, a People's Temple defector, describing beatings and abuses in Jonestown.

3. The affidavits of May and June, 1978, by Debbie Blakey describing suicide rehearsals and other serious charges.

The State Department's response of June 26, 1978, to Ambassador Burke's telegram of June 6, 1978, was a clear rejection of Burke's request for permission to discuss the Jonestown situation with the Government of Guyana. It seems quite possible, in retrospect, that this rejection was influenced by intelligence agency considerations.

Some knowledgeable observers may argue that the deaths of Leo Ryan, the media members and over 900 American residents of Jonestown may be the price we had to pay to keep control of Guyana. Sort of a "that's war, folks; that's the way it is" attitude. But what if Guyana falls anyway, and soon? That spectre was raised in a news article from London and published in the San Francisco Chronicle on December 9, 1979, "Guyana May Be the Next to Fall" (Exhibit E).

That article detailed the desperate economic plight of the Guyanese people and their growing opposition, now estimated at 75 to 80 percent, to the Burnham government. It also discussed the use of violence by another U.S. based pseudo-religious group. This group, "The House of Israel", appears to be the strong-arm successor to the Peoples' Temple in support of Burnham. If the tragedy at Jonestown was in fact allowed to happen to protect the secrecy of our intelligence operations in Guyana, the ultimate tragedy when Guyana falls will be that it was in vain.

I submit that our government policy in the under-developed countries in the Caribbean is fatally flawed if it is based solely on the protection of U.S. commercial interests. We must be more supportive to the native economies in the Caribbean if we are to maintain our sphere of influence against Cuba and Russia.

Grenada, a small island nation near Guyana, has already been taken into the Communist sphere of influence, despite our support for the government of Sir Eric Gairy, which fell in March, 1979. It is of interest to note that Gairy and Jim Jones were close enough for Gairy to visit Jones at the Peoples' Temple in San Francisco prior to Jones' departure to Guyana. A photograph of the two together appears in a book "The Suicide Cult" written by a San Francisco Chronicle reporter, Ron Javers.

It has been reported that Jim Jones had planned to escape to Granada with a select group of supporters following the mass murders in Jonestown. Jones did not intend to die in Jonestown. No paraffin tests were ever made on his hands to determine if he had fired a gun. It is now known that more than one million dollars of Peoples' Temple money was deposited in a Grenada bank. It should also be noted here that the pathology report by the Guyanese coroner showed that a high percentage of the victims examined were injected in the back with the poison. The proof was the blisters on the backs at the point of injection. We also know that an undetermined number of the Jonestown residents showed up in Grenada following the Jonestown tragedy.

My reason for going beyond a discussion of the recommendations by the State Department is that the fault may be with Government policy rather than with the day-to-day conduct of State Department employees. When a tragedy of this magnitude occurs, we should do more, much more, than be content with a surface examination of individual conduct.

I realize that many of the matters I have discussed today are beyond the purview of this subcommittee, or of any standing committee of the Congress. For that reason, I ask now for the formation of a Special House Committee with full power to investigate all aspects of the Jonestown tragedy, including its impact on our foreign policy and our relations with neighboring nations in the Caribbean.

Some of the questions to be addressed by such a Select Committee would include the following:

1. Is it State Department policy to make protection of American commercial interests abroad its top priority at the expense of the safety of American citizens?

2. To what extent is the CIA used to promote and protect American commercial interests abroad, in addition to its normal functions of gathering intelligence? Does such protection result in the creation of animosity toward our country by citizens of these nations?

3. Did our government use Jones and the Peoples Temple to support the Burnham government? If so, was the purpose to protect the commercial export of raw materials such as bauxite and manganese?

4. Were members of our intelligence agencies serving in key positions in our

Embassy in Guyana and in the State Department in Washington, D.C., and were they directed by our government to use those positions to control State Department conduct regarding complaints against the Peoples Temple?

5. Did our government knowingly acquiesce in the intolerable conditions of bondage at Jonestown in order to maintain control of the Guyanese government?

6. Was our government, through its intelligence operation, fully aware of the arms in Jonestown and the potential for violence there? If so, why did it fail to insist on armed protection by the Guyanese government for the Ryan misssion? Was Leo Ryan set up for murder?

7. Did a member of the CIA, who was also a State Department official, go back into Jonestown after the killings at Port Kaituma and witness the mass murder/suicide scene there? If so, why?

8. Who killed Jim Jones and why?

9. Has the Administration used "National Security" as an excuse to cover up the monumental error of withholding vital information from Leo Ryan concerning Jim Jones and the Peoples Temple in Jonestown, an error that led directly to the tragedy?

I thank you for the opportunity to present this statement in an open hearing before this committee. My personal feelings about the tragic death of my good friend, Leo Ryan, are obvious. He is gone, but I believe that we should now proceed to examine fully the causes of this tragedy and to ensure that the errors leading to it are corrected for the good of our nation.

EXHIBIT A

[From the San Mateo Times, Dec. 6, 1978]

RYAN'S CALLS TO STATE DEPARTMENT—SOMEHOW THE WORD WOULD GET TO PEOPLES TEMPLE

(By John Horgan and Rick Sullivan)

Prior to the Nov. 18 suicide-murder of more than 900 persons in the Guyana settlement of the Rev. Jim Jones, the Peoples Temple possessed a sophisticated intelligence network which permitted the sect to obtain sensitive information rapidly from a number of government agencies, including the U.S. State Department.

According to Joe Holsinger, administrative aide to the late Rep. Leo Ryan, D-San Mateo, as soon as Ryan's office would make in inquiry of the State Department or provide data to that agency on Peoples Temple, letters would be forthcoming from cult members here in the Bay Area urging that Ryan desist in his efforts to probe the church's affairs.

"We began to think there might be a connection, where as soon as we would contact the State Department, somehow the word would get to Peoples Temple," said Holsinger.

"We called it a Pavlovian reaction," he said.

Did that odd circumstance indicate a possible leak inside the State Department itself before Ryan's journey to South America?

Said Holsinger, "I don't think I'd call it a leak. It could have been someone being pretty stupid. It could have been just incompetence. We figured that whoever was down there (in the U.S. embassy in Guyana) and viewing the reports, felt there was nothing wrong and that was part of the problem. We didn't know whether it was incompetence or what it was. But Leo was going down there to find out."

Holsinger's comments about the State Department's seeming lack of security involving informaion about Peoples Temple fit a general pattern which has come to light since the Nov. 18 deaths and the murders of Ryan and four other people at the Port Kaituma airport in Guyana.

Law enforcement officials in Los Angeles have revealed that Peoples Temple operatives in that city knew about the secret address of two cult defectors who have been cooperating with investigators there.

One deputy district attorney in Los Angeles expresed amazement at finding the confidential address at a real estate office linked to Peoples Temple. The address was found during a search of the office, a search which also turned up about 200 rounds of ammunition, bomb-making plans, and a dummy time-bomb.

"We were amazed to find that address there because we thought it was known only to law enforcement," said Lee Cogan.

Additionally, the FBI has expressed a desire to question Tim Carter, 30, the former Burlingame man who was one of Jones' key assistants in Guyana.

Carter has said he came back to the Bay Area last month to infiltrate those connected with Ryan's trip in an attempt to gain information about the planned fact-finding mission to Jonestown.

Carter, along with Michael Carter, 20, his brother, and Michael Prokes, 31, are being kept under house arrest in Georgetown.

Deborah Layton Blakey, sister of Larry Layton who has been charged in the deaths of Ryan and the others at Port Kaltuma, has stated that government officials in Guyana had been compromised by Jones.

A temple defector, Mrs. Blakey has said she was part of a temple delegation which made daily visits to the Russian embassy in Georgetown to negotiate the transfer of the settlement to the Soviet Union.

She has said that U.S. officials at the American embassy in Georgetown were "extremely close" to Jones. She has said that one of them, Richard McCoy, had told her not to take her assertions of oppression and possible mass suicide to the press.

After the warning from McCoy, she has said, she got a letter that referred to her conversation with him which threatened her life if she took her complaints to the press. She has said the letter was apparently from Jones.

Holsinger said Ryan was aware that there were weapons inside Jonestown. "We knew there were armed guards around there," he said.

Holsinger said Ryan's office, which had been compiling information on Peoples Temple for more than a year before the congressman's trip, had turned over to the State Department copies of virtually everything which had been turned up in the investigation here.

That included information on Jones' suicide ritual, reports of gun-running and other matters.

"It was not the State Department warning Leo of any danger," said Holsinger. "It was Leo warning the State Department. Only they didn't listen. We sent them copies of our reports. We sent them what we had. We asked for further investigation. But they apparently preferred to support and confirm their own field reports from Guyana. If they had sent their own investigators from Washington, they would have found enough to have prevented this tragedy." State Department officials have said they did try to warn Ryan of the existence of weapons in Jonestown.

One problem that Ryan's office had, said Holsinger, was that it was difficult to determine what to believe about all of the dire allegations being made about Jones, Peoples Temple, Jonestown, etc. in the months before Ryan's trip.

"We were starting to believe that there was a great deal of merit to what these people were saying," said Holsinger, referring to many of the relatives of Peoples Temple members here in the Bay Area. "We weren't sure how much was emotional. We weren't sure how far it went."

Holsinger said he personally advised Ryan to be extremely wary of the Jonestown venture. "I advised him that if the reports turned out to be even half true, the possibility for physical intimidation existed. I thought they might try to provoke a fight. When it came down to the matter of guns, of taking no protection, Leo pointed out, and I think rightly so, that Mark Lane was claiming armed CIA invasion under the guise of some government agency to disrupt Jonestown. Leo said if we took any guns in there at all they'd use that to claim provocation and say we started it."

Although, said Holsinger, Ryan did not originally intend to take the media along with him, he was glad he did so as he prepared to leave for South America.

"Leo said they (the press) were the best protection he could have. They were better than guns. I found out late that the media felt kind of afraid but they felt that Leo was their best protection. We didn't understand the potential. We knew these people were possibly very psychotic or whatever. We were concerned. But Leo said you can't give in to fear. He said we've got to get the job done and no one else will do it."

In an interview with The Times, Holsinger addressed a range of other issues relating to Ryan's trip and Peoples Temple.

Here are the questions and Holsinger's responses:

When did your office receive its first inquiry about Peoples Temple from a concerned person?

It was in the spring of 1977. A reqnest to meet with Leo came from Sam Houston of San Bruno. He was a wire service photographer. He told us his son, Robert, had been involved with Peoples Temple. According to his parents, he had planned to leave the temple. The next night, he was found dead. His two daughters had been taken to Gnyana and the grandparents were worried.

When was the first time Ryan or someone in Ryan's office contacted the State Department ahout the Peoples Temple affair?

I'm not sure. There was a December 1977 letter to Secretary Vance on the (Tim) Stoen case. We probahly first contacted the State Department in the summer of 1977. But I can't remember.

Did you or anyone else in the Ryan office contact the State Department either personally or on the phone? Or did you do it all by letter?

I talked personally with some people I don't want to identify. They said they were basing their opinions on the basis of reports from one or two field men. Richard McCoy was the principal one.

Are we correct in saying that the State Department did not mention danger per se in Jonestown?

No. What they said was . . . if any trouble erupted, they were not in a position to provide any protection (for Ryan and his party).

What about the concept of international circumstances resulting from Leo's trip? Did the State Department ever allude to, even vaguely, the possihility of nnfavorable international consequences?

That seemed to be a general thread. It wasn't that so much as they said this was an independent country. They felt they were guests in that country and that they had no powers in that country. The roots of it (this attitnde), in my opinion, were in the memories of the Chile disaster. Our administration had a general policy of avoiding direct intervention in Latin and South America. Nobody knew enough to make this (Jonestown) the exception.

Did you ever get the impression that the State Department did not want you to go down there?

Yes.

Can you elaborate on that?

For example, when Leo asked that someone from the State Department's legal aid office go with him, they said everyone was too busy. The general impression was that this was something they weren't anxious to see happen. They were satisfied that things were benign. They almost seemed to indicate that this was some kind of a trouble-making sort of thing. They didn't seem concerned at all about the people who were down there.

What could the State Department have gained by not giving Ryan or Ryan's office a full briefing on everything they may have known?

I think they did as far as they knew. They gave him a briefing bnt the State Department file seemed to indicate that there was nothing wrong.

Has it occurred to you that the State Department actually withheld information it had on Jonestown because of a fear that Ryan might take that information to the media?

We have no such indication.

If not, how can it be explained that the CIA reported the ambush accurately to embassy officials at Georgetown within an hour of the event at the Port Kaituma airport and that the State Department transferred John Burke from a highly sensitive post in Thailand to remote Guyana last December?

My reaction is that if there was a CIA report, then one of Guyana crew members may have been their source. That's possible. I just don't know otherwise. As far as Burke is concerned, I know nothing about his career. I can't answer that question. I don't know.

At Ryan family spokesman George Corey's press conference on Nov. 19, he said the first word you got that there might be a problem was a State Department phone call to you in which the caller said there was an unconfirmed CIA report (on the ambush).

That's not what I said. I had two calls. I had been calling the State Department all day because I was nervous. I called at 3 o'clock California time. Then I got a call at 4 o'clock on this unconfirmed report. Fifteen minutes later, I got a call from someone in the White House. Rather than four people dead, the caller

said five were dead and one of them was Leo Ryan. There were two separate calls. I do not recall having ever said anything about the CIA. That may have been an interpretation by someone else.

Was Ryan aware that even the act of leading people out of Jonestown, with or without journalists, could trigger a mass suicide?

No.

Was that discussed before the trip?

No. We had talked about that as sort of an act of faith, a tying together, a ritual he (Jones) went through for psychological effect. We never had any idea that it was more than a psychological trick.

Was Ryan or Ryan's office aware that Jones' health was apparently seriously impaired and that he was close to death?

We had heard those reports coming out. The concerned relatives told us it was a bunch of hogwash.

Did the State Department ever suggest postponing the trip to see if Jones would die a natural death?

No. They never suggested that. I don't think anyone was really believing it. There was so much showmanship going on that you couldn't separate fact from fancy.

Did you and Leo ever discuss the possibility of the entire settlement moving en masse to the Soviet Union or Cuba or some other communist country?

That was Mark Lane's comment. We knew of the threat. We laughed at it. Well, not so much laughed, we kind of scorned it. We knew what treatment they would get there, after all of Jones' talk of freedom and this type of thing. He wouldn't like the kind of freedom he would find in Cuba or the Soviet Union.

Did Ryan ever mention the possibility that there might be some foreign involvement in what was happening in Jonestown late this year, particularly with the appearance of Mark Lane so suddenly?

It was really (Charles) Garry who introduced Mark Lane to Jones. They were long-time friends, according to Garry. I guess they felt they needed a little public relations help to fend off this growing pressure that Leo was mounting.

When you received Mark Lane's letter of Nov. 6, did you and Leo ever discuss it?

Oh, yes. We were together all the time. I was with him when he sat down and marked up Lane's letter and prepared his reply.

One of the last lines in Lane's letter bears on something we talked about earlier, about "further persecution of Peoples Temple might very well result in the creation of a most embarrasing situation for the U.S. government."

Leo knew it was a public relations battle. He said he didn't think even Jones would back that. He said he (Lane) was threatening something that he really didn't mean to threaten.

Do you believe that it could have been an embarassing situation for the U.S. government?

I don't think it would have been. I think it would have been a bizarre incident. I don't think Russia was ready to take them. I have my doubts whether Russia would have let them in.

How about Cuba?

Don't know. I don't know if they had any contact with Cuba. They have enough problems in those countries without this. I really think this was a ploy to push away the pressure. But I'm not certain about that. It's my opinion.

Did you and Ryan ever discuss, particularly when you were talking about danger inside Jonestown, the possibility that the CIA may have had a person inside Jonestown?

We never discussed that. We were never thinking those terms at all.

Did the State Department ever raise that issue?

No. We hear so many spook stories we don't know what to believe.

Why do you think Ryan and his group were detained so long in Georgetown?

They were trying to stall. The embassy was asleep, if nothing worse.

What do you know about the dialogue between Ambassador Burke and Ryan during the period in Georgetown?

From what I understand, the ambassador simply didn't believe any of this.

Did the ambassador ever try to discourage Leo from going to Jonestown?

In effect, he was not getting any cooperation. He was being stymied. The State Department was disinclined to move.

Did you get the impression that the ambassador was trying to discourage Ryan or anyone else from going to Jonestown?

I don't know about that. I know he was discouraging Leo's efforts.

EXHIBIT B

[From the San Mateo Times, Dec. 8, 1978]

UNCONCERNED ABOUT AMERICAN CITIZENS—MCCLOSKEY SLAMS STATE DEPARTMENT

(By Rick Sullivan)

A congressional investigation of the Jonestown massacre is likely to show that the U.S. State Department was more concerned with promoting exportation of natural resources from Guyana than exposing injustices within Peoples Temple or protecting Americans visiting that country, Rep. Paul McCloskey told The Times Thursday.

The Republican congressman from Menlo Park who had worked with his slain colleague, Rep. Leo J. Ryan, for State Department intervention in the Jonestown commune, stated:

"I think an investigation will bring out that the Guyanese government had a relationship with (the Rev. Jim) Jones and that the U.S. Embassy (in Georgetown) knew about it, accepted it and didn't try to intrude.

"Based on my dealings with the State Department, I think it is apparent that the department was more concerned with getting along with the Guyanese . . . and promoting exports from that country than it was in protecting U.S. citizens."

The most important mineral resources in Guyana are bauxite and manganese. Gold and diamonds also are mined. Bauxite is the principal source of aluminum.

Joe Holsinger, Ryan's administrative aide, has told The Times the State Department implicitly discouraged the congressman's fact-finding mission to the Jonestown settlement.

"They (State Department officials) were satisfied that things were benign. They almost seemed to indicate that this (mission) was some kind of a trouble-making thing. They didn't seem concerned at all about the people down there," Holsinger has stated.

McCloskey said it is the "inherent mission" of all U.S. embassies, as representatives of the president, to place more emphasis on maintaining an amiable relationship with a host country and promoting exports than looking after the interests of citizens abroad.

He said it is his hope that the investigation will result in an order by the House International Relations Committee that embassies take a "stronger position" on the well-being of Americans.

The committee that has taken over Ryan's probe of Peoples Temple already has plunged into a far-reaching inquiry that is covering the past, present and future of the cult, including its members, its money and relations with U.S. and Guyanese officials.

The committee is chaired by Rep. Clement J. Zablocki, D-Wis.

McCloskey said he has been advised by members of the committee that the investigation is centering on several key areas:

Why the State Department did not take more vigorous action on the Jonestown commune.

The relationship between the U.S. Embassy in Guyana and the cult.

What the State Department knew or should have known about the violent conditions at Jonestown.

The inadequacy of the information the State Department gave Ryan before his visit.

Whether funds collected from church bank accounts scattered throughout the world should be used for reimbursement of federal expenses and those incurred by relatives of the more than 900 cultists who died Nov. 18 at the Jonestown camp.

The congressman revealed that he and Ryan had tried for more than a year to move the State Department from its steadfast position of noninterference in Guyanese affairs and that he became just as frustrated as his colleague.

He said that he, like Ryan, received a barrage of mail from Peoples Temple supporters critical of his efforts whenever he made inquiries of the State Department.

His efforts alone, he said "attracted" 700 letters, including 10 from residents of San Mateo County—two from Redwood City, one from San Mateo and seven from East Palo Alto.

Local residents who wrote McCloskey included Viola Kelly and Essie Roach of Redwood City, Margaret Ellzey of San Mateo; and Pauline Thornton, Mary Murphy, Mary Lendo, Bessie Lee Webster, Roxie Mae Jones, Dorothy Ellzey, Ida Dorsey, all of East Palo Alto.

McCloskey said that he plans to contact personally several of these letter writers next week to discuss, generally, past affairs of the church and specifically to determine if any of the cultists have received death threats.

The congressman said that he was drawn into the church controversy more than a year ago when temple defectors Tim and Grace Stoen had asked him for help in regaining the custody of their son who, they said, was being held by Jones in Guyana.

McCloskey disclosed that he wrote a letter to the State Department asking that it intervene in the matter, but was advised that Ryan also was looking into the case and, in fact, had planned a trip to Guyana in December of 1977.

That trip, according to McCloskey, was postponed because of pressing congressional affairs.

McCloskey said that he continued to press for State Department action on the Stoen case, but was advised firmly in March of this year by Assistant Secretary of State Douglas Bennett that the case was being litigated in Guyana and that the State Department could not interfere with the procedure down there.

"I like Congressman Ryan, kept insisting that the embassy (in Georgetown) had an obligation to look into the matter."

McCloskey said that Ryan had invited him to join the delegation to Jonestown, but he said he had to decline because arrangements already had been made for him to participate in a South African fact-finding mission.

"Clearly, as far as I was concerned, Jones had no right to hold the Stoen boy in Guyana and the State Department had an obligation to intervene on behalf of that child," said McCloskey.

"But it was clear that the government didn't want to ruffle the feathers in Guyana."

EXHIBIT C

[From the San Mateo Times, Dec. 14, 1979]

CIA AGENT WITNESSED JONESTOWN MASS SUICIDE

(By Rick Sullivan and Karen Petterson)

An agent of the U.S. Central Intelligence Agency traveled to the Guyanese jungle colony of Jonestown immediately following the assassination of Rep. Leo J. Ryan and witnessed the murder/suicide ritual orchestrated by the maniacal Rev. Jim Jones, The Times has learned.

Government sources have confirmed that a CIA agent assigned to the U.S. embassy in the Guyanese capital arrived at the commune as Peoples Temple members collapsed and died of the lethal cyanide/soft drink concoction.

State Department officials acknowledge that a CIA agent was dispatched to Jonestown within minutes of the airstrip assault. However, they will not disclose how the agent got there, his specific assignment or his identity.

But The Times has learned that the FBI has a tape recording recovered from the agricultural commune that apparently places Richard Dwyer, deputy chief of the U.S. embassy, inside Jonestown while more than 900 Americans died.

As second in command at the embassy, Dwyer reportedly was the CIA agent in charge of all intelligence activities in Guyana.

Dwyer took charge of the San Mateo congressman's fact-finding party upon their arrival in Georgetown, briefed the party on Jonestown activities, arranged for planes to transport the group to and from the jungle colony, and escorted the group to the commune.

The deputy chief was at the Port Kaituma airstrip Nov. 18, 1979, when Peoples Temple assassins opened fire, killing Ryan, three newsmen and a temple defector. Dwyer was one of 10 persons injured in the attack. He was wounded slightly in the leg.

A source confides that Dwyer left those who had survived the ambush sometime after the shooting, went back to Jonestown and then returned to the group.

Millbrae investigator Joseph Mazor, who has been delving into Peoples Temple activities for three years, says the tape recording held by the FBI contains a statement about Dwyer by Jones during the suicides.

Mazor quotes Jones on the tape as shouting repeatedly over the din and confusion of the ghastly death ritual. "Get Dwyer out of here!"

Mazor is an expert in analyzing voices on tapes. He has served as a consultant in the field to various law enforcement agencies.

Mazor would not reveal under what conditions he listened to the tape.

FBI agents in San Franciso and George R. Berdes, staff consultant for the House Committee on Foreign Affairs and director of the investigation of the Ryan assassination, independently confirm that federal authorities have a tape on which Jones says, "Get Dwyer out of here."

Berdes, however, does acknowledge that much of the tape recording is inaudible and confusing, mixed with loud music and screaming in the background.

Although Berdes and FBI agents agree that the "Dwyer" Jones refers to is, indeed, the deputy embassy chief, they do not believe Dwyer was actually at the compound.

Dwyer, reached today by The Times at the U.S. embassy in Guyana, said he knew of the existence of the tape but denied that he returned to Jonestown after the airstrip ambush.

Jones was obviously mistaken he said, "I was shot, you know."

Dwyer said that he had made arrangements with Jones to stay overnight at the compound after Ryan's party was to have left Nov. 18 to await a plane the following day to take Peoples Temple defectors back to Georgetown.

"He (Jones) apparently thought that I was still there (at the compound) when he made his comment."

The depnty embassy chief said he spent the night with the survivors at the Port Kaituma airstrip and did not leave until around 5 p.m., Nov. 19, when the wounded were transported to the Guyanese capital.

In his two-inch thick investigative report presented to the 34-member Committee on Foreign Affairs last May, Berdes makes no reference to the portion of the tape on Dwyer. And he admits that his staff of investigators never questioned Dwyer about the Jones comment.

The FBI has not questioned Dwyer either. The deputy chief remains today at the embassy in Guyana, and government officials there refuse to allow FBI agents into the country.

Berdes says that at the time his investigators interviewed Dwyer, they were not aware of the existence of the tape. Later, when the tape was given to him, he says he listened to it and concluded that Jones was mistaken.

"We thought it (questioning Dwyer again) would be pointless," says Berdes. "I think what happened was that Jones mistook someone else for Dwyer (who had visited the commune several times before the massacre). He (Jones) was under extreme pressure . . . he only thought he saw Dwyer."

FBI agents proffered the same theory—that Jones was delirious and that Dwyer could not have been present at the camp.

Berdes argues that there is "credible evidence" that Dwyer stayed with the survivors after the airstrip shooting and spent the night with them.

But ambush survivors, including Ryan's aide Jackie Speier, are not convinced that Dwyer could not have somehow returned to Jonestown.

Miss Speier, who was wounded in the attack, said that Dwyer's leg injuries were not debilitating, that he was able to walk with little difficulty, and, in fact, left the group on several occasions.

Another survivor, who asked not to be named, recalls that Dwyer left "two or three times" after the airstrip shooting, saying he would attempt to make radio contact with the embassy.

"I would say," the survivor offers, "that Dwyer was gone more than he was there with us."

The survivor notes that there was a truck at Port Kaituma, but cannot remember if Dwyer used it. The Jonestown camp is approximately four miles from the airstrip.

Miss Speier also tells of several incidents which she claims rsise questions about Dwyer and his role in Jonestown.

She explains that when embassy officials briefed the Ryan party on activities

at the colony, a slide show was presented and conducted by Dwyer. One slide, she recalls, shows a smiling Dwyer in Jonestown with his arm around Jim Jones and his wife, Marceline.

"It was like a family photo, and I remember thinking how strange it seemed that a professional U.S. embassy official should be acting this way."

The former Ryan aide also says she still is annoyed at the disappearance of tape recorders and tapes belonging to her and Ryan.

Miss Speier says that Ryan and she taped and took notes of interviews they conducted with temple members after they were allowed into the commune by Jones. The recorder, the tapes and the notes were placed in a briefcase, also containing $1,000 in cash and other documents.

When Ryan and his party departed Jonestown for the airstrip, the congressman, Miss Speier recalls, gave the briefcase to Dwyer.

Miss Speier says that when the briefcase was later returned to her, the tapes the notes and the recorders were missing. The cash and other papers remained enclosed.

Dwyer counters Miss Speier's account, claiming Ryan never gave him the briefcase but that he picked it up off the airstrip after the ambush.

"I don't recall seeing any tapes in the case, but I think I remember seeing a small recorder—I'm not 100 percent sure.

"I suspect that someone got to the briefcase very quickly. The only time it was out of my sight is when I helped load the wounded on the plane," says Dwyer.

The deputy embassy chief said he gave the briefcase to Jim Schollaert, a member of the House Foreign Affairs Committee, when he returned to Georgetown.

FBI agents, Miss Speier says, questioned her twice when she returned to the United States.

"All they wanted to know about was the tape recorders and the tapes."

The Justice Department will not confirm if they have located the tapes or if they have custody of them.

State Department sources acknowledge that a CIA agent did travel to Jonestown immediately following the airstrip assault, but they emphatically deny that the agent was Dwyer.

Department sources instead say that an agent, whom they would not identify, was dispatched from inside the U.S. embassy in Georgetown to the jungle commune, but only after word was received from the airstrip that Ryan and others had been murdered.

That word came within minutes of the ambush, and sources claim it was one of the airplane pilots hired by embassy officials who radioed the information.

Statements linking U.S. Embassy officials with the Peoples Temple were made as early as May 1978, when a temple defector took her story to government officials.

Debbie Blakey, who deserted the temple commune, charged that embassy officials in Georgetown were "extremely close" to Jones. She said that the one embassy officer, Richard McCoy, who is currently assigned to the Guyana desk at the State Department, warned her not to take her assertions of oppression and possible mass suicide in Jonestown to the press.

A few days after that warning, she said, she received a letter, apparently from Jones, that referred to conversation with McCoy and threatened her life if she took complaints to the press.

Mrs. Blakey is the sister of cult member Larry Layton, the only person facing charges stemming from the airstrip massacre. Layton was recently ordered to stand trial in Guyana on murder and conspiracy charges.

Allegations of a close alliance between U.S. officials and temple members were also made by Mazor, who made several trips to the jungle outpost. His clients were local parents of temple members.

He also said he took warnings to the embassy on the activities inside Jonestown, specifically that there were weapons in the camp.

Mazor contends that Dwyer gave a copy of his (Mazor's) report to temple members during a cocktail party at the temple's Georgetown house.

"I know he did it because (temple member) Tim Carter called me from Georgetown and read me the report—my report to the consul general referring to the guns and a lot of other things," Mazor reports.

Carter, a top Jones aide, escaped from the jungle massacre scene and is now living in Idaho.

EXHIBIT D

DEPARTMENT OF STATE,
Washington, D.C., June 16, 1978.

MR. SHEWIN HARRIS,
Marlene Drive, Lafayette, Calif.

DEAR MR. HARRIS: On behalf of Secretary Vance, I want to thank you for your communication concerning the situation at the People's Agricultural Temple in Guyana.

As part of the traditional and internationally sanctioned protection services, officers of the American Embassy in Georgetown, Guyana, periodically visit the People's Agricultural Temple located at Jonestown, Guyana. These officers have been free to move about the grounds and speak privately to any individuals, including persons who were believed by their family and friends to be held there against their will. It is the opinion of these officers, reinforced by conversations with local officials who deal with the People's Temple, that it is improbable anyone is being held in bondage. In general, the people appear healthy, adequately fed and housed, and satisfied with their lives on what is a large farm. Many do hard, physical labor, but there is no evidence of persons being forced to work beyond their capacity or against their will.

Should you have a specific individual about whom you want information, please provide the name of the person and the person's date and place of birth to the Office of Special Consular Services, Department of State, Washington, D.C. 20520. During the next visit to the People's Temple by an officer of the American Embassy, that officer will attempt to speak privately with the individual in question, convey your concern, and report to you.

Sincerely,

HODDING CARTER III,
Assistant Secretary for Public Affairs and Department Spokesman.

HON. CYRUS VANCE,
Secretary of State, U.S. Government,
Washington, D.C.

DEAR SIR: You have recently received information and facts concerning the activities of a "Rev." Jim Jones in Guyana, South America.

My daughter, Raine is one of those trapped at his jungle encampment and is being subjected to a brutalizing program of mind control and repression designed to make her an active participant in his plans. I sincerely believe her life to be in danger—as well as the lives of the over 1000 Americans reportedly there.

Jones apparently espouses a program of marxism, atheism, hatred of the United States and destruction of family ties a plain depravity. He apparently has dropped all guise of being a religious organization and has emerged as a political entity in Guyana & ultimately the Carribean.

I am appealing to you as Secretary of State to instruct our Embassy officials in Guyana to bring pressure to bear on Prime Minister Forbes Burnham so that he will act to cause Jones to halt his human rights abuses directed against my daughter and others and further to send my daughter and others like her home.

I am further requesting co-operation from the State Department in seeing that mail we send our family members is delivered directly into their hands and that they are free to read and respond in complete privacy and safety. If the mail could be sent by diplomatic pouch and delivered and read in the privacy of the U.S. Embassy then relatives here might stand a chance of counteracting Jone's vicious mind control tactics.

The situation is all the more dangerous and delicate in that Jones in a letter to Congressmen and Senators on March 14, 1978 threatened that they were "devoted to a decision that it is better to die" than to suffer "bureaucratic hassles."

This ruthless man must be stopped. It is for this reason that I believe the key man in this sad drama to be Forbes Burnham. I have sent him a letter of appeal.

I am begging you to act at once in this matter, not only in our national interest but in the human rights interest and the interest of the heartbroken relatives who like myself find themselves unwilling pawns in this bizarre game Jones has initiated. My daughter Raine, must come home again safely.

Sincerely respectfully,

EXHIBIT E

[From the San Francisco Chronicle "This World," Dec. 9, 1975]

New Left Thrust—Guyana May Be the Next to Fall

(By Gwynne Dyer)

LONDON.—The next Caribbean regime to fall before the wave of new-left agitation that has already triumphed in Grenada and Dominica may be a much larger place: Guyana. Despite ever stricter security measures, Prime Minister Forbes Burnham's control of Guyana is now gravely threatened by the best-organized new-left party in the region. The Working People's Alliance (WPA), which only formally became a political party last August, has accomplished a miracle in Guyanan terms: it has bridged the gap between the races. For 15 years Dr. Burnham has been able to ignore the political views of Guyana's East Indian majority, most of whom live in the rural areas. But the WPA's support is drawn at least equally from Burnham's own constituency, the urban black minority.

Moreover, the WPA maintains the closest possible links with the traditional opposition party of the East Indians, the People's Progressive Party (PPP), which is led by the strongly pro-Moscow Marxist, Dr. Cheddi Jagan. If Burnham falls, the new regime will alarm not only Washington, but also Guyana's large and powerful neighbors, Brazil and Venezuela.

Guyana, a country the size of Britain but with only 800,000 people, located on the Caribbean coast of South America, has always been high on the list of places where the U.S. Central Intelligence Agency spent its Caribbean budget. The CIA paid for the riots that overthrew Dr. Jagan and brought Dr. Burnham to power in 1964, and it put up most of the money that allowed Burnham to fix the 1968 and 1973 elections.

Along the way, Dr. Burnham came out of the closet and revealed himself to be a Marxist, too. But through it all, despite Burnham's well-publicized trips to Moscow, Havana, East Berlin, Peking and even Pyongyang, the CIA never lost its tender regard for his welfare.

It was probably involved again in July of last year, when Burnham cancelled the election and instead held a "referendum" on a proposal effectively giving his own People's National Congress (PNC) party a free hand to re-write the constitution. All outside observers supported the opposition parties' assertion that the abstention rate was 86 percent, but Burnham claimed 97.4 percent support with only 30 percent abstentions, and declared himself the winner.

Last year the U.S. State Department did everything in its power to save Burnham embarrassment over the Jamestown mass suicide, and the financial links between the Rev. Jim Jones and the Georgetown government have been carefully ignored. Last November Britain sent troops of the Black Watch to exercise in Guyana. The only alternative to Burnham, for the past 15 years, has been Dr. Cheddi Jagan, who has never concealed his boundless affection for the Soviet Union.

One of the charms of the "free enterprise" system, however, is that the left hand frequently does not know what the right hand is doing. While the CIA was busy propping Burnham up, the International Monetary Fund pulled the carpet out from under him. The harsh austerity measures it has imposed on Guyana's economy to cure the huge balance of payments gap have hit hardest at the black urban 40 percent of the population who were Burnham's own supporters.

The main beneficiary has been in the Working People's Alliance, a radical new-left party containing many of the country's leading black intellectuals. The WPA has been cooperating closely with Chedi Jagan's PPP, and together they probably now have the support of 75–80 percent of Guyanans. No wonder Burnham is getting desperate.

Over a year ago Burnham made the army and militia (almost all black, and amounting to an astonishing one in 35 of the entire population) swear allegiance to his own PNC party and its "paramountcy" over the government. The Chief of Staff and the Defense Force Commander were dismissed in July, and replaced by police officers related to Burnham's wife, Viola.

When serious political disturbances broke out in Georgetown after some government offices had been fire-bombed on June 11, Burnham turned a gang of thugs belonging to yet another predominantly black U.S. religious group, the

"House of Israel," loose on the opposition crowds. One of them stabbed the well-known Jesuit priest Bernard Darke in the back during the demonstrations, killing him instantly.

As a consequence not only the Indian sugar workers, but also the mainly black bauxite workers, went on an openly political and closely coordinated strike that shut down the economy's two main export industries. Burnham managed to break the strikes after six weeks (allegedly by making death threats against the families of the strike leaders), and for the moment all is calm again in Guyana. But it is an angry calm, and Burnham has never been more isolated.

At the end of October, Burnham illegally postponed elections for the second year in succession. Immediately afterwards his Education Minister was assassinated, whereupon the university was closed down for the rest of the year, and police began seizing typewriters and stencils from private houses to stifle dissent. (The opposition paper has already been strangled by the withholding of its newsprint ration.)

The African-Indian racial divide that served Burnham for so long has been closed, at least temporarily, by a younger generation of new-left intellectuals led by men like Professor Clive Thomas, probably the Caribbean's leading Marxist economist, and Dr. Walter Rodney, a well-known Marxist historian. If Burnham cannot open up the racial gap again—which could be a very ugly business indeed—he may not keep his hold on power much longer.

TESTIMONY OF W. WILLIAM WILSON, ATTORNEY AT LAW

Mr. WILSON. Thank you, Senator Huddleston, for allowing me this opportunity to appear before the committee. My name is W. William Wilson, and I am an attorney representing the parents of Gary Acker. He is a prisoner in Angola who was sentenced to 16 years for his participation in the civil war there in 1976. I also represent Sheila Gearhart and her four children. She is the widow of Daniel Gearhart who was executed by a firing squad in Angola in 1976.

I can summarize by getting into those particular issues that motivated my dispute with this proposed charter. I have represented these people for 4 years. Approximately 2 years ago, when John Stockwell wrote his book, "In Search of Enemies" we began to give greater credibility to the mercenary recruiter, David Bufkin. He had always maintained that he was recruiting for the CIA. Everyone said he was probably lying, since there was always official denial of any government involvement in the Angola operation or use of Government funds for the recruitment of mercenaries. Quite frankly, we tended to believe the denials because the men who went over there were totally unqualified to take part in any type of covert paramilitary operation. Acker, for instance, was a 21-year-old ex-Marine who had received a psychological discharge, and who had no combat experience whatsoever. He was unemployed at the time.

I do not know if you recall the press that appeared at that time. The Secretary of State and the President in their public statements led us to believe that the fate of their free world hinged on the outcome of that particular confrontation.

My clients went over there believing that they were serving U.S. interests. It is important to emphasize that there were hearings in the House of Representatives at that time concerning the issue of Government involvement in luring Americans to go to Angola. Officials denied any involvement and testified to the effect that Gearhart and Acker were certainly "serving the interest of American foreign policy and we have sympathy for them." But these officials ultimately said that since

the Agency was not involved in the recruitment of the men, there was nothing they could or should do now.

About 3 weeks ago, John Stockwell, the CIA's Angola Task Free Commander, admitted to me that in fact the Agency was involved in recruitment activities in the United States. Now, that contradicts all official testimony. It is obvious that he probably would not have given me this information if your charter had been in effect.

I do not want to dredge up old issues. I am sure you heard testimony on a lot of this material, and I do not want to be repetitious. But Stockwell says that in 1975 and 1976 when CIA agents came to New York from the FNLA and UNITA, they met with the press; then they came to Washington, D.C. Stockwell now admits that in November 1975 the CIA found out that these agents were recruiting Americans to fight in Angola, and that they continued to fund that operation until March 1976, after the Americans had already been captured.

I asked Stockwell if they were concerned about violation of the Neutrality Act and the Foreign Enlistment Act. He indicated to me that there was no concern of ever being called to account for it, but yes, they were aware that what they were doing was illegal. They felt that since there was no direct contact with Agency officers, in other words, U.S. citizens working out of Langley—although the recruiter himself says that he did meet with the two Agency officers, who were described in Stockwell's book, in a hotel room in New York—a connection with the CIA could never be proved. I would argue that even if the recruits did not meet with the officers, it was an operation that was conducted illegally in this country by the CIA and they are responsible for the consequences.

As an attorney trying to represent the families of the victims it has been extremely difficult to get information. FOIA is frankly not adequate in a case like this. I filed a very broad Freedom of Information Act request. I think it was the kind that Deputy Director Carlucci probably did not appreciate. We asked for just about everything and did not request a waiver of fees simply because Mr. and Mrs. Acker wanted to make sure they could get what was available.

Well, they gave us a blanket denial on national security grounds. We had to think there probably was something in there that they could have let us have that would not have been classified or damaged national security because I imagine they had rooms full of data.

In any event, I frankly do not believe that the Freedom of Information Act is really adequate for us. We have to depend on somebody's conscience to persuade him to come to the family that has been abused to and just tell them the truth.

Senator HUDDLESTON. Have you been able to get any information from the Agency?

Mr. WILSON. No; and I have tried to understand that. I suspect that because the recruitment of mercenaries is such a volatile issue in Africa that, quite frankly, if the United States acknowledges that they did that, it would be damaging. There is just no question about about it, and it would be useful propaganda for our enemies.

So you get into a situation where there is a balancing of interests. Naturally, I favor the interests of the families. Sometimes it is dangerous to automatically tilt toward the short-term expedient which

appears to be in the national interest while sacrificing the welfare of individuals.

I just thought I should mention that there is a fellow named Ed Arthur, who was an FBI informant—and I do not have this in my prepared statement. He wrote an article in Soldier of Fortune magazine, "Revealing All." He apparently had infiltrated this group of recruiters and was informing on them until the time that they left the United States. One wonders why the FBI did not stop them.

Well, in any event, I think you can understand why we focus our attention on the Agency. We have been searching everywhere. We talked to anybody who would have any kind of data. As you notice from the documents we have included, we have come across all the various articles in the press accusing them of collaborating with Nazi war criminals and all of the other outrageous charges, and it is difficult to evaluate whether these articles contain the truth or not—but they are shocking.

I think, if you look at the history of the Agency since 1954–55, it is not a particularly sterling record as an intelligence agency. I assume that you recognize that because Senator Moynihan in his statement indicates that this bill is a "reconstruction of the intelligence community." I do not think you would be doing that unless you recognized there were some substantial problems.

But, as I read Deputy Director Carlucci's and Admiral Turner's testimony, they seem to be making the argument that their whole problem is one of perception. At one point Deputy Director Carlucci indicated that "we still have the best intelligence agency in the world." I cannot believe that if it really were the best, we would have to reconstruct our entire intelligence community. There has to be a serious problem.

I do not see that the list of problems they have had including the Bay of Pigs, can really be attributable to FOIA or to agents revealing secrets. There must be some fundamental management problem in the Agency.

I allude to that in my prepared statement. As I researched the 1947 act and the 1949 enabling legislation, I found many references to the "loophole" which got the CIA into intelligence gathering and operations. It was a mistake to have a civilian agency take on these responsibilities. And I suggest that these functions should have been left to the military. The Agency should have performed its initial function of coordiating intelligence and reporting directly to the President.

I have talked to Colonel Fletcher-Prouty and I mentioned him in my prepared comments. Colonel Prouty was apparently in charge of assigning personnel for covert operations that were conducted by the CIA from 1954 until 1963. In his book, "The Secret Team," he talks about how the Agency had a debilitating effect on the military, and he names a group of senior officers whose primary loyalty was to the CIA and not to the military. Colonel Prouty has revealed that since 1954, "whenever we saw the KGB we ran the other way."

I believe it was Senator Domenici who in his statment indicated that in 1950 and 1954 we were effective in Greece and in Europe. Our problems seem to date from the time when Prouty says that the CIA decided to run the other way.

But in any event, I am sure you can hear testimony on that point if you are interested.

There are two other important things. This notion that the CIA is somehow going to protect us in these difficult times is the argument advanced for sacrificing individual rights, and for denying greater freedom of access to the Agency.

It just seems to me that when you analyze the setbacks that we have suffered internationally in the last few years, that it has not really been the KGB that has been responsible. We have gone far beyond that. It was Soviet tanks and regular military divisions that won the war in Angola, in Ethiopia and, of course, in Afghanistan. I cannot imagine a CIA officer being particularly effective against invading Soviet troops.

President Carter has admitted that even our regular military would be ineffective in the Middle East without resorting to nuclear weapons. If the military cannot salvage the situation, it seems to me that we have gone beyond the point where the clandestine services, through the use of a covert operation, are going to be particularly effective.

The point is we have to be very sure of what we are going to get in return for unleashing this Agency. Are they going to be effective if we do this? Mr. Snepp's book was an embarrassment to the CIA because it revealed the CIA's sacrifice of its Vietnamese agents. I am sure that affected the CIA image internationally. But when you are incompetent, and you make a mistake. that does affect your credibility internationally; and your ability to get cooperation from people that might be hurt if you reveal secrets. Snepp's crime was to criticize his superiors' competence.

In the last week it has been brought to my attention that a fellow who was instrumental in this Jonestown affair was involved in recruiting mercenaries in Angola. I am trying to find out if he was involved in the same recruitment operation that was conducted in this country. But unfortunately this information is extremely difficult to get.

I did get ahold of the testimony of Mr. Joseph Holsinger, who was Congressman Ryan's administrative assistant, and he makes some very serious allegations. He seems to feel that the Agency might have been involved in the murder of Ryan. I just do not know whether this was true or not, but it seems to me that this is an extremely serious charge. It shocked me. There was also the connection with my particular case.

It is apparent that Holsinger has made a very persuasive case that the State Department and the CIA knew that American citizens were suffering and being abused in Guyana, and yet they lied to the families when they made inquiries. I do not know why. He suggests the reason they did that was to protect some type of covert operation that was ongoing.

But in any event, if there is any possibility that the Agency was involved in something like this in any way, it ought to be investigated thoroughly. I believe the Foreign Affairs Committee of the House has sent a letter to the Intelligence Committee over there, asking them to investigate this matter. I just thought I would call that to your attention at this time.

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I think those are the major points I wanted to cover.

Senator HUDDLESTON. Do you have any specific suggestions of how the charter legislation that has been presented at this time could be changed to meet some of the concerns that you have?

Mr. WILSON. Well, I read the testimony of Morton Halperin and the ACLU on this issue of providing some type of civil remedy because I can attest to the difficulty of obtaining information. The constitutional tort theory is not totally adequate in some situations where very grievous wrongs have been committed.

They did have some positive ideas. I think there might be some way to fashion some sort of civil remedy, perhaps some type of congressional forum where aggrieved citizens would be able to get some type of redress. But frankly, I think it is going to require some typo of creative input from experts in legislative theory, as opposed to the local attorney trying to deal with a tort victim. But I do believe that it is something that has to be addressed. The ACLU's recommendations seem to be very cogent and on point to me.

Senator HUDDLESTON. Your position would be that the freedom of information section should be tighter, as far as the Agency is concerned, rather than give it more flexibility?

Mr. WILSON. Yes. I understand the problems with that, but I really believe that, frankly, the Freedom of Information Act has been very useful on some of this information concerning biological warfare experiments and things of this nature. There has to be concern on the part of the public since it is in their vital interest to know if a Government bureau is doing something like that. A lot of this information came out through FOIA.

Senator HUDDLESTON. In your case the charter as it is written now does not restrict an individual from getting information relating to his own activities.

Mr. WILSON. That is true.

It is my opinion that probably it would not help him simply because I believe that the national security exemption would probably prevent a lot of the information from coming to my client in any event.

Senator HUDDLESTON. Do you have a request pending before the Agency now?

Mr. WILSON. We did not appeal that request because we thought we would go ahead and file another one that was a little more specific.

Senator HUDDLESTON. You intend to do that?

Mr. WILSON. Yes; I do. But I was not encouraged by the individuals I talked to, they were very polite, but they did not indicate they were looking forward to receiving the other request. But I certainly do intend to do that.

Senator HUDDLESTON. Do you think it is essential for your client to obtain information from CIA?

Mr. WILSON. I think it is essential to these clients to demonstrate the responsibility of the Government in their plight, and that is in their vital interest. That is, frankly, what we are up against.

Senator HUDDLESTON. How would it change his situation if you could determine that he was in fact recruited by an employee of the U.S. Government?

Mr. WILSON. As an example, 3 weeks ago we met with Dick Moose,

who is the Assistant Secretary of State for African Affairs. The State Department had been assuring us for 4 years that they were doing everything they could to get Acker back. I do not know what made me ask the question, but I said, "Have you ever asked for his release," and he said, "No, we have not done that." I said, "Well how would you feel"—I was sitting there with Gary's parents—"if you were the parents of this young man, meeting with an official, asking that question; and after 4 years of assurances that they were doing everything they could they admitted to you that they had not even bothered to ask for an early release." He said, "I would be very upset and angry." I said, "Well, that is, in fact, how we feel."

I think that, frankly, there was this evasiveness to avoid admitting any responsibility. We had the telegram from President Ford indicating that the Americans had committed no crime. If they have not committed any crime, according to the President under international law, or Angolan law, or U.S. law, then we cannot recognize the legitimacy of their imprisonment and are obligated to go ahead and try to obtain Gary Acker's release.

So the State Department has been trying to stay away from us because they do not want to acknowledge responsibility because of the political implications of it.

Senator HUDDLESTON. Have you talked to your client personally?

Mr. WILSON. The parents or the individual who is in prison?

Senator HUDDLESTON. The one in prison.

Mr. WILSON. Senator McGovern was the last American citizen to have contact with Gary Acker when he visited Angola; I believe that was 18 months ago. We did get word just recently from a fellow prisoner who was released that Gary was in good health. But we cannot seem to get mail through.

Senator HUDDLESTON. So, you have not had this story directly from him.

Mr. WILSON. Well, of course, I defended him at the trial in Angola. There was some information that came back afterward. You have to understand that before we went over there we met with the State Department. They told us, "Listen, there is nothing much we can do. These fellows went over there on their own in violation of U.S. law." This was their public statement as well. "But, as a humanitarian gesture we will take you in and brief you on Angola."

One of the first things that we said when we met with the prisoners was that we had been briefed by the State Department before coming over. One of the first questions I asked them was, "Was there any CIA involvement in your recruitment?" You know, when you put that into context, knowing what they knew; knowing we had been briefed by the State Department. Here is a lawyer coming over from the States. Everybody assumed we were CIA officers over there trying to protect the agents.

They must have assumed that we did not want them to talk about that, or we would not be foolish enough to ask them a question that we already knew the answer to, especially in a room that was presumably bugged by the KGB and the Angolan intelligence.

So, I do not believe we got forthright information from them. As a matter of fact, it was very evident in Gearhart's testimony, where we

told him to tell the truth. Everything he told us was innocent. We said, "All you have to do is tell the truth." He got up there in front of that tribunal and they tore him apart because he could not tell the truth. There were several things he had not told us in the conference room. For instance, that he had sent off $5 to join the Wild Geese Club from an advertisement in Guns and Ammo Magazine. They sent him a card.

Apparently the "Wild Geese" are a famous group of mercenaries in the Congo, which apparently Gearhart identified with, but he was never a mercenary. He had no combat experience at all.

So, that came out at the trial. You can imagine, they already had the identification when they confiscated his wallet. And the Wild Geese Club is one of the most hated organizations in Africa. So, they had him pegged as being a member of the Wild Geese Club. Then he would pause before answering questions, be evasive. They were convinced that he was an agency official.

I can still remember the judge saying when be sentenced him to death, he said, "There are some questions about why Mr. Gearhart came to Angola, but there is no doubt that he is a very dangerous individual."

I went back to the prison and asked him. "What in the world was wrong with you? All you had to do was tell the truth." He just nodded his head. I will never forget that.

They could not deal with their attorneys because of what the Government did to us. It was such a simple little thing, a simple little evasion, just simply not telling us the truth.

Senator HUDDLESTON. It is so simple that it is hardly plausible. He was interested in getting out, was he not? He wanted to win the case. He did not purposely help to prosecute himself, did he?

Mr. WILSON. I think that he felt that we were telling him that if he admitted any kind of Agency involvement, that this was not in his interest. This impression was created by the State Department deception. There is no way that Gary Acker is going to be released from prison unless the U.S. Government becomes actively involved in trying to secure his release. He is going to stay over there for 16 years. Two years ago he was lined up in front of a wall, ready to be shot. He was saved at the last minute. This occurred during a political disturbance in that country.

Gary is in mortal danger. This thing is not going to go on for 16 years. At some point this young man is going to die over there. So, frankly, it has gotten to the point now where we have to do something.

Senator HUDDLESTON. Well, we cannot try this case here today. It is very interesting and I am glad to hear your version of the experiences that you have had. I recall very vividly myself, of course, the Angolan situation and the involvement that the committee and the Senate had in it.

I would just say that the whole purpose of the charter legislation is to develop a system of accountability by which we can determine precisely what kinds of actions our agencies have been involved in and who made the decisions to get them into those kinds of actions; charter procedures are designed to insure that all aspects have been given proper consideration, including the risks involved—the risk to the individual American citizen and the risk to this country, to both our security and our prestige.

If your suspicions regarding past events are true, we would certainly be in a better position to deal with them under this kind of legislation than we are at the present time, in my judgment.

Mr. WILSON. As long as they reported it to you, and as long as it did not remain a secret.

Senator HUDDLESTON. Well, they can keep secrets from the committee just so long. Sooner or later they have to come and ask for appropriations, for one thing, to cover their activities. Then, of course, they run a considerable risk if the committee discovers that it has not been dealt with openly and fairly.

So, I think over some period of time we can have some confidence that there is congressional oversight.

Thank you very much for your testimony, I appreciate your coming here today.

Mr. WILSON. Thank you, Senator.

Senator HUDDLESTON. That concludes our session today, and the committee will stand adjourned.

[Whereupon, at 4:30 p.m. the committee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX I

SUMMARY OF TESTIMONY OF WITNESSES

GRAHAM ALLISON, DEAN, JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY—MARCH 31, 1980 (p. 389)

Primary problem within the intelligence community is the poor performance in producing estimates that provide a comprehensive basis for policy making.

Charter legislation is part of the solution if: S. 2284 is passed giving the community "authority and *responsibility* to produce first class intelligence," establishing accountability and then Congress says "let's move on".

Charter legislation is part of the problem if: The issue of "the intelligence community's mandate-even legitimacy" is left hanging allowing shifting ground rules and an ever growing thicket of regulation to guide the community.

Inertia not irresolvable differences will prevent passage of charters.

HON. GRIFFIN BELL, FORMER ATTORNEY GENERAL OF THE UNITED STATES—MARCH 27, 1980 (p. 325)

Favors comprehensive charter legislation.

Opposes charter provisions for prior notification and full and complete access by Congress. "Congress should be generally informed of the scope and nature of the intelligence activities undertaken by the Executive. However, to require prior notice or complete access without limit will sap the strength of the activity itself. Oversight should not equate to obstruction. There should be a continuing dialogue between the Executive and the Congress. But the Congress should not, in effect, be inserted into the councils of the Executive. This would alter fundamentally the checks and balances relationship intended by the framers of our Constitution."

Favors identity protection provision, but not extension of same to include those who have not had authorized access to intelligence information.

Seems to favor provision whereby intelligence can be collected against an American abroad if the President determines that such intelligence is essential to the national security.

Approves of intelligence collection with minimization procedures as adequate protection of individual privacy.

Suggests that minimization standards might be prepared by the surveillance court judge rather than by the attorney general.

ANTHONY BELLAGAMBA, EXECUTIVE SECRETARY, U.S. CATHOLIC MISSION COUNCIL—MARCH 25, 1980 (p. 314)

S. 2284 does not go far enough to safeguard the rights of private institutions, nor does it provide even adequate guidelines for the intelligence agencies.

Disagrees with sec. 132 (c, d): U.S. government should not use missioners in any way, either in the host country or in debriefing furloughed missioners in the United States.

Proposes that sec. 132(c, d) be altered so as to remove doubt of possible future involvement of American missioners with national intelligence activities of the U.S. government.

JERRY BERMAN AND MORTON HALPERN, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION—MARCH 25, 1980 (p. 145)

Opposes lack of: criminal standard for use of intrusive techniques; statutory limitations on covert investigative techniques with strict controls on uses of informants; traditional references for search warrants for mail openings and

physical searches; prohibition of COINTELPRO-type activities; civil remedies for charter violation affecting privacy or exercise of lawful political rights.

Opposes FOIA exemption for CIA.

Favors sec. 132 ban on use of clergy/media/academics for cover.

Favors identity protection provision as drawn in S. 2284.

Favors prior notice and full access provisions.

JOHN F. BLAKE, PRESIDENT, ASSOCIATION OF FORMER INTELLIGENCE OFFICERS—MARCH 25, 1980 (p. 205)

Favors comprehensive Charter legislation.

Recommends amendment of existing Charters where possible, rather than repeal and re-enactment of new legislation on a wholesale basis.

Opposes Title III creation of DNI and attendant executive offices.

Opposes detailed guidelines which foreclose prudent flexibility in meeting unforseen situations.

Strongly supports: Modification of Hughes-Ryan amendment, protection of agent identities (favors stronger provision), and partial relief from FOIA.

Supports "in a timely fashion" language regarding the issue of prior notice.

Opposes Sec. 431(b)(4)(A) necessity for Director's determination of death as result of performance of duty as condition for receipt of death gratuities.

Supports provisions for: Assistance of local law enforcement agencies, CIA personnel to carry firearms; employment in the competitive service for CIA or NSA personnel who are terminated from Agency service.

Favors deletion of the word "all" in congressional access provision.

Opposes sec. 143 (Congressional committee disclosures) as unconstitutional and unwise.

Opposes Title II electronic surveillance and physical search provisions which legislate the violation of the laws of foreign countries. Prefers provision vesting authority in the President within the framework of reporting to the two Intelligence Committees.

Opposes FISA requirement for judicial approval of a warrant prior to institution of electronic surveillance in the U.S. against a foreign embassy or agent of a foreign power.

Favors amendment to FISA to authorize applications for court-approved warrants for wiretaps and physical searches targetted against Americans in the U.S.

Opposes sec. 232 creation of new cause of action for civil relief against intelligence personnel. Criminal penalties are sufficient.

Secs. 423: 507(b) which, among other things, permit establishment and operation of proprietaries are unnecessary.

Opposes inflexibility of sec. 132 ban on use of clergy/media/academics for cover.

Opposes sec. 145(a) provision requiring audit and review of funds by Comptroller General.

Opposes sec. 103(5)(B) authorization to conduct counterterrorism activities.

Favors wartime waiver.

EUGEN BURGSTALLER, FORMER CIA OFFICER (1948–1979), NOW RETIRED—APRIL 2, 1980 (p. 524)

Concerned about language in charter regarding the Committee's full and complete access to intelligence information. This could possibly be interpreted to mean access to sources and methods. This would inhibit the Agency operationally.

Revelations of CIA activities in recent years have led to a drying up of many previously valuable sources.

Approves of close congressional oversight, but recognizes that certain situations demand speed and flexibility, i.e., instances where covert operations may be useful or indeed imperative.

Wary of creating unnecessary problems by legislating a list of dos and don'ts. Sees many advantages in an unwritten constitution for the intelligence agencies—"in not identifying to the potential enemy what you will or will not do in certain situations."

FRANK C. CARLUCCI, DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE—FEBRUARY 28, 1980 (p. 63)

Favors comprehensive charter legislation.

Offers amendment to sec. 414(b)(10) authorizing the CIA to "coordinate overt collection of foreign intelligence by entities of the intelligence community from witting and voluntary sources within the U.S. Administration amendment lan-

guage reads: "In accordance with policy guidance provided by the DNI, coordinate the overt collection . . . States." Such policy guidance is now provided by the DCI.

Opposes sec. 431(c) extension of benefits and allowances to CIA employees by authorization of D/CIA.

Suggests correlation between sec. 426 (notification of withdrawal from reserve fund) and provisions for prior notification, and the need to see that these provisions remain in agreement.

Favors community-wide application of provision regarding relief from FOIA (sec. 421(d)).

S. 2284 would give DNI coordinating authority to help promote competing analysis.

Supports provision to set up executive guidelines regarding use of clergy/media/academics rather than outright ban on such use.

WILLIAM COLBY (REID & PRIEST), FORMER DIRECTOR, CENTRAL INTELLIGENCE AGENCY—MARCH 24, 1980 (p. 129)

Approves of comprehensive charter legislation and sees S. 2284 as a viable example of such legislation.

Does not see need for prior notice provision.

Favors "fully and currently informed" provision.

Favors FOIA provision.

Favors identity protection provision. Would include those who reveal technological elements of the intelligence process.

Favors standards and procedures for collection of intelligence against U.S. persons.

Strongly favors sec. 132 provision regarding the integrity of private institutions.

Sees need for provision to clarify the need for good cover for intelligence activities.

Favors DNI in charge of CIA.

E. DREXEL GODFREY, DIRECTOR, MASTER'S OF PUBLIC ADMINISTRATION PROGRAM, RUTGERS UNIVERSITY—APRIL 2, 1980 (p. 506)

Strongly favors comprehensive charter legislation.

Favors prior notification of special operations.

Opposes exemption of certain files from FOIA. Feels that safeguards for national security considerations contained in FOIA are sufficient.

Favors ban on use of clergy/media/academics.

DR. ROY GODSON, ASSOCIATE PROFESSOR OF GOVERNMENT AT GEORGETOWN UNIVERSITY AND COORDINATOR OF THE CONSORTIUM FOR THE STUDY OF INTELLIGENCE—MARCH 31, 1980 (p. 409)

Supports charters for the intelligence community.

Believes S. 2284 is inadequate, too narrow, too complex and ambiguous.

Favors a strong statement of purpose, "defining the affirmative mission of various aspects of intelligence."

Opposes the emphasis on restrictions in S. 2284, argues that the bill sets "standards for restrictions rather than for performance."

Favors a DNI, suggests he be separate from the DCI.

Suggests the possibility of dividing the CIA into various smaller institutions according to the different functions it now performs.

Favors reestablishment of PFIAB.

Supports the establishment of integrated central files for counterintelligence and counterterrorism intelligence.

Reduce reporting requirement for special activities to the two Intelligence Committees.

Suggests relaxing the restriction on intelligence collection and tightening those on dissemination.

LT. GEN. DANIEL GRAHAM, FORMER DIRECTOR, DEFENSE INTELLIGENCE AGENCY—MARCH 31, 1980 (p. 373)

Argues changes in organization can reduce not eliminate ill effects of bad management, ossified thinking and political influence.

Favors fostering competitive analysis within the intelligence community by requesting "more than one estimate"—a different estimate from each bureaucracy.

Favors separating the functions of the DCI and the overseas clandestine element of the intelligence community to: (1) Preserve secrecy of foreign operations and (2) avoid centralization in collection and analysis thereby preventing "irresistible bureaucratic imperative towards bias."

Endorses an expanded PFIAB bringing in more members from academia and the scientific community.

WILLIAM R. HARRIS, CONSULTANT TO THE SSCI; MEMBER, RESEARCH STAFF, RAND CORP.; MEMBER, NEW YORK BAR ASSOCIATION—APRIL 2, 1980 (p. 502)

S. 2284 can be streamlined and amended to provide a positive mandate to ensure that *counterintelligence information relating to foreign intelligence* is more effectively utilized.

New legislative charters should insure that the DNI is responsible for coordination of counterintelligence (other than collection in the U.S.) relating to foreign intelligence. Sec. 304(b) should be modified to reflect this responsibility. "To scatter responsibility among the Attorney General, the Director of the FBI, the DNI, and the DCIA would be to defeat the central coordinating concept of the National Security Act of 1947."

Commends sec. 505(a) provision for FBI production of foreign intelligence as "an example of future-directed charter drafting."

Sees ultimate need to amend S. 2284 to shorten and simplify intelligence collection standards for use of those who will apply these standards.

Favors extension of coverage of Title VII to protect against intentional disclosure of classified information regarding national intelligence systems. The test should not be whether there was an intention to injure the United States. The scope of protection should be strictly limited to persons employed in a fiduciary capacity, with a duty to protect sensitive intelligence information.

JOHN R. HOUCK, GENERAL SECRETARY, LUTHERAN COUNCIL IN THE U.S.A.—MARCH 25, 1980 (p. 302)

Approves of comprehensive charter legislation.

Favors sec. 132 prohibition as a charter provision, rather than in the form of an internal regulation or executive order.

Maintains that intelligence agency use of church personnel as agents or information sources seriously inhibits the church's mission and represents unacceptable government interference in the activities of the church.

Even the mere perception of linkage between clergy abroad and national intelligence agencies seriously undermines the trust relationship with the receiving community which is absolutely essential if U.S. church personnel are to carry out the full scope of their mission.

The provision of S. 2284 allowing "voluntary contact or the voluntary exchange of information" between individuals and entities of the intelligence community could open the door to direct or subtle solicitation on the part of the intelligence agencies, possibly involving coercion. "If it is the intent of Congress to respect the integrity of the church as an institution, national intelligence agencies should not be allowed to request church personnel to engage in activities which are forbidden them by that institution". (The Lutheran churches Houck represents expressly prohibit missionaries from serving as agents or information sources for intelligence, here or abroad.)

Opposes use by U.S. intelligence agencies of any affiliation, whether real or fabricated, with religious organizations and individuals as a means of establishing "cover" for their agents. "We would like to see sec. 132(b) strengthened to prohibit their (religious organizations) use as cover for *any and all* intelligence agency activities—including counterintelligence and counterterrorism intelligence activities".

Other religious organizations to which U.S. church bodies relate, which may not be U.S. based but may be important partners in the churches' mission, should not be used by U.S. intelligence agencies for cover or for any other operation purpose.

Opposes provision (sec. 132(d)) for waiver of restrictions during wartime or period of hostilities. This waiver would undermine the integrity and credibility of the church and possibly endanger lives of church personnel.

BOBBY R. INMAN, VICE ADMIRAL, USN, AND DIRECTOR, NATIONAL SECURITY AGENCY—FEBRUARY 28, 1980 (p. 66)

Fully and strongly supports charters, specifically Title VI NSA charter.

REED IRVINE, CHAIRMAN, ACCURACY IN MEDIA, INC.—APRIL 1, 1980 (p. 432)

Recommends that restrictions on use of journalists or journalistics cover be stricken from S. 2284.

DAVID KAHN, AUTHOR, "THE CODEBREAKERS: THE STORY OF SECRET WRITING," EDITOR, NEWSDAY—MARCH 31, 1980 (p. 393)

Supports S. 2284 for "giving NSA a needed statutory base affording it security and permanence," while legislating oversight functions to ensure "NSA remains a servant of the people" and does not violate citizen rights.

Encourages SSCI to thoroughly and vigorously investigate cryptologic agencies and not be deterred by special protection accorded cryptologic information due to its sensitivity.

Argues NSA should be brought under FOIA purview.

Favors inserting words "and declassified" in Section 613(a)16 to make clause read "ensure that cryptologic information is classified and declassified in accordance with applicable law" to remind NSA of its public duties.

Urges clarification of the definition of "electronics intelligence" and "US communications".

Favors NSA Director reporting directly to the Secretary of Defense.

Favors changing S. 2284 provisions to agree with current U.S. law prohibiting interception of diplomatic traffic.

Favors converting excessive number of collectors into analysts which would: (1) Reduce the excess in volume of traffic, (2) improve data timeliness and (3) de-emphasize tactical information gathering.

Argues outside analysts are comparably vulnerable to policy makers political pressures so do not necessarily provide competitive judgments.

Urges SSCI to demand evidence that unpopular views are being aired in estimate process.

RICHARD S. KIRKENDALL ON BEHALF OF THE ORGANIZATION OF AMERICAN HISTORIANS AND THE AMERICAN HISTORICAL ASSOCIATION—MARCH 25, 1980 (p. 226)

Opposes section exempting CIA from certain provisions of the FOIA.

JACK LANDAU, DIRECTOR, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS—APRIL 16, 1980 (p. 539)

Opposes FOIA exemption provision.

Argues against DCI proposal to include publishers in identities protection provision. Considers any enlargement upon existing criminal laws to be a violation of the First Amendment.

Interprets Sec. 701 (identity protection) to mean prohibition of CIA officers from disclosure of their own identities or management errors within the CIA.

Supports Sec. 132 ban on use of clergy/media/academics. Supports provision allowing voluntary information exchanges, but strongly opposes any paid relationships.

DR. ERNEST W. LEFEVER, PRESIDENT, ETHICS AND PUBLIC POLICY CENTER—MARCH 25, 1980 (p. 308)

"All American citizens should be free to cooperate with the CIA, FBI, HEW, or any other U.S. agency, in the pursuit of legitimate national interests . . . Likewise, a missionary in any Third World country has an obligation to report important developments that affect the security and quality of life in the country in which he is a guest."

In general, opposes payment to clergy for providing information to intelligence agencies, unless time and effort expended gaining information are extraordinary; in such case, modest payment is not inappropriate, provided professional responsibilities are not infringed upon.

Seems to favor case-by-case approach regarding issue of use of clergy for cover. "If access to highly secret, sensitive, and dangerous activities on the part of an adversary . . . is needed, it may be justifiable for a CIA operative to pose as a journalist, geologist, or even a medical missionary . . . the ultimate moral measure of any such deception should be the consequences of the act . . ."

Opposes comprehensive charter legislation, especially the explicit barring of persons in certain professions from cooperating with U.S. intelligence officials. Favors the complete elimination of sec. 132(b), leaving the matter of disciplining members of a particular profession to the organization itself.

ROBERT LEWIS, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI—APRIL 1, 1980 (p. 421)

Opposes FOIA exemption for CIA.

Wants prohibition on recruitment and use of journalists for intelligence purposes.

Supports sec. 132(b) ban on use of media as cover, and not sec. 132(c) provision for voluntary exchange between journalists and CIA personnel.

Supports sec. 701 identity protection provision as written; opposes Administration proposal to prosecute all authorized and unauthorized recipients of classified information.

Urges re-drafting of CIA publication contract so as to ban writings which clearly damage national security interests, or set a time limit during which former CIA employees would be required to submit a manuscript for clearance.

ANDREW MARSHALL, DIRECTOR OF NET ASSESSMENT, OFFICE OF SECRETARY OF DEFENSE—MARCH 31, 1980 (p. 357)

Argues the "quality of analysis is not primarily determined by the general way in which it is organized, but by the GA internal programs."

States the intelligence community's analysis suffers from three problems:

(1) Overemphasis on the production of current intelligence at the expense of more in-depth long term analysis;

(2) A tendency to press for consensus answers to questions despite fragmentary inconclusive data;

(3) An over reliance on "descriptive analysis" and first level inferences derived from technical sources.

The solution to these problems is to "institutionalize intellectual competition," and specifically:

(1) Attract intelligent people particularly by providing career opportunities in analysis;

(2) Create competing analytic teams with continuity of focus on specific problem areas;

(3) Encourage "manager's support of independent review, quality control, and the equivalent of sophisticated market analysis";

(4) Apply R & D concepts to analysis methods to develop new fields of study.

ERNEST MAY, PROFESSOR OF HISTORY, HARVARD UNIVERSITY—MARCH 31, 1980 (p. 379)

Questions of analysis do *not* depend on legislation but on a) quality of mind and expertise of analysts and b) interest of policymakers.

To improve analysis:

SSCI should concern itself through budget process with the quality of recruitment and training of analysts.

SSCI should encourage the exchange of people from one branch of the intelligence community to another.

SSCI should encourage careers in analysis.

SSCI should compel the community to obtain "external assessments of the quality of its product."

SSCI should concern itself with building up the "bank of the base for analysis of problems that are not easy to anticipate."

KATHERINE A. MEYER, DIRECTOR, FREEDOM OF INFORMATION CLEARINGHOUSE—APRIL 1, 1980 (p. 448)

Opposes sec. 421(d) exemption of CIA from certain provisions of FOIA.

NEWTON S. MILER, FORMER CIA OFFICER (1947–74), NOW RETIRED—APRIL 2, 1980 (p. 512)

"Unless CI is given priority attention and support no other function of the intelligence system will be improved significantly or for long."

Does not support S. 2284 as written. ". . . (it) is not the answer to our intelligence problems: it will not basically nor substantially improve our Intelligence capabilities. It is no substitute for an Intelligence program . . . S. 2284 is an overreaction."

That S. 2284 will not give us the intelligence system we need has already been demonstrated because, since January 1978, the intelligence community has been operating under essentially the restrictions, guidelines, and provision of S. 2284—E.O. 12036.

"Intelligence services . . . will atrophy completely if there is a law—a manual—for every function and contingency." S. 2284, while designed to prevent wrongdoing, makes it difficult for the intelligence officer to do some things "right", in the sense of increasing his capability to collect intelligence and CI.

S. 2284 does not make intelligence more professionally effective, but insures the need for legal counsel in all non-technical, non-estimative intelligence activities, esp. CI. In other words, the charter is too complicated and legalistic.

CI should be centralized and within the CIA to improve CI capabilities.

SSCI should: assess the relative merits of centralized versus decentralized CI and advise executive of its findings; gain a better understanding of what CI officers need to do their job.

MELVA MUELLER, EXECUTIVE DIRECTOR, U.S. SECTION, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM—APRIL 1, 1980 (p. 457)

Opposes sec. 421(d) exemption of CIA from certain provisions of FOIA.

Favors prior notice provision.

Opposes targeting of Americans abroad with or without a criminal standard.

Opposes the conduct of "special activities".

DANIEL J. MURPHY, ADMIRAL, USN (RET.), DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY REVIEW—FEBRUARY 28, 1980 (p. 73)

DOD strongly supports NSA charter.

Approves S. 2284 formulation of missions and functions of the DNI.

Opposes writing prior notification requirement into law. Favors a "fully and currently informed" provision.

DOD is concerned with how definition of the term "special activities" will be interpreted during a time of hostilities.

Opposes outright ban on use of clergy/media/academics.

Favors provision for collection of foreign intelligence from U.S. persons abroad without a criminal standard.

Concerned about lack of waiver during wartime.

Recommends inclusion of NSA, DIA, etc. under FOIA exemption provision.

Favors eventual amendment of S. 2284 to include charter for DIA.

MARSHALL PERLIN, GENERAL COUNSEL, FUND FOR OPEN INFORMATION AND ACCOUNTABILITY, INC. (FOIA)—APRIL 1, 1980 (p. 441)

Opposes sec. 421(d) exemption of CIA from certain provisions of FOIA.

Favors no charter legislation at all, rather than S. 2284 as written.

DOUGLAS RENDLEMAN, PROFESSOR OF LAW, WYTHE SCHOOL OF LAW, COLLEGE OF WILLIAM AND MARY, ON BEHALF OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS—MARCH 25, 1980 (p. 268)

Opposes sec. 132 (ban on use of clergy/media/academics) as written.

Favors statement of support for integrity and independence of institutions of higher education in accordance with constitutional principles.

Favors prohibition of certain activities of intelligence which violate professional and ethical standards of academia.

Favors forbidding intelligence agencies from using academics for cover, from using members of academia for covert intelligence activities and for clandestine recruitment.

Favors requirement for disclosure of any contracts between intelligence agencies and academic institutions or research institutes.

STEVEN B. ROSENFELD, GIVEN ON BEHALF OF THE COMMITTEE ON FEDERAL LEGISLATION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK—MARCH 27, 1980 (p. 345)

Favor comprehensive charter rather than stop-gap approach of Moynihan bill, S. 2216.

Favor prior authorization and prior notice for covert actions.

Urge consideration of revision of sec. 103(18) definition of "special activity." Would exclusion of "counterintelligence" and "counterterrorism" ultimately permit covert operations abroad without Presidential authorization and notice to Congress such as is contemplated in sec. 125?

Oppose sec. 421(d) exempting CIA from FOIA; suggest amendment to 5 U.S.C. sec. 552(b)(7) to include within that exemption "investigatory records" compiled for "foreign intelligence" purposes and endangering the lives or safety of "intelligence personnel" to the same degree as the present language exempts files compiled for "law enforcement purposes" and disclosure of which would endanger "law enforcement personnel."

Favor civil remedies to redress *any* damage to Americans from intelligence gathering conducted in violation of charter standards, not just for electronic surveillance and physical searches conducted in violation of the charter.

Favor prohibitions against: (1) Assassinations, (2) use of academics/media/clergy, (3) unacknowledged government involvement in publication in U.S.

Oppose secs. 213 and 221 use of intrusive techniques without evidence of criminal activity. "Although there are procedural safeguards in the form of a Presidential finding . . . the bill departs from the 1978 Act's substantive safeguard for United States persons of a probable cause to believe that the target of surveillance is or may be engaged in a violation of criminal law."

Favor constitutional protections against unreasonable searches and seizures and constitutional rights of privacy for Americans overseas. Urge that procedures and standards of S. 2525 be fully applicable to electronic surveillance, physical searches, and mail openings undertaken against United States persons outside the U.S. Prefer greater procedural controls and substantive standards than Presidential authorization of sec. 213.

Urges definition of phrase "clandestine intelligence activities" (sec. 221) in terms of criminal activities.

Question need for sec. 504(b) grant of authority to FBI for activities outside the United States.

Concerned about broad grant of authority to FBI in sec. 504(a)(2)—see possible construction as broad authorization for COINTELPRO-type activities.

Favor language of sec. 701 regarding agent identity disclosure, as opposed to Moynihan bill.

KIRKPATRICK SALE, V.P. PEN AMERICAN CENTER—MARCH 25, 1980 (p. 245)

Opposes sec. 421(d) exemption of CIA from certain provisions of FOIA.

DR. JAMES R. SCHLESINGER, CONSULTANT IN RESIDENCE, GEORGETOWN CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES—APRIL 2, 1980 (p. 477)

Favors amending of "skeletal" National Security Act of 1947 as necessary, rather than enactment of comprehensive charter legislation. A detailed charter will "restrict future flexibility, severely handicap liaison relationships and agent recruitment, and grossly curtail special operations capabilities."

"The charter, in effect, publicly and explicitly states the general conditions in which agents of the United States are authorized to violate the laws of other nations."

Favors congressional notification on the basis of "fully and currently informed" as under the old Atomic Energy Act.

Opposes provision for congressional access to any and all information, fearing disclosure of sources and methods.

Opposes legislated exclusions of categories of professions or person that cannot serve American intelligence.

Opposes establishment of separate structures and staffs for the DNI and the DCIA. This would lead to dilution of strength and diffusion of effort.

Charter will damage our liaison relationships with friendly foreign intelligence services who fear exposure of intelligence exchanges.

Charter legislates a routined, bureaucratic intelligence service peopled by risk-avoiders.

Opposes the specific spelling out of a prohibition against assassination.

Feels that morale and confidence in the intelligence community could be restored to a much greater degree through passage of a joint congressional resolution noting this country's need for a strong intelligence establishment, rather than by passage of the charter "which is by and large restrictive."

U.S. must re-establish public respect for intelligence analysis in order to draw personnel into that system. There must be a system of devil's advocacy within the analysis field, receiving strong support from senior intelligence officials, the oversight committees, and the Administration.

Suggests the Committee establish a system of rewards for exceptional intelligence service done at risk and ultimately proved correct, as a means of improving the quality of intelligence.

JOSEPH R. L. STERNE, EDITOR, THE BALTIMORE SUNPAPERS, REPRESENTING CHARLES W. BAILEY, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, AMERICAN SOCIETY OF NEWSPAPER EDITORS—APRIL 1, 1980 (p. 425)

Strongly opposes sec. 421(d) exemption of CIA from provisions of FOIA.

Endorses sec. 132(b) ban on use of journalists for cover.

Urges addition of language prohibiting CIA from recruiting journalists or media representatives.

Supports sec. 701 identity protection provision as written, as opposed to language of similar provision in S. 2216.

REV. EUGENE L. STOCKWELL, ASSOCIATE GENERAL SECRETARY FOR OVERSEAS MINISTERS OF THE NATIONAL COUNCIL OF CHURCHES—MARCH 25, 1980 (p. 296)

Executive Committee of NCC urges inclusion of charter provisions prohibiting intelligence agencies from:

Recruiting or employment of missionaries, members of the clergy or church workers—American or foreign—as informants or agents in any capacity at home or abroad;

Impersonating clergy or church workers;

Establishing proprietaries purporting to be churches, church agencies or religious organizations.

The law should explicitly direct the above listed prohibitions without *any* exceptions for special permissions by agency senior officers, the President, or the courts.

Roles of missionary and intelligence agent are incompatible. The missionary cannot act as intelligence agent without impairing the mission, not only of the individual missionary involved, but of all missionaries. Therefore, it is insufficient for various churches to forbid their missionaries to act as spies, and the government itself must legally foreswear the use of any missionary in its espionage roles.

Lack of government prohibition of use of missionaries for intelligence purposes results in increased difficulty for the missionary trying to establish credibility, and destroys the essential relationship of trust and confidence between clergy and their people.

ETHEL TAYLOR, NATIONAL COORDINATOR, WOMEN STRIKE FOR PEACE—APRIL 1, 1980 (p. 462)

Opposes sec. 421(d) exemption of CIA from certain provisions of FOIA.

Favors greater delineation of "special activities" sanctioned in S. 2284.

Opposes sec. 214(a) provision for conduct of counter-intelligence and counter-terrorism intelligence against U.S. persons.

ATHAN THEOHARIS, PROFESSOR OF AMERICAN HISTORY, MARQUETTE UNIVERSITY—MARCH 25, 1980 (p. 249)

Opposes S. 2284 exemptions of CIA from certain provisions of FOIA.

ADM. STANSFIELD TURNER, DIRECTOR OF CENTRAL INTELLIGENCE AGENCY—FEBRUARY 21, 1980 (p. 22)

Favors comprehensive charter legislatiou.
Disagrees with organizationai structure of S. 2284.
Favors comprebensive wartime waiver provision.
Opposes prior notification provision. Favors "in a timely fashion" language.
Notes failnre of sec. 142 to specifically mention duty of DNI to protect intelligence sources and methods.
Opposes congressional access to "any and all" intelligence information, noting chilling effect on friendly intelligence services.
Opposes sec. 132 ban on use of ciergy/media/academics for cover. Prefers regulation hy executive branch guidelines.
Sees failure of S. 2284 to confirm CIA ability to protect intelligence sources and methods:
Wants intelligence community-wide relief from FOIA.
Wants sec. 701 (identity protection) provision extended to include any person who knowingly assists another to identify intelligence personnel.
Favors additional amendments to the Foreign Intelligence Snrveillance Act including:
Modification of targeting standards to permit targeting of dual nationals who are senior officials of foreign governments, while retaining U.S. citizenship.
Modification of targeting standards to permit targeting of former senior foreign government officials even if they are not acting in the U.S. as members of a foreign government or faction.
Extension of emergency surveillance period from 24 to 48 hours.

RAYMOND J. WALDMANN, INTELLIGENCE CONSULTANT, STANDING COMMITTEE ON LAW AND NATIONAL SECURITY, AMERICAN BAR ASSOCIATION—MARCH 27, 1980 (p. 341)

Not completely persuaded of need for comprehensive charter legislation.
Public discussion may bave prompted the adoption of legislation on three key issues without the problems of comprehensive charter legislation. These issues are: (1) Hugbes-Ryan reporting requirements; (2) unauthorized disclosure of agent identities; (3) partiai exemption of CIA et al. from FOIA.
Concerned about involvement of jndiciary, through warrant procedure, in possible sanctioning of intelligence operations which violate laws of other countries. Can judges protect civil liberties and not merely act as rubber stamps?
Concerned about direct involvement of Congress in the management of executive agencies. "Congress should concern itself with authorizations, restrictions, and procedures. The writing of detailed rules and regnlations is more appropriate for an administrative agency for its own operations."

JUDGE WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION—FEBRUARY 28, 1980 (p. 59)

Approves the extension of FISA standards to include physical searches.
Concerned about the impact of FOIA on sensitive records of the FBI re FCI and counterterrerism activities. Endorses provision for relief from FOIA.
Suggests inclusion of FBI and other members of the intelligence community personnel and assets in Title VII protection provision.
Favors standards for CI and counterterrorism intelligence of sec. 214. Current statutory language, which is limited to facts or circumstances indicating a person is or may be currently engaged in inte'ligence activities, must be clearly examined in the context of situations where past completed intelligence activities continue to be of legitimate investigative concern.

HON. LOWELL WEICKER, JR., U.S. SENATOR—MARCH 24, 1980 (p. 109)

Favors comprehensive charter legislation hut feels that S. 2284 provides for too little Congressional oversight.
Opposes provision exempting CIA frem some requirements of FOIA.
Feels that Intelligence Oversight Board will serve the Executive branch and not the American public.
Opposes surveillance of U.S. persons abroad in the absence of a criminal standard.

Concerned about inadequate limitations on permissible counterintelligence activities. Sees revival of COINTELPRO-type programs.

Opposes provision waiving prohibition against use of clergy/media/academics. Urges inclusion of domestic corporations, other than CIA proprietaries, in this provision (sec. 132 (b)).

Opposes creation of DNI.

Opposes lack of disclosure of CIA expenditures.

Favors involvement of House and Senate Intelligence Committees exclusively in intelligence oversight, authorization, and appropriation functions, with any committee action requiring a large quorum.

PETER WEISS, VICE PRESIDENT, CENTER FOR CONSTITUTIONAL RIGHTS—APRIL 1, 1980 (p. 465)

Endorses ACLU position regarding those provisions of S. 2284 affecting U.S. constitutional rights.

Opposes sec. 421(d) exemption of CIA from certain provisions of FOIA.

Concerned about lack of regard for international law in S. 2284, especially with regard to conduct of "special activities."

W. WILLIAM WILSON, ON BEHALF OF PARENTS OF GARY ACKER; ALSO SHEILA GEARHART AND FAMILY—APRIL 16, 1980 (p. 576)

Favors replacement of FOIA exemption provision with language in H.R. 6820, the House version of Charter legislation.

Favors language change in identity protection provision to allow CIA officers to reveal their own identities. Would add provision for whistle blowers.

Favors ACLU suggestion of provision for civil remedy for those seeking redress for wrongs inflicted upon them by the CIA.

Urges consideration of return to clandestine services to the military services.

DR. JAMES E. WOOD, JR., EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS—MARCH 25, 1980 (p. 288)

Favors charter provision banning use of clergy for intelligence gathering purposes.

Opposes use or solicitation of missionaries to gather or report intelligence information on a paid or unpaid basis; opposes use of agents posing as missionaries for purposes of intelligence gathering.

Such activities by government are a blatant affront to separation of church and state mandated by the First Amendment.

Solicitation and/or use of clergy, missionaries or church workers in collection of intelligence perverts the church's mission without accomplishing the state's objective.

Use of clergy, missionaries, or church workers to gather intelligence will be a death sentence for many clergy members.

Urges that sec. 132 be reworded to remove ambiguities and to state in plain English that a U.S. intelligence agency may not (1) pay or provide other valuable consideration to clergy, missionaries, or church workers to serve as intelligence gatherers; (2) coerce, intimidate, threaten, or blackmail any clergy, missionary, or church worker into becoming an intelligence gatherer; or (3) solicit any intelligence matters from these people. That is to say, remove the waiver to be found in sec. 132(d) on p. 20, lines 1–11.

Urges a clear spelling out of a guarantee that religious workers will not be used as gatherers of intelligence unless the religious worker wholly voluntarily initiates the contact with the intelligence agency.

APPENDIX II

THE COUNCIL,
CITY OF NEW ORLEANS,
New Orleans, La., February 13, 1980.

HON. WALTER S. MONDALE,
President of the Senate,
Senate Office Building,
Washington, D.C.

DEAR MR. MONDALE: We are enclosing herewith a certified copy of Resolution R-80-35 which was adopted by the Council of the City of New Orleans.

This Resolution fully endorses the President's position in strengthening our intelligence agencies and calls on Congress to support this issue.

Sincerely,

SIDNEY J. BARTHELEMY,
Council President.

Enclosure.

RESOLUTION R-80-35, CITY HALL, FEBRUARY 7, 1980

By Councilmen Giarrusso and Early:

Whereas, the intelligence apparatus of the United States, particularly the C.I.A. and the F.B.I., has been severely curtailed in its effectiveness by legislation over the past several years, and

Whereas, the Freedom of Information Act is necessary to protect the rights of individual citizens; however, neither this nor any other legislation should severely limit the effectiveness of America's intelligence agencies in the light of the current aggression being committed in the world, and

Whereas, an effective intelligence operation in international affairs is essential to the security of our country because wars are not won by military operations alone, and

Whereas, the President of the United States has asked in his State of the Union Address to remove "unwarranted restraints on our abllity to collect intelligence and to tighten our controls on sensitive intelligence information"; now, therefore be it

Resolved by the Council of the City of New Orleans, That the Council hereby endorses the position of the President and calls on Congress to support the President in strengthening the effectiveness of our intelligence agencies for the security of our nation and its citizens.

Be it further resolved, That copies of this resolution be forwarded to the President of the United States, the President of the Senate, Speaker of the House of Representatives and to the entire Louisiana delegation in Washington, D.C.

The foregoing resolution was read in full, the roll was called on the adoption thereof and resulted as follows:

Yeas: Bagert, Barthelemy, Ciaccio, Early, Friedler, Giarrusso, Singleton—7;
Nays: None;
Absent: None;
And the resolution was adopted.
The foregoing is certified to be a true and correct copy.

JOSEPH C. PETERSON,
Council Clerk,
City of New Orleans.

APPENDIX III

THE AUTHORS LEAGUE OF AMERICA, INC.,
New York, N.Y., March 4, 1980.

Re use of journalists as intelligence agents

HON. WALTER D. HUDDLESTON,
Chairman, Subcommittee on Charters and Guidelines, Select Committee on Intelligence, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN HUDDLESTON: The Authors League is the national society of professional authors and dramatists. Many of our 8,800 members write books and magazine articles on political, social, economic and other issues of public interest. We are, therefore, concerned with the use of journalists and authors by the Central Intelligence Agency, and other government agencies, for intelligence purposes.

The Authors League believes that the National Intelligence Act should unequivocally prohibit the CIA (and other agencies) from using journalists and professional authors of books and magazine articles to gather information or perform other intelligence services. There should not be any exceptions to the prohibition. And it should extend to professional authors of books and magazine articles since their involvement with the CIA creates the same threats to freedom of expression that arise in the case of newspaper or broadcast journalists. Much valuable "investigative reporting" on foreign and domestic issues of vital importance is done in books and magazine articles.

The use of journalists and authors by the CIA for intelligence purposes inhibits their freedom to perform their journalistic functions, and endangers the integrity of the writing. Moreover, the fact, or even possibility, that some journalists and authors may play a dual role as CIA retainers can discredit other writers, have a chilling effect on their potential sources of information, and erode confidence in the United States press both here and abroad.

The first amendment's protection is not limited to direct restraints on freedom of expression. It also precludes actions by government agencies that may indirectly inhibit the freedom of journalists and authors to do their work, or subject them to governmental direction, or threaten to produce these results. Among other reasons, journalists, authors and their publishers are protected by the First Amendment so they may secure and disseminate information to the public concerning the activities of our government, and its officials. That purpose requires that members of the press should not be exposed to governmental control or influence. The use of journalists and professional authors for intelligence purposes by the CIA or other agencies creates the threat that the agency can exercise such control or influence over their reporting and writing, and thus violates the spirit and letter of the First Amendment.

The Authors League urges that the prohibition in the National Intelligence Act against the use of journalists and professional authors for intelligence purposes should not be qualified to permit waivers of the restraint in "exceptional cases". Any exceptions will be difficult to enforce, and will erode the effect of the prohibition. Moreover, a provision permitting waivers will foster suspicions that the CIA and other agencies can and will employ journalists and professional authors for intelligence purposes, and that suspicion itself will harm the press and diminish its opportunities to gather information from potentially useful sources.

Sincerely yours,

JOHN HERSEY,
President.

APPENDIX IV

ASSOCIATION OF AMERICAN PUBLISHERS, INC.,
Washington, D.C., March 10, 1980.

Senator BIRCH BAYH,
Chairman, Senate Select Committee on Intelligence, Washington, D.C.

DEAR MR. CHAIRMAN: This Association, which represents the major United States publishers of textbooks, historical and diverse other works of nonfiction, strongly opposes enactment of the various proposals to exempt the Central Intelligence Agency from virtually all provisions of the Freedom of Information Act. I refer to such provisions as Sec. 421(d) of S. 2284 (the "National Intelligence Act of 1980", commonly referred to as the "CIA Charter") and to other more specific bills, such as the "Intelligence Reform Act of 1980". Our members deeply believe that a strong national intelligence agency is essential to the preservation of our democratic form of government. On the other hand, they are not prepared to exempt the CIA from public accountability, which would be the inevitable result of a blanket denial of agency information sought by citizens of the United States. We also believe that irreparable damage to legitimate historical and journalistic research would result from the kind of sweeping exemptions contained in the proposed legislation, and that this in turn would preclude full informed public debate on issues of the gravest consequence to our nation and our society.

We are impressed by the political and historical importance of the documents and related information already made public by the CIA under terms of the FOIA. We are equally satisfied that the agency is amply provided with legal safeguards against the release of vital information that must properly remain classified and nonpublic. We therefore urge, in the strongest possible terms, that the Congress refrain from enacting hastily drafted, overbroad, ill-considered and quite unnecessary legislation that would arbitrarily curtail the people's right to know what its government is doing. That would be a dangerous and unwise course of action for our country.

Sincerely,

TOWNSEND HOOPES,
President.

APPENDIX V

MARCH 20, 1980.

Lt. Gen. EUGENE F. TIGHE, Jr.,
Director, Defense Intelligence Agency,
The Pentagon, Washington, D.C.

DEAR GENERAL TIGHE: On behalf of the Senate Select Committee on Intelligence, I thank you for your testimony on S. 2284, the National Intelligence Act of 1980. The Committee would appreciate it if you would answer the attached questions for the record to supplement your testimony before the Committee. The questions reflect the Committee's desire to have your personal and professional judgment on issues relating to our consideration of a charter for the intelligence community.

As the Committee is eager to expedite the hearing process of this important piece of legislation, we would appreciate receiving your responses as quickly as possible.

With kind regards.

Sincerely,

BIRCH BAYH,
Chairman.

Attachment.

QUESTIONS FOR THE RECORD FOR GEN. EUGENE F. TIGHE, JR.,
DEFENSE INTELLIGENCE AGENCY

Question. What are the major challenges and requirements that the U.S. military intelligence community must meet in the future, say, the next ten years? Does the charter provide the framework of organization and authority necessary to meet these challenges and the requirements of U.S. national defense?

Answer. The major challenges and requirements that the U.S. military intelligence community must meet over the next ten years concern not only the Soviet Union, but the Peoples Republic of China (PRC) and non-aligned and less developed countries as well.

The military intelligence community will have to determine with a high degree of confidence, Soviet political, military, economic and sociological goals worldwide. We will have to accurately identify and interpret Soviet objectives and capabilities regarding force structure, strategic supremacy, international agreements, power projection, surrogate forces and expansionism. An understanding of Soviet perceptions concerning the resolve of the U.S., NATO and non-aligned countries to thwart Soviet aims will be vital.

With regard to the PRC, U.S. military intelligence must be able to forecast Chinese military capabilities and intent, their military strategy and doctrine and the PRC perception of the international balance of power to include China's role.

Military intelligence, in the 1980's, must continue to monitor the political, military, economic and sociological objectives of the non-aligned and less developed countries as well as their stability and military capabilities. Sound analysis will be needed with regard to developing regional, geopolitical, economic and military associations or organizations. Nuclear proliferation will continue to be a major requirement for military intelligence as well as R&D breakthroughs which could change regional and world-wide power balances. Added emphasis must be placed on enhanced analysis of the implications of technology transfer. There will be an increasing need for an improved capability to assess the threat to our overseas installations and U.S. nationals from international terrorist organizations.

In order to maintain and better our analytical capability in the 1980's, military intelligence will need increased on-line data from national assets to support theater forces, especially in contingency operations. We will have to enhance our capability to fuse and disseminate data in a timely manner for national crisis management, warning and operational support.

Generally speaking, S. 2284 does provide a framework for meeting these challenges. However, this charter legislation does not provide the specific framework of organization and statutory authority for DIA to meet these challenges and requirements. Although departmental authority for DIA is outlined in DoD directives, this Agency's national intelligence role and that of supporting our Armed Forces is absent from S. 2284.

CHARTER FOR DEFENSE INTELLIGENCE AGENCY

Question. Why does S. 2284 not include a specific charter for DIA. In your personal opinion, should DIA have a statutory charter?

Answer. Although DIA has national intelligence responsibilities, the Agency is a departmental entity under the Secretary of Defense, with an obligation to support the JCS, Unified and Specified Command and other DoD components. For those reasons, the Secretary of Defense does not desire a legislative charter for DIA.

In my opinion, DIA should have a statutory charter in S. 2284 or any follow-on intelligence charter legislation. Such legislation would:

Establish clear DIA authority in the area of national production with respect to the Agency's military intelligence contribution to national intelligence.

Strengthen the healthy concept of competing analysts.

Increase perception of DIA as one among equals and assure an equal position in the Intelligence Community.

Give the Services, through DIA, an equal voice in expressing the views of the military.

Provide consistency since CIA and NSA have charters.

Strengthen DIA's influence in recommending the use of national systems to support the U&S Commands and Defense production priorities and objectives.

Afford DIA statutory standing and alleviate the necessity of DIA's repeatedly justifying its existence.

Significantly enhance Agency morale and assist in recruiting and retaining bright and experienced talent, including top grade civilians through career development programs similar to CIA and NSA.

Enhance DIA's image and provide for improving personnel resources, grade structure, flexibility and physical facilities.

Flexibility would allow experienced analysts to stay in key analytical positions without endangering promotion prospects.

CONTINUED PRODUCTION OF NATIONAL INTELLIGENCE

Question. There is no specific reference in the charter to the analytical functions of the Defense Intelligence Agency on the State Department Bureau of Intelligence and Research. Is it clear that these agencies will continue to produce national intelligence analysis, and that their views must be taken into account in any community-wide product?

Answer. S. 2284 is not clear as to the continued production of national intelligence by DIA and State's Bureau of Intelligence Research (INR) nor that their views will be taken into account in any community-wide product. The charter legislation states that these two agencies will exist and be a part of the Intelligence Community under the overall purview of the Director of National Intelligence. There are no provisions that state specifically that DIA and INR will perform national analytical functions as members of the Intelligence Community. Consequently, there remains the possibility, remote though it may seem, that DIA and INR—or at least one of them—might be omitted or excluded from the intelligence process at the national level, either on specific projects or as a matter of general practice. It should be noted that DIA speaks for the military establishment in armed forces intelligence and that its record in this performance has been a highly effective one. A statement of such functions would be a worthwhile inclusion which would not detract from any other member or element of the Intelligence Community.

DISCIPLINARY POWER

Question. Section 141(i) of the charter grants to the head of each intelligence agency broad disciplinary power to fire or penalize employees for violating the charter or violating security regulations. The CIA Director already has such powers, but other agency heads do not.

What impact does this power have on ordinary civil service protections for agency employees?

Since members of the intelligence community are members of the Armed Forces, doesn't this provision violate their rights as specified in detail in the Uniform Code of Military Justice (UCMJ) especially since the UCMJ covers security violations?

Answer. If Section 141(i) is enacted the question is asked what impact it would have on Civil Service protections for Agency employees. This being a new statute it would stand on its own, overriding any existing Office of Personnel Management regulations. It is noted that there is no provision for appellate review.

This question also refers to military members of the Armed Forces assigned to the Intelligence Community. At best this provision should be clarified so that there is no confusion concerning overriding the UCMJ. Generally speaking the UCMJ is the exclusive Federal Criminal Law applying to military personnel committing purely military offenses. This provision could be interpreted as permitting the head of an Agency, whether he be military or civilian, to (1) suspend a military member for 180 days, (2) reduce him one grade, (3) or dismiss him from employment.

UNCHARTERED DEFENSE INTELLIGENCE COMPONENTS

Question. In his statement Admiral Murphy explained that the decision not to charter DoD intelligence components other than NSA was based on "the fact that other Defense intelligence components are either staff elements of a headquarters organization or intelligence elements in the command structure of the military srevices." Where does DIA fit in Admiral Murphy's description of these unchartered Defense intelligence components?

Answer. Admiral Murphy's description of unchartered Defense intelligence components cannot be applied to DIA. To describe DIA as either "staff elements of a headquarters organization or intelligence elements in the command structure of the military services" would be erroneous. DIA is an agency of the Department of Defense whose Director is appointed by and subordinate to the Secretary of Defense. This Agency is a departmental intelligence entity with both national and departmental responsibilities. DIA not only provides intelligence support to the Secretary of Defense, the Joint Chiefs of Staff and DoD components, but provides the military intelligence contribution to national intelligence as well. Executive Order 12036 describes DIA as a national intelligence producer.

APPENDIX VI

MARCH 7, 1980.

ADM. DANIEL J. MURPHY,
Deputy Under Secretary of Defense for Policy Review,
The Pentagon, Washington, D.C.

DEAR ADMIRAL MURPHY: On behalf of the Senate Select Committee on Intelligence, I wish to thank you for your testimony on S. 2284, the National Intelligence Act of 1980. In addition to your testimony at the hearing the Committee would find it useful to receive your written responses to the following attached Questions for the Record.

As the Committee is eager to expedite the hearing process on this important piece of legislation, we would appreciate receiving your response as soon as possible.

With kind regards,
Sincerely,

BIRCH BAYH,
Chairman.

QUESTIONS FOR THE RECORD FOR ADMIRAL MURPHY

(1) In S. 2284—at the insistence of the Administration—the Director of National Intelligence is given no control over or statutory access to tactical intelligence. Yet, we understand that CIA currently does valuable work in weapons analysis and order of battle analysis. Could you explain to us now how tactical intelligence is shared with the rest of the intelligence community and how this bill would change that?

(2) The Department of Defense is allowed to conduct special activities in certain peacetime circumstances. Please explain why the CIA should not be the sole agency to conduct special activities, with DoD playing only a support role in peacetime. (Classified response.)

THE DEPUTY UNDERSECRETARY OF DEFENSE,
Washington, D.C., April 8, 1980.

HON. BIRCH BAYH,
Chairman, Select Committee on Intelligence,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In your letter of March 7, 1980, N # 1981, you asked that I furnish responses to two questions to be included in the hearing record on S. 2284. My answers are at Tab A.

I am also enclosing, in response to a question posed at the hearing, a breakdown of the costs involved in implementing the Department's Freedom of Information Act program. This is at Tab B.

DANIEL J. MURPHY,
Admiral, USN (Ret.).

Enclosures.

TAB A

Question. In S. 2284—at the insistence of the Administration—the Director of National Intelligence is given no control over or statutory access to tactical intelligence. Yet, we understand that CIA currently does valuable work in weapons analysis and order of battle analysis. Could you explain to us now how tactical intelligence is shared with the rest of the intelligence community and how this bill would change that?

Answer. Tactical intelligence systems and elements are designed primarily to collect information to satisfy the tactical intelligence requirements of the military departments. These elements, however, also collect information which satis-

fies national intelligence requirements, and this is disseminated within the national intelligence community. The DCI does not today have tasking authority or budgetary authority over these systems, and S. 2284 would not alter this.

Question. The Department of Defense is allowed to conduct special activities in certain peacetime circumstances. Please explain why the CIA should not be the sole agency to conduct special activities, with DoD playing only a support role in peacetime.

Answer. There may be special activities which the U.S. Government wishes to take, even in peacetime, that the Department of Defense is uniquely suited to undertake. These might include the training or equipping of military forces, or use of physical force (without attribution to the United States).

TAB B

DEFENSE DEPARTMENT CALENDAR YEAR 1979 REPORT OF FREEDOM OF INFORMATION COSTS—DOD REPORTING ACTIVITIES

Cost outline	OSD/ OJCS	Army	Navy	Air Force	DCA	DCAA	DIA
I. Personnel costs:							
A. Estimated man-years[1]	50.19	69.08	28.78	75.45	.06	1.26	2.94
B. Cost of man-years (grades considered)	$426,753	$1,193,945	$508,738	$940,615	$16,800	$51,926	$93,000
C. Cost of eslimaled man-hours by calegory (fee schedule rates):[2]							
(1) Search time	7,028	54,130	40,015	46,080	303	4,042	3,922
(2) Review and exclising	12,548	46,493	16,852	51,273	1,800	916	2,976
(3) Coordination and approval	3,539	37,546	38,542	75,068	0	11,205	1,452
(4) Correspondence and form preparation	1,557	16,905	29,162	40,907	47	3,165	470
(5) Other activities	9,789	20,427	16,591	40,954	0	8,414	9,953
(6) Man-hour cost total	34,461	175,501	141,162	254,282	2,150	27,742	18,773
D. Total of IB and IC	461,214	1,369,446	649,900	1,194,897	18,950	79,668	111,773
E. Overhead rate (25 percent)	115,304	342,362	162,475	298,724	4,738	19,917	27,943
F. Total of other costs	576,518	1,711,808	812,375	1,493,621	23,688	99,585	139,716
II. Other case-related costs:							
A. Computer search time costs	3,618	17,608	6,968	8,873	0	0	0
B. Reproduction costs	1,286	60,156	17,730	25,082	360	943	1,700
C. Microfiche reproduction	0	24,799	3,990	1,456	0	0	750
D. Cost of printed records	1,929	3,825	11,424	6,563	0	0	6,700
E. Total of other costs	6,833	106,388	40,112	41,974	360	943	9,150
III. A. Reporting costs:							
(1) Operational	750	36,209	15,538	16,944	0	1,350	650
(2) User	1,050	304	13,299	441	0	0	0
(3) Overhead (25 percenl of (1) and (2)	450	9,128	7,187	4,346	0	338	163
B. Other operating costs (voluntary reporting of ilems such as postal, travel, computer, etc.)	25,500	13,139	3,123	19,697	0	0	0
C. Total	27,750	58,780	39,057	41,428	0	1,688	813
IV. Summary:							
A. Total costs of I–III	611,101	1,876,976	891,544	1,577,023	24,048	102,216	149,679
B. Amount collected from public	3,740	119,568	68,547	48,564	443	943	2,192

See footnotes at end of lable.

TAB B

DEFENSE DEPARTMENT CALENDAR YEAR 1979 REPORT OF FREEDOM OF INFORMATION COSTS—DOD REPORTING ACTIVITIES—Continued

Cost outline	DIS	DLA	DMA	DNA	NSA	DCPA	DOD totals
I. Personnel costs:							
A. Estimated man-years [1]		8.02			6.53		242.31
B. Cost of man-years (grades considered)		$130,578			$158,839		$3,521,194
C. Cost of estimated man-hours by category (fae schedula rates): [2]							
(1) Saarch time	$137	19,303	$329	$458	36,347	$289	212,383
(2) Review and axcising	714	4,719	0	666	16,209	116	115,282
(3) Coordination and approval	502	13,385	72	915	0	654	182,880
(4) Correspondence and form preparation	107	3,685	12	337	0	71	96,425
(5) Other activities	0	3,511	160	335	0	0	110,134
(6) Man-hour cost total	1,460	44,603	573	2,711	52,556	1,130	757,104
D. Total of IB and IC	1,460	175,181	573	2,711	211,395	1,130	4,278,298
E. Overhead iata (25 percant)	365	43,795	143	678	52,849	283	1,069,576
F. Total of other costs	1,825	218,976	716	3,389	264,244	1,413	5,347,874
II. Other casa related costs:							
A. Computar search time costs	14	30,179	0	184	289,299	0	356,743
B. Reproduction costs	50	8,693	71	93	556	132	116,852
C. Microfiche reproduction	13	21	16	0	0	0	31,045
D. Cost of printed records	0	4,337	0	0	0	2	34,780
E. Total of other costs	77	43,230	87	277	289,855	134	539,420
III. A. Reporting costs:							
(1) Operational	19	3,878	225	88	1,200	112	76,963
(2) Usei	0	124	75	0	114	0	15,317
(3) Overhaad (25 parcant of (1) and (2)	5	1,001	75	22	329	28	23,072
B. Other operating costs (voluntary reporting of items such as postal, traval, computer, etc.)	0	98	0	0	500	0	62,057
C. Total	24	5,101	375	110	2,143	140	177,409
IV. Summary:							
A. Total costs of I-III	1,926	267,307	1,178	3,776	556,242	1,687	6,064,703
B. Amount collected from public	35	53,824	659	161	0	0	298,676

[1] Personnel assigned full-time or part-time FOI duties.
[2] Personnel othar than (1) above.

APPENDIX VII

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
Washington, D.C., April 16, 1980.

Senator BIRCH BAYH,
Chairman, Select Committee on Intelligence,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN BAYH: Recent legislative proposals to establish a charter for the Central Intelligence Agency have raised issues of grave concern to the American Newspaper Publishers Association.

As you know, ANPA is a national trade association which consists of more than 1,370 member newspapers representing more than 90 percent of the daily circulation in the United States. Membership includes many nondaily newspapers as well.

The primary "charter" legislation, "The National Intelligence Act of 1980" (S. 2284) introduced by Sen. Huddleston (Ky.), contains several objectionable provisions. The bill grants the CIA broad exemptions from provisions of the Freedom of Information Act and establishes punishments for disclosing names of agents either intentionally or through negligence.

Exemption from the Freedom of Information Act is of particular concern to ANPA. Existing law contains adequate safeguards for national security information. CIA officials have not asserted that the act has led to disclosures of information actually deleterious to the security of the United States.

The primary rationale for this provision is that the very existence of the FOIA creates the *perception* among foreign nations that national intelligence secrets *could* be made public. The mere existence of "perceptions" does not seem an adequately substantive reason to justify unprecedented exemptions from the FOIA. As Mr. Robert Lewis of Sigma Delta Chi stated in his testimony before your committee this month, "To extend a sweeping exemption raises the suspicion that the CIA really wants to avoid a repetition of the embarrassing disclosures that have come out in recent years."

Section 701 of S. 2284 provides for a maximum penalty of 10 years in prison and $50,000 fine for disclosing the identity of CIA agents. CIA Director Turner has recommended that prosecution for this "crime" be extended not only to those persons with authorized access to classified information but to the press as well. ANPA opposes this recommendation. Sen Moynihan (N.Y.) accurately and succinctly described this recommendation as being "extraordinarily careless of the rights of journalists"—a characterization with which ANPA agrees.

Section 132(b) of Sen. Huddleston's bill appropriately prohibits CIA agents from assuming the identity of a journalist in its undercover work. ANPA strongly supports this provision as guaranteeing the necessary distinction between the press and the government.

ANPA realizes the need for a certain degree of secrecy in foreign intelligence operations. It is not evident, however, that current national security laws do not provide adequate protections.

A government cannot be "of the people, by the people and for the people" if its operations are undertaken in secrecy. Excessive secrecy is inimical to our very precious democratic way of life and it severely undermines the activities of an active and free press.

Thank you for the opportunity to express our views.

Sincerely yours,

JERRY FRIEDHEIM.

APPENDIX VIII

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,
Washington, D.C., April 23, 1980.

Hon. BIRCH BAYH,
Chairman, Senate Select Committee on Intelligence,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: In his testimony on March 25 concerning S. 2284, Professor Douglas Rendleman, speaking for the American Association of University Professors, said:

"It is our opinion that Part D should speak specifically to the concerns of the academic community. The legislation should incorporate the following: (1) an affirmative statement indicating that it is the purpose of Congress to protect the integrity and independence of institutions of higher education in accordance with constitutional principles; (2) a prohibition on certain activities of the intelligence agencies which violate the professional and ethical standards of the academic profession and interfere with the legal autonomy of institutions of higher education; (3) a prohibition on the intelligence agencies from not only using academic institutions as a cover but also using members of academic communities for covert intelligence activities and for covert recruitment; (4) an acknowledgment found in the CIA Regulation that the intelligence agencies are not authorized to violate the Family Educational Rights and Privacy Act (i.e. the Buckley Amendment; (5) a prohibition on the intelligence agencies from subsidizing the publication or distribution of scholarly books, articles, and materials prepared by scholars at institutions of higher education for the purpose of influencing public opinion within the United States or in foreign countries; and (6) a requirement that if intelligence agencies enter into contracts with academic institutions, research institutes, centers, and other entities affiliated with academic institutions, or individual academics, the sponsorship of such contracts shall be fully disclosed in a manner consistent with institutional regulations governing contracts with outside sponsors."

In order to implement these recommendations, we submit the following language for revision of Sections 132 and 133:

Sec. 132(a). It is the intention of the Congress in authorizing intelligence activities by entities of the intelligence community to protect the integrity and independence of institutions of higher education in accordance with constitutional principles. The President shall promulgate regulations which are consistent with the intent of Congress.

Sec. 132(b). No provision of a program administered by an intelligence agency shall be construed to authorize the Director of any such officer to violate the regulations or legal authority of an institution of higher education or to violate the Family Educational Rights and Privacy Act (20 U.S.C. 1232g).

Sec. 132(c). No entity of the intelligence community may use, for the purpose of establishing or maintaining cover for any officer of that entity to engage in foreign intelligence activities or special activities, any affiliation, real or ostensible, with any institution of higher education.

Sec. 132(d). An entity of the intelligence community may not use an employee of an institution of higher education for the purpose of engaging in special activities, foreign intelligence activities, or covert recruitment.

Sec. 133. No entity of the intelligence community may pay for or otherwise knowingly cause or support publication, distribution, or dissemination of any book, magazine, article, periodical, film or video or audio tape, for the purpose of influencing public opinion within the United States or outside the United States, unless the involvement of the United States Government is acknowledged.

We urge consideration of these revisions as the Committee moves towards marking up the legislation.

Sincerely,

ALFRED D. SUMBERG.

APPENDIX IX

SAN FRANCISCO, CALIF., *April 20, 1980.*

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: Please include the enclosed statement in the record on the proposed National Intelligence Bill. Thank you.

Sincerely yours,

BILL EISEN.

PARK PRESIDIO NEIGHBORHOOD ASSOCIATION,
San Francisco, Calif., April 20, 1980.

Re S. 2284—Proposed National Intelligence bill.
MEMBERS OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE,
U.S. Senate,
Washington, D.C.

DEAR SENATORS: On behalf of the members of the Park Presidio Neighborhood Association in San Francisco, I wish to express our very deep and grave concern with certain provisions of S. 2284, the proposed national intelligence bill.

Our primary concern is that Sections 213, 214, 221, 222 and 223 apply a non-criminal, non-judicial standard for the gathering of foreign intelligence and counterintelligence activities directed at U.S. persons. The courts have consistently held such non-criminal standards to be unconstitutional. Moreover, the need for a non-criminal standard was considered by your committee during the course of the hearings on the Foreign Intelligence Surveillance Act. After considerable deliberation, the act was amended to include only a criminal standard. In fact, the administration could not provide one bonafide example of why a non-criminal standard should be adopted.

Historically, the Executive Branch, under the guise of national security, has directed countless investigations and covert activities against U.S. persons (Exhibit A). According to William Sullivan, former assistant director of the FBI, many of these investigations have been strictly political (Exhibit B). Certainly, the Watergate hearings uncovered a prime example of such politically motivated activities. Were it not for the "criminal standard" applicable to covert activities, the Watergate break-in and the subsequent cover-up would have been perfectly legal.

As it curently stands, very few, if any, members of the intelligence community can be prosecuted for illegal covert activities. As Lawrence Houston, former General Counsel to the CIA, so aptly states:

". . . in many cases it would be readily apparent that prosecution would be impossible without revealing highly classified matters to public scrutiny.

"The law is well settled that a criminal prosecution cannot proceed in camera or on production of only part of the information. The Government must be willing to expose its entire information if it desires to prosecute." (Exhibit C)

Thus, the only practical remedy available to a U.S. person who has been illegally victimized by a covert action is a civil action against the agency involved. However, such civil actions are made extremely difficult, if not impossible, by the agency's predicted resistance to providing any sort of meaningful discovery.

In essence, a non-criminal, non-judicial standard applied to surveillance and covert activities directed at U.S. persons would effectively give the Executive Branch "carte-blanche" to do whatever it wants and would seriously weaken the protections afforded U.S. persons under the Fourth Amendment to the U.S. Constitution. For these reasons, we strongly oppose the provisions of S. 2284 applicable to U.S. persons. In addition, we oppose any weakening of the Freedom of Information Act as it applies to intelligence agencies (Exhibit D). I know of no instance where a request for information, honored under the Freedom of Information Act, has compromised national security. On the other hand, what little

information that has been released under the F.O.I.A. has given our citizens a valuable insight into the workings of government and has enabled many citizens to provide constructive criticism.

Although much of S. 2284 is simply a restatement and refinement of existing legislation and executive orders, we would like to commend the authors of S. 2284 for inclusion of Sections 131, 132 and 133 in the bill. I am quite sure that the vast majority of Americans, including members of the clergy, educational community and media (Exhibit E) support these provisions (which effectively preclude assassination, restrict the use of cover and restrict the intelligence community from influencing public opinion within the U.S. in a clandestine fashion).

Non-profit religions, educational and cultural organizations have historically enjoyed a certain degree of freedom from governmental intrusions. But, when such intrusions occur the result can be especially tragic. A case in point, in which I have some degree of familiarity, is that of the Peoples Temple and the tragedy that occurred at Jonestown (Exhibit E). I do not profess to know the exact nature of the CIA's involvement in this episode, but what I do know is that (1) the CIA or intelligence component of the FBI had been monitoring the Peoples Temple since at least 1960 (see pg. 566 of the House Staff Investigative Report of the Assassination of Representative Leo Ryan), (2) the CIA had developed close ties with the State Department in Georgetown, Guyana and with Guyanese Prime Minister Forbes Burnham, (3) the CIA and State Department kept fully informed about the situation in Jonestown and what might happen, and (4) the CIA and State Department could have prevented the tragedy but didn't.

Furthermore, the State Department, knowing full well that the Jonestown residents were living under a condition of involuntary servitude (illegal under both Guyanese law and U.S. law—see 18 USC 1584; *U.S.* v. *Bibbs*, 564 F.2d 1165 (1977)), refused to perform its legal duty to help the Jonestown residents by informing the authorities and attempting to enforce the Consular Convention between the U.S. and Guyana which, among other things, requires that U.S. nationals living in Guyana be permitted to communicate with consular officers at all times (see pg. 227 of the House Staff Investigative Report).

When Congressman Ryan learned of the appalling situation in Jonestown, he inquired of but received no help or information (that he didn't already know) from the State Department, FBI and CIA. According to a retired high ranking intelligence official, the intelligence community was "reluctant to supply information on Rev. Jim Jones and his Guyana commune which was available in various intelligence agencies long before the murder . . ." (see the Feb. 26, 1979 issue of the Congressional Record—H845).

In as much as the intelligence community was required to supply the information to Congressman Ryan in accordance with the Ryan Amendment (22 USC 2422—legislation that Congressman Ryan, as a member of the Foreign Affairs Committee, had authored), it seems inexcusable that the information was not provided. Rep. Ryan knew about the guns that had been shipped to Jonestown, but what he may not have known was that Jim Jones' cadre of lieutenants were parolees who had been involved in over a dozen Temple related murders (Exhibit F) that were hushed up by the authorities. Jim Jones presented a significant political liability both to the Carter administration and to San Francisco public officials, and no one seemed anxious to have this politically embarrassing information surface in a trial. Thus, an understanding was reached with Jones that all official investigations would cease as long as Jones remained in Guyana. Unfortunately, this "understanding" enabled Jones to effectively strip most of his followers of their civil rights.

It is hard for me to believe some of the things attributed to Admiral Stansfield Turner and the Carter administration pertaining to the intelligence community's need to infiltrate religious organizations, educational institutions and the media, their need for a clandestine government public information system and their need to undertake covert actions against Americans who are not suspected of any crime. Is this America 1980 or is this Germany 1936? Whether or not the intelligence community becomes a law onto themselves may very well depend on the outcome of S. 2284. Please include this letter and the accompanying exhibits in the record. Thank you.

Sincerely yours,

BILL EISEN,
President.

P.S.—1. If the Foreign Intelligence Surveillance Act is to be amended to include physical search, as defined in Sec. 801 of S. 2284, we suggest that the definition of physical search also include "mail cover" as defined in Sec. 202. Mail cover is a form of physical search, but since "opening of mail" is specifically covered in the definition we have some question whether "mail cover" is also covered. We strongly feel that the government has no business examining private mail without a search warrant and that the protections afforded to other forms of search should also be extended to post cards and any information on the exterior of envelopes in the mail. Also, since the contents of a private mail box are, in fact, considered government property until the mail is removed by the addressee, inclusion of "mail cover" in the definition of physical search would preclude any unauthorized tampering with the mail without a warrant.

2. We are concerned that another failure of the intelligence community to warn yet another member of Congress of a potential life threatening situation could occur. We therefore suggest that criminal penalties be prescribed for any such willful failure to effect a timely warning. (See Exhibit G for copy of suggested legislation.) Although Congressman Ryan did not represent our neighborhood per se, he did represent members of the Peoples Temple from our neighborhood and he lost his life trying to help them. As it turned out, few members of Congress were willing to stick their neck out the way Congressman Ryan did, but we strongly feel that those members of Congress that might find themselves in a potentially risky situation should be afforded every conceivable Governmental protection.

EXHIBIT A

[From "Documents," by Macy and Kaplan, Penguin Books, Ltd., 1980, p. 126]

In its all-encompassing search for subversive elements, the intelligence network was reluctant to let anyone go by without some kind of check. Thus by the time C.I.A.'s domestic surveillance program, entitled Operation CHAOS, was terminated in 1973, the Agency had over 300,000 names of American citizens on its computer index, had created 7,200 separate personality files, and begun 1,000 "subject files" on American student, peace, and publishing organizations, including Grove Press, Women Strike for Peace, Clergy and Laity Concerned about Vietnam, the American Indian Movement, and the Student Non-Violent Coordinating Committee.

David Ober, head of Operation CHAOS, tried to explain the problem he faced. In his testimony before the Rockefeller Comunisslon, set up to study the abuses of the C.I.A. in the United States, he said:

"At some point perhaps it should be explained that one of the reasons for having so many files on so many people was that the estimates and assessment required of the Agency in terms of possible foreign involvement with domestic activities were such that one could only give a responsible answer if one knew, of this group of people, how many had any sort of connection of significance abroad. What I am getting at indirectly, I think, is that to respond with any degree of knowledge as to whether there is significant foreign involvement in a group, a large number of people, one has to know whether each and every one of those persons has any such connection. And having checked many, many names and coming up with no significant connections, one can say with some degree of confidence that there is no significant involvement, foreign involvement with that group of individuals. But if one does not check the names, one has no way of evaluating that, without a controlled penetration agent of the F.B.I. by that group, or a control penetration agent of the K.G.B. abroad who works on the desk which deals with these matters through us." [2]

By 1973 the C.I.A. had read the private correspondence of the Ford Foundation, Harvard University, the Rockefeller Foundation, Rep. Bella Abzug, Senators Humphrey, Kennedy, and Church, Linus Pauling, Victor Reuther, Richard Nixon, and Mrs. Martin Luther King. The criteria used by the C.I.A. to target these, and literally thousands of others, over the twenty-year mail-opening program varied. Some of their names were placed on lists and thus received specific attention. The majority, however, became the objects of C.I.A. scrutiny as a result of the "vacuum cleaner" psychology.

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[2] David Ober, testimony before the Commission on C.I.A. Activities Within the United States (Rockefeller Commission), 3/28/75. S.C.C. Supplementary Reports, Book III, p. 718.

The F.B.I. discovered the C.I.A.'s mail-opening program in 1958 (see Chapter 2) and upon realizing its usefulness for its own counter-intelligence operations, requested the C.I.A. to target persons whose correspondence came under the following categories:

1. All correspondence of a suspicious nature, et cetera.
2. All correspondence indicating that the Soviets may be utilizing a hostage situation, i.e. correspondence indicating pressure being exerted on Soviet citizens who have close relatives in the United States or pressure being exerted on individuals in the United States.
3. Any information appearing in correspondence indicating weaknesses or dissatisfaction on the part of any Soviet presently in the United States so that the Bureau might give consideration to feasibility of approaching such individuals for defection or double agent purposes.
4. Any information appearing in correspondence indicating Soviet control of direction of the C.P.U.S.A.[3]

EXHIBIT B

[Letter to Mr. J. Edgar Hoover from Mr. William C. Sullivan, from "FBI," by Sanford Ungar, Atlantic Monthly—Little, Brown, Ltd., 1976, pp. 648–653]

CHEVERLY, MD., *October 6, 1971.*

MR. J. EDGAR HOOVER,
4936 Thirtieth Place NW.,
Washington, D.C.

DEAR MR. HOOVER: Please refer to your letters to me of September 3 and September 30, 1971. You state that I have not replied to your letter of September 3. In the light of our conversation this letter did not require a reply. However, as long as you want a response I will give you one now even though it is after the fact. This letter I am sending to your home in order that you may hold it privately for as you are aware the Bureau has become a bit of a sieve and this letter if seen would be the subject of gossip which, I am sure, we both wish to avoid.

First, I wish to say this complete break with you has been truly an agonizing one for me. You well know how fond I am of the Bureau and its work. To some degree this is the paradox for it is over this fact the rupture has risen. By this I mean the damage you are doing the Bureau and its work has brought all this on, but more of this later. At this time I want to again thank you for the support you have given me in the past and in particular when I was quite ill in Arizona years ago from a respiratory ailment. In the years now gone we have enjoyed some good conversations and some hearty laughter. I think you will agree I have with enthusiasm always, as time mounted, accepted every special assignment, dangerous or non-dangerous given me by you and carried them out to the best of my ability. We have had a reasonably close relationship and this is why it is so tragic for it to have ended as it did. It is regretted changes could not have been made to prevent it.

I will now turn to your letter of September 30, 1971, in which you say you are, in substance, forcing me into retirement for the sake of "public interest." May I suggest this is one of your minor faults—overstatement and overkill. More relevant is your charge that I have been unwilling to accept "final administrative decisions." This is not true and you know it. You cannot cite one instance where I have refused to carry out your instructions even when I disagreed with them vigorously and wholly. But, this leads to larger issues which I wish to discuss with you.

Many times I have told you what I think is right and good about the FBI, but now I will set forth what I think is wrong about it hoping that something worthwhile will come out of it. I want to make it clear that I am not blaming all these faults upon you. All of us in high places around you must also bear our share of the blame. One might call it a collective responsibility.

NO. 1. CONCEALMENT OF THE TRUTH AND ALL THE FACTS FROM THE PEOPLE OF THIS NATION WHO HAVE A RIGHT TO KNOW

A very good and serious example of this is the Communist Party of the United States. In the mid-forties when the membership of the Party was about 80,000

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[3] Memorandum from A. H. Belmont to L. V. Boardman, 2/6/58. S.S.C. Supplementary Reports. Book III, p. 628.

and it had many front organizations you publicized this widely month and month out. In fact it was far too widely publicized to the point where you caused a Communist scare in the Nation which was entirely unwarranted. You had your staff of writers in the Crime Records Division (a "front" of your own to conceal our huge public relations and propaganda operations which no government Bureau should have) turning out hundreds of articles on the great "dangers of" and "serious threat" of Communism to our national security. You never seemed to be that concerned with organized crime. I am just as much opposed to Communism as you but I knew then and I know now that it was not the danger you claimed it was and that it never warranted the huge amounts of the taxpayer's dollar spent upon it. I stand condemned for not making an issue of it at that time. What happened when the Communist Party went into a rapid decline? You kept the scare campaign going just the same for some years. However, when the membership figures kept dropping lower and lower you instructed us not to give them out to the public any more and not even to the Justice Department. I told you at one time we should publish the low figures and let the Bureau get credit for a job well done and point out how successfully Communism can be met in a democratic society but you would have none of it. At the time of my leaving the Bureau this week the membership figures of the Communist Party are down to an amazing 2800 in a nation of over 200 million people and you still conceal this from the people. Of the 2800 only about half are active and wholly ineffective. I think it is a terrible injustice to the citizens and an unethical thing for you to do to conceal this important truth from the public. You keep complaining that in my lectures I downgrade the Communist Party. Had I remained in the Bureau any longer I would, contrary to your instructions, have told the public about the tiny 2800 membership of the Communist Party. I stand condemned for not doing so before, despite your instructions not to do so. You will recall that on October 12, 1970, speaking before the conference of UPI Editors at Williamsburg I told them the Party was not the cause of and did not direct or control the racial and student unrest in the Nation. On my return to Headquarters you were furious and gave me hell for what you called "downgrading the Communist Party" and you raised with me how were you going to get appropriations wanted if I kept doing that. We do not need to get appropriations that way. Further, if there is no longer a Communist problem we should not spend money on it. In fact, I have for some years been taking men of [*sic*] Communist work in the field and here at Headquarters and putting them on some important work.

NO. 4. SENATOR JOSEPH MCCARTHY AND YOURSELF

More than one of us at the Bureau were disturbed when you identified yourself with Senator McCarthy and his irresponsible anti-Communist campaign. His method was not the method which should be used to combat Communism and he did grave damage to national security in the sense that reflective men said if this is anti-Communism I want none of it. Yet, you had us preparing material for him regularly, kept furnishing it to him while you denied publicly that we were helping him. And you have done the same thing with others. This is wrong and one day the "chickens may come home to roost."

NO. 7. FBI AND THE POLICE DEPARTMENTS

As you must know, we are not at all well-liked by the police departments around the country with some exceptions. They complain that it is a one-way street. We take everything from them and give nothing, that we steal credit from them, deliberately overshadow them, etc. If it was not for the excellent person friendships built up by our field office special agents with the police, conditions would be far worse. When I say disliked, I mean the official policy of the FBI toward the police, our headquarters' attitude, not the special agent in the field. The FBI National Academy to train police is one of the finest things you have done, yet until recent years it was not regarded highly by police who came in from large departments. When I was single I roomed at the same place with many of them when they were in Washington. Almost without exception they had a low opinion as to its practical worth for them. I remember a man from Los Angeles saying they had a far better training school than the FBI Academy. But, he said he was satisfied to come here because the FBI diploma from our Academy was valuable to him and would help to promote him. He laughed and said he was certainly not going to let out the "secret" of its low

quality instruction and hurt himself and fellow class members, who, according to him felt the same as he did. He pointed out that men from very small police departments might get some practical value from the course but not any person from medium sized departments up. With our new quarters and training facilities at Quantico this has all been corrected. But, why was the old inadequate situation allowed to prevail for so many years? It was the same with the few officers from foreign nations who attended. I talked to some of them. They complained no special courses were set up for them; that courses geared only to police needs in the United States had very limited use for them. This, too, recently has been corrected but more needs to be done here if we are to train any large numbers of them. Lastly, and the most important point, is this: the FBI should not try to dominate the police (as we were repeatedly told to do in our In-Training class) but should cooperate and treat them as equals and wherever possible let them take the credit and publicity for cases worked in common. We should stay in the background. Why do we need to grab the headlines? If we did this, we would find police departments all over the nation anxious to give us all possible help and our war against crime would be far more effective than it is now. One more point, the police never liked recovering stolen automobiles then having our men on your instructions go down to where the cars were, take down all the basic statistics, set a recovery value (the highest possible) then have you, at the end of the year, total all this and take claim for so many cars recovered that were stolen, and the total value of them. Here was the FBI taking credit for what the police had actually done.

NO. 10. FBI AND ILLEGAL AGENTS IN THE UNITED STATES

This is one of our most serious and harmful security problems in the United States today. Yet you abolished our main programs designed to identify and neutralize the enemy agents. I just cannot understand this. It simply is not a rational thing to do. This is one of your acts that led me to take a strong stand against you for I am convinced you are seriously damaging our national security. You know the high number of illegal agents operating along the east coast alone. As of this week, the week I am leaving the FBI for good, we have not identified even one of them. These illegal agents, as you know, are engaged, among other things, in securing the secrets of our defense in the event of a military attack so that our defense will amount to nothing. Mr. Hoover are you thinking? Are you really capable of thinking this through? Don't you realize we are betraying our government and people by abolishing programs to protect them from enemy illegal agents? Now that I am gone you do not have to save face anymore by holding out against what I recommend. Please reconsider and start those programs again. I must say again I just cannot understand you. I do not know what is the matter with you that you should do such a thing.

NO. 11. FBI AND SECURITY INVESTIGATIONS

I think we have been conducting far too many investigations called security which are actually political. This is our policy and it should be changed at once. What I mean is investigations mainly of students, professors, intellectuals and their organizations concerned with peace, anti-war, etc. We have no business doing this. Now, if there are definitely subversives (a word that always bothered me, hard to define) among them seeking to violate our laws, all well and good, investigate them as individuals but with great care so as not [to] smear the organization they are with. Just think of the time and money we have wasted on nothing but political investigations. Is it any wonder so many students and professors detest the FBI. I am not the only one who thinks this. Many, many field office agents think the same and some have resigned and commented about it.

NO. 14. FBI AND OUR STATISTICS

We all know they have never been either definitive or wholly reliable. More than one scholar has pointed this out down through the years and instead of appreciating their interest we looked upon them as enemies to be attacked. Why do we have such an attitude? Is it because long years ago you projected the image of infallibility and now you are stuck with it? No one is infallible and he who takes this position is doomed to be exposed and taken apart sooner or later. To return to our statistics, in many instances we came up with about any thing you wanted. The story has long been told in the FBI that one year when you were testifying you were asked the cost of crime in the United States and you

replied 22 billion. According to the account, it was 11 billion based on our scanty statistics. The men said now what will we do for the Director is wrong. Our enterprising young supervisor said we have no problem here at all. Just multiply the 11 billion by two and you have established the correctness of the Director's figures. So 22 billion it was for years until some taxpayer wrote in and said he noted that for some years the cost of crime remained constant at 22 billion and how could that be? Needless to say it started to change and move up from that time on. What the new figures were based on I do not know. It is suggested that we get some of the most brilliant statisticians in the country on contract and set a real and useful statistical system.

NO. 21. FBI AND INFALLIBILITY

I mentioned this once before briefly. Here I want to say this. Our effort (though you may deny it) to create the impression in the mind of the American people that we are infallible, perfect and sort of superhuman has over the years done us far more harm than good. Why can't we take a cold, factual, sensible position and set forth where necessary what we have done that is right and good, and also set forth our mistakes when we make them and what was wrong with our action. We would be respected far more. Often we have gone into long-winded explanations as to why we were not wrong when actually we were. Truth needs no lengthy explanation. We have wasted much time and money arguing and defending ourselves when a brief, simple statement of our error would have paid us richer dividends. Let us get away from infallibility and present ourselves as ordinary human beings trying to do the best job possible but not always succeeding.

NO. 25. MILITARY LEAVE

A few years ago I could see the beginning of the breakup of the FBI. At first I did not admit even to myself. I made excuses. I rationalized. I turned aside from the obvious. At last I had to face up to reality. You had abolished vital programs, your decisions were fouling up other operations and I decided I could better serve my country in the army and I wrote to you and said I would like military leave to go to Vietnam. This was a time when many of our young soldiers were getting ambushed and killed because of a lack of good intelligence, I was told. You made it clear you did not want me to take military leave so I dropped the idea. I wonder how much different it all would have been if you said "yes go ahead." No use now of speculating about it.

NO. 26. LEAKS OF SENSITIVE MATERIAL

Mr. Hoover, you have regularly told the public FBI files are secure, inviolate, almost sacred. Years ago when I first discovered this was not true at all I was stunned. But, we had created in time a certain atmosphere in the FBI difficult to describe and one learns to live with what one learns, both good and bad. We have leaked information improperly, as you know, on both persons and organizations. My first recollection was leaking information about Mrs. Eleanor Roosevelt whom you detested. And so it was year after year right up to our leaking the investigation on the killing of President John F. Kennedy and thereafter to the present. This should also stop.

NO. 27. FBI AND POLITICS

This topic I have saved until the last because it has done more than anything else to bring on my disillusionment with the FBI. Like so many young men before I entered the FBI I thought the FBI was the epitome of purity and that you were about as flawless a leader that can be found. I held on to this belief while I was in the field offices despite stories told me by old agents. I held on to it for a long time after I returned to Headquarters as a supervisor. This again despite stories circulated that the FBI was the most political agency in government and that you were completely immersed with politics with every administration. I do not have to go into detail. I saw example after example of how you willingly served any powerful figure in an influential office. While you are extremely conservative yourself I noticed it did not matter whether the political figure was liberal or conservative, if it served your ends, you were eager to act. It did not matter whether it was a Republican or a Democrat or whether the Administration in power was Republican or Democrat. I saw clearly at last that the FBI always presented to the American public as non-political, as being outside, above and beyond politics, was just the contrary. It was immersed in politics and even went so far as to conduct purely political investigations and inquiries. At times, it seemed that when we

were not asked to perform politically we sought opportunities to do so. I was so concerned about this under Mr. Johnson's administration that I wrote you a letter and expressed my concern and urged that the FBI not be used politically. Again, you are not the sole blame here. We who helped you inside the Bureau to carry out such activities must share the blame. And, the politicians who used [*sic*] must also share the blame.

FINAL OBSERVATION

Mr. Hoover, you know this was not an easy letter for me to write, both physically and psychologically. The first is true because as you can see I am no typist so please pardon the mistakes and organization. The second is true because we have been friends and worked together for years even though our views often differed. The hardest decision I have ever made in my lifetime was the decision in July to take a stand and break with you hoping that some good would come out of it for the Bureau, not for me because I would be leaving. It was a last resort [*sic*]. You know well I tried in every proper way to bring about the badly needed changes. You did away with vital programs. You falsely accused me of writing the two fine letters which Sam J. Papich, former liaison with CIA, had written trying to prevent you from further damaging the Bureau. I never wrote these letters but I would have been proud to have done so and had you listened to Mr. Papich, one of the finest and most able men this Bureau ever had, we would not be in the horrible condition we are in today and there would have been no need of my writing this letter to you. Like myself, Mr. Papich was most fond of the Bureau but he saw it was deteriorating and tried to prevent it. After the reception his two fine letters received he knew the cause was hopeless and retired. Perhaps I should have done the same thing at the time but I still clung to the hope that changes could be brought about orderly and quietly and once more the Bureau would be moving ahead and doing what the people thought it had been doing all along.

Once again I want to say, Mr. Hoover, we are not blaming you alone. We were all part of your staff for years. We all share the blame and responsibility. This is no time for anger, recriminations or vindictiveness. There is still time to bring about the progressive changes needed. I am gone now so you do not have me any longer as a "thorn in your flesh." Why don't you sit down quietly by yourself and think this all over and then get some of the men together and work out a plan to reform, reorganize and modernize the Bureau. If you do not give reality to what to some degree has become a bubble that bubble will burst and it will be bad for all. You can still do it if you will only see the situation as it actually is and then act. It is an internal situation and it need not even get into the press. Just handle it quietly in a professional manner. This is what I hope you will do.

Mr. Hoover, if for reasons of your own you cannot or will not do this may I gently suggest you retire for your good, that of the Bureau, the intelligence community and law enforcement. More than once I told you never to retire; to stay on to the last, that you would live longer being active. It looks now that I may have been wrong. For if you cannot do what is suggested above you really ought to retire and be given the recognition due you after such a long and remarkable career in government.

Sincerely yours,

WILLIAM C. SULLIVAN.

EXHIBIT C

FEBRUARY 23, 1954.

[Memorandum for Director of Central Intelligence from Lawrence R. Houston, General Counsel, "Documents," by Macy and Kaplan, Penguin Books, Ltd., 1980, Docs. 7b, 7c]

Memorandum for: Director of Central Intelligence.
Subject: Reports of Criminal Violations to the Department of Justice.

1. From time to time information is developed within the Agency indicating the actual or probable violation of criminal statutes. Normally all such information would be turned over to the Department of Justice for investigation and decision as to prosecution. Occasionally, however, the apparent criminal activities are involved in highly classified and complex covert operations. Under these circumstances investigation by an outside agency could not hope for success without revealing to that agency the full scope of the covert operation involved as well as this Agency's authorities and manner of handling the operation. Even then, the

investigation could not succeed without the full assistance of all interested branches of this Agency. In addition, if investigation developed a prima-facie case of a criminal violation, in many cases it would be readily apparent that prosecution would be impossible without revealing highly classified matters to public scrutiny.

2. The law is well settled that a criminal prosecution cannot proceed in camera or on production of only part of the information. The Government must be willing to expose its entire information if it desires to prosecute. In those cases involving covert operations, therefore, there appears to be a balancing of interest between the duty to enforce the law which is in the proper jurisdiction of the Department of Justice and the Director's responsibility for protecting intelligence sources and methods. This is further affected by practical considerations.

3. I have recently had two conversations with the Department of Justice, the latter on 18 Februacy being with the Deputy Attorney General, Mr. William P. Rogers. To illustrate the problem I took with me the complete investigation, with conclusions and recommendations, of a case which indicated a variety of violations of the various criminal statutes relating to the handling of official funds.

This case arose during the review of a highly complex clandestine operation. The information was developed by the Inspection and Review Staff, Deputy Director (Plans), and even in its completed form would be almost unintelligible to a person not thoroughly familiar with the Agency and its operations due to the use of pseudonyms and cover companies and to various circumstances arising out of operational conditions.

4. I pointed out to the Deputy Attorney General that review by my office indicated that the individual was almost certainly guilty of violations of criminal statutes, but that we had been able to devise no charge under which he could be prosecuted which would not require revelation of highly classified information. Mr. Rogers said that under these circumstances he saw no purpose in referring the matter to the Department of Justice as we were as well or, in the light of the peculiar circumstances, perhaps better equipped to pass on the possibilities for prosecntion. Therefore, if we could come to a firm determination in this respect, we should make the record of that determination as clear as possible and retain it in our flies.

5. If, however, any information arising out of our investigation revealed the possibilities of prosecution, then we would have an obligation to bring the pertinent facts to the attention of the Deparment of Justice. I agreed that any doubt should be resolved in favor of referring the matter to the Department of Justice. I also pointed out that even in cases where we felt prosecution was impossible, if a shortage of funds were involved we took whatever collective action was feasible and, in spite of the problems arising out of the covert nature of our operotions, were frequently successful in recovering the funds, at least in part. I also mentioned that our investigation sometimes indicated possible tax evasion or fraud which did not involve operations, and that we worked with the Internal Revenue Service in such situations.

6. Mr. Rogers asked that we follow through carefully on any such case with any appropriate Government agency. He stated that an understanding on these matters could be reduced to a formal exchange of letters, if it becomes necessary, but that he saw no reason why present practices could not be continued without further documentation. I said it had been my recommendation not to formalize the situation unless the matter were brought to an issue either by passage of legislation and a need for clarification thereof or by discussion on specific cases with the Criminal Division of the Department of Justice.

LAWRENCE R. HOUSTON,
General Counsel.

EXHIBIT D

[From the Oakland Tribune, Thursday, Apr. 17, 1980, p. A-23]

CLAMPING CONTROLS ON THE FREEDOM OF INFORMATION ACT

(By John S. Rosenberg [1])

Recent threats to national security may have come from abroad, but, in a familiar historical pattern, the overreaction here at home may prove even more dangerous.

[1] John S. Rosenberg, a historian, is director of the Nation Institute in New York City.

Perceiving a threat from the Soviet Union after World War II, President Truman gave us the Truman Doctrine, which led to alliances with repressive if anti-communist regimes the world over, and instituted a domestic loyalty program that contributed to the hysteria of McCarthyism.

Now President Carter has given us the Carter Doctrine, intended to help such friends of the free world as Pakistan's General Zia, and has proposed intelligence legislation that once again would unleash the FBI and the CIA at home and abroad.

The focal point of the domestic offensive is the Freedom of Information Act. Strengthened in 1974 in the wake of the Watergate revelations and enhanced by the Sen. Frank Church Committee's findings concerning intelligence abuses, the act has proved an invaluable tool for scholars, journalists, and ordinary citizens seeking to understand American policies and, through the public accountability the act provides, to prevent the recurrence of the abuses that often accompanied them.

But now, because of the contagious national security fever raging through Washington, the curtain of secrecy is about to descend again. The new foreign intelligence charter would almost totally exempt the CIA's operational files from the Freedom of Information Act; similar legislation introduced by Sen. Daniel P. Moynihan, D-N.Y., would exempt not only the CIA but also the FBI and every other "Intelligence agency or component" of the government.

Iran and Afghanistan seem to have given the intelligence agencies virtual carte blanche on Capitol Hill, even though no one has demonstrated any connection between those challenges and the Freedom of Information Act.

Indeed, no one has even claimed that any important secrets have ever been released through the information act process, which is not surprising since the act allows broad latitude for the agencies to withhold information that is properly secret.

What the CIA does claim is at once both subtle and strained: The agency freely admits that the Freedom of Information Act has caused no vital information to be released, but it nevertheless wants to be exempted from the act because many would-be spooks and informers incorrectly think the act produces leaks.

Testifying Feb. 20 before the House Subcommittee on Information and Individual Rights, CIA Deputy Director Frank Carlucci acknowledged that under the Freedom of Information Act "national security exemptions do exist to protect the most vital intelligence information," but he claimed that "the key point . . . is that those sources upon whom we depend . . . have an entirely different perception."

Beset by leaks from the executive branch, from former agents, and from inside the agency itself, the CIA wants to change a law that has not caused the problem but that has incorrectly become the symbol for it, and in the process escape accountability to the American people.

Carlucci also testified that the act is no longer needed to provide oversight of the intelligence agencies since Congress now has oversight committees, and he affirmed that they "are now and will continue to be supplied with whatever information they need" to prevent abuses.

In the past, however, material released under the act has revealed abuses Congress never discovered in its intensive investigations (such as CIA spying on Martin Luther King). In other cases, Freedom of Information disclosures have contradicted CIA statements to Congress. But even aside from the question of who will watch the congressional watchdogs (whose predecessors often dozed while the house was robbed) if the pubic is cut off from information, Carlucci's argument was undermined the very next day when CIA Director Stansfield Turner informed the Senate Intelligence Committee that sensitive information has been and will continue to be withheld from it, despite his assurances to the contrary in his confirmation hearings.

The Senate committee appears to be taking a stand on the issue of notification, but there is a real danger that it will simply abandon the act as part of some compromise. Many senators seem to believe that the only beneficiaries of the act are the KGB and civil liberties fanatics, but in fact the historical profession and other academic groups, not to mention the press, are nearly united in support of it.

At the end of March a statement opposing Freedom of Information exemptions was submitted to Congress by over 150 individuals and organizations, including Common Cause, the Association of American Publishers, the Federation of Ameri-

can Scientists, the American Historical Association and the organization of American Historians.

The CIA and its friends, however, want to eviscerate the act because of what they concede are the incorrect perceptions of their foreign accomplices. As Carlucci qualntly put it, "It is unimportant whether they are right or not . . . In our business, perception is reality."

Perhaps the last word should go to Rep. Richardson Preyer, D-N.C., chairman of the subcommittee that heard Carlucci's testimony. "Even as we recognize this problem of perception," Preyer stated, "we must remain aware of another potential problem of perception.

"The ideas of an informed citizenry and public accountability of public institutions have been allve in our national consciousness since before we adopted our Constitutlon two centuries ago," Preyer concluded. "The Freedom of Information Act ls simply the latest llnk in a chain of law and tradition which attempts to preserve and protect those ideas."

EXHIBIT E

[From the San Francisco Examiner, Friday, Apr. 11, 1980, p. 12]

NATIONAL DIGEST

CIA INTERESTED IN JOURNALISTS

WASHINGTON.—The ClA approached three American journalists during the last three years to work ln covert operations and plans to continue the practice where warranted by the nation's vital interests. CIA director Stansfield Turner told a group of newspaper editors yesterday that journalists, academlcs and members of religious orders were now falr game for CIA recruiters—but not without his specific authorization. He told a less-than-enthusiastic audience at the American Society of Newspaper Editors convention he failed to understand why the U.S. press labors "under the assumption that if you accept an assignment from me for your country, you have somehow lost your freedom."

[From the San Francisco Examiner, Friday, Apr. 4, 1980, p. 34]

QUESTIONS ABOUT CIA AND JONESTOWN DEATHS

WASHINGTON (UPI).—Persistent rumors of CIA involvement in the 1978 mass suicide in Jonestown, Guyana, should be explored further, the staff of a House subcommittee says.

The House Foreign Affairs subcommittee on international operations found nothing new about the November, 1978, Peoples Temple tragedy during hearings earlier this year, and its staff said allegations of CIA involvement "are largely speculative and unsubstantiated."

However, the staff told the chairman, Rep. Clement Zablocki, D-Wis., that the House Intelligence Committee should examine the allegations again.

Rep. Leo Ryan, D-Calif., Examiner photographer Greg Robinson and other members of an American delegation were shot to death by members of the Temple, a San Francisco-based religious cult led by the Rev. Jim Jones. The congressman and others had gone to Guyana to investigate Jones' cult.

Shortly after Ryan was killed, more than 900 cult members committed suicide by drinking a cyanide-laced drink or were killed at the Jonestown colony.

In particular, the subcommittee staff said these points should be investigated:

The contention that the CIA conducted a varied range of "activities" in Guyana.

The contention that the CIA made a conscious decision to allow the events of Nov. 18, 1978, to occur in order to avoid disclosure of CIA covert activities in Guyana.

The contention that this alleged reporting failure was conscious and calculated because Ryan was co-author of the Hughes-Ryan Act, which restricted some CIA activities.

The contention that the CIA was used "to promote and protect American commercial interests in Guyana."

Following are descriptions or references to the murders (some of which may actually have been accidents or suicides) of the following people: Maxine Harpe,

Emily Leonard, Arzie Hood, Leo Blair, Curtis Buckley, John Head, Truth Hart, Janie Brown, Bob Houston, Rory Hight, Chris Lewis, unidentified man in Philadelphia, Al Mills, Jeannie Mills, and Daphne Mills.

EXHIBIT F–1

[From "People's Temple—People's Tomb," by Phil Kearns, Logos International, January 1979, pp. 136–147, 87, 88, 186–189]

Pages 136–147

down his pants and expose himself in front of the whole congregation. This was a punishment. "And there have been murders," he said.

"You can prove that?" I asked, sitting up quickly.

"Yes," he promised.

"You realize," I said, "Jones has power. He can cover up almost anything. But if we can prove just one murder we can get this whole thing shut down!"

He shook his head vigorously. "It can be done!"

We only talked for a few minutes but I could see he was obviously frightened. He warned that we should set up a meeting for which he could obtain a better alibi, something reasonable which could let him get away long enough to tell what he knew.

I met him again the following month. His information was very sketchy but it was a beginning. He suggested that one of Ruth's old girl friends would know more. I planned to meet her the very next night but I was in for an unexpected occurrence.

My mother showed up instead. She was intensely angry!

"Mom, what's wrong?" I asked innocently. I was not sure if she had just stumbled onto me accidentally or someone had spotted me and alerted her.

"What are you doing here?" she snapped. "You're a traitor!"

"Mom," I pleaded.

"Look at this car!" She was shocked. I was driving a cheap little import but to her it was bourgeoisie and too materialistic. "What are you doing running around in this fancy sports car?"

"Mom, it's okay," I said. Then I grabbed her and held her. For only seconds there was a slight response. Then as if acting on a stage, she pulled away mechanically. She sneered at me, her beautiful face contorted in an ugly expression. She turned and walked off. I would never see my mother again.

My three years in the Bay area were the most frustrating of my life. The Jones family deteriorated rapidly. The violence and sex stories increased. Still, there was nothing to prove murder. I drove hundreds of miles, racking up thousands of dollars worth of phone calls. I didn't have much to show for all the time and money except rumors and the kind of evidence that works perfectly on a TV murder mystery but holds no water in a courtroom.

There were eight mysterious deaths related to the People's Temple. I had organized some information about them, and I was probing for every piece of first-hand information I could get.

1. *Maxine Harpe.* On March 28, 1970, she was found swinging from a noose. According to the coroner's report, she had stood on a trunk, tied a heavy cord around the rafters of her garage, wound the cord around her neck and jumped. A lot of people in the Jones family were suspicious of the so-called suicide. Now I learned we had not been the only ones. Carolyn Pickering, reporter for the Indianapolis Star, had been asking questions. The San Francisco Examiner ran an article. But the newspapers had come up with nothing substantial.

What I learned from friends was sickening. Maxine had began dating Jim Randolph, one of Jim Jones's henchmen. Jones was jealous of their relationship. My friend overheard him say, "Maxine needs to have her attention focused on me, not Jim Randolph!" He wanted Maxine's total loyalty.

According to another friend, Jim Jones had told Randolph to "destroy the relationship." Maxine was tearful and upset. Jones, furious because she mourned her lover, had taunted her, "Why don't you just kill yourself? Get it over with!" This statement was also overheard by my second source. Another friend said Jones had sneered at her and told her that "at least Judas had the guts to kill himself."

Finally, in his bitterness and wrath, Jones had prophesied her suicide before a small gathering. Maxine herself was present. That was the week in which

I had seen her troubled and frightened. No wonder! Jones's prophecies, including automobile accidents, were always fulfilled. In fact, on one occasion he announced to the audience. "The prophet is responsible to make the prophecy come true."

The night of her death Maxine did a strange thing for one who was contemplating suicide. But it was a perfectly understandable thing for one who was fearing murder. Maxine had asked if she could take several children home with her. The house was full of children. Tom Ijames, James Moore, Danny Harpe, Kathy Harpe and another little sister. The oldest was ten. At 1:30 a.m. Tom Ijames wandered out into the garage and found Maxine hanging from the rafters. The little children then called the People's Temple. Maxine's children and babies watched as temple members removed a Jim Jones healing cloth from her body. The house was ransacked and anything which could identify the temple was removed.

There is a final bizarre note to this tragedy. Years later, after the 1978 mass suicides, I contacted a former member of the People's Temple council. She is now a Christian and was troubled by the fact that she had introduced Maxine to the cult. She had been present at a meeting shortly after Maxine's supposed suicide. It was a closed meeting, with approximately sixty in attendance. Jim Randolph was brought before the group whereupon Jones began to rant and rave at him. "You know you did it!" According to the eyewitness, Randolph did not break, even after Jones verbally worked him over.

2. *Emily Leonard.* She was an elderly white woman who lived in South San Francisco. She had turned her property over to the temple and then a storm began. Relatives convinced her she had made a mistake. Emily and her relatives secured legal help and planned to go to court. She died that same week.

Shortly thereafter, a Mr. Wade Medlock and his wife were confronted at the temple in Los Angeles. Jeannie Myrtle told me that they were asked to sign over their property to the church or die. Jones had allegedly said, "One person attempted to get her property back and I killed her."

3. *Azrie Hood.* She was an elderly woman who wrote Birdy Maribelle and Ross Case, two Ukiah friends who were not members of the temple. Azrie was a member of the People's Temple in Marshall, Texas, who wanted out. She warned that her telephone had been tapped. Birdy, Ross and Brenda Ganatos were planning to give her money to fly from the Shreveport, Louisiana, airport to San Francisco where they would pick her up.

The old woman declined the offer, and in a possibly fatal mistake, used her telephone to tell her friends she would not bother them for money. She would just wait for her Social Security check which was to come the first of the month. Azrie Hood disappeared within hours of that phone call. She has never been found.

4. *Leo Blair.* He owned a little grocery store in Redwood Valley. Allegedly, Jim Jones wanted it. Blair said, "No!" Suddenly, he found himself in a gigantic mess. Two young temple girls claimed he had molested them. There was a lot of hatred and venom coming forth from temple members. I remembered Leo. He had impressed me as being a kind man. I'm sure he was stunned by the organized harassment which suddenly descended on him. Jones never did get his property; but Blair didn't have it much longer either. He committed suicide.

5. *Curtis Buckley.* The story was that Buckley had overdosed. Three things about this bothered my friends. One, the fact, that Buckley wasn't known to have ever taken drugs. Two, he had been observed carrying a large amount of cash into the temple on the day he died. Three, the complaints of Janet Schuller, his stepmother. She declared his medical records had been tampered with. The Buckley case bothered me even more than the others, but it was the one with the least evidence to indicate foul play.

I was troubled by Buckley's friends who were very intense and seemed very convinced that he had been murdered. On paper that means nothing but hearing it from those who knew him was quite a different story.

6. *John Head.* On September 27, 1975, two People's Temple members visited John. He was escorted to a bank where he withdrew some money. He then turned it over to the temple. The next day Head told his mother he was going to live with the Jones people. On October 19, he reportedly committed suicide. Allegedly, he jumped from a building. Many family members felt he had been pushed.

The coroner's report was confusing. Mrs. Head, the boy's mother, was suspicious. Various pages reported different accounts of his death—that John had

jumped from a bridge, from a three-story warehouse, and another page indicated he had died at 212 North Vignes Street. The report stated that there were no scars on his body, but his mother wondered how they could miss a giant scar on his leg. This remained from a motorcycle accident and had required three hundred stitches.

Mrs. Head wanted an inquiry. The Los Angeles Coroner's Department refused.

7. *Truth Hart.* Truth was an elderly black lady, living at the Maribelle Rest Home. Truth had died in very mysterious circumstances. According to one eyewitness, it was murder.

Jones's very idealistic operation began quite generously in its ministry to the elderly. As Jones's own ego soared and his personality deteriorated, he began his exploitation of the older members. Those on Social Security or disability were required to turn checks over to the temple. In return, the cult began providing them with less and less.

Jean Foley was typical of those who would try to hold some of their checks back. Sometimes she would be locked in her room and her blankets would be taken away.

Not all the rest homes deteriorated to the level of a concentration camp. Birdy Maribelle ran a clean ship. She had been a member of People's Temple for some time but when some of the residents of her own home were exploited, she quit. She objected openly—a brave thing to do in the little city of Ukiah where most offices, including that of the sheriff, were thought to be controlled by the Jones people.

When a Mendocino County newspaper investigated the situation, Birdy talked openly to them. She reported that a Harvey Lawson was forcibly removed from her rest home. He was hauled out, tied up in a sheet, kicking and flailing at his kidnappers. "Jones wants us to bring him dead or alive," People's Temple members had told her.

The Truth Hart incident began in 1974. Hart started to speak out in the services of the temple and this irritated Jim Jones. There were reports that she had been complaining behind his back.

Numerous witnesses remember a public prophecy that had been given by Jim Jones. He was in his full acting character, his omnipotent posture, when impulsively he stated, "That woman will die soon!"

Shortly thereafter, the People's Temple organized a bus trip to the East Coast. Jones told Birdy Maribelle to pack her bags. Birdy wouldn't leave her responsibilities at the rest home. Jim arranged for the temple people to take over and then encouraged others to talk Birdy into the trip.

Birdy finally did leave and Mary Black took over. According to witnesses, Mary Black was also known as Mary Love, a former worker for Father Divine, the black preacher who claimed to be God.

The rumors began to pick up. According to "family legend," Truth Hart was pinched and tormented by Black. She was put in a bathtub, then pulled out. According to eyewitnesses, a pill was given to Hart. She was told to drink a glass of water. She then laid on her bed and died.

One of the witnesses was Janie Brown who said, "Look, she's already dead!" Another witness was Ella May Hoskins.

The coroner arrived and, according to Hoskins, without any examination, the doctor simply asked, "How did she die?"

Mary Black allegedly said, "Heart attack."

Birdy Maribelle began to suspect she had been lured away from Ukiah so they could get to Hart. While back East she made some remark of concern about Hart to Jim Jones. Jones said, "It's better this way, Birdy."

The two eyewitnesses in Ukiah were crusty old women who were not easily intimidated at first. They suspected murder. Janie Brown stood in a public meeting to declare, "I don't care what anybody says about Truth Hart; I know what really happened!"

Days after this public announcement—on January 29, 1975—Janie Brown also died. Her death was not reported to the coroner and the line on her death certificate contains no signature of the coroner's name.

Reverend Case, a local pastor, was troubled. He obtained testimonies from all involved and presented it to the police, the sheriff's department, and the district attorney. He got nowhere. The assistant district attorney was People's Temple member, Tom Stoen.

An intensified harassment of Case now began, including threats of death. Attempts to see the minister lose his job as a public school teacher failed. A

temple member went to the principal claiming to have had homosexual acts with Case and my own mother, Penney duPont, testified that she had personally witnessed it. In the Case situation, the man's personal integrity proved even greater than all the temple resources. He survived but his inquiry into the death of Truth Hart had failed.

There is one postscript to the Hart story. The other witness, Ella May Hoskins, is still living. After the mass suicides, Doug Wead, the co-author of this book, made contact with Ella May. The woman was frightened and unwilling to talk. A second attempt proved successful, however. Members of the rest home had seen the author on the PTL Club television program. Ella May opened up, confirming the whole story.

"Was this just a family legend that grew with time?" Wead asked. "Or were the residents of the home immediately suspicious of the death?"

Ella May Hoskins answered clearly, "We all believed it was murder—immediately!"

8. *Bob Houston.* The most famous of the temple's mysterious deaths had this intellectual and sensitive man as the victim. On orders from Jones he had divorced his wife and married one who was chosen for him. Jones ordered him to move into a slum apartment to take care of twenty-four children. He and his wife maintained fifty-hour work weeks, turning over 10,000 dollars a year to the temple. They were true humanitarians and socialists.

Bob's problem was his colorful intellect. He could not keep it under wraps and the threatened Jones retaliated. Houston was beaten for every minor infraction. These so-called disciplinary actions took place in front of the whole congregation with Houston's children looking on in terror. A larger man would beat on him until Jones would call a halt. His widow told the San Francisco Examiner that Jones laughed during one of these scenes.

Eventually, Joyce Shaw, his new wife, left the temple. Bob Houston suddenly became the literal whipping boy. Everybody jumped on him. The pressure increased. Ever the intellectual and philosopher, he thought there was some hidden reason or special kindness Jones was trying to communicate through these actions.

Meanwhile, Bob's parents longed to see their granddaughters. The visits were "controlled" and the elder Houstons were told that if they wanted to give Pat and Judy gifts they had to give similar gifts to all the other children in the commune. Bob loved his daughters but displayed no public favoritism and accepted his socialist duty when he was ordered to be separated from them.

As the brutal storm rose, Houston seemed to remain unaware of the strangeness of events. He knew he had special talents and took on two jobs to help the family. In the nights he served as a switchman in the Southern Pacific rail yards. One of my sources spoke of meeting him there. "Bob was a meticulous man. He always wore his gloves to keep his hands clean. He never took his gloves off while working. But when I approached him he took off a glove and reached out with a clean hand to shake."

On October 2, 1976, Bob Houston, brilliant, sensitive—yet blind to the anger his socialist purity caused—was found dead. His body was mangled on the tracks. His glove was found neatly on a coupler nearby. Everybody was asking the question. Had Bob been approached by someone before his death? Someone he recognized? Someone he naively greeted with a gloveless handshake?

Pat and Judy? Their grandparents longed for them. They were whisked to New York for a vacation. Actual destination? Guyana. Jones was establishing a model socialist commune in South America. The older Houstons had more tragedy before them.

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change your life," they would say.

Sometimes Lewis took me into San Francisco with him. His wife would get out, walk the streets and bring back money. Lewis was soon right back on drugs. One rainy night we sat in the car and talked while his wife hustled.

"Do you think Jones would blackmail someone?" I asked.

He looked at me hard. I told him the story of the little girl. Lewis laughed.

"Listen," he said. "I was a lot better off pimping and on drugs than being with Jones."

"But he got you out," I said. "Everybody thinks he got you out of jail."

He scowled. "Jones can get you out and Jones can get you in."

"What do you mean?" I asked.

"You just got to be a good soldier," he said. "You gotta do what you're told. That's what I mean. Jones has got San Francisco locked up. He can get what he wants."

"Do you think I could just leave?" I asked. "What could they do to me?"

Lewis just stared out at the rain. "I don't know," he said. "They couldn't do nothin' to you." Then he paused. "But I can't leave."

I didn't ask him why. I knew he wouldn't answer.

A few years later Jones would become furious with a young man named Rory Hight. Christopher Lewis would murder him with dozens of witnesses looking on. Jone's lawyers would go to work. Within a short time Lewis would be free, walking the streets again.

On December 10, 1977, Lewis was chased down a San Francisco street by two gunmen. To no avail, he banged on doors and windows for help. He was shot to death. Lewis was wrong. There was one way out of the family. Eventually, more than 900 people would take that same way out.

By working at the high school lunchroom I had started to build a little savings for my escape. Occasionally, on little excursions to town, I stopped by an army surplus store. I eyed a $15.00 backpack. When I get $30.00 I'll take off, I decided. That was enough for the backpack and a ticket for Santa Rosa with some change left over.

One night I bought the pack. I hid it in the bushes a short distance from Archie's house. Over a period of days, I shifted my valuables and necessities to my little cache. Then the time came for the break.

Archie's son was home. It was a special occasion. He was an airplane pilot and a hero at People's Temple. A hometown boy who made good. His presence changed the mood of the house. Mama James was happy and proud. No one seemed to notice me come or go. It was a perfect time.

"Jim Jones will be one of the most renowned and well-know men in the world," Archie's son told me.

"You're sure?" I asked. The whole table scowled at me.

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loudspeaker system and order his people to the commune pavilion where he would deliver yet another diatribe against an infinite list of Jonestown's "enemies."

A second major event of 1977 was the defection of Tim Stoen. Tim was the former assistant district attorney of Mendocino County. He later became assistant district attorney of San Francisco. Throughout it all, he was a People's Temple legal advisor. Information sheets prepared by Tim Stoen, plucked from the jungles of Guyana at the very moment of the mass suicide, record visiting numerous banks in and out of the United States while conducting temple business. Needless to say he was close to Jones.

Tim left the cult after one of his trips to Jonestown and did not return. Suddenly he and his wife Grace began to openly charge that Jim Jones was holding their child in South America. Jones said the child was his. A San Francisco newspaper reported on what appeared to be an affidavit that was "floating around." It had been signed by Tim Stoen on February 6, 1972, and witnessed by Marceline M. Jones, the cult leader's wife. The affidavit stated that Stoen had entreated "my beloved pastor, Jim Warren Jones, to sir a child by my wife. Grace Lucy Stoen." In the affidavit Stoen explained that he wanted his child to be fathered by the "most compassionate, honest and courageous human being the world contains."

Stoen's lawyer told the newspapers that when Tim signed the affidavit he really was convinced that Jones was the father. Now he knew different. Jones lawyer Charles Garry said (and most family members agreed), "The child is the spitting image of Jim." The battle was on.

The third major event of the year was the murder of Christopher Lewis. He was my black friend, the one who had once told me that if I left the family they couldn't do anything to me—but he could no longer leave. He spoke of being a good soldier. Jones's money and pull had kept Lewis out of prison a long time. Lewis had been useful to the cult for a wide variety of odd jobs. He had hinted about these dark assignments when he had told me he was better off "pimping and being on drugs" than he was working for Jones.

Finally, Lewis was to be sentenced for one of his crimes. Timothy Stoen pre-

dicted Lewis was about to tell all and trade information about People's Temple for a lighter sentence.

On December 10, 1977, before Lewis had a chance to answer questions, before his sentencing, he was shot dead. Two men had chased him down a street in Hunters Point, California. Lewis had run onto the front porch at 1447 Palue, banging on the door for help. They would not let him in. His assailants had never been found. This was murder, not suicide, not a confused coroner's report. This was murder. The Jones controversy was simmering.

The People's Temple fought back. Jim Jones began to pull in his numerous IOU's. In spite of signed affidavits of eyewitnesses charging sexual abuse and beatings, in spite of the pleas of concerned relatives, San Francisco District Attorney Joe Freitas said he found "absolutely nothing" that would make him prosecute Jones.

A temple publication mentioned the Chris Lewis murder: "It was inferred that Chris was a hired bodyguard for Jim Jones. That is an outrageous lie! The temple has never hired anyone, and Chris never worked for us in this or any other capacity."

It went on to say, "It was inferred that Chris was a hired bodyguard, and Chris never worked for us in this or any other capacity."

It went on to say, "If the authors of the news article on Chris Lewis concluded that he was a part of us, then a lot of questions should be raised, because the night of his death, a threatening phone call came to the temple saying, 'There will be more. Tonight was the first.'"

"It was undoubtedly these lies that said he was a temple bodyguard that got him shot," the propaganda said. "We don't believe this was a gangland murder. We believe the conspirators were responsible. There are those who would sacrifice anyone if it served their purpose. We had to talk to some of his friends outside the church to keep them from taking revenge. This murder we will not forget."

This was typical Jones hype. Turn the accusations around. Jones attempted to convince San Francisco that the now growing body of People's Temple defectors were homocidal, jealous criminal elements he had given his life to help but who had now turned on him.

Propanganda hype was no longer enough. Birdy Maribelle, the nursing home manager who knew too much, found the windows of her home smashed in. Kathy Hunter, a former temple member who is now a reporter for a local newspaper, was pinned to the floor of her home by two black assailants who poured liquor down her throat, covered her clothes with whiskey, and then fled into the night. Jones-style terror tactics had begun. Former members who had heard Jones prophesy their deaths now shivered in fear.

In Jonestown, Guyana, gun battles were staged in the jungles and communards were told that the CIA had sent assassination squads to wipe them out but Jones's little army would protect them.

Suicide drills were stepped up. "Would you kill for me?" Jones often asked. In San Francisco the whole group was sometimes organized alphabetically to pledge their complete loyalty in death.

One day in Guyana, Jones filled a big vat with Kool-Aid and ordered all residents to take a cup and drink. The so-called "white night" had finally arrived. They were told to go out of the pavilion and

EXHIBIT F–2

[From "Six Years With God," by Jeannie Mills, A & W Publishers, Inc., May 1979, pp. 248, 15, 48, 266]

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1974

Deep in my heart
I do believe,
I know,
I know you're God.

—from a Peoples Temple song

Chris Lewis, a fierce Temple guard, got himself into trouble with the law—big trouble this time. When he had first joined the church, he brought an expensive drug habit with him. Through the positive reinforcement of the church

he had kicked this habit and dedicated his life to Jim and to the Cause. Although Chris tried to follow Jim's many rules, he had errant tendencies and so a significant part of his life was spent on the streets of San Francisco. Jim knew about this side of Chris's life but for some reason never confronted Chris or asked him to give the total life commitment the rest of us were expected to give.

But now, witnesses had seen Chris murdering someone in San Francisco. Jim had a long, serious discussion with the P.C. about the incident. "I have always allowed Chris certain latitude in his actions and in his living situation, because he had contacts that are very helpful in some areas of my work, areas that few of you are aware of. I cannot allow him to go to jail. We need to maintain his contacts. And, more important, I do not fully trust Chris. If he were left in jail it is very probable that he would tell everything he knows about our group. His testimony could be harmful to our welfare. It is imperative that we keep him out of jail at all costs."

"At all costs" came to $36,000, Jim told us. Chris was released—free of all charges.

Now, however, Jim faced another problem and discussed it at

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through a bathroom window), on our porch, or in or on our mailbox.

Reacting to the threats, harassment, and fear our children were experiencing, Deanna Mertle (Jeannie Mills) sent a handwritten letter to Jim Jones apologizing for having asked for the money the church had taken when they made us turn our properties over to the church (amounting to many thousands of dollars). This letter did stop the constant surveillance we had been experiencing and, at that point, we were willing to do anything just to be left alone.

The Church operates a mission field in Jonestown, Guyana (near Georgetown). Members of the church who have gotten in legal difficulties or who are beginning to act hostile against the church are sent there to work. Once there, it is impossible to contact them or for them to contact anyone else, except through carefully censored letters by one of the church secretaries. . . .

Mysteries surround the deaths of some of the previous members of the church, such as Maxine Harp in Redwood Valley, who supposedly committed suicide after an altercation with church members. Emily Leonard, who was trying to recover some of the property the church had taken from her, died the day she was supposed to go to court against Jim Jones. Curtis Buckley, a minor child, while he was away from his parents, died without being taken to a doctor when he was sick. His guardians were told to place Jim Jone's picture on the child rather than find him medical help. Most recently, Robert Houston died under unusual circumstances two weeks ago, while working for Southern Pacific. He had been called "treasonous" by the church. His wife, Joyce, had left the church a few weeks before this time. One of the threatening letters to us, attached hereto, makes reference to the death of Maxine Harp. (See pages 23-24.)

These are some of the reasons that the more than fifty persons who have left the church in the past three years have not come forward to prosecute the church and try to recover the money they have lost. We fear for the lives and well-being of our families and ourselves. Pastor Jim Jones is a wise and shrewd man. He is making powerful political connections. He has aligned himself with the Muslims. He brags about Mafia connections through a doctor in San Francisco. He has aligned himself with Cecil Williams (a man he used to say he hated). He courts politicians, who fear him because all Peoples Temple members vote the way Jim Jones tells them to. He has members of his church work in school districts, police departments, legal offices, government positions, and any place he feels will increase his personal power.

To try to fight Jim Jones in court would be useless. Every person who is still in the church would be forced to swear to anything he asked, even going to their death to protect him. This letter is prepared

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P.C. members who had quit during the year: Grace Stoen, Joyce Shaw, and the entire Purifoy family. After all the depressing news in the papers, it was fantastic to hear that so many of Jim's good workers had found the courage to leave. We decided that we would have a party for all the "traitors," to celebrate our freedom.

A couple of days later, we saw an article in the paper that Bob Houston had been killed in an unusual railroad accident. This was dreadful news. Bob and I

had been good friends through his work with me at the church's Publications Office. He had been a talented photographer and dark-room technician. He had always been a skeptic. This got him into trouble with Jim much of the time, but it also helped many of us to hang on—just a bit—to reality.

Roz and Bob's ex-wife, Joyce, went to the funeral. After it was over, they came to visit us.

The accident had indeed been strange. Joyce had talked to Bob the very morning of his death, and he had expressed some doubts about his church commitment. When Joyce asked him to go to the church to pick up her clothes, he agreed.

Later that evening, when news of his death had leaked out, someone told us that Jim had announced: "Bob planned to quit the church today, but, fortunately, he was killed before he had the opportunity to see what it was like outside this group." The announcement caused most of us to question whether Bob's death was an accident or murder.

They also told a gruesome story about our friend Peter Wotherspoon. Jim, knowing Peter's weakness for small boys, had assigned Peter to be "big brother" to a group of young boys between nine and twelve years old, and Peter had been seen and reported doing something compromising to a little boy we knew and loved. Jim—in a rage—had commanded that Peter be beaten. While the boy, Searcy, was forced to watch, Peter was stripped naked and beaten with a board all over his body. His penis was banged until it drained blood. The nurse had to catheterize him, and a stream of blood and urine poured out. When the beating ended, all the P.C. members had to walk past Peter, one by one, to see his bruised and bleeding body.

The thought of Searcy having to witness this atrocity filled me with pain. No doubt he had been reaching out to find the love that he needed, and this was the result. And Peter, sweet gentle Peter. Jim was sadistic to put Peter in a position of authority over young boys. But we were as helpless to do anything about it now as we had been when we stood by and watched the children being tortured. Anger flooded my heart as I thought of the important

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there were several amazing healings. Local people would be called out for revelations and given warnings of impending doom. Before the meeting ended, Jim would go over to the "dead" person and, in a loud voice, command him to awaken. Sometimes the "dead" person would be so groggy he had to be "awakened" several times. A few even had to be helped off the stage.

Jim assured the congregation that he would minister to this person after the meeting, and that the person would return to the next day's meeting in good health. A few returned, but many did not.

During the last meeting in each city, Jim would invite everyone to join our group in Redwood Valley. At least one would come along.

As we got close to Philadelphia, the city Joey had come from a year before, he began to seem very upset. Finally he said, "Mommy, do I have to go to the meeting in Philadelphia?"

"Why, Joey," I asked him, "are you afraid?"

"Yes, I'm afraid my real mother might make me come back home with her. If she heard about our meeting. I'm sure she'll be there." I didn't want Joey to be taken from us, so I asked Tim to leave Joey and me at a nearby park while he drove the rest of the children to the service. Joey and I had a marvelous two days, swimming and camping together, while everyone else went to the services. His gratitude was deep and sincere. "My real mother never loved me like you do. I just couldn't go back to live with her," he said solemnly.

An unusual situation arose at the meeting in Philadelphia. A man came in armed with a gun and a knife. Somehow one of the security guards spotted him fingering something in his jacket and discovered that he had a holster strapped around his body, with a gun in it.

A couple of guards grabbed the man and took him to a side room where, Jim was later to tell us, they beat the man until he was unconscious. Unexpectedly the man died, and the guards were faced with the problem of disposing of the body.

One of the young guards later confided to me. "They took the body, wrapped it in a blanket, put it into a car, and then drove it to the edge of the city and dumped it there." Although Jim bragged for weeks about his guards beating this man until he lost consciousness, he never mentioned the fact that his body had been dumped into a river at the edge of Philadelphia. Later he showed us a newspaper

clipping that reported the recovery of a body from the river, and Jim claimed it was the same person.

After Philadelphia, we stopped in New York, Chicago, and Indianapolis. We arrived home still smiling. The trip was

EXHIBIT F–3

[Account of Jeannie Mills death from the Oakland Tribune, Wednesday, Feb. 27, 1980, p. 1]

DAUGHTER SHOT TWICE, STILL ALIVE

A Berkeley couple who had once been under police protection because of threats made after they defected from Peoples Temple were shot to death Tuesday night and her teen-age daughter was critically wounded.

Al Mills, 51, and his wife Jeannie, 40, were found a few feet apart in their house at 2733 Woolsey St. His body was in the couple's bedroom and his wife was in a bathroom.

Both apparently were kneeling in what appeared to be a position for execution. Each had a single shot in the top of the head.

The daughter, Daphene, 15, was nearby in the bedroom.

The daughter, who was shot twice in the right temple, was in "extremely critical" condition at Alta Bates Hospital and is not expected to live.

Al Mills' mother found the bodies when she came to visit the family shortly after 9 p.m., Berkeley police said.

The coroner said there was no sign of a struggle in the home. Both Jeannie and Al Mills were shot once in the head with a small caliber weapon. Jeannie Mills' son, Eddie, 18, was in another room, but he told police he was watching television and had not seen or heard anything.

He said he was in his own room in another part of the house. Sources close to the investigation said Eddie Mills was questioned extensively about the shooting, but he maintained that he did not hear any gunfire. They noted, however, that nearby neighbors said they heard nothing, either.

Al Mills' son, Steve, 23, came to the home after the shootings to talk with police.

A rifle was found on a dresser in the bedroom where Al Mills' body was found and a small handgun was on a stereo speaker nearby. Neither had been fired, and investigators said they appeared to have been there for defensive purposes.

There were no indications robbery was a motive. Officers said the house was not ransacked and apparently no valuables were missing.

Since leaving Peoples Temple, the Mills had established the Human Freedom Center to help defectors from various cults, and they asked for police protection after the Jonestown, Guyana mass murder-suicide because they feared they were being sought by "hit squads" they believed were organized to kill them.

A source close to the investigation said, "We have quite a few suspects, including those from Guyana who had the opportunity. We're looking at all of them. It's obvious we cannot rule out the Guyana 'hit squad' people.

The couple were one of the first group to break away from the cult and Jeannie Mills published a book last year entitled "Six Years With God—Life inside Jim Jones' Peoples Temple." A year ago, an older daughter, Diana Mills, told police that the cult's "strongarm men" had been terrorizing her father, brother and sister since they quit the temple. "We spent a long time after that trying to make somebody believe us," Diana Mills said when the family asked for police protection. "Now all those people are dead and they didn't have to die." The couple had been so afraid of reprisals from Jones that they changed their names from Elmer J. and Deanna M. Mertle to Al and Jeannie Mills. At one time, Jeannie Mills said the temple congregation had voted to cut off her ear.

Shortly after the Jonestown horror unfolded, word circulated that a "hit list" was being circulated by Guyana survivors. Terri Buford, once a top Temple administrator, claimed an assassination squad had been told "to kill as many people as they could until they were killed themselves or took their own lives."

But until Tuesday night, the only deaths of other temple members known was that of former newsman and Temple spokesman Mike Prokes, who shot himself in the head in a Modesto motel room shortly after releasing a rambling statement on Jonestown at a press conference.

San Francisco Attorney Charles R. Garry, who was in Guyana at the time

of the Jonestown tragedy, expressed shock when contacted at his home this morning.

"Some of the temple members I knew were non-commital about them (the Mills family)," Garry said. "I can't imagine why it would be connected with Jonestown. Jonestown is so far away now. It's been over a year now."

Garry said he had only met Jeannie Mills once, when he participated in a panel discussion with her in Berkeley. He said he had never represented her or her husband.

A steady stream of visitors came to the murder scene throughout the day. Chris Hatcher, a psychologist who has worked with the cult defectors, and Kevin Ford, a former San Francisco district attorney's investigator, were among those entering the Mills home.

Melissa Klein, 16, a friend of Daphene, said she had talked to Steve Mills and that he was handling the tragedy well. "He seemed really cool, but you could tell he was shook up like hell. He was white with shock," she said.

Two family friends, Ken Dagenais, 17, a Laney College student, and Michael Gavin, a Berkeley High School friend of Eddie Mills, said they were at the home about 5 p.m. Tuesday. They described the scene as very friendly. They said the family was sitting around a burning fireplace "in a good mood."

Both Al and Jeannie Mills had been previously married, and both brought children into the Peoples Temple. He had five children by a previous marriage to Zoe Mertle. Three of them, Steve, now 23, Linda, 21, and Diana, 20, were with them in the cult. Jeannie Mills brought Eddie and Daphene from her previous marriage.

Al Mills joined the Peoples Temple in November 1969, and the couple stayed until October 16, 1975, when they left because of what was going on there, Jeannie Mills recounted in her book.

EXHIBIT G

SUGGESTED LEGISLATION

Whoever having, or having had, access to intelligence information pertaining to any threat of death or serious bodily harm, or intelligence information pertaining to any danger of death or serious bodily harm, of any member of Congress, or any member of the family of a member of Congress, shall immediately warn said members of Congress, or his designated agent, of such threat or danger, provided that such warning has not already been effected, and shall, as soon as practicable, provide said member of Congress, or his designated agent, with all intelligence information available pertaining to the threat or danger.

Whoever intentionally fails to effect such warning or provide such intelligence information shall be punished by a fine of not more than $50,000 or imprisonment by not more than 10 years, or both.

APPENDIX X

PARK PRESIDIO NEIGHBORHOOD ASSOCIATION,
San Francisco, Calif., April 26, 1980.

Re S. 2284—Proposed National Intelligence bill.

HON. BIRCH BAYH,
Senate Select Committee on Intelligence,
U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: Enclosed please find a supplement to my letter of April 20, 1980 pertaining to the proposed National Intelligence Bill. Please include my supplementary letter and accompanying exhibits into the record. However, if the exhibits are too lengthy to be so included, please note that the supplement contains a table of exhibits for both my letter of April 20, 1980 and the supplemental letter. Thank you.

Sincerely yours,

BILL EISEN,
President.

PARK PRESIDIO NEIGHBORHOOD ASSOCIATION,
San Francisco, Calif., April 26, 1980.

Re Supplement to my letter of April 20, 1980 pertaining to S. 2284—the National Intelligence bill.

MEMBERS OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE,
U.S. Senate, Washington, D.C.

DEAR SENATORS: As indicated in my letter of April 20, 1980, we are concerned with provisions of S. 2284 which would seriously weaken Fourth Amendment standards. Public concern with the potential for governmental abuse in this area has increased dramatically since Watergate. Consequently, the courts have been acting to *strengthen* Fourth Amendment standards (see Exhibits A and B attached herewith). State and local officials have also been acting to strengthen such standards. Recently, the Los Angeles Police Commission adopted stricter standards for the collection and retention of intelligence information (see Exhibit C attached herewith). Clearly, the trend has been to *strengthen* Fourth Amendment standards. Thus, the non-criminal standards provided by S. 2284 for federal intelligence work run contrary to trend and can not help but undermine all that has been accomplished by the courts, as well as state and local officials, to help safeguard our Fourth Amendment standards.

As also indicated in my letter of April 20, 1980, the reluctance of the intelligence community to provide information on the Peoples Temple may have cost the lives of hundreds of innocent people. I believe the intelligence community failed to act in this matter for the following reasons:

1. The State Department was well aware of the conditions in Jonestown if from nothing else than from the information it obtained from Jonestown escapees, such as Debbie Blakey, who sought passports in order to leave the country.

2. The State Department refused to help any of the Jonestown residents who were being deprived of their civil rights and, by virtue of their unlawful detention, were being denied, according to the treaty in force between Guyana and the United States (see Exhibits D and E attached herewith), "the right at all times to communicate with the appropriate consular officer and, unless subject to lawful detention, to visit him at his consulate."

3. Official information verifying the above would be tantamount to an admission by the administration that it was ignoring its treaty with Guyana as well as depriving Americans living abroad of their civil rights.

4. The intelligence community possessed information which could prove embarrassing to public officials and which could, if released, prompt publicity, such

as the New West August 1, 1977 and August 15, 1977 articles (see attached Exhibits F and G), which could very well prompt an investigation that would jeopardize the "understanding" with Jim Jones that there would be no investigations so long as Jones remained in Guyana.

The "official" position of the federal authorities, however, is one of noninvolvement. In a letter, dated April 19, 1979, to the House Foreign Affairs Committee (see attached Exhibit H), Assistant Attorney General Philip Heymann, responding for the FBI, states that the FBI had received only two pre-tragedy complaints—one from the office of Senator Hayakawa and one from a private citizen. This is simply amazing considering the volume of complaints that have been made public both before and after the tragedy. Many of the complainants said that they had contacted the FBI prior to the tragedy and, I presume, could testify to that effect. Also, a substantial number of the relatives and former members of the Peoples Temple with whom I spoke after the tragedy told me and others from the Park Presidio Neighborhood Association that they had contacted the FBI prior to the tragedy.

Perhaps if Mr. Heymann had checked the FBI's "soft" files (the ones that are not on computer) he would have found the complaints as well as the investigative information about the Peoples Temple murders and other crimes (see Exhibit F of my April 20, 1980 letter and Exhibits F and G attached herewith) which was furnished to a treasury agent by Al and Jeannie Mills (see attached Exhibit I). The treasury agent furnished the information not only to the FBI, Treasury Department and State Department, but to other federal, state and local agencies as well.

Undoubtedly, the San Francisco District Attorney's office was one of the "local" agencies that received the information. And since Mr. Tim Stoen, who was president of the Peoples Temple at the time, was employed as an Assistant District Attorney in San Francisco, the information was undoubtedly passed on to Jim Jones through Mr. Stoen. (Mr. Stoen was employed as a San Francisco Assistant District Attorney from May of 1966 to April of 1977 according to the December 18, 1978 issue of New West, pg. 51. Also, a major complaint of the former Temple members was that Stoen was using his office to harass them and to pass information on to Jones. Even the House Staff Report verified that confidential information furnished to the District Attorney's office was being "filtered back to the Peoples Temple"—see pg. 22 of the House Staff Report on the Assassination of Rep. Leo J. Ryan). Then is it any wonder that the treasury agents failed to locate illegal shipments of arms, drugs, currency or other illegal goods? And is it any wonder that they failed to catch anyone using phony passports? (See attached Exhibit I.) Or did the treasury agents really want to catch anyone?

Moreover, by thus furnishing Jim Jones with whatever the Millses knew about the murders and other Peoples Temple crimes the treasury agents thus set the Millses up for whoever might not want them around should the authorities decide to prosecute the Peoples Temple crimes. Perhaps the Millses knew or suspected who killed Bob Houston on the day that he announced that he was quitting the Temple (see Exhibit F–2, pg. 48). Jeannie Mills certainly provides a good description of a Peoples Temple meeting, presumably held in 1976 around the time Bob Houston was killed, in which Jim Jones threatened quitters with a gun (see attached Exhibit J—Although Jeannie doesn't actually say the meeting was held in 1976, she does say that Tim Stoen was then employed as an assistant district attorney in San Francisco which would place the meeting about October 4, 1976 which was the date Bob Houston was killed. The Millses did not attend meetings after 1976 since they had defected in that year.)

Then when Al and Jeannie Mills were murdered on February 26, 1980 (see Exhibit F–3 of my April 20, 1980 letter) the Berkeley police, according to the February 27, 1980 issue of the Berkeley Gazette, "notified the FBI and asked the agency for assistance in the investigation" presumably to learn the whereabouts and other information about the Peoples Temple suspects. However, the FBI has steadfastly refused to provide any information whatsoever about the Peoples Temple. According to the February 28, 1980 issue of the Berkeley Gazette, "the FBI has not entered the case. Agent Tom Anderson said that 'as far as we are concerned, it is strictly a Berkeley Police Department case.'" I also checked with the authorities, both right after the murders and about a month later, and each agency, including the Berkeley Police Department, Alameda County District Attorney's office, U.S. Attorney's office and FBI told me that the FBI had pro-

vided absolutely no information to the Berkeley Police or to anyone else for that matter.

Of course, should a murderer be apprehended and the crime proves to be part of some Peoples Temple crime, conspiracy or plot, then the FBI, by virtue of their involvement, would likely be asked to produce their files for an in camera court hearing to determine the relevancy of the information. If they refuse to produce their files, then they could face a problem similar to what a State Assistant Attorney General recently experienced here in San Francisco when he was cited for contempt of court for "misleading the court" in connection with a discovery request by the attorneys for Geronimo Platt, a member of the Black Panther Party.

Prior to 1976, Jim Jones managed to keep the lid on his operation by supporting politicians at election time and by threatening defectors with harm to themselves or to their friends and families still in the Peoples Temple. However, the pot began to boil in January of 1976 when San Francisco Chronicle reporter Julie Smith, who lived next door to Peoples Temple member Grace Stoen and just a few doors away from Al and Jeannie Mills, wanted to do a story critical of the Temple. "It was so distressing," she said, that so many people in "high places," including San Francisco District Attorney Joseph Freitas, managed to suppress her story (see New West, December 18, 1978, pg. 52). Then the lid really flew off the pot when Grace Stoen, wife of Peoples Temple president Tim Stoen, quit the Temple and filed for divorce and custody of her son.

By this time, however, certain people and political powers had decided that their relationship with Jim Jones and the Peoples Temple could not stand public scrutiny. Thus the Guyana "understanding" was formed to encourage Jim Jones to leave the country. Unfortunately, as indicated above and in my April 20, 1980 letter, this "understanding" enabled Jones to effectively strip most of his followers of their civil rights.

But what is most disturbing is the way the intelligence community is accommodating this whole scheme of things as if our constitution and laws did not apply to them. As the Guyanese have said many times, the Jonestown tragedy is strictly an American problem. Considering that the country of Guyana is not much larger in population than the city of San Francisco and considering the CIA-backed Guyanese government is decidedly prone to American influence, it is hardly possible that the conditions of involuntary servitude (anathema to the freedom conscious Guyanese) existed in Jonestown because Jim Jones suddenly managed to acquire some sort of overwhelming Guyanese political influence far in excess of any influence which might have been held by the United States government. The inescapable truth is that Jim Jones did what he did with the tacit consent of U.S. public officials despite the numerous protests of former members of the Peoples Temple, relatives of Temple members and even the intervention of a United States Congressman.

If the intelligence community wishes to argue that this whole Peoples Temple affair, including the murders, extortions, smuggling and other crime committed by the Temple, was necessary in the interest of our national security, I wish them good luck because I have not seen one shred of evidence to support such a contention. What I have seen is a wholesale "ducking" of issue.

For example, in a press release that was issued November 24, 1978, shortly after the Guyana tragedy, then Deputy Attorney General Benjamin Civiletti stated that the Justice Department "will do everything within its powers to investigate these (Peoples Temple) occurrences so that the perpetrators and participants, wherever located, can be brought to justice." (See "Guyana Massacre," by Charles Krause of the Washington Post, Berkeley Publishing Corp., Appendix C.) However, the only thing I have seen from the Justice Department since is a statement by Deputy Attorney General Philip Heymann in the August 25, 1979 local press which indicated that no indictments were forthcoming in California for conspiracy to murder Congressman Ryan, thus ignoring the kidnapping, smuggling, extortions, murders and other crimes committed by Jim Jones and his lieutenants (see attached Exhibit L).

However, Mr. Heymann's California grand jury investigation was handled by U.S. Attorney William Hunter, who, coincidentally, was a former employee of San Francisco District Attorney Joseph Freitas and who, through his employment in the District Attorney's office, had developed a close and well publicized friendship with Peoples Temple president Tim Stoen. (For further information on this subject, see my testimony, dated December 20, 1979, which was sub-

mitted to the Senate Judiciary Committee regarding the nomination of Judge Charles Renfrew as a Deputy Attorney General.) Naturally, Mr. Hunter was not about to indict anyone or investigate anything which could prove embarrassing to his friends.

Meanwhile, the cover up and more murders continue. I have no reason to doubt that if an investigation is not commenced soon the Mills family will not be the last to die. Of over 3,000 active members of the Peoples Temple, only a few more than 900 perished in Guyana. Most are decent, law-abiding citizens. But there are others who consider violence and terrorism a way of life and who apparently are attempting to fill the vacuum left by Jim Jones.

Congressman Ryan died trying to help Americans who had been deprived of their civil rights and Rep. Ryan's son has requested Congressional hearings on this whole affair (see attached Exhibit M). However, the only Congressional hearing that has been held so far on the matter has been a House Foreign Affairs inquiry to determine whether the State Department has implemented recommendations to prevent another Jonestown-type tragedy. Therefore, we fully agree with Congressman Ryan's son that more hearings are needed. In our opinion, the Departments of State, Justice, Treasury and CIA should be asked to fully explain their conduct, and witnesses should be subpoenaed to testify under oath. I see no other way of arriving at the truth. Let us hope that Congressman Ryan did not die in vain.

Aside from trying to help the Jonestown residents out of their unfortunate predicament, I believe that Congressman Ryan had another purpose for going to Jonestown. I believe that it was to use Jonestown as a case study to propose legislation to help our government to better protect the lives and property of of U.S. citizens living abroad (see attached Exhibit N). There is no question in my mind that the behavior of government officials, with respect to the Peoples Temple affair, has been inexcusable and should be made unlawful if not already so.

Perhaps, more than anything else, the Peoples Temple affair illustrates how little our government can care about the civil rights of its citizens. President Carter, in his inaugural address, stated, "We will not behave in foreign places so as to violate our rules and standards here at home, for we know that this trust which our nation earns is essential to our strength." But if the Peoples Temple affair is any indication as to how this policy has been implemented, I would have to call the implementation a dismal failure.

As illustrated by the above, our constitutional freedoms are difficult enough to enforce without trying to weaken our constitutional standards. However, by providing a non-criminal standard by which to conduct foreign intelligence and counterintelligence activities directed against U.S. persons, Sections 213, 214 and 221-223 of S. 2284 (the proposed National Intelligence Bill) would provide just such a weakening. There is no question that if a non-criminal standard is enacted, it will only pave the way for more Watergate, Peoples Temple and other tragic episodes in American history. Please include this letter and the accompanying exhibits in the record. Thank you.

Sincerely yours,

BILL EISEN,
President.

EXHIBIT A

[From the Los Angeles Times, Thursday, Apr. 24, 1980, pt. I, p. 22]

RESIDENTIAL IMMIGRATION RAIDS BANNED

U.S. JUDGE'S INJUNCTION IS SIMILAR TO 2 PREVIOUS ORDERS

(By Evan Maxwell)

A federal district judge has issued an order that effectively bans neighbborhood immigration raids or "sweeps" of the type that have caused widespread anger in Latino neighborhoods.

The order, signed last week by District Judge David W. Williams restrains Immigration and Naturalization Service agents from making "warrantless intrusions" into the homes of suspected illegal aliens.

Terms of the preliminary injunction are similar to those of a temporary order that has forbidden such raids since last November. The same general restrictions were contained in an administrative order handed down late last year by Atty. Gen. Benjamin Civiletti.

The injunction has been sought by several federally funded legal groups and by the American Civil Liberties Union on ground that immigration officers were violating the rights of citizens and legal resident aliens in the raids.

Timothy S. Barker, deputy director of the National Center for Immigrants' Rights, said the injunction was needed to prevent the Justice Department from changing its mind regarding such raids.

In addition to the residential raid prohibition, immigration agents were precluded in March from conducting raids on factories, pending the completion of the 1980 census.

U.S. Atty. Andra Ordin said that the terms of the injunction are "not very different" from the guidelines under which the immigration service has been operating since last year.

But she said her office is conferring with Justice Department officials in Washington about possible appeals or requests for clarification of the order.

EXHIBIT B

[From the Recorder, Wednesday, Apr. 16, 1980, p. 1]

COURT SETS STRICT TEST FOR ARRESTS IN HOMES

POLICE NEED WARRANTS

WASHINGTON.—Fourth Amendment standards require police to obtain a warrant before entering a suspect's home to arrest him, the Supreme Court ruled yesterday.

By a 6–3 vote, the justices reversed a New York court ruling that upheld the state's arrest laws. They said the Fourth Amendment to the Constitution establishes the basic principle "that searches and seizures inside a home without a warrant are presumptively unreasonable."

The ruling appeared to impose an arrest warrant requirement on police except in the most extraordinary situations.

The court has long held police must obtain warrants before searching a home because of the individual right to privacy. But this is its first ruling in the arrest area, long the subject of conflicting lower court rulings.

Writing for the majority, Justice John Paul Stevens said the Fourth Amendment, bearing unreasonable searches and seizures "protects the individual's privacy in a variety of settings.

"In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home," he wrote.

In addition to New York's 100-year-old statute, the laws of 36 other states are affected by yesterday's ruling.

The Fourth Amendment "has drawn a firm line at the entrance of a house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant," the majority held.

Justice William Brennan, Potter Stewart, Thurgood Marshall, Harry Blackmun and Lewis Powell joined Stevens in the majority. They set aside convictions in two New York cases and returned them to the New York Court of Appeals for further proceedings.

The three dissenters—Chief Justice Warren Burger, and Justices Byron White and William Rehnquist—said the high court's decision created a hard-and-fast rule that has "little or no support in the common law or in the text and history of the Fourth Amendment."

The case arose last Spring when the 2nd U.S. Circuit Court of Appeals in New York held warrants are necessary in such circumstances. But three months later a sharply divided New York Court of Appeals took the opposite position in two cases where police made warrantless entries to arrest suspects.

The ruling covered two cases where police entered a suspect's home to make an arrest without having obtained a warrant and seized evidence later used at trial. One case involved the murder of a New York City service station manager, and the other concerned illegal possession of drugs.

Theodore Payton was convicted of felony murder after his apartment was searched on Jan. 15, 1970—three days after the crime occurred. Although Payton was not in the Manhattan apartment, police seized a shell casing lying on a table. It was later admitted as evidence at his trial.

Obie Riddick pleaded guilty to possessing heroin after he unsuccessfully

attempted to suppress evidence police seized from the dresser of his Queens home when they arrested him in March 1974.

Although police allegedly knew Payton's address the night before his arrest and Riddick's address as much as three months before his arrest, they did not obtain warrants before entering the two homes.

In its July 1978 ruling upholding the arrests, the New York appeals court held warrant requirements for arrests could be less stringent than those required for searches.

When police enter for an arrest, there is "no accompanying prying into the area of expected privacy" unlike a search involving a greater invasion of privacy, the lower court held.

The New York court said there was "no sufficient reason to distinguish between an arrest in a public place and an arrest in a residence"—referring to the Supreme Court's 1976 ruling approving warrantless arrests in public when police suspect a crime has occurred.

EXHIBIT C

[From the Los Angeles Times, Apr. 23, 1980, pt. II, p. 1]

POLICE UNIT ACCEPTS INTERIM GUIDELINES ON SURVEILLANCE

COMMISSIONER ANNOUNCES RULES WHICH WILL BECOME FIRST TO RESTRICT GATHERING OF INTELLIGENCE DATA

(By David Johnston)

The Los Angeles Police Department's Public Disorder Intelligence Division agreed Tuesday to interim guidelines banning the gathering of any information about the lawful activities of peaceful citizens.

The interim guidelines, announced by Police Commissioner Reva B. Tooley, are the first restrictions ever imposed on how the Los Angeles police collect intelligence data.

Previous guidelines dealt only with what material could be kept in the Public Disorder Intelligence Division (PDID) records after it was gathered.

Under the new guidelines no information can be gathered about anyone's sexual activities, and information on the political and religious beliefs and activities of individuals may be collected only if it "is relevant to the investigation of a significant threat to the public order."

Asked by a reporter if PDID had, in fact, gathered information and written reports about the activities of law abiding citizens, or only "might" have, Tooley said: "Yes. Change 'might' to read 'on occasion has.'"

Later Tooley said her remarks should not be construed as saying the department specifically gathered information on anyone's sexual activities or their political or religious beliefs or activities.

"What I am saying," she said, "is information was gathered beyond that which was explicitly relevant to the investigation of targets. I'm not being very specific about just what was gathered."

Comdr. William Booth, the Police Department's chief spokesman, said Tooley's written statement was "entirely consistent" with past department statements on the issue.

The prospect of "death or serious bodily injury" is to be used in determining whether an individual or organization poses a "significant threat to the public order," Tooley said.

A group opposing alleged police spying on political groups, the Citizens Commission on Police Repression, has charged that the PDID has collected information on the sexual activities as well as the political and religious beliefs of law abiding citizens. The Police Department has flatly refused to discuss the charges beyond a general denial that it has acted improperly.

The Citizens Commission has obtained 1,300 pages of PDID documents as a result of a lawsuit. It says the documents support its charges of police abuses in intelligence gathering and promises to make at least some of the documents public once it gets permission from the individuals named in the documents.

In a prepared statement Tooley said "in the past a member of PDID engaged in gathering information might write a comprehensive report mentioning where he was and whom he saw and what conversations or discussions occurred in his presence, in addition to (reporting on) the individual he was supposed to be watching (the target) and that information would be sifted by supervisors to cull out material which could properly be maintained in the files."

Tooley, who has been designated by fellow commissioners to audit the PDID files to make sure they comply with current guidelines on material kept in them, said the interim guidelines were "formalized" during meetings between herself, Asst. Chief Marvin Ianone and Capt. Robert Loomis, the PDID commander.

Tooley said officers may no longer write down in reports the names of everyone they have seen and what they said or did, with supervising officers being assigned later to edit the reports. Also, she said, the initial written report must be limited to information about the target of the investigation and information relating directly to the target's suspected unlawful activities.

In addition, when an undercover officer must attend meetings of a peaceful group because a person under surveillance attends those meetings, at least one member of the Police Commission must be advised of the action, and the need to attend further meetings of the peaceful group must be justified to the commissioner, she said.

The Police Department agreed to the interim guidelines because of delays in submission of its proposed guidelines on intelligence gathering.

Once Chief Daryl Gates submits his proposed guidelines, which he has promised "soon," the Police Commission will schedule public hearings and adopt permanent guidelines. After that, Tooley said, it will begin work on adoption of guidelines governing use and dissemination of intelligence data.

EXHIBIT D

[Treaties between the United States and Guyana, from Treaties in Force (on Jan. 1, 1979), U.S. Department of State, pp. 81–82]

GUYANA

On May 26, 1966, Guyana (former British Guiana) became an independent state. In a letter dated June 30, 1966 to the Secretary General of the United Nations, the Prime Minister of Guyana made a statement reading in part as follows:

"I have the honour to inform you that the Government of Guyana, conscious of the desirability of maintaining existing legal relationships, and conscious of its obligations under international law to honour its treaty commitments, acknowledges that many treaty rights and obligations of the Government of the United Kingdom in respect to British Guiana were succeeded to by Guyana upon independence by virtue of customary international law.

"2. Since, however, it is likely that by virtue of customary international law certain treaties may have lapsed at the date of independence of Guyana, it seems essential that each treaty should be subjected to legal examination. It is proposed after this examination has been completed, to indicate which, if any, of the treaties which may have lapsed by customary international law the Government of Guyana wishes to treat as having lapsed.

"3. As a result, the manner in which British Guiana was acquired by the British Crown, and its history previous to that date, consideration will have to be given to the question which, if any, treaties contracted previous to 1804 remain in force by virtue of customary international law.

"4. It is desired that it be presumed that each treaty has been legally succeeded to by Guyana and that action be based on this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Guyana be of the opinion that it has legally succeeded to a treaty and wishes to terminate the operation of the treaty, it will in due course give notice of termination in the terms thereof."

CONSULS

Consular convention between the United States and the United Kingdom. Signed at Washington June 6, 1951; entered into force September 7, 1952. (3 UST 3426; TIAS 2494; 165 UNTS 121.)

EXHIBIT E

[From United States Treaties and Other International Agreements, U.S. Department of State, 1955, UST 3439]

UNITED KINGDOM—CONSULAR OFFICERS—JUNE 6, 1951

* * * * * * *

(d) nothing herein shall be construed to permit the entry into the territory of any article the importation of which is specifically prohibited by law.

PART V. PROTECTION OF NATIONALS

ARTICLE 15

(1) A consular officer shall be entitled within his district to

(a) interview, communicate with and advise any national of the sending state;

(b) inquire into any incidents which have occurred affecting the interests of any such national;

(c) assist any such national in proceeding before or in relations with the authorities of the territory, and, where necessary, arrange for legal assistance for him.

(2) For the purposes of the protection of the nationals of the sending state and their property and interests, a consular officer shall be entitled to apply to and correspond with the appropriate authorities within his district and the appropriate departments of the central government of the territory. He shall not, however, be entitled to correspond with or to make diplomatic claims to the Department of State or the Foreign Office, as the case may be, except in the absence of any diplomatic representative of the sending state.

(3) A national of the sending state shall have the right at all times to communicate with the appropriate consular officer and, unless subject to lawful detention, to visit him at his consulate.

ARTICLE 16

(1) A consular officer shall be informed immediately by the appropriate authorities of the territory when any national of the sending state is confined in prison awaiting trial or is otherwise detained in custody within his district. A consular officer shall be permitted to visit without delay, to converse privately with and to arrange legal representation for, any national of the sending state who is so confined or detained. Any communication from such a national to the consular officer shall be forwarded without delay by the authorities of the territory.

(2) Where a national of the sending state has been convicted and is serving a sentence of imprisonment, the consular officer in whose district the sentence is being served shall, upon notification to the appropriate authority, have the right to visit him in prison. Any such visit shall be conducted in accordance with prison regulations.

* * * * * * *

EXHIBIT F

[From New West, Aug. 1, 1977, pp. 30–38]

INSIDE PEOPLES TEMPLE

(By Marshall Kilduff and Phil Tracy)

For Rosalynn Carter, it was the last stop in an early September campaign tour that had taken her over half of California, a state where her husband Jimmy was weak. So Rosalynn gamely encouraged the crowd of 750 that had gathered for the grand opening of the San Francisco Democratic party headquarters in a seedy downtown storefront. She smiled bravely despite the heat.

Mrs. Carter finished her little pep talk to mild applause. Several other Democratic higwigs got polite receptions, too. Only one speaker aroused the crowd: he

was the Reverend Jim Jones, the founding pastor of Peoples Temple, a small community church located in the city's Fillmore section. Jones spoke briefly and avoided endorsing Carter directly. But his words were met with what seemed like a wall-pounding outpour. A minute and a half later the cheers died down.

"It was embarrassing," said a rally organizer. "The wife of a guy who was going to the White House was shown up by somebody named Jones."

If Rosalynn Carter was surprised, she shouldn't have been. The crowd belonged to Jones. Some 600 of the 750 listeners were delivered in temple buses an hour and a half before the rally. The organizer, who had called Jones for help, remembered how gratified she'd felt when she first saw the Jones followers spilling off the buses. "You should have seen it—old ladies on crutches, whole families, little kids, blacks, whites. Made to order," said the organizer, who had correctly feared that without Jones Mrs. Carter might have faced a half-empty room.

"Then we noticed things like the bodyguards," she continued. "Jones had his own security force [with him], and the Secret Service guys were having fits," she said. "They wanted to know who all these blacks guys were, standing outside with their arms folded."

The next morning more than 100 letters arrived. "They were really all the same," she said. " 'Thanks for the rally, and, say, that Jim Jones was so inspirational.' Look, we never get mail, so we notice one letter, but 100?" She added, "They had to be mailed before the rally to arrive the next day."

But what surprised that organizer was really not that special. She just got a look at some of the methods Jim Jones has used to make himself one of the most politically potent religious leaders in the history of the state.

Jim Jones counts among his friends several of California's well-known public officials. San Francisco mayor George Moscone has made several visits to Jones's San Francisco temple, on Geary Street, as have the city's district attorney Joe Freitas and sheriff Richard Hongisto. And Governor Jerry Brown has visited at least once. Also, Los Angeles mayor Tom Bradley has been a guest at Jones's Los Angeles temple. Lieutenant Governor Mervyn Dymally went so far as to visit Jones's 27,000-acre agricultural station in Guyana, South America, and he pronounced himself impressed. What's more, when Walter Mondale came campaigning for the vice-presidency in San Francisco last fall, Jim Jones was one of the few people invited aboard his chartered jet for a private visit. Last December Jones was appointed to head the city's Housing Authority Commission.

The source of Jones's political clout is not very difficult to divine. As one politically astute executive puts it: "He controls votes." And voters. During San Francisco's run-off election for mayor in December of 1975, some 150 temple members walked precincts to get out the vote for George Moscone, who won by a slim 4,000 votes. "They're well-dressed, polite and they're all registered to vote," said one Moscone campaign official.

Can you win office in San Francisco without Jones? In a tight race like the ones that George or Freitas or Hongisto had, forget it without Jones," said State Assemblyman Willie Brown, who describes himself as an admirer of Jones.

Jones, who has several adopted children of differing racial backgrounds, is more than a political force. He and his church are noted for social and medical programs, which are centered in his three-story structure on Geary Street. Temple members support and staff free diagnostic and outpatient clinic. A physical therapy facility, a drug program that claims to have rehabilitated some 300 addicts and a legal aid program for about 200 people a month. In addition the temple's free dining hall is said to feed more indigents than the city's venerable St. Anthony's dining room. And temple spokesmen say that these services to the needy are financed internally, without a cent of government or foundation money.

Jones and his temple are also applauded for their ardent support of a free press. Last September, Jones and his followers participated in a widely publicized demonstration in support of the four Fresno newsmen who went to jail rather than reveal their confidential news sources. The temple also contributed $4,400 to twelve California newspapers—including the San Francisco *Chronicle*—for use "in the defense of a free press," and once gave $4,000 to the defense of Los Angeles *Times* reporter Bill Farr, who also went to jail for refusing to name a news source.

In addition, at Jones's direction the temple makes regular contributions to several community groups, including the Telegraph Hill Neighborhood Center

and Health Clinic, the NAACP, the ACLU and the farmworkers' union. When a local pet clinic was in trouble, Peoples Temple provided the money needed to keep it open. The temple has also set up a fund for the widows of slain policemen, and the congregation runs an escort service for senior citizens.

To many, the Reverend Jim Jones is the epitome of a selfless Christian.

The reverend was born James Thurman Jones, and grew up in the Indiana town of Lynn. While attending Butler University in Indianapolis, where he received his degree in education, Jones opened his first temple (in downtown Indianapolis). Although he had no formal training as a minister and was not affiliated with any church, his temple grew. It featured an active social program, including a "free" restaurant for the down-and-out. And the congregation was integrated, a courageous commitment in the years before Martin Luther King became a national figure—particularly in Indianapolis, once the site of the Ku Klux Klan's national office.

Then at around Christmas of 1961, according to a former associate named Ross Case, Jones had a vision. He saw Indianapolis being consumed in a holocaust, presumably a nuclear explosion. Fortunately for him, *Esquire* had just run an article on the nine safest spots in the event of nuclear war, Eureka, California, was called the safest location; another safe area was Belo Horizante, Brazil. Jones headed for Belo Horizante, and Case went to Northern California.

Jones eventually returned and visited Case in Ukiah. Jones liked California, and twelve years ago this month, he and his wife, Marceline incorporated Peoples Temple in California: Jones and some 100 faithful settled in Redwood Valley, a hamlet outside Ukiah.

Jones's congregation grew, and he soon became a political force in Mendocino County. In off-year elections, where the total vote was around 2,500. Jones could control 300 to 400 ballots, or nearly 16 percent of the vote. "I could show anybody the tallies by precinct and pick out the Jones vote," says Al Barbero, county supervisor from Redwood Valley.

Then, in 1970, Jones started holding services in San Francisco: one year later he bought the Geary Street temple. And later the same year, he expanded to Los Angeles by taking over a synagogue on South Alvarado Street.

One success followed another, and his flock grew to an estimated 20,000. Jones's California mission seemed blessed.

Although Jones's name is well-known, especially among the politicians and the powerful, he remains surrounded by mystery. For example, his Peoples Temple has two sets of locked doors, guards patroling the aisles during services and a policy of barring passersby from dropping by unannounced on Sunday mornings. His bimonthy newspaper, *Peoples Forum*, regularly exalts socialism, praises Huey Newton and Angela Davis and forecasts a government takeover by American Nazis. And though Jones is a white fundamentalist minister, his congregation is roughly 80 percent to 90 percent black.

How does Jones manage to appeal to so many kinds of people? Where does he get the money to operate his churchs' programs, or maintain his fleet of buses, or support his agricultural outpost in Guyana? Why does he surround himself with bodyguards—as many as fifteen at a time? And above all, what is going on behind the locked and guarded doors of Peoples Temple?

TEN WHO QUIT THE TEMPLE SPEAK OUT

Beginning two months ago, when it became known that *New West* was researching an article on Peoples Temple, the magazine, its editors and advertisers were subjected to a bizarre letter-and-telephone campaign. At its height, our editorial offices in San Francisco and Los Angeles were each receiving as many as 50 phone calls and 70 letters a day. The great majority of the letters and calls came from temple members and supporters, as well as such prominent Californians as Lieutenant Governor Mervyn Dymally, Delancey Street founder John Maher, San Francisco businessman Cyril Magnin, and savings and loan executive Anthony Frank. The messages were much the same: We hear *New West* is going to attack Jim Jones in print; don't do that. He's a good man who does good works.

The flood of calls and letters attracted wide attention, which, in turn, prompted newsman Bill Barnes to report the campaign in the San Francisco Examiner. The Examiner also reported an unconfirmed break-in one week later at our San Francisco office.

After the Barnes article, we began getting phone calls from former temple members. At first, while insisting on anonymity, the callers volunteered "back-

ground" about Jim Jones's "cruelty" to congregation members, in addition to making several other specific charges.

We told the callers that we were not interested in such anonymous whispers. But then a number of them, like Deanna and Elmer Mertle, called back and agreed to meet in person, to be photographed, and to tell their attributed stories for publication.

Based on what these people told us, life inside Peoples Temple was a mixture of Spartan regimentation, fear and self-imposed humiliation. As they told it, the Sunday services to which dignitaries were invited were orchestrated events. Actually, members were expected to attend services two, three, even four nights a week—with some sessions lasting until daybreak. Those members of the temple's governing council, called the Planning Commission, were often compelled to stay up all night and submit regularly to "catharsis"—an encounter process in which friends, even mates, would criticize the person who was "on the floor." In the last two years, we were told, these often humiliating sessions had begun to include physical beatings with a large wooden paddle, and boxing matches in which the person on the floor was occasionally knocked out by opponents selected by Jones himself. Also, during regularly scheduled "family meetings," attended by up to 1,000 of the most devoted followers, as many as 100 people were lined up to be paddled for such seemingly minor infractions as not being attentive enough during Jones's sermons. Church leaders also instructed certain members to write letters incriminating themselves in illegal and immoral acts that never happened. In addition, temple members were encouraged to turn over their money and property to the church and live communally in temple buildings; those who didn't ran the risk of being chastised severely during the catharsis sessions.

In all, we interviewed more than a dozen former temple members. Obviously they all had biases. (Grace Stoen, for example, has sued her husband, a temple member, for custody of their five-year-old son John. The child is reportedly in Guyana.) So we checked the verifiable facts of their accounts—the property transfers, the nursing and foster home records, political campaign contributions and other matters of public record. The details of their stories checked out.

One question, in particular, troubled us: Why did some of them remain members long after they became disenchanted with Jones's methods and even fearful of him and his bodyguards? Their answers were the same—they feared reprisal, and that their stories would not be believed.

The people we interviewed are real; their names are real. They all agreed to be tape-recorded and photographed while telling their side of the Jim Jones story.

Elmer and Deanna Mertle of Berkeley

After Elmer and Deanna Mertle joined the temple in Ukiah in November, 1969, he quit his job as a chemical technician for Standard Oil Company, sold the family's house in Hayward and moved up to Redwood Valley. Eventually five of the Mertle's children by previous marriages joined them there.

"When we first went up [to Redwood Valley], Jim Jones was a very compassionate person," says Deanna. "He taught us to be compassionate to old people, to be tender to the children."

But slowly the loving atmosphere gave way to cruelty and physical punishments. Elmer said, "The first forms of punishment were mental, where they would get up and totally disgrace and humiliate the person in front of the whole congregation. . . . Jim would then come over and put his arms around the person and say, 'I realize that you went through a lot, but it was for the cause. Father loves you and you're a stronger person now. I can trust you more now that you've gone through this and accepted this discipline.'"

The physical punishment increased, too. Both the Mertles claim they received public spankings as early as 1972—but they were hit with a belt only "about three times." Eventually, they said, the belt was replaced by a paddle and then by a large board dubbed "the board of education," and the number of times adults and finally children were struck increased to 12, 25, 50 and even 100 times in a row. Temple nurses treated the injured.

At first, the Mertles rationalized the beatings. "The [punished] child or adult would always say, 'Thank you, Father,' and then Jim would point out the next week how much better they were. In our minds we rationalized . . . that Jim must be doing the right thing because these people were testifying that the beatings had caused their life to make a reversal in the right direction."

Then one night the Mertles' daughter Linda was called up for discipline because she had hugged and kissed a woman friend she hadn't seen in a long time. The woman was reputed to be a lesbian. The Mertles stood among the congregation of 600 or 700 while their daughter, who was then sixteen, was hit on the buttocks 75 times. "She was beaten so severely," said Elmer, "that the kids said her butt looked like hamburger."

Linda, who is now eighteen, confirms that she was beaten: "I couldn't sit down for at least a week and a half."

The Mertles stayed in the church for more than a year after that public beating. "We had nothing on the outside to get started in," says Elmer. "We had given [the church] all our money. We had given all of our property. We had given up our jobs."

Today the Mertles live in Berkeley. According to an affidavit they signed last October in the presence of attorney Harriet Thayer, they changed their names legally to Al and Jeanne Mills because, at the church's instruction, "we had signed blank sheets of paper, which could be used for any imaginable purpose, signed power of attorney papers, and written many unusual and incriminating statements [about themselves], all of which were untrue."

Birdie Marable of Ukiah

"I never really thought he was God, like he preached, but I thought he was a prophet," said Birdie Marable, a beautician who was first attracted to Jones in 1968 because her husband had a liver ailment. She had hoped Jones might be the healer to save him.

On one of the trips to services in Redwood Valley, Marable noticed Jones's aides taking some children aside and asking, "What color house did my friend have, things like that," she says. "Then during the services, Jim called [one woman] out and told her the answers that the children had given as though no one had told him."

She became skeptical of Jones after that, and remained skeptical when her husband's health did not improve: the cancer "cures" Jones was performing seemed phony to her. Yet eventually she moved to Ukiah and ran a rest home for temple members at Jim's suggestion.

One summer she was talked into taking a three-week temple "vacation" through the South and East. "Everybody paid $200 to go on the trip, but I told them I wasn't able to do so," she added.

The temple buses were loaded up in San Francisco, and more members were packed aboard in Los Angeles. "It was terrible. It was overcrowded. There were people sitting on the floor, in the luggage rack, and sometimes people [were] underneath in the compartment where they put the bags," she said. "I saw some things that really put me wise to everything," she added. "I saw how they treated the old people." The bathrooms were frequently stopped up. For food, sometimes a cold can of beans was opened and passed around.

"I decided to leave the church when I got back. I said when I get through telling people about this trip, ain't nobody going to want to go no more. [But] as soon as we arrived back, Jim said . . . don't say nothing." She left the church in silence.

Wayne Pietila of Petaluma and Jim and Terri Cobb of San Francisco

Wayne Pietila and Jim Cobb guarded the cancers. "If anyone tried to touch them, we were supposed to eat the cancers or demolish the guy," said Cobb, who is six-feet, two-inches tall. Pietila was licensed by the Mendocino County Sheriff's Department to carry a concealed weapon; reportedly he was one of several Jones aides with such a permit.

It was during the Redwood Valley healing sessions in 1970, when nervous hope for relief from the pains of age spread among the congregation, that Cobb and Pietila would guard the cancers. Finally Jones would ask for someone who believed herself to be suffering from cancer. That was the signal for Cobb's sister, Terri, to slip into a side restroom and shoo out whoever might be there. Then Jones's wife Marceline and a trembling excited old woman would disappear into the stall for a moment. Marceline would emerge holding a foul-smelling scrap of something cupped in a napkin—a cancer "passed." Marceline and the old woman would return to the main room to screams, applause, a thunder of music. Jim Jones had healed again.

But one time, Terri got a chance to look into the "cancer bag." "It was full of napkins and small bits of meat, individually wrapped. They looked like chicken gizzards. I was shocked."

Wayne Pietila recalled another healing incident. On the eve of a trip to Seattle in 1970 or 1971, as Jones was leaving his house, a shot cracked out and he fell. "There was blood all around and people [were] screaming and crying, just hysterical." Jones was lifted to his feet and helped to his house. A few minutes later, Jones walked out of the house with a clean shirt on. "He said he'd healed himself," Pietila said. "He used [the incident] for his preaching during the whole Seattle trip."

Micki Touchette of San Francisco

The Touchette family followed Jones to California in 1970. They lived in Stockton for a while, then moved up to Redwood Valley, where they bought a house and converted it into a home for emotionally disturbed boys.

During 1972 and 1973 Micki and other temple members were expected to travel to Los Angeles services every other weekend. One of her jobs was to count the money after offerings. Micki, a junior-college graduate, had the combination to the temple's Los Angeles safe. She says, "It was very simple to take in $15,000 in a weekend, and this was [four] years ago. [To encourage larger offerings, Jones would say, 'We folks, we've only collected $500 or $700,' and we would have in reality] several thousand."

In addition to attending Wednesday night family meetings and weekend services, Micki also was part of letter writing efforts directed by church officials. "We'd write various politicians throughout the state, throughout the country, in praise of something that they had done. I wrote Nixon, wrote Tunney. I remember writing the chief of the San Francisco Police Department," she said. Micki, who lived in temple houses apart from her parents, would often be handed a sheet listing the points she would have to include in the letter. "I would tell you how and what to say and you'd word it yourself." She says she also would regularly use aliases she made up.

When Micki left the church in 1975 along with seven other young people including Terri and Jim Cobb and Wayne Pietila, none warned their parents or other relatives. "We felt that our parents, our families . . . would just fight us and try to make us stay." Furthermore, they were all frightened. "At one point we had been told that any college student who was going to leave the church would be killed . . . not by Jones, but by some of his followers." Both Terri and Cobb recall the statement being made by Jones.

Walter Jones of San Francisco

When Walt Jones, who never believed in the church, followed his wife Carol to Redwood Valley in 1974, Jim Jones asked them to take over a home for emotionally disturbed boys. The home belonged to Charles and Joyce Touchette, Micki Touchette's parents. Walt says he was told that the Touchettes were in Guyana, and that the people who had replaced them, Rick and Carol Stahl had done such a poor job that "the care home, at that time, was under surveillance of the authorities because of the poor conditions. Some of the boys had scabies due to the filth."

In 1974 and early 1975, before Walt and his wife were granted a license to run the home, county checks (of approximately $325 to $350 per month for each child) for the upkeep of the boys were made out to the Touchettes and cashed by a church member who had their power of attorney. "The checks," said Walt, "were turned over to someone in charge of all the funds [for the church's care homes] at the time. [The temple] allotted us what they felt were sufficient funds for the home and supplied us with foodstuffs and various articles of clothing." Jones says the food was mostly canned staples, and the clothes were donations from other temple members. Walt is uncertain how much of the approximate total of $2,000 a month of county funds earmarked for the upkeep of his boys actually ended up in his hands; his wife kept the books. But, he claimed, "it was very inadequate."

After the Joneses were granted their own license in 1975, the checks from the Alameda County Probation Department (which placed the boys in the home) were made out to him and his wife. "But still the church requested that we turn over what remained of the funds," says Walt Jones. "Approximately $900

to $1,000 [per month] were turned over to the church." And he added, "I do remember that there were times when all of the checks were signed over to the church."

Laura Cornelious of Oakland

Laura Cornelious was one of the privates in the Peoples Temple's army. She was in the temple about five years before leaving in 1975—just one of dozens of elderly black grandmothers who attended each meeting of the San Francisco Housing Authority Commission that Jim Jones chairs.

The first thing that bothered her was the constant requests for money. "After I was in some time," she says, "it was made known to us that we were supposed to pay 25 percent of our earnings [the usual sum, according to practically all the former members that we interviewed]." It was called "the commitment." For those who could not meet the commitment, she says, there were alternatives, like baking cakes to sell at Sunday services—or donating their jewelry. "He said that we didn't need the watches—my best watch," she recalls sadly. "He said we didn't need homes—give the homes, furs, all of the best things you own."

Some blacks gave out of fear—fear that they could end up in concentration camps. The money was needed, she was told, "to build up this other place [Guyana—the 'promised land'], so we would have someplace to go whenever they [the fascists in this country] were going to destroy us like they did the Jews. [Jones said that they would put [black people] in concentration camps, and that they would do us like the Jews . . . in the gas ovens."

Laura Cornelious was also bothered by the frisking of temple members (but never dignitaries) before each service. "You even were asked to raise up on your toes [to check] your shoes."

The final straw, she says, came the night Jones brought a snake into the services, "Viola . . . she was up in age, in her eighties, and she was so afraid of snakes and he held the snake close to her [chest] and she just sat there and screamed. And he still held it there."

Grace Stoen of San Francisco

Grace Stoen was a leader among the temple hierarchy, though she was never a true believer. Her husband Tim was the temple's top attorney, and one of its first prominent converts. Later, while still a church insider, he became an assistant D.A. of Mendocino County, and then an assistant D.A. under San Francisco D.A. Joe Freitas. Tim resigned to go to Jones's Guyana retreat in April of this year.

Grace agreed to join the temple when she married Tim in 1970, and gradually she acquired enormous authority. She was head counselor, and at the Wednesday night family meetings, she would pass to Jones the names of the members to be disciplined.

She was also the record keeper for seven temple businesses. She paid out from $30,000 to $50,000 per month for the auto and bus garage bills and also doled out the slim temple wages. And she was one of several church notaries. She kept a notary book, a kind of log of documents that she officially witnessed—pages of entries including power-of-attorney statements, deeds of trust, guardianship papers, and so on, signed by temple members and officials.

She recalled why Jones decided to aim for Los Angeles and San Francisco. "Jim would say, 'If we stay here in the valley, we're wasted. We could make it to the big time in San Francisco.'"

And expanding to Los Angeles, Jones told his aides, "was worth $15,000 to $25,000 a weekend."

During the expansion in 1972, members would pile into the buses at 5 p.m. on a Friday night in Redwood Valley, stop at the San Francisco temple for a meeting that might last until midnight and then drive through the night to arrive in Los Angeles Saturday in time for six-hour services. On Sunday, church would start at 11 a.m. and end at 5 p.m. Then, the Redwood Valley members would pile back on the buses for the long trip home; they would arrive by daybreak Monday.

Some of the inner circle, like Grace Stoen, rode on Jim's own bus, number seven. "The last two seats and the whole back seat were taken out and a door put across it," she said. "Inside there was a refrigerator, a sink, a bed and a plate of steel in the back so nobody could even shoot Jim. The money was kept

back there in a compartment." According to attendance slips she collected, the other 43-seat buses sometimes held 70 to 80 riders.

Jones's goal in San Francisco, Grace said, was to become a political force. His first move was to ingratiate himself with fellow liberal and leftist figures—D.A. Freitas, Sheriff Hongisto, Poice Chief Charles Gain, Dennis Banks, Angela Davis.

Sometimes Jones nearly tripped up. Once, said Grace, when Freitas and his wife dropped in unexpectedly, temple aides quickly pulled them into a side room and sent word to Jones in the upstairs meeting hall. Just in time. The pastor was wrapped up in one of his "silly little things," said Grace. "He was having everybody shout 'Shit! Shit! Shit!' to teach them not to be so hypocritical." When Freitas was shown in, everybody just laughed at the puzzled district attorney. (D. A. Freitas confirms making an unexpected visit to the temple, but does not recall anyone using the word *shit.*)

Jones became impatient at the pace of his success. Eventually Mayor Moscone placed Jones on the Housing Authority Commission, and then intervened to assure him the chairmanship.

Strangely, as Jones's successes mounted, so did the pressures inside his temple. "We were going to more and more meetings," said Stoen. "[And] if anyone was getting too much sleep—say, six hours a night—they were in trouble." On one occasion, she said, a man was vomited and urinated on.

In July of 1976, after a three-week temple bus trip, her morale was ebbing lower, her friends were muttering about her, and there were rumors that Jones was unhappy with a number of members. "I packed my things and left [without telling Tim]. I couldn't trust him. He'd tell Jim."

She drove to Lake Tahoe and spent the July Fourth weekend lying on a warm beach. She dug her toes in the sand, stretched her arms and tried to relax. "But every time I turned over, I looked around to see if any of the church members had tracked me down."

WHY JIM JONES SHOULD BE INVESTIGATED

It is literally impossible to guess how much money and property people gave Jim Jones in the twelve years since he moved his Peoples Temple to California. Some, like Laura Cornelious, gave small things like watches or rings. Others, like Walt Jones, sold their homes and gave the proceeds to the temple.

According to nearly all the former temple members that we have spoken with, extensive, continuous pressure was put on members to deed their homes to the temple. Many complied. A brief reading of the records on file at the Mendocino County recorder's office shows that some 30 pieces of property were transferred from individuals to the temple during the years 1968 to 1976. Nearly all these parcels were recorded as gifts.

Interestingly, several of the "gifts" were signed or recorded improperly. The deed to a piece of property signed by Grace and Timothy Stoen was notarized on June 20, 1976. Grace Stoen told New West that on that date, when she was supposed to be in Mendocino signing the deed before a temple notary, she and several hundred temple members were in New York City. Grace Stoen said she signed the deed under pressure from her husband, Tim, months before it was notarized. And similar irregularities appear on a deed the Mertles turned over to the temple. A thorough investigation of the circumstances surrounding the transfers of the properties is clearly required.

In the last few issues of Peoples Forum, the temple newspaper, there are several references to the claim that 130 disturbed or incorrigible youths were being sent to the temple's Guyana mission. A church spokesman confirmed that these youngsters were released to the temple by "federal courts, state courts, probation departments" and other agencies. An article in the July issue of the temple newspaper on the Guyana mission's youth program reports that, "In certain cases when a young person is testing the environment . . . physical discipline has produced the necessary change." The article goes on to describe a "wrestling match" that sounds all too similar to the "boxing matches" some former temple members described. If there is even the slightest chance of mistreatment of the 130 youths the temple claims to have under its guidance in Guyana, a complete investigation by both state and federal authorities would be required.

An investigation of the "care homes" run by the temple or temple members in Redwood Valley may also be in order. Both Walt Jones and Micki Touchette have stated that anywhere from $800 to $1,000 of the monthly funds provided by the state for the care of the six boys in the Touchette home were actually funneled to the temple. If those figures are accurate, as much as $38,000 to $48,000 may have been channeled into the church's coffers during the four years the Touchette home was open. It is known at at least two other "care homes" for boys were run by the church or its members. In addition, at least six residential homes licensed by Mendocino County were owned or operated by the temple. They housed from six to fourteen senior citizens each, and the county provided upwards of $325 per month per individual. An investigation should be launched immediately to determine if any of the money paid for the care of the elderly actually went to the temple.

Files at the Mendocino County recorder's office show that the temple has sold off a number of its properties. The Redwood Valley temple itself is currently for sale for an estimated $225,000. The Los Angeles temple is also for sale. The three Mendocino "care homes" that are still operating are up for sale. Several former temple members believe Jones and a few hundred of his closest followers may be planning to leave for Guyana no later than September of this year. The ex-members we interviewed had the ability to walk away from the temple once they found the courage to do it. Whether the church will permit those who move to Guyana the option of ever leaving is questionable.

Jones has been in Guyana for the last three weeks and was unavailable to us as this magazine article went to press. In a phone interview, two spokesmen for the temple, Mike Prokes and Gene Chaikin, denied all of the allegations made by the former temple members we interviewed. Specifically, they denied any harassment, coercion or physical abuse of temple members. They denied that the church attempted to force members to donate their property or homes. They also denied that Jones faked healings. They confirmed that the temple's churches and property in Redwood Valley and Los Angeles are for sale, but went on to deny that Jones's closest followers are planning to relocate in Guyana any time soon.

Finally, something must be said about the numerous public officials and political figures who openly courted and befriended Jim Jones. While it appears that none of the public officials from Governor Brown on down knew about the inner world of Peoples Temple, they have left the impression that they used Jones to deliver votes at election time and never asked any questions. They never asked about the bodyguards. Never asked about the church's locked doors. Never asked why Jones's followers were so obsessively protective of him. And apparently, some never asked because they didn't want to know.

The story of Jim Jones and his Peoples Temple is not over. In fact, it has only begun to be told. If there is any solace to be gained from the tale of exploitation and human foible told by the former temple members in these pages, it is that even such a power as Jim Jones cannot always contain his followers. Those who left had nowhere to go and every reason to fear pursuit. Yet they persevered. If Jones is ever to be stripped of his power, it will not be because of vendetta or persecution, but rather because of the courage of these people who stepped forward and spoke out.

EXHIBIT G

[From New West, Aug. 15, 1977, pp. 18, 19]

MORE ON PEOPLES TEMPLE: THE STRANGE SUICIDES

(By Phil Tracy)

Two weeks ago, New West reported the extraordinary activities of the Reverend Jim Jones, pastor of the Peoples Temple Christian Church, which is based in San Francisco with branches in Los Angeles and the Ukiah area. We portrayed Jones, who is chairman of San Francisco's Housing Authority Commission, as a charismatic leader with strong ties to the state's power elite. And we also described him as a religious huckster who relies on phony faith healings and fear tactics to keep his congregation in line and available to do

his bidding. Sometimes doing his bidding meant getting out the votes to elect politicians like San Francisco mayor George Moscone. And sometimes doing his bidding meant turning over all of one's property to the temple.

In the story, ten former members of the Peoples Temple told of being coerced to sign false confessions about unusual and incriminating acts so that Jones would have something with which to blackmail them if they ever decided to leave the church. They told of ritual beatings. They told of coercion designed to get them to sign over deeds to their property—30 pieces of property were conveyed in Mendocino County alone. When they left the church, many had neither jobs nor homes outside the temple.

They told of operating "care homes" for children and old people, while the bulk of the state's support funds ended up going directly to the church; the people who maintained such homes had to make do as best they could.

Some of the information came from the temple itself. The July issue of Peoples Forum, Jones's church newspaper, describes "a wrestling match" for disciplinary purposes that took place on the temple's 27,000-acre agricultural mission in Guyana where, it was claimed, 130 incorrigible youths have been remanded by "federal and state courts, probation departments," and other agencies. The discipline sounds like the beatings members described.

In the last two weeks, the following has taken place:

San Francisco Board of Supervisors president Quentin Kopp requested that Mayor Moscone conduct an investigation into the "very serious" allegations New West raised. Kopp said he felt "very uneasy" because he was chairman of the Supervisors' Rules Committee that approved the mayor's appointment of Jim Jones to head the housing authority.

Mayor Moscone issued a statement: "The mayor's office does not and will not conduct any investigation into the Reverend Jones or the Peoples Temple . . . [the allegations] carry with them no proof that any laws have been broken."

San Francisco district attorney Joseph Freitas instructed his chief special prosecutor Robert Graham to review the allegations made in the article and interview any former temple members who were willing to cooperate with his office. Those interviews are being conducted now.

Other media, both in the Bay Area and in Ukiah, have also interviewed former temple members not previously questioned by New West. For example, Jim Clancy of KTVU (Oakland) interviewed Linda Dunn, who had been Jim Jones's personal secretary for four years. She confirmed Jones's phony cancer cures, saying that the "cancers" were actually "chicken guts." She also described how she disguised her appearance, sat in a wheelchair and, when signaled by Jones during a healing service, got up and slowly began to walk like a newly healed cripple.

Clancy also interviewed Linda Mertle, who lived in the church for a year after her parents had quit. She described how temple officials asked her to break into her parents' house and steal cameras and other photographic equipment that the temple claimed it owned, along with photographs and other items.

Clancy also showed a film of temple members loading huge wooden containers onto flatbed trucks bound for the Guyana mission, lending credence to the suspicion that Jones is actively pulling out of San Francisco.

In the July 21 issue of the Mendocino Grapevine, Stu Chapman interviewed former temple member Sally Stapleton, who revealed that she was forced to turn over 25 percent of her earnings to the church and also saw Jones hit Tim Stoen on the head "because Stoen was not taking care of legal matters. Stoen [a former assistant D.A. under Freitas] was as humble as a lamb.

As this is written, Reverend Jones is still unavailable for comment. Spokesmen claim that an ear infection is preventing him from flying back from Guyana where he's been since June.

Since the publication of our story, over one dozen other ex-temple members have come forward to tell their stories. By far, the most serious questions raised relate to the deaths of certain people who had dealings with the temple.

The most recent case in point is that of John William Head, who died on October 19, 1975, at the age of 22. Head was never a member of the temple; neither was his mother, Ruth Head, who now lives in West Plains, Missouri. She told us that her son, as a teenager, received the proceeds of a $10,000 insurance policy following a serious motorcycle accident. After he got the check, he bought $10,000 worth of silver bullion from the Shamaz Trading Company in Ukiah, where the family then lived. Head then put the silver in a Ukiah bank.

As his mother recalls, on September 27, 1975, Harold Cordell and another temple member visited the boy at the Head's home. They then escorted him to the bank, where he withdrew his silver and turned it over to the temple. Head, who had emotional difficulties, often had long talks with his friend Tim Stoen; at one point the boy admitted himself to a Mendocino County hospital for mental treatment for two weeks.

The day after he gave up his silver, Head told his mother that he was going to live in one of the temple's homes in Los Angeles. Then on October 19, less than a month later, Head is reported to have committed suicide. His body was buried in Ukiah.

Two months later, Mrs. Head received a copy of the Los Angeles coroner's report on her son's death and discovered serious discrepancies. The place of death is listed on one page as 212 North Vignes Street, Los Angeles, a three-story warehouse between Temple and First streets. Although the first page of that report lists Head as "a jumper from three-story warehouse," there is a notation on another page that reads, "jumper from bridge." The nearest bridge crosses the Los Angeles River, which is two blocks east of the warehouse. In addition, the report claims the boy's body bore no scars or surgical wounds. Mrs. Head claims, however, that her son had 300 stitches in his right leg as a result of the motorcycle accident. "No one could miss that scar," she says. To complicate the mystery, one source reports that Head's body had no wounds and abrasions usually associated with a leap from a high structure.

Mrs. Head is not making any charges against anyone, but she wants an inquiry into the death, something she says the Los Angeles coroner's department refused to do back in 1976. "I'd like to know what happened."

Apparently the last person who spoke to Head in Ukiah is a family neighbor who requested anonymity. The neighbor claims that Head phoned her the night before his death: "To me, he sounded like he was very, very upset. . . . He said the situation was really bad. He said he was in a corner of the church, and nobody would bring him back [home], and he had no money."

While there appears to be no evidence of any connection between Head's death and the temple's control of its members, the unanswered questions involving the coroner's report and Head's phone call shortly before his death would appear to justify a formal inquiry.

And this is not the only report of a mysterious death of someone connected to the temple. Another strange death was reported by the San Francisco Examiner and the Indianapolis Star. The Star article by Carolyn Pickering, published September 24, 1972, describes the "suicide-death" of Maxine Harpe of Ukiah. The article reported that Reverend Richard Taylor of Oakland asked State Attorney General Evelle Younger to investigate Jones and his temple after Mrs. Harpe's death because "her [Mrs. Harpe's] sister informed me that unidentified persons from Peoples Temple had occupied her sister's house and ransacked it." According to the article, a relative of Mrs. Harpe said, "I know she gave them [the temple] a check for $1,000 just a week before she died [by hanging herself seven years ago]. The money came from her share of proceeds from the sale of a house owned by my family."

New West spoke recently to the sister quoted by Pickering. The woman, Joanna Key, reported that one of Maxine Harpe's daughters recently turned eighteen and was sent a check for $1,400 (Pickering quotes Key saying Stoen admitted the church had put the original $1,000 in a trust fund. Presumably the $1,400 represents this money plus interest). Still, Mrs. Key says she would welcome a full inquiry. She added that it took the family three days to locate and retrieve Maxine Harpe's children. Mrs. Key told New West that the children had been kept all that time in a "shack" with all their belongings piled up around them. She said the children had been taken from the dead mother's home by Temple members at the same time that they reportedly ransacked the house. The Pickering article quoted an unidentified California woman as explaining that the temple members went through the dead woman's belongings "to remove anything that would identify her with the temple." At the time, the attorney general's office looked into the matter, but did not discover anything unusual.

As we said two weeks ago, the story of Jim Jones and Peoples Temple is not over. But we are rapidly approaching the point when it becomes legitimate to ask how much longer will it take politicians like Mayor George Moscone to face the fact that Jim Jones was not the man they thought he was.

EXHIBIT H

[Letters to House Committee on Foreign Affairs from William H. Webster, Director of FBI, and Philip B. Heymann, Assistant Attorney General, from the Assassination of Rep. Leo J. Ryan and the Jonestown Tragedy, Staff Report of the House Committee on Foreign Affairs, May 15, 1979, pp. 197–199]

D. April 12, 1979, interim response from the Department of Justice to the March 30, 1979, letter from Hon. Clement J. Zablocki

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., April 12, 1979.

HON. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I have received a copy of your letter of March 30, 1978, to Deputy Attorney General Benjamin R. Civiletti requesting information and materials concerning the death of Representative Leo J. Ryan and activities relating to the People's Temple.

A response to your request is being prepared and will consist of those materials and information agreed upon during a meeting of your staff with Mr. Robert L. Keuch, Deputy Assistant Attorney General, Department of Justice, members of Mr. Keuch's staff, and FBI representatives on March 29, 1979.

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

E. April 19, 1979, final response from the Department of Justice to the March 30, 1979, letter from Hon. Clement J. Zablocki

DEPARTMENT OF JUSTICE,
Washington, April 19, 1979.

HON. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of March 30, 1979, requesting certain items of information and evidence in the possession of the Department of Justice, relating to the investigation of the assassination of Congressman Leo Ryan at Port Kaituma, Guyana, on November 18, 1978. As you know, this matter was discussed at a meeting on March 29, 1979, between staff members of the Committee and representatives of the Department.

The assassination of Congressman Ryan and related matters presently are being investigated by a Federal grand jury in the Northern District of California. Therefore, the secrecy provisions of Rule 6 of the Federal Rules of Criminal Procedure limit the extent of information and evidence that may be disclosed at this time. Upon completion of the grand jury investigation and any resulting criminal proceedings, the Department would be pleased to share with the Committee any information developed in the course of our investigation.

The transcript of the Jonestown "Death Tape" was furnished to Committee staff members on March 29, 1979. A copy of the actual tape is being prepared by the Federal Bureau of Investigation Laboratory and will be furnished in the near future.

With regard to pre-tragedy knowledge and investigation of the People's Temple by the Department of Justice, a search of our records developed the following information. In June 1978, the FBI received a communication from the office of Senator S. I. Hayakawa concerning an allegation by a constituent that Jim Jones was coaxing individuals into traveling to Georgetown, Guyana, where they were being held against their will for unknown reasons. The constituent was contacted by the FBI and during a personal interview it was determined that relatives of the constituent had traveled to Guyana voluntarily, and no evidence of forced confinement was developed. Because no violation of the Federal kidnapping statute had occurred, no further investigation was conducted. Additionally, the Criminal Division received a citizen complaint in December 1977, alleging that a relative was being held in bondage in Georgetown, Guyana by Pastor Jim Jones. Because

the facts set forth by the citizen indicated no criminal violation within our jurisdiction, the information was forwarded to the State Department.

With regard to the People's Temple Jonestown guest book, we prefer not to release a copy of the book at this time. However, the book may be viewed by representatives of the Committee at a mutually agreeable time by contacting Donald W. Moore, Jr., Assistant Director, Criminal Investigative Division, FBI Headquarters, telephone 324–4260.

Attached hereto is a copy of the NBC video tape film footage of the crime scene at Port Kaituma. Other portions of the NBC video tape cannot be disclosed at this time because they are not in the public domain and are among the items of evidence being considered by a Federal grand jury.

At the March 29, 1979 meeting, Committee staff members expressed interest in ascertaining the present locations of Odell Rhodes and Stanley Clayton. The last known address for Odell Rhodes is 1530 LaSalle Street, Apartment B5, Detroit, Michigan, telephone 313–345–3490. The last known address for Stanley Clayton is 920 39th Street, Oakland, California, no telephone number. An additional address for Clayton is c/o Patricia Clayton, 910 Rosemary Lane, Cummingsburg, Guyana. The remaining items in your request cannot be disclosed at this time because they concern matters under consideration by the grand jury.

I hope the foregoing information will be of some assistance.

Sincerely,

PHILIP B. HEYMANN,
Assistant Attorney General,
Criminal Division.

By: ROBERT L. KEUCH,
Deputy Assistant Attorney General
Criminal Division.

EXHIBIT I

[From "Six Years With God," by Jeannie Mills, A & W Publishers, Inc., May 1979, pp. 57, 63]

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One person listened. His name was Dave Conn. After he heard our story, he expressed genuine concern for our welfare. He told us that he would put us in contact with a friend who was an investigative reporter; a friend to whom we could tell our story and who could document the events we'd described. Dave felt that if something happened to any of us, at least there would be verification that we were really being threatened. We were deeply appreciative of his offer to try to help, and, since Dave was the very first person who had been willing to listen to the whole story, we decided to trust his judgment. A few days later he brought the reporter, George, over to our house. Grace Stoen was also visiting us that day, so together we told him as much as we could about the beatings, Jim's sadism, his politics, and the threats and fear we lived under. Dave took copious notes which he promised no one would ever see. George promised that he wouldn't use his notes either, unless we gave him our express permission or unless something were to happen to one of us and the information was needed to back up our testimony.

At last something positive was happening. At least we knew that if one of us were killed, maybe someone would suspect and investigate the Temple. Little did we know then how hard it was going to be over the next year and a half to persuade the public to believe the truth about Jim Jones.

George was truly concerned about our safety, and he introduced us to James, an agent from the Treasury Department of the United States government, with whom he had been working on another story. James swore us to absolute secrecy about the fact that we were working in cooperation with a government agency. I must admit that we were a little skeptical at first about talking to an "agent." I remembered the letter that I had sent to Ralph Nader, which had somehow made its way into the hands of Peoples Temple. We weren't at all sure that James wouldn't feed the information we gave him right back to Jim Jones, but he was our only hope, so we decided to trust him.

We told James the same bizarre stories we had told Dave a few days before. We also told him about the weapons we knew Jim was shipping to Jonestown, in the bottoms of crates marked "agriculture supplies." We explained how the counsellors wore money belts around their waists and under their clothes to

smuggle in illegal cash. We told him about the supplies we knew were going in there without proper customs papers and about the people who were using phony passports because they hadn't been able to produce a birth certificate. Jim had bragged about these things in church as he scoffed about his contempt for government.

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the *Bay Guardian*. Don't ever do anything like that again. If you ever do this again, we'll see you in court." Even Zoe was finding out that there was no place to turn for help in exposing the church and its fear tactics.

Jones, who was always paranoid, now went into a complete state of panic. Hundreds of letters written by his members and political supporters were sent to the *New West* headquarters in San Francisco, and hundreds more were sent to New York to the owner of the magazine. Phil Tracy was later to say at a news conference, "We seldom get one letter commenting on an article we are preparing, but when we got 300 letters, many from politicians and prominent people, we really knew we were on to something."

In the meantime, though, all we knew was that Dave Conn had told everything to Dennis Banks and that Jim Jones might have the entire conversation on tape.

Someone called to tell me that her sister was still in the church and said that Jones was going to return to San Francisco from a visit to Guyana. "He'll be at the meeting tomorrow night," she said. I thanked her for the information and promptly called James, the agent. He politely thanked me for the information.

Again, we drove past the church and saw two large flatbed trucks packed with crates headed for Guyana. I called James to report it, and once again he thanked me politely.

Next, I called to tell him that several counsellors were making a trip to Guyana, and once again he expressed thanks. Again and again I would be disappointed, because somehow government investigative agencies were unable to find the trucks or the church members who were coming and going, or to check the supplies that were constantly being shipped to Guyana. As time went on and nothing was happening, we again began to get discouraged. No one really believed us, not even the government—or else someone was smothering the investigations.

Then someone told me about a board of directors meeting for the Downtown Association in San Francisco (an association of top business leaders), at which the city supervisor, John Barbagelata, had spoken about voting fraud and about the power of the Peoples Temple church, and said that the businessmen at the meeting had been thoroughly shocked by the supervisor's allegations. I asked if I could get a copy of the comments that had been made, and after swearing me to secrecy about the source, the person sent me the minutes of the meeting. As I read what Barbagelata said and the remarks of the participants at the meeting, my hopes soared.

EXHIBIT J

[Letters to House Committee on Foreign Affairs from Robert Carswell, Acting Secretary of the Treasury and Richard J. Davis, Assistant Secretary of the Treasury from the Assassination of Rep. Leo J. Ryan and the Jonestown Tragedy, Staff Report of the House Committee on Foreign Affairs, May 15, 1979, pp. 201–204]

G. January 5, 1979, letter from the Department of the Treasury to Hon. Clement J. Zablocki

THE SECRETARY OF THE TREASURY,
Washington, D.C.

Hon. CLEMENT J. ZABLOCKI,
Chairman, Committee on International Relations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We share your sense of tragedy over the recent events in Guyana, and, in particular, over the untimely death of Congressman Ryan.

As you may know, various agencies within the Department of the Treasury are involved in inquiries related to the events in Jonestown. In order to facilitate whatever assistance we may be able to provide to your Committee, Assistant Secretary (Enforcement and Operations) Richard J. Davis will coordinate

responses to any requests your Committee may make. I have also asked him to coordinate with the Department of Justice in order to avoid interfering with any of the ongoing investigations of these events, while cooperating with your Committee to the extent possible.

Sincerely,

ROBERT CARSWELL,
Acting Secretary.

H. March 21, 1979, letter from the Department of the Treasury providing information and materials requested by the staff investigative group

(Materials include a synopsis of the investigative activities carried out by the U.S. Customs Service concerning the People's Temple.)

HON. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with the Committee's inquiry into events relating to the People's Temple settlement in Jonestown, Guyana, Mr. Smeeton of the Committee's staff has recently contacted Mr. McBrien of my staff in order to clarify certain matters in which the Committee is interested. These involve possible illegal shipments to Guyana of guns, money and other materials.

We believe that the enclosed synopsis of the investigative activities carried out by the Customs Service concerning the People's Temple before the tragedy in Jonestown will assist the Committee in its endeavors to reach a fuller understanding of that incident.

We understand that the Committee has in its possession a Customs Service Report of Investigation dated August 26, 1977, discussing allegations against individuals involved in the People's Temple. Another agency erroneously released the report without our authorization. We request your consulting with us prior to the release or publication of any information contained in that report since it contains both criminal allegations against individuals and the identification of confidential sources.

If you have any further questions, please contact me; or you may wish to have your staff contact Mr. McBrien of my office (566-8534).

Sincerely,

RICHARD J. DAVIS,
Assistant Secretary, Enforcement and Operations.

Enclosure.

SYNOPSIS

For more than a year, the law enforcement community in Northern California has received varieties of unconfirmed information, regarding unorthodox tactics utilized by the People's Temple Church to expand their holdings and control the activities of their members. Members of the Temple were required to relinquish all personal property to the Temple which in turn provided totally for the welfare of its members. Many relatives of members objected to this transfer of assets, particularly title to real estate. All earnings from conventional employment were considered the property of the Temple. There were numerous allegations that the Temple was encouraging welfare fraud in addition to the use of corporal punishment by Temple authorities. Many of these types of allegations were also reported in the San Francisco based media during this period.

In February of 1977, an unpaid informant of the Office of Investigations, U.S. Customs Service, offered to arrange a meeting between Special Agents and a group of former Temple members. It was alleged that the Temple was violating statutes related to the illegal export of firearms and negotiable instruments to the Temple's mission in Guyana.

A meeting was arranged with approximately 12 former members. The former members discussed several instances wherein they had witnessed the collection of weapons and currency which they believed had been illegally exported. They made further allegations regarding welfare frauds, civil rights violations, Temple association with right-wing extremists and political influence exercised at various levels of local, state, and Federal Government.

All the former members present were adamant in their belief that such violations had occurred, but the information was dated. None were able or willing to provide specific details sufficient to obtain search or arrest warrants.

The results of these meetings were provided to the BATF, FBI, Secret Service, Department of State and the California Department of Justice as well as various state and local law enforcement agencies.

Efforts were undertaken to cultivate sources of current information from Temple members and others relevant to the Customs violations, but proved unsuccessful. Surveillance activity identified several target vehicles, but there was no indication of illegal activity.

In early August of 1977, one of the former members who participated in the February meeting advised that she had identified a truck which had departed San Francisco with supplies for Guyana. She believed that crates of missonary supplies might also contain weapons or unreported currency. Lookouts were established and 90 crates of supplies were located. This shipment was examined in Miami with negative results. The American Embassy in Guyana was advised and responded that they had notified Guyanese authorities who would again search the shipment upon arrival. Guyanese authorities were also advised of the allegations and status of the Customs investigation via INTERPOL in late August.

During August and September of 1977, the majority of the Temple members joined Reverend Jones in an exodus from the San Francisco area to the mission in Guyana. Due to the subsequent lack of activity by remaining members, the Customs investigation was terminated.

Subsequent to the report of the murder of Representative Leo J. Ryan and the mass suicide in Guyana, U.S. Customs reopened the investigation. Presently, the Office of Investigations is cooperating with ongoing investigations by the FBI and Secret Service as well as debriefing returning Guyana survivors relative to Customs violations. Federal Grand Jury inquiries concerning the People's Temple and the Jonestown incident are also under way in San Francisco and New York.

EXHIBIT K

[From "Six Years With God," by Jeannie Mills, A & W Publishers, Inc., May 1979, pp. 301–306]

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gave her a little outfit she had been making. Candy gave her a big hug and a kiss.

"You know, Mom, we have another problem. We have fourteen children living with us, and we'll have to find a place to live. Do you know where there might be a house we can rent?" I asked.

"Are you going to bring all fourteen children with you?" she asked in surprise.

"Yes," Al answered. "These are our children, and they'll all be living with us."

She promised to watch for a house, and we scanned the classifieds to see what was available.

The next weekend, in the church service, Jim had a "treat" for all the members. He brought in huge vats of homemade juice that had turned to wine. "I want to give you all a treat," he said magnanimously. "You can consider this as a giant communion service." Nearly a thousand members went up, one by one, as he gave each person a drink of the wine. It was delicious, and many of the children who had never been allowed to taste wine before agreed that it was good. Several of the children popped back into line more than once and went home that night giggly and tired. On the way home, Al and I discussed the time just two years before when almost a hundred people had lined up to be whipped for drinking wine.

Jim sent the message to all the P.C. members that there was going to be an extremely important meeting Monday night and that every P.C. person was to be there without fail. The meeting was to be held in the San Francisco temple, and any person who didn't attend would be subject to discipline.

As Al and I walked on to the stage area of the church where all the chairs had been set up for a meeting, we were delighted to see Larry Schacht. We hadn't seen him for almost a year because he'd been at medical school in Mexico City. "This must really be an important meeting for Jim to have brought Larry here for it," Al said.

"I wonder what's so very important?" I asked. As we walked toward a couple of empty seats we got another surprise. Tim Stoen was in this meeting. He was excused from most of the services and most of the P.C. meetings because of his heavy work schedule as an assistant district attorney in San Francisco.

He spent all extra time giving free legal advice to members of the three congregations. All Jim's staff workers were present, too, which was unusual. Most of the time one or two of them were out on a "secret mission" during the P.C. meetings.

We sat waiting to find out what had caused Jim to call all these busy people away from their duties for this meeting. We had only

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The following Monday night was to be our last P.C. meeting. As our attention focused on the front of the room, we were surprised to see a gun at Jim's side. He solemnly announced, "I have heard that someone in this room is contemplating quitting our church. I want you to know that I am disgusted with those among us who contemplate being traitors to a group that is doing so much good." My heart jumped into my throat, and for a moment I thought I might pass out. The gun at his side seemed to grow ten feet long.

Still, I reasoned, I hadn't actually told anyone that we were quitting. I had called in an excuse for every meeting we had missed. As Jim slowly pointed the gun toward the group of counsellors, everyone looked frightened. "Tonight I am going to make certain that there is no question in anyone's mind about what happens to traitors."

At this inopportune time, Carol Stahl had to use the bathroom. She stood up and asked for permission to leave. Jim pointed the gun directly at her. "Where do you think you are going?" he screamed.

"I'm sorry, Father, but I have to go to the bathroom and I can't wait!" She was trembling with fright, but Jim didn't seem to notice.

"I said no one is to leave this room tonight, and I mean it. If you must use the bathroom, you can do it right here."

"But Father, it's number two," Carol said pleading.

"I don't care, you're among friends." Larry brought out the large fruit can that Jim used to urinate in, and handed it to her.

"Can I have a blanket in front of me?" she asked quietly.

"No! If you really have to go, you should be able to do it in front of us here."

Carol contemplated for a moment and knew that she couldn't wait, so she pulled down her pants and sat on the can. The hundred people assembled in the room watched her while she had a bowel movement, and someone handed her a tissue to wipe with. Carol had turned crimson. Someone in the room made a weak attempt at humor and said, "Father must have scared the shit out of her," but a stern look from Jim made him realize that this was no time for humor.

"Tonight is a very serious night and I don't want anyone in this room to go to sleep." It was almost as if Jim were a hypnotist and he had commanded Grace to go to sleep. Immediately her head began to nod. "Grace, I don't want to have to shoot you. You'd better stay awake tonight."

Grace felt sleepy but she could hear the threat in Jim's voice, so she stood up and remained standing for the rest of the meeting. Jim continued to talk about the rumor he had heard about

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EXHIBIT L

[From the San Francisco Chronicle, Saturday, Aug. 25, 1979, p. 15]

FOCUS OF THE RYAN DEATH PROBE

The long federal grand jury investigation into the murder of Congressman Leo J. Ryan during his visit last November to the Peoples Temple colony in Guyana is not likely to lead to any indictments in California, a high-ranking Justice Department official said yesterday in Washington.

The Justice Department may instead concentrate its efforts on trying to build a strong case in the murder trial of Larry Layton, a follower of cult leader Jim Jones, who is accused of killing Ryan and four others.

Philip B. Heymann, head of the Justice Department's criminal division, said there are substantial problems in attempting to prove that Ryan's death resulted from a conspiracy hatched in San Francisco.

Unless it can be shown that the conspiracy to kill Ryan had its roots here—rather than in Guyana, where the mass Peoples Temple slayings were carried out—it would not be possible to win convictions in San Francisco, Heymann said.

The cases against Jones' lieutenants awaiting trial in Guyana are "probably clearer and stronger," he added.

Heymann said United States authorities will probably work in cooperation with Guyanese officials, assisting officials of that South American republic in their efforts to get key witnesses to testify in Layton's murder trial.

Layton, who was seized after Ryan and four others were killed at an airstrip shootout near Jonestown, Guyana, is expected to go on trial for murder this fall.

EXHIBIT M

[From the San Francisco Chronicle, Friday, Dec. 7, 1979, p. 14]

RYAN'S SON URGES PROBE OF TEMPLE

(By John Fogarty)

WASHINGTON—Representative Leo J. Ryan's son asked members of the House Foreign Affairs Committee yesterday to conduct "a thorough investigation" into questions that remain unanswered about Ryan's death last year at the Peoples Temple settlement in Guyana.

Christopher Ryan, 30, of Boston, made the plea during a memorial service held by the House Foreign Affairs Committee to dedicate a plaque for Ryan, who was investigating charges made against the cult when he was killed Nov. 18, 1978, near the Jonestown settlement.

"We are grateful for the honor you pay to my father," Ryan said in brief remarks at the service, "but the greatest honor you could pay him would be to conduct a thorough investigation of what caused the Peoples Temple so we can try to make sure something like the People's Temple does not happen again."

Ryan endorsed Representative Bill Royer's request to the Foreign Affairs and Judiciary committees of the House for hearings into how the State and Justice Departments handled complaints about conditions inside Jonestown. Royer, a Republican, succeeded Ryan as San Mateo County's representative in the House.

While two reports have been issued on the case by the State Department and the Foreign Affairs Committee, no hearings have been held into the deaths of Ryan and four members of his party and more than 900 residents of Jonestown who died in a suicide-murder ritual. The government has refused to release documents on Jim Jones, the Temple's leader and his followers.

In an interview following his speech, Ryan said he believes the tragic events in Guyana could have been avoided if the State Department and Justice Department had acted on complaints about the Peoples Temple that dated back to 1972. He said public hearings should be held so those responsible could explain why they failed to act for so long.

"If someone in government had done an adequate investigation of the complaints, they would have uncovered the horrors of Jonestown," Ryan said. "It should not have taken the death of my father to find out what was going on there."

EXHIBIT N

[From the Assassination of Rep. Leo J. Ryan and the Jonestown Tragedy, Staff Report of the House Committee on Foreign Affairs, May 15, 1979, p. 43]

A. RYAN TRIP BACKGROUND

1. CORRESPONDENCE BETWEEN HON. LEO J. RYAN AND VARIOUS MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

A. October 4, 1978, letter from Hon. Leo J. Ryan to Hon. Clement J. Zablocki

OCTOBER 4, 1978.

Hon. CLEMENT ZABLOCKI, Jr.,
Chairman, International Relations Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: Under the distinguished chairmanship of the Honorable Dante Fascell, the International Operations Committee, has become increasingly aware of the problems related to protecting the lives and property of U.S. citizens

abroad. As a member of the subcommittee, I have had a particular interest in this issue and would like, with your permission, to pursue an investigation focusing on the U.S. Government's ability and responsiveness in protecting Americans abroad in a specific case study.

It has come to my attention that a community of some 1400 Americans are presently living in Guyana under somewhat bizarre conditions. There is conflicting information regarding whether or not the U.S. citizens are being held there against their will. If you agree, I would like to travel to Guyana during the week of November 12–16 to review the situation first hand.

I have checked with the Chairman of the two subcommittees with jurisdiction, Dante Fascell and Gus Yatron, and they have no objection.

Your consideration of my request is appreciated.

Sincerely yours,

LEO J. RYAN.

APPENDIX XI

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK,
COMMITTEE ON FEDERAL LEGISLATION,
New York, N.Y. May 5, 1980.

Re: Proposed National Intelligence Act of 1980 (S. 2284)

HON. BIRCH BAYH,
Chairman, Senate Select Committee on Intelligence, Dirksen Building, Washington, D.C.

DEAR MR. CHAIRMAN: By letter dated April 3, 1980, you posed certain questions to our Committee concerning the proposed foreign intelligence charter, as a supplement to my testimony on March 27. Although our Committee is of course dismayed at the reports in Friday's newspapers indicating abandonment of the effort to enact a comprehensive charter, we are nevertheless setting forth in this letter our responses to your questions, in the hope that they will be helpful in the event that the effort is revived (as we hope it will be) or for use in developing alternative legislation governing foreign intelligence activities. We respectfully request that this letter be made a part of the record along with my March 27 testimony.

Question 1. Shorter Charter

If we moved ahead with a charter that is much shorter than S. 2284 and focuses on basic principles, what would you consider the most important principles to include in such a bill?

Response. We believe that any "streamlined" foreign intelligence charter should include, at a minimum, the principles discussed in the testimony we presented on March 27, 1980. As I said then, we would favor an attempt to condense the charter, so long as these basic provisions are not sacrificed. In this connection, we think that the bill introduced in the House of Representatives by Congressman Aspin on March 17, 1980, H.R. 6820, contains the basic principles that should be addressed by any foreign intelligence charter legislation.

Question 2. Wiretapping U.S. Persons Abroad

Executive Order 12036 limits wiretapping of an American abroad to cases where the Attorney General finds probable cause to believe that the American is an agent of a foreign power. The charter goes further and permits wiretapping an American who is not a foreign agent, if the President finds it 'essential' to national security and a court finds probable cause that the American possesses foreign intelligence. Is it constitutional to wiretap an American abroad who is not a foreign agent?

Response. In the first place, we do not believe that it makes a difference, as a matter of constitutional law, that the American abroad is considered to be a foreign agent. We recognize that this question was expressly left open by the Supreme Court in the *Keith* decision, *United States* v. *United States District Court*, 407 U.S. 297, 308, 321–22 & n. 20 (1972). We would now answer that open question by applying a warrant requirement, under at least the criminal standard enunciated in the Foreign Intelligence Surveillance Act, before any surveillance may be undertaken of Americans abroad, regardless of whether such Americans are deemed foreign agents. As set forth in our March 27 testimony, we do not think that the protections of the Fourth Amendment for American persons stop at the borders of the United States, nor do we think those borders should demarcate different standards of legislative protection. By the same token, we do not think that such protections should terminate simply when the label "foreign agent" is applied to an American abroad. With these caveats in mind, we turn to the subsections of Question 2:

(a) Does it make a difference, constitutionally, that the court is involved in finding probable cause to believe that the American possesses foreign intelligence?

Response. It should not make a difference constitutionally that the court is involved, because, as suggested above, we do not think that constitutionality of surveillance may be derived simply from the fact that an American person "possesses foreign intelligence"—whether that determination is made by a court or any other government agency. The critical question is whether the American person is involved in conduct which would be criminal activity if committed within the United States. Nevertheless, should the Congress decide to permit wiretapping and surveillance abroad based merely on a finding of probable cause to believe that the American possesses foreign intelligence, then we would prefer to have a court make that finding based on an evidentiary record.

(b) Is that kind of 'probable cause' finding appropriate or proper for a court to make?

Response: It is indeed appropriate—and preferable, in our view—that a court make the probable cause finding, for reasons that the Supreme Court has articulated time and again in Fourth Amendment cases. For example, in *United States* v. *United States District Court*, *supra*, the Court declared (407 U.S. at 316–17):

". . . [W]here practical, a governmental search and seizure should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify invasion of a citizen's private premises or conversation. Inherent in the concept of a warrant is its issuance by a 'neutral and detached magistrate.' *Coolidge* v. *New Hampshire*, *supra*, at 453; *Katz* v. *United States*, *supra*, at 356. . . . The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility are to enforce the laws, to investigate, and to prosecute. . . . But those charged with this investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech." (Citations omitted.)

The Court concluded in *Keith* that it was "practical" to apply the warrant requirement to domestic security surveillances, rejecting the government's contention that courts "as a practical matter would have neither the knowledge nor the techniques necessary to determine whether there was probable cause to believe that surveillance was necessary to protect national security." *United States* v. *United States District Court*, *supra*, 407 U.S. at 319. Similarly, we think there would be no practical impediments to a court-ordered warrant procedure for foreign intelligence surveillances overseas. And, as noted, we believe the Fourth Amendment requires such a procedure. *Cf. Payton* v. *New York*, —— U.S. ——, CCH S.Ct. Bull. at B1593, B1600–601 n. 17 (April 15, 1980).

(c) Would the alternative of leaving to the President whatever constitutional authority he may have be better than a statutory court order procedure?

Response. A statutory court order procedure is preferable to "leaving to the President whatever constitutional authority he may have." In this connection, we understand that the Senate Committee may be prepared to make most foreign searches and surveillances subject to the warrant procedure and the criminal standard of the 1978 Act, but still allow the President some leeway to circumvent the warrant procedures in extraordinary circumstances essential to national intelligence needs. Viewed in this light, the question then becomes whether the statute should specifically authorize the President to make a finding of extraordinary circumstances and thereby circumvent the warrant procedure, so long as it is reported to the House and Senate Intelligence Committees, or whether the statute should simply provide that nothing therein shall affect any inherent right of the President to conduct such searches or surveillance on his personal authority, provided there is notice to Congress.

Our Committee has been critical of statutory provisions which purport to recognize, or even allow for the recognition of, the existence of some undefined inherent power of the President. Therefore, if Congress wishes to give the President leeway in certain extraordinary circumstances, we prefer the specific authorization with an express requirement of notice to Congress (preferably prior notice) over a provision framed in terms of an inherent power of the President.

We understand that language concerning inherent presidential power may not be interpreted to confer such power, but merely to reflect a decision by Congress

to leave "presidential powers where it found them," *United States* v. *United States District Court, supra*, 407 U.S. at 303. However, we do not think it wise to run the risk that a court interpreting such a statutory provision may decide that it implies some recognition by the legislature of inherent executive power to conduct overseas surveillance without court order. Moreover, if Congress gives the President specific authorization to conduct warrantless surveillance in certain exceptional cases, it can also condition the exercise of that power upon the report to Congress—which is another compelling reason, in our view, for preferring that approach over a clause that simply refers to inherent executive powers.

(d) The charter would let the Attorney General "certify" facts to the court for its probable cause finding, if the information deals with liaison relationships with foreign governments. Is it constitutional to keep that kind of information about the source of the Government's knowledge from the court?

Response. We think it would be unconstitutional to keep any information from the court relevant to a finding of probable cause. Also, we think it is constitutionally infirm to permit the Attorney General to "certify" any facts to the court necessary to a probable cause finding. Such a provision would not only violate the separation of powers principle, but would make the warrant procedure meaningless. We involve the courts—"disinterested magistrates"—in making probable cause findings precisely because they are equipped to go behind mere assertions and look instead for hard evidence. A certificate from the Attorney General is no substitute for that evidentiary procedure; nor would it satisfy the Constitution simply because the certificate is presented to a "court." We appreciate the sensitivity of information dealing with liaison relationships. However, the entire domestic and national security area is fraught with sensitive data and secrecy considerations, yet such factors do not and should not take precedence over the fundamental policies underlying Fourth Amendment protections.

(e) In view of the concern about court approval for violating foreign laws, would it be appropriate to apply the standards and procedures of the Foreign Intelligence Surveillance Act abroad, so that an American overseas could be wiretapped with a court order if his activities might be a crime if they were conducted within the United States?

Response. If the standards and procedures of the Foreign Intelligence Surveillance Act are applied to wiretapping and surveillance of Americans overseas, the American court will not be involved in determining whether the intended intelligence activity violates foreign law—but rather, whether the surveillance is permissible under an Act of Congress. If we assume that the CIA, for example, will commit acts abroad that are unlawful under local law, we believe it is still important to have an American court protect against CIA violations of the U.S. constitutional rights of American persons abroad; therefore, we think it is indeed appropriate to apply the Foreign Intelligence Surveillance Act to overseas surveillance of Americans. Foreign authorities are well equipped to cope with the question of whether the resulting surveillance, if discovered, violates foreign law—as they would if there were no warrant requirement under U.S. law.

Question 3. Physical Searches (Break-ins, Mail Opening)

The ACLU has testified that, in its view, the charter provisions for physical searches of the homes or offices of Americans are unconstitutional. They argue that the Fourth Amendment requires, absent exigent circumstances, that the officer serving the warrant knock on the door and seek entry and that he leave behind a record of what was seized. They point out that the courts have recognized *no national security exemption* to this traditional Fourth Amendment procedure for physical search in contrast to wiretapping. The framers of the Fourth Amendment had national security powers in mind when they adopted the Bill of Rights, because they feared the abuses committed by the British in searching the homes of alleged 'traitors.' What is your view of the constitutionality of totally secret break-ins to search the homes and offices of Americans for intelligence purposes?

Response. We agree with the ACLU's view. Any authorization of secret break-ins to search the homes and offices of Americans would be a radical and unwarranted departure from existing law; it should not be permitted.

Question 4. FBI Intelligence Investigations

The charter would depart from a criminal standard for FBI investigations in two ways. First, FBI counterintelligence investigations would be based on a

non-criminal "clandestine intelligence activities on behalf of a foreign power" standard. Second, FBI foreign intelligence investigations of Americans could be conducted to collect information about the "capabilities, intensions or activities of any foreign government, organization, or individual," upon the request of the CIA with approval of the FBI Director and notice to the Attorney General. Do you believe there is a truly compelling justification to authorize FBI investigations that use such techniques as infiltration of groups, access to bank records, and similar techniques on the basis of these broad, vague noncriminal standards?

(a) Director Webster told us that borderline cases might arise where the charter would permit investigations of Americans engaged in lawful political activities, such as lobbying for policies that would favor a particular foreign government. He said he thought the charter gave sufficient safeguard by requiring notice to the Attorney General in such cases. Should the charter require that any *full-scale* FBI investigation (as opposed to a limited inquiry) be based on the possibility of criminal activity, like espionage or violation of the Foreign Agents Registration Act?

Response. Our answer to the general question is no, as reflected in our testimony on March 27. In response to sub-part (a), we believe that, with respect to any full-scale FBI investigation, the foreign intelligence charter should adopt the same standard as that embodied in Section 533(b)(1) of the proposed FBI charter (S. 1612) for domestic criminal investigations, *i.e.*, "facts or circumstances that reasonably indicate that a person has engaged, is engaged or will engage in an activity in violation of a criminal law of the United States."

Question 5. FBI "Counterintelligence" Tactics

Recently the newspapers have reported Director Webster's testimony before the House Committee that the charter would permit the FBI to take counterintelligence actions to disrupt and neutralize the activities of domestic groups and individual citizens who "may be" engaged in clandestine intelligence activity on behalf of a foreign government. The ACLU strongly opposed this broad power, but the ACLU also agreed that "certain forms of disinformation and protective measures may be justified against known agents of foreign powers engaged in espionage or to avert imminent planned acts of terrorist violence." Do you agree that such authority is justified?

(a) Should we require a higher standard of certainty about the activities of an American for such authority to be exercised—higher than the "may be engaged" standard used to open an investigation?

(b) Should we require that the types of counterintelligence techniques used by the FBI under this authority must be specified in the procedures approved by the Attorney General?

Response. The majority of our Committee is against giving the FBI express authority to take preventive action. However, certain members of our Committee believe that the FBI would be justified in taking such action to avert violent acts threatening to cause death or bodily injury or other terrorist acts (such as taking hostages), in circumstances where a failure to take preventive action would be unconscionable, and where the action is authorized in advance by the Attorney General or his designee outside the FBI.

(a) If the charter is to contain a separate grant of such preventive action authority to the FBI, then we believe it should require a standard of certainty about the activities of an American higher than the "may be engaged" standard used to open an investigation.

(b) In our view, the types of counterintelligence techniques should not be limited, but there should be a statutory procedure involving high-level personnel (*i.e.*, the Director reporting in advance to the Attorney General or his designee outside the FBI and subsequently to Congress) for authorizing the use of any such techniques.

We wish to thank you again for the opportunity to present our views to the Senate Committee on this crucial legislation. If we can be of any further assistance, please let us know.

Respectfully submitted,

STEVEN B. ROSENFELD,
Chairman,
Committee on Federal Legislation.

APPENDIX XII

THE ASSOCIATION OF AMERICAN GEOGRAPHERS,
Washington, D.C., May 14, 1980.

Senator BIRCH BAYH,
Chairman, Select Committee on Intelligence, Senate Office Building,
Washington, D.C.

DEAR SENATOR BAYH: At last month's annual business meeting of the Association of American Geographers in Louisville, Kentucky, the membership in attendance passed by voice vote the following resolution:

"*Be it resolved*, That the Association of American Geographers insists that the new charter regulating the activities of the CIA explicitly forbid the use of academics as cover for any manner of covert operation,

Be it further resolved, That the text of this resolution be communicated immediately in writing to the President of the United States, the Director of the CIA and all relevant committees of Congress charged with regulating the overseeing CIA activities."

Sincerely,

PATRICIA J. MCWETHY,
Executive Director.

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