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Agency Information

AGENCY : SSCIA
RECORD NUMBER : 157-10014-10132

RECORD SERIES : MISCELLANEOUS RECORDS OF THE CHURCH COMMITTTEE

AGENCY FILE NUMBER : 07-M-38

Document Information

ORIGINATOR : SSCIA
FROM :
TO :

TITLE :

DATE : 03/24/1976
PAGES : 28

SUBJECTS :
SSCSGO, METHODOLOGY
COMMITTEE BUSINESS

DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : Declassified
RESTRICTIONS : 1B; 1C
CURRENT STATUS : Redact
DATE OF LAST REVIEW : 03/22/2000

OPENING CRITERIA :

COMMENTS : CCBOX 324

JFK ASSASSINATION SYSTEM
IDENTIFICATION FORM

AGENCY INFORMATION

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COMMITTEE BUSINESS

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

[R] - ITEM IS RESTRICTED

NATIONAL SECURITY INFORMATION
Unauthorized Disclosure Subject to Criminal Sanctions

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Vol. 2 OF 3

R 2862

The United States Senate

Report of Proceedings

Hearing held before

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

Wednesday, March 24, 1976

Washington, D.C.

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

WARD & PAUL
410 FIRST STREET, S. E.
WASHINGTON, D. C. 20003

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TOP SECRET

1 COMMITTEE MEETING

2 - - -

3 Wednesday, March 24, 1976

4 - - -

5 United States Senate,

6 Select Committee to Study Governmental

7 Operations with Respect to

8 Intelligence Activities,

9 Washington, D. C.

10 The Committee met, pursuant to notice, at 2:23 o'clock

11 p.m., in Room S-407, the Capitol, the Honorable John Tower

12 (Vice Chairman) presiding.

13 Present: Senators Tower (presiding), Huddleston, Mondale,

14 Baker, Mathias and Schweiker.

15 Also present: William G. Miller, Staff Director; and

16 William Bader, Charles Kirbow, Joseph diGenova, Elizabeth

17 Culbreath, Elliot Maxwell, Charles Lombard, Rick Inderfurth,

18 Michael Madigan, Al Quanbeck, Ted Rolston, David Aaron and

19 Robert Kelley, Professional Staff Members.

20 - - -

21

22

23

24

25

1 P R O C E E D I N G S

2 Senator Tower. Why don't we go ahead and proceed without
3 a quorum. If anybody wants to raise a point of order later, let
4 them do that.

5 Mr. Aaron. All right.

6 Page 110, Section VIII is the section on oversight and the
7 intelligence budget. It contains both an analysis of some of
8 the constitutional questions involved in disclosure of intelli-
9 gence expenditures, as well as the Committee's analysis or
10 the staff's analysis of the particular issue of disclosure
11 and its relationship to our national security concerns.

12 Two numbers appear in the text that the Committee should
13 direct its attention to. The most important functioning number
14 is the $4.7 billion which the Committee's analysis would
15 attribute to the direct costs of national intelligence. That
16 is the number which the findings and recommendations propose
17 be made public and be made public annually.

18 The second number is a $10 billion figure, which is the
19 overall global costs of all intelligence, based upon the
20 analysis of the Committee staff, essentially Mr. Quanbeck. This
21 includes not only the $4.7 billion of national intelligence, but
22 it includes tactical intelligence and it includes what I think
23 you have to call indirect costs of the intelligence establishment.
24 For example, the fact that intelligence officers in the military
25 go through certain training programs and have certain medical

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1 facilities and so forth and so on, these costs are not costs
2 in the sense that they are exclusively devoted to intelligence.
3 I mean, if we were, for example, to have no intelligence, that
4 doesn't mean you would save that entire $10 billion. These are
5 in effect, I think those who worked on the defense budget
6 before are aware of what indirect costs are and how one calculates
7 them.

8 Those essentially are the two numbers. There is, of course,
9 a dispute about whether it is necessary or desirable to reveal
10 the numbers, and I might just say in that connection, the
11 primary reason for giving the global figure is in part to
12 settle a lot of public debate about these enormous costs of
13 intelligence in a manner which will make it clear what it is
14 one has been talking about, and that in fact a lot of these
15 are indirect costs, a lot of these are tactical and integral
16 to the normal functioning of military commands.

17 The recommendations start on page 114, and there are only
18 three of them. I think the decision of the Committee has to
19 go to the question of the numbers to begin with, whether they
20 should be indicated in the text, and then the recommendations,
21 the first of which being that there be a national intelligence
22 budget, that it be made public, that the figure, the global
23 figure for the national intelligence budget, which would be
24 the $4.7 billion, be made public, and that the Committee
25 recommend further that the oversight committee consider whether

1 it is necessary, given the requirement of the Constitution and
2 so forth, to publish more details.
3 I must say the latter point raises a textual question which
4 we have to look at, and that is the way one describes what
5 revealing the national intelligence number would do in terms
6 of the constitutional requirements.
7 What we have suggested here is on page 112 there are, I
8 think, some points of view which say that revealing that
9 number is not sufficient to satisfy the Constitution. There is
10 another point of view which says that the national security
11 is overriding and that this number should not be disclosed at
12 all, and therefore even not disclosing any numbers still
13 satisfies the Constitution.
14 What we have attempted to capture in the first sentence
15 of the full paragraph on page 112 is what the Subcommittee, I
16 believe, felt was just about the right balance between the
17 requirements of national security and the requirements of the
18 Constitution.
19 It reads, "The Committee believes that disclosure of an
20 aggregate figure for national intelligence is as far as it is
21 prudent to go at this stage in reconciling the nation's
22 constitutional and national security requirements.
23 Senator Tower. All right.
24 Shall we take this page by page now and see what --
25 Senator Huddleston. I would suggest that we go on the

1 three recommendations, Mr. Chairman.

2 Senator Tower. Take the recommendations?

3 All right.

4 First, let me just ask if there is any substantial disagree-
5 ment with anything in the text here. I think it has got
6 probably as good a balance as you can on this figure, given
7 the aggregate figure. Well, you don't have line items on the
8 figure in that anyway.

9 Senator Huddleston. Probably not. We hassled over it
10 pretty much, and I will say this: the staff that did the work
11 on the budget did an outstanding job, so I think we had a better
12 look at the budget of intelligence than anybody has had.

13 Senator Tower. Well, I'll bet there is nobody around here
14 that can challenge the figures.

15 Senator Huddleston. That is right, even the Administration.

16 I think it is reasonable. Of course, we will have a
17 question on the numbers that we have included maybe in the
18 text, as far as the Agency is concerned in sanitization, but I
19 think our recommendation to include an aggregate figure is
20 sound, plus further consideration be given to the constitutional
21 requirements.

22 Senator Tower. Any objection, then, to the text, pages 110
23 through 113.

24 Senator Baker. I have no objection, Mr. Chairman.

25 Senator Tower. All right.

1 Dee, do you want to address yourself to the recommenda-
2 tions?
3 Senator Huddleston. I think David explained them pretty
4 well. The main thing is that we recommend that an aggregate
5 total which would correspond to that $4.7 billion figure be
6 included in the budget that is presented to Congress, and
7 thereby it would be made, of course, public, and that the
8 oversight committee consider further whether it would be neces-
9 sary in order to fulfill the requirements of the Constitution to
10 go further than that. There is a question of additional study
11 there.
12 The monitoring, that is just an oversight responsibility,
13 it seems to me, No. 2 there.
14 And then the GAO report, which is essentially available any-
15 time anyway.
16 Senator Tower. Well, let me ask you this.
17 Is inherent in this No. 1 the suggestion that when OMB
18 makes its recommendations, they come in with a national figure?
19 Mr. Miller. This committee?
20 Senator Tower. No, OMB, when they present the annual
21 budget, they present a national --
22 Senator Huddleston. Under our plan, the DCI would do
23 that.
24 Mr. Miller. The DCI would do that.
25 In the presentation that the people from the CIA gave to

1 this Committee, they have the capacity to array it in a way
2 that would be useful to an oversight committee, so the figure
3 $4.7 billion corresponds really to their perception of what
4 national intelligence is.
5 The larger figure, the $9.7 billion is based on further
6 work done by this Committee. They dispute some of the items
7 but not the basic approach.
8 Mr. Aaron. As you know, the new executive order, the
9 Director of Central Intelligence will be presenting to the
10 President a consolidated national intelligence budget, and he
11 will in fact be preparing that budget. In effect we are
12 recommending that it be presented to the Congress. Earlier
13 there are recommendations along those lines, that that budget
14 be presented to the Congress.
15 This would say, in effect, that that global figure, not
16 the breakdown, be made public.
17 Mr. Quanbeck. I think it would be important that the
18 Congress, together with the executive branch, define exactly
19 what goes in that national intelligence budget. There really
20 is no agreement at this time.
21 Senator Tower. Any further comment on the recommendations?
22 Senator Schweiker. One question. When we talk about
23 releasing a figure publicly, which of these figures are we
24 talking about?
25 Mr. Aaron. It would be the $4.7 billion, down to the first

1 subtotal, national intelligence effort.

2 Mr. Quanbeck. We also propose to release the $9.7

3 billion to show some relationship to what the House has already

4 released. They released a figure of $10.5 billion.

5 Mr. Kirbow. I think the Senator's question went to in the

6 future, annually.

7 Mr. Quanbeck. Yes, that would be the $4.7 billion.

8 Senator Huddleston. I don't know whether we ought to

9 change that figure from $10 billion to $9.7 billion.

10 Mr. Aaron. I think we ought to use the same figure all

11 the way through.

12 Mr. Kirbow. I think if you say $10 billion and jump back

13 to $9.7 billion -- if you just say approximately $10 billion.

14 Senator Schweiker. What is the reason of the Subcommittee

15 in releasing the $4.7 billion as opposed to the $9.7 billion?

16 Senator Huddleston. Well, $4.7 billion represents more

17 of the direct costs of our national intelligence. You have

18 got three different figures there. As you go up to $6.9

19 billion you are picking up your tactical and military intelli-

20 gence. Then when you pick up the next $2 billion or so there,

21 that is support costs that while they are necessary for intelli-

22 gence, they are not necessary just because of intelligence.

23 You could probably go on -- they would go on even if you

24 eliminated all of your intelligence.

25 Senator Tower I think the first paragraph on 113 deals

1 with that. Thus, the entire amount could not be saved if there
2 were no intelligence activities funded by it through the
3 Defense Department.
4 Senator Schweiker. Won't you conceal more from the other
5 side if you release the entire figure?
6 I don't have any strong argument, but it just seems to me
7 that one of your problems is that if you give the indirect
8 figures you would confuse the enemy and you would still level
9 with the public to a greater extent.
10 Senator Tower. Well, I'm told the Agency would rather
11 have the $4.7 billion figure.
12 Senator Huddleston. I think they like the national figure
13 without getting into the tactical.
14 Senator Schweiker. Okay, I don't feel strongly about
15 it.
16 Senator Baker. I think Dick has got a good point, but
17 I guess their preference in this respect --
18 Senator Huddleston. Well, they don't want it to look too
19 high, for one thing.
20 Senator Baker. Well, who knows what is too high?
21 Senator Tower. You know, the critics have been saying we
22 are going to be spending $10 billion.
23 Senator Baker. Oh, that, they are going to stop and they're
24 going to say we've been spending $4 billion in the same tone of
25 voice.

1 Senator Tower. Well, $10 billion is more powerful than
2 $4.7 billion because it is higher.
3 Senator Baker. I knew that and I knew that would be the
4 answer.
5 Mr. Aaron. I might say that there is also the consideration
6 that the $4.7 billion number, under our proposed oversight
7 committee, it would be the number that was authorized and
8 therefore presumably would have to be made public in the author-
9 ization bill.
10 Senator Tower. Anything further on Section VIII?
11 All right, Section IX.
12 Mr. Aaron. The next section deals with chemical and
13 biological agents and the intelligence community, and I
14 might call on Elliot to describe it because he did most of the
15 work in this area, you recall. We had a hearing on the subject
16 of the toxins and what have you. We also had even more I think
17 in-depth analysis of the whole problem of drug testing as
18 it existed in the CIA and to some extent in the military.
19 Elliot?
20 Mr. Maxwell. The section tries to deal with both the
21 testing and the shift from defensive to offensive concerns as
22 well as the problems involved in particularly the surreptitious
23 administration of drugs to unwitting, non-volunteer human
24 subjects.
25 All the Senators are knowledgeable about the Olsen case.

1 In a related matter, another person was killed as a result of
2 a military intelligence testing program conducted in New York.
3 These were very highly sensitive programs that were begun in
4 response to a concern by the Agency and the military that
5 individuals in the American government or agents of the
6 American government would be kidnapped or held by hostile
7 powers and would have these drugs used against them either for
8 interrogation purposes or to gain control.
9 They soon, however, became used as testing programs for
10 our use of chemical and biological agents. These included not
11 only the toxins, but also testing of LSD, sodium pentathol among
12 others. The problems involved were not only the concern over
13 the human rights of individual subjects,but the procedures
14 within the CIA, in this case, in which internal CIA's concern
15 over the security of the program led to the waiving of
16 certain administrative controls so that in 1957, for instance,
17 the Inspector General, doing a survey of the whole program, had
18 no knowledge that there was this particular unwitting testing
19 program going on.
20 The Committee recommendations go to the question of waiver
21 of Agency regulations, a problem that we have had all the way
22 through whereby regulations are issued by the Director and
23 thus can be waived at any time, and the Committee, or the
24 Subcommittee recommendations would require that if there were
25 a waiver of such regulations, they be reported to the Committee

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1 so that they would know how the internal governance of the
2 agency has changed.
3 Secondly, it deals with the establishment, or really, the
4 continuation of a body presently in existence, the President's
5 Commission for the Protection of Human Subjects of Biomedical
6 and Behavioral Research, which is drawing up standards for
7 testing on human subjects within the government.
8 There is a piece of legislation, S. 2515, introduced which
9 would continue the life of that commission and would provide
10 the commission with jurisdiction over DOD and the CIA. The
11 CIA and DOD have both expressed individually their agreement
12 with having their experimentation governed by the standards of
13 this Commission.
14 Finally, it indicates the Committee's hope that the
15 Director of Central Intelligence and the Secretary of Defense
16 will continue the efforts they are making to find those people
17 who were subjects of the tests and to make sure that they
end .1 18 have proper medical treatment available if it is required.
19 Senator Schweiker. I just wanted to say this recommendation
20 here coincides with what our health subcommittee is working on
21 and also with what the Domestic Subcommittee is coming up with.
22 So we do have a fairly unified and integrated --
23 Senator Tower. Any comment on this section?
24 Mr. diGenova. The only thing I would say in regard to the
25 first recommendation would be that one way of reading it is that

1 it reads "the Director," and it should be also probably amended
2 to include not only the Director but anybody in the Department of
3 Defense.
4 Senator Tower. Yeah, the stylistic has to be changed to
5 include everybody involved.
6 Mr. diGenova. It says "The Director shall be required to
7 provide immediately the reasons for the waiver." And maybe he
8 should first be required to identify that there is a waiver, and
9 then the reasons, because then it could be possibly read that
10 he only have to give the reasons if asked. It could be construed
11 that he does not have to come up here and tell that they are in
12 fact in a waiver --
13 Senator Schweiker. This doesn't give him a right to
14 violate the law, does it, Elliot? What do you mean by that
15 because I read it two ways.
16 Mr. Maxwell. There are certain regulations that we
17 are recommending CIA issue, internal directives and the like,
18 if -- and this is a general recommendation that just was
19 placed here because it dealt with the waiver of regulations
20 in this particular case, but in cases where an internal
21 directive is promulgated, this would require the Director to
22 notify committees of waivers that take place. The Committee
23 could then ask him for the reasons for the waiver.
24 It is a general recommendation so that the Committee is
25 able to determine when there have been changes in the governing

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1 procedures which it will be familiar with because they will
2 have copies of the Agency regulations. It would not provide
3 any right to violate the law.
4 Senator Schweiker. That isn't clear. I would like to see
5 something said about it in Section 2 below. In other words,
6 when I first read it I thought that even though we have the
7 law, the Director can waive the law as long as he tells somebody
8 he is doing it. I would like to do something to the effect
9 that such waiver does not --
10 Mr. Maxwell. Well, I think the intention of the Subcommittee
11 was that this provision, if the Full Committee approves it,
12 would go to the back section on general recommendations
13 affecting CIA, DOD and the intelligence communities.
14 Mr. Kirbow. You mean a waiver of any regular internal
15 regulation would have to be reported to the oversight committee.
16 Then it is probably too broad, Mr. Chairman, because that
17 means that a simple waiver of a Department of Defense regulation
18 having to do with some reimbursement or travel or anything
19 like that would fall under this general -- if you are talking
20 about the drug program or just the CIA's programs like that,
21 I could see it. Otherwise, this is a very broad mandate
22 requiring extensive communication between the executive branch
23 on a daily basis.
24 Senator Schweiker. We are in trouble here, Elliot, because
25 as I read it, this is so poorly written that if I want to waive

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1 the fact that we don't recruit clergymen, I can as I read
2 this thing, recruit clergymen, and just be required to advise
3 people that I am doing it.
4 You have really got to narrow this.
5 Mr. Maxwell. The problem it was geared to was if in fact
6 the Committee chooses to do certain things by way of internal
7 directives, by requiring Agency regulations to be amended, there
8 is at this point no, in particular circumstances, no requirement
9 that the Director who is responsible for the issuance of those
10 regulations notify the oversight committee.
11 I think Charlie's point is very well take in the sense
12 that it is too broad now, and we can attempt to narrow it, but
13 it does govern a whole series of questions directed toward
14 internal directives.
15 Mr. Aaron. I think the first question, Mr. Chairman, is do
16 we want to include the Department of Defense in this particular
17 Recommendation 1. If we do want to include the Department of
18 Defense under this waiver, we have a very large issue.
19 Is my understanding correct that that was a suggestion that
20 had been made earlier?
21 Mr. Kirbow. The point I was trying to make was that if
22 this was to be a general recommendation, we should take it
23 out of the drug section and put it in the back.
24 Mr. diGenova. Is there the general recommendation or is
25 it only in the drug area?

1 Mr. Maxwell. My personal opinion would be that because
2 we are making a number of recommendations in regard to the
3 amending of the internal directives of the CIA, that some pro-
4 vision should be made for a general recommendation insofar as
5 the oversight committee would be notified should there be a
6 waiver for a particular reason by the Director of the internal
7 directives that we are asking him to promulgate.
8 There is no requirement at this point that if the
9 Director is asked to promulgate regulations in regard to the
10 recruitment of clergy, that they would have to notify the over-
11 sight committee that that was being done. You could simply
12 waive the regulation in this particular case.
13 Now, it might be argued that this would fall into the
14 fully and currently informed.
15 Senator Huddleston. Well, I think here first of all we
16 ought to address ourselves to the drug problem. It seems to me
17 that No. 2 should have been No. 1 to start with. First establish
18 what --
19 Senator Schweiker. I don't really think it belongs here.
20 I think you really get a can of worms, because I can read this
21 to have a waiver to assassinate Presidents, you know. We've
22 got a policy. There is no statute now, and our policy is to not
23 assassinate, so we can waive and say it is okay.
24 Senator Huddleston. Why don't we just strike the waiver
25 paragraph.

1 Senator Tower. You can look at it another way, too. To
2 the extent that this procedure is required of any kind of regu-
3 lation, be it a minor regulation on staff travel policy or
4 some damned insignificant thing like that.
5 Mr. Maxwell. I think that is correct. As it is now drawn,
6 it is overly broad, and I don't think it belongs here. I think
7 it probably belongs in the question of whether we make clear at
8 some point that fully and currently informed includes any
9 question of waiver of major regulations by the Director.
10 Another example would be that where a regulation now
11 provides the Inspector General have access to all information,
12 that could be waived and has been waived in the past by the
13 Director in order not to allow the Inspector General to have
14 access, and in that condition you would want the oversight
15 committee's to know that such a waiver had been made. That
16 is why this is a general recommendation.
17 Senator Schweiker. But you are setting up a bypass route.
18 That troubles me because it seems to me you go into any area,
19 you can get around it by a waiver. I would rather not address
20 ourselves to the subject and make it clear he has to issue a
21 new regulation. After all, he can still amend his own
22 regulations. If it is just a regulation, the way to do it is
23 amend the regulation. Why give them a cause to cheat?
24 Mr. Miller. Senator, I think this is addressed by two
25 provisions we have suggested. The first is in the oversight

1 legislation which says "fully and currently informed," of anything
2 beyond a nitpicking, minor, trivial things that the oversight
3 committee would not be worried about. The committee would be
4 informed it would be the obligation of the agencies to do
5 it.
6 Secondly, in the general provisions here, we have the
7 provision for a classified Federal Registry where regulations
8 are required to be deposited, and the oversight committee has
9 access to any changes in regulations, including such things as
10 waivers and so on.
11 So I think in those two ways, the kind of question that
12 Elliot is worried about really is covered. So I don't think
13 it is necessary.
14 Senator Schweiker. So let's delete it then..
15 Mr. Aaron. Well, before we do, may I make one comment?
16 First of all, I think it should be understood that the
17 Director of the Agency writes his own regulations. The Director
18 of the Agency can amend his own regulations whenever he
19 wishes, and the Director of the Agency can waive his own
20 regulations whenever he wishes. The regulations may be secret
21 or classified regulations. And he may waive them or amend
22 them in secret.
23 Now, there are a number of recommendations that we make
24 that go to the suggestion that certain regulations be adopted
25 by the Agency. For example, we have had an extensive discussion

1 of the use of academics or certain categories of personnel.

2 They have a very important regulation called 50-10, which

3 regulates how they can [redacted]

4 [redacted] numbers of different kinds of

5 people. Some of these regulations say, you want to use somebody

6 you have to get a waiver, or sometimes -- well, there are all

7 sorts of provisions like that.

8 Now, I think the point of this suggestion was to make it

9 clear that in these important policy cases, if there is to be a

10 waiver which can take place on a classified basis, it is

11 brought to the attention of the oversight committee, for these

12 matters, not for the normal personnel and such issues.

13 My personal view is that this is not covered by our

14 recommendations governing currently and fully informed, because

15 that recommendation goes to covert action.

16 Mr. Miller. No, it doesn't.

17 Mr. Aaron. As far as I am aware, that is what it goes

18 to.

19 Mr. Kirbow. Might I suggest that if the Committee desires

20 notice of changes in regulations on major policy questions, that

21 we simply have the staff rewrite this to say that and put it

22 back in the other section and consider it next time around.

23 Senator Tower. I think it is going to have to be rewritten

24 because everybody is unclear about it.

25 Senator Schweiker. It doesn't belong here.

1 Mr. diGenova. There has to be a caveat in there that even
2 though you are talking about a waiver, you are still not talking
3 about anything that is inconsistent with the laws and the
4 Constitution of the United States, because we say that all the
5 way through, and the waiver cannot encompass a violation of
6 a law that the Congress has passed.
7 Senator Huddleston. That ought to be added to the general
8 recommendations.
9 Mr. Maxwell. I think that is where it belongs.
10 Senator Schweiker. And redrafted back to the Committee.
11 Senator Tower. All right. If everybody is agreed,
12 that will be redrafted and made a part of the general recommen-
13 dations.
14 Mr. Maxwell. It would deal with both waiver and promulgating
15 new regulations.
16 Mr. Aaron. Right.
17 Senator Tower. Yes.
18 Mr. Bader. And Elliot, I assume amend the current
19 regulations.
20 Mr. Aaron. May I suggest in doing this we take the
21 point made by Mr. Miller and start out by simply saying, in
22 accordance with the policy of being currently and fully
23 informed on all signficant Agency activities, because the only
24 place we have that phrase now is in the covert action case.
25 Senator Huddleston. That ought to be established.

1 Mr. diGenova. It is now on all intelligence activity.
2 Senator Tower. All right.
3 2 and 3 no objection.
4 All right, let's move to Section X.
5 Mr. Aaron. All right, now, we are on to the General
6 Recommendations. We have five of them.
7 I might just say at the outset, these I think fall into the
8 category of what the staff would say or put forward as good
9 ideas, in other words, that we haven't had a hearing on each
10 one of these subjects; our total experience on some of them
11 leads us to feel that some of these steps would be very useful;
12 some of them fall into the category I think of helpful sugges-
13 tions as to how we might proceed in some of these general areas.
14 The first one on security clearances, I think perhaps Mr.
15 Miller would want to talk to it. He had a great deal of
16 experience with the security clearance problem as this
17 committee was established, and I think it flows from his
18 experience.
19 Mr. Miller. Well, this very simply is based on our own
20 Committee's experience on security clearances, and also based
21 on the GAO study that was made of security clearances.
22 There are on the civilian side vast inconsistencies in
23 procedure and practice and degree of thoroughness in the
24 security clearance process. The suggestion here is that for
25 the civilian intelligence community, and possibly for the

1 Congressional Committees, that there be a single applicable
2 standard, that it be done by one agency, that what would flow
3 from this are economies and a consistency of purpose and a
4 consistency of standard.
5 This is something that I think would profit well in the
6 future.
7 Senator Tower. Okay.
8 Anything more on that?
9 All right, personnel practices.
10 Mr. Aaron. All right. I think the purpose of this is
11 we have found as we have talked to a number of people in inter-
12 views and what have you that to ensure in these areas where
13 there is a potential for people straying across the line of
14 constitutional rights of others, that there be a conscious
15 effort made by the Federal Government to inculcate its employees
16 with the proper idea of what the law and the Constitution
17 require. That is the basic thrust of Recommendation B.
18 Senator Tower. Any comment on that?
19 All right, Section C, security functions of the intelligence
20 agencies.
21 Mr. Aaron. Now, I think this makes a general observation
22 concerning what the security function of intelligence agencies
23 not involved in law enforcement, what in effect the policy
24 should be. This is not a recommendation as to precisely how
25 one might implement that policy, and I take it perhaps you

1 could inform us, Bob and Mike, as to the Domestic Group I
2 believe is doing a considerable amount of work on dealing with
3 the specifics of this.
4 This would really simply be the policy statement.
5 Elliot?
6 Mr. Maxwell. There is a problem in that in that the last
7 sentence of that, security functions of the intelligence
8 agencies may be in conflict with the detailed recommendations
9 of the Domestic Subcommittee, and then a number of activities
10 which were undertaken under Operation CHAOS and Operation
11 MERRIMAC were designed in a larger sense and interpreted in
12 the larger sense to be based on the authority to protect the
13 Agency's personnel and facilities and to ensure that intelligence
14 personnel follow proper security practices.
15 Mr. Miller. But they were abuses of those missions.
16 There was no problem with the missions, per se.
17 Mr. Kelley. The problem is they didn't think it was an
18 abuse at the time. They just interpreted it broad enough.
19 I think we can flag this to be coordinated.
20 Mr. Kirbow. I do have some serious reservation about the
21 detail which the Domestic report goes on this, and that is a
22 general statement of policy, I think this Committee or the
23 Subcommittee should adopt kind of a general policy that they
24 do have the requirement and that we think they should be
25 authorized to do this in each individual agency. Otherwise

1 we wind up leaving not only personnel facilities but putting
2 a man's record in the record, and for the most part it is
3 pretty naked.
4 Mr. Kelley. Charlie, I think that is true, and I think
5 we have to make these match and fit. I don't think we can
6 take any action on this not knowing what the other side has
7 reference to.
8 Senator Tower. The Chairman requested that we carry over
9 D until his return, so to accede to his request, we will postpone
10 consideration of D.
11 E deals with Federal Register for Classified Executive
12 Orders.
13 Mr. Miller. This is a provision that was introduced some
14 years ago by Senator Mathias and Senator Ervin dealing with the
15 problem of -- it was discovered during the investigation of
16 emergency powers that there were a great many orders of the
17 President which because they were not called executive orders
18 were not put into the Federal Register. The intention was to
19 bring all lawful orders of the President in the Register. We
20 also found that there was provision for some classified material
21 in the Federal Register, although it was very seldom used.
22 The purpose for this is to have a place where the lawful
23 orders of the President and executive orders, by whatever name
24 called, are put in a place for purposes of official record.
25 Senator Tower. This would be a separate Federal

1 Register, in effect, for classified regulations and orders.

2 Mr. Miller. That's right.

3 Senator Tower. And would have, of course, very limited

4 circulation. It would not be a public record.

5 Mr.Miller. That is right.

6 Senator Tower. And do we say anything about access or

7 provision?

8 Mr. Miller. Only by the oversight committee.

9 Senator Tower. By appropriate Congressional oversight

10 committee would mean not necessarily the oversight committee,

11 but it could mean Appropriations or Armed Services.

12 Mr. Miller. That's right, in their area of jurisdiction.

13 Senator Tower. Anything further on that?

14 Mr. Kirbow. There is an escape valve. There is a

15 provision where he can do something immediately and then

16 file it in an emergency situation.

17 Senator Tower. All right.

18 With the instructions to redraft Item 1 on page 118, and

19 put it in the General Recommendations, with the reservation that

20 the Chairman will want to take up Section D on page 120, and

21 we will consider it adopted. Of course, in that we operated

22 without a quorum, a motion to reconsider on anybody's part is

23 in order.

24 All right.

25 Senator Mathias. An eventuality which is horrible to

1 contemplate.

2 Senator Tower. Senator Huddleston here has some redrafted

3 language.

4 Senator Huddleston. Well, we have two very difficult

5 subjects to resolve which I think will complete our findings

6 and recommendations. One, of course, is the covert action which

7 the Chairman has incorporated in some of his suggestions and

8 wants to be here when we consider it, tomorrow I take it. Also,

9 yesterday at the suggestion of Senator Mondale, we rewrote some

10 provisions relating to the use of academics, and I would

11 suggest that we hold that over also to give us a chance to

12 look at this, to reconsider the whole matter of academics and

13 be prepared to move on it forthwith, tomorrow, if that is the

14 day the Chairman is going to be here.

15 Mr. Miller. Yes, he is.

16 Senator Huddleston. And see if we can't resolve these

17 two things tomorrow, and we will have it wrapped up, Mr.

18 Chairman.

19 Ms. Culbreath. Mr. Chairman, in connection with the

20 attempted rewrite that we worked on, there are a couple of

21 typos in here that might help you if anybody really has time to

22 look at them.

23 On page 77, on these inserts, about six lines down the

24 second word is typed "for confirmation," and the word that was

25 intended there was "for continuation." This is under

1 Recommendation 43.

2 Senator Tower. The ninth line, substitute "continuation"

3 for "confirmation."

4 Ms. Culbreath. That is the main one. There may be a

5 few others, but that was the main one that really had a

6 very different meaning.

7 Senator Tower. Any more on that?

8 Then this will be carried over until the Chairman

9 returns.

10 Senator Huddleston. Do I understand he will be here

11 tomorrow?

12 Senator Tower. He will be.

13 Mr. Miller. Yes, he will be tomorrow morning.

14 He called and asked to meet tomorrow at 10:00 and 2:00 and

15 Friday at 10:00.

16 Senator Tower. All right.

17 Does that complete our business now?

18 Mr. Miller. I believe so, sir.

19 Senator Tower. All right, we will reassemble again at

20 10:00 o'clock tomorrow morning, and then at 2:00 o'clock

21 tomorrow afternoon. So until that time the Committee is in

22 recess.

23 (Whereupon, at 3:02.5 o'clock p.m., the Committe recessed

24 to reconvene at 10:00 o'clock a.m., Thursday, March 25, 1976.)

25

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