

INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS

BOOK II

FINAL REPORT
OF THE
SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO
INTELLIGENCE ACTIVITIES
UNITED STATES SENATE
TOGETHER WITH
ADDITIONAL, SUPPLEMENTAL, AND SEPARATE
VIEWS



APRIL 26 (legislative day, APRIL 14), 1976

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1976

68-786 O

**SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES**

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LETTER OF TRANSMITTAL

On behalf of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, and pursuant to the mandate of Senate Resolution 21, I am transmitting herewith to the Senate the volume of the Committee's Final Report which presents the results of the Committee's investigation into Federal domestic intelligence activities.

The Committee's findings and conclusions concerning abuses in intelligence activity and weaknesses in the system of accountability and control are amply documented. I believe they make a compelling case for substantial reform. The recommendations section of this volume sets forth in detail the Committee's proposals for reforms necessary to protect the right of Americans. The facts revealed by the Committee's inquiry into the development of domestic intelligence activity are outlined in the balance of the volume.

I would add one principal comment on the results of the Committee's inquiry: The root cause of the excesses which our record amply demonstrates has been failure to apply the wisdom of the constitutional system of checks and balances to intelligence activities. Our experience as a nation has taught us that we must place our trust in laws, and not solely in men. The founding fathers foresaw excess as the inevitable consequence of granting any part of government unchecked power. This has been demonstrated in the intelligence field where, too often, constitutional principles were subordinated to a pragmatic course of permitting desired ends to dictate and justify improper means.

Our recommendations are designed to place intelligence activities within the constitutional scheme for controlling government power.

The members of this Committee have served with utmost diligence and dedication. We have had 126 Full Committee meetings, scores of other sessions at which Senators presided at depositions for the taking of testimony, and over 40 subcommittee meetings devoted to drafting the two volumes of our final report. I thank each and every one of my colleagues for their hard work and for their determination that the job be done fully and fairly.

John Tower's service as Vice Chairman was essential to our effectiveness from start to finish. This inquiry could have been distracted by partisan argument over allocating the blame for intelligence excesses. Instead, we have unanimously concluded that intelligence problems are far more fundamental. They are not the product of any single administration, party, or man.

At the outset of this particular volume, special mention is also due to Senator Walter F. Mondale for his chairmanship of the subcommittee charged with drafting the final report on domestic intelligence activity. During our hearings, Senator Mondale helped to bring into focus the threats posed to the rights of American citizens. He and his

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domestic subcommittee colleagues—Senator Howard Baker, as ranking Minority member, and Senators Philip Hart, Robert Morgan and Richard Schweiker—deserve great credit for the complete and compelling draft which they presented to the Full Committee.

The staff of the Committee has worked long, hard and well. Without their work over the past year—and during many long nights and weekends—the Committee could not have come close to coping with its massive job. I commend and thank them all. The staff members whose work was particularly associated with this volume and its supplementary detailed reports are listed in Appendix C.

FRANK CHURCH,
Chairman.

PREFACE

In January 1975, the Senate resolved to establish a Committee to:
conduct an investigation and study of governmental operations with respect to intelligence activities and the extent, if any, to which illegal, improper, or unethical activities were engaged in by any agency of the Federal Government.¹

This Committee was organized shortly thereafter and has conducted a year-long investigation into the intelligence activities of the United States Government, the first substantial inquiry into the intelligence community since World War II.

The inquiry arose out of allegations of substantial wrongdoing by intelligence agencies on behalf of the administrations which they served. A deeper concern underlying the investigation was whether this Government's intelligence activities were governed and controlled consistently with the fundamental principles of American constitutional government—that power must be checked and balanced and that the preservation of liberty requires the restraint of laws, and not simply the good intentions of men.

Our investigation has confirmed that properly controlled and lawful intelligence is vital to the nation's interest. A strong and effective intelligence system serves, for example, to monitor potential military threats from the Soviet Union and its allies, to verify compliance with international agreements such as SALT, and to combat espionage and international terrorism. These, and many other necessary and proper functions are performed by dedicated and hard working employees of the intelligence community.

The Committee's investigation has, however, also confirmed substantial wrongdoing. And it has demonstrated that intelligence activities have not generally been governed and controlled in accord with the fundamental principles of our constitutional system of government.

The task faced by this Committee was to propose effective measures to prevent intelligence excesses, and at the same time to propose sound guidelines and oversight procedures with which to govern and control legitimate activities.

Having concluded its investigation, the Committee issues its reports² for the purposes of:

providing a fair factual basis for informed Congressional and public debate on critical issues affecting the role of governmental intelligence activities in a free society; and

¹ Senate Resolution 21, January 27, 1975, Sec. 1. The full text of S. Res. 21 is printed at Appendix A.

² The Committee's final report is divided into two main volumes. The balance of this volume covers domestic activities of intelligence agencies and their activities overseas to the extent that they affect the constitutional rights of Americans. The other volume covers all other activities of United States foreign and military intelligence agencies.

The Committee has previously issued the reports and hearing records set forth in Appendix B.

recommending such legislative and executive action as, in the judgment of the Committee, is appropriate to prevent recurrence of past abuses and to insure adequate coordination, control and oversight of the nation's intelligence resources, capabilities, and activities.

A. THE COMMITTEE'S MANDATE

In elaboration of the broad mandate set forth at the outset of this Report, the Senate charged the Committee with investigating fourteen specific "matters or questions" and with reporting the "full facts" on them. The fourteen enumerated matters and questions concern: (i) what kind of activities have been—and should be—undertaken by intelligence agencies; (ii) whether those activities conform to law and the Constitution; and (iii) how intelligence agencies have been—and should be—coordinated, controlled and overseen.³

In addition to investigating the "full facts" with respect to such matters, the Committee was instructed to determine:

Whether any of the existing laws of the United States are inadequate, either in their provisions or manner of enforcement, to safeguard the rights of American citizens, to improve executive and legislative control of intelligence and related activities and to resolve uncertainties as to the authority of United States intelligence and related agencies. [Id., Sec. 2 (12)]

B. THE MAJOR QUESTIONS

Our investigation addressed the structure, history, activities and policies of America's most important intelligence agencies. The Committee looked beyond the operation of individual agencies to examine common themes and patterns inherent in intelligence operations. In the course of its investigation, the Committee has sought to answer three broad questions:

First, whether domestic intelligence activities have been consistent with law and with the individual liberties guaranteed to American citizens by the Constitution.

Second, whether America's foreign intelligence activities have served the national interest in a manner consistent with the nation's ideals and with national purposes.

³ S. Res. 21, Sec. 2. Examples of the "matters or questions" include:

"The conduct of domestic intelligence or counterintelligence operations against United States citizens" by the FBI or other agencies. [Sec. 2(2)];

"The violation or suspected violation of law" by intelligence agencies [Sec. 2(10)];

Allegations of CIA "domestic" activity, and the relationship between CIA responsibility to protect sources and methods and the prohibition of its exercising law enforcement powers or internal security functions [Sec. 2(1), (6)];

"The origin and disposition of the so-called Huston Plan" [Sec. 2(7)(9)];

"The extent and necessity" of "covert intelligence activities abroad [Sec. 2(14)];

Whether there is excessive duplication or inadequate coordination among intelligence agencies [Sec. 2(4)(13)] and

The "nature and extent" of executive oversight [Sec. 2(7)(9)] and the "need for improved, strengthened or consolidated" Congressional oversight [Sec. 2(7)(9)(11)].

Third, whether the institutional procedures for directing and controlling intelligence agencies have adequately ensured their compliance with policy and law, and whether those procedures have been based upon the system of checks and balances among the branches of government required by our Constitution.

The Committee fully subscribes to the premise that intelligence agencies perform a necessary and proper function. The Preamble to the Constitution states that our government was created, in part, to "insure domestic tranquility [and] provide for the common defense." Accurate and timely intelligence can and does help meet those goals.

The Committee is also mindful, however, of the danger which intelligence collection, and intelligence operations, may pose for a society grounded in democratic principles. The Preamble to our Constitution also declares that our government was created to "secure the blessings of liberty" and to "establish justice". If domestic intelligence agencies ignore those principles, they may threaten the very values that form the foundation of our society. Similarly, if the government conducts foreign intelligence operations overseas which are inconsistent with our national ideals, our reputation, goals, and influence abroad may be undercut.

C. THE NATURE OF THE COMMITTEE'S INVESTIGATION

1. SELECTION OF AGENCIES, PROGRAMS AND CASES TO EMPHASIZE

Necessarily, the Committee had to be selective. To investigate everything relevant to intelligence—and even everything relevant to the fundamental issues on which we had decided to focus—would take forever. Our job was to discover—and suggest solutions for—the major problems "at the earliest practical date".⁴

Accordingly, the Committee had to choose the particular Governmental entities upon which we would concentrate and then further had to choose particular cases to investigate in depth.

Many agencies, departments or bureaus of the Federal Government have an intelligence function. Of these, the Committee spent the overwhelming preponderance of its energies on five:

The Federal Bureau of Investigation; The Central Intelligence Agency; The National Security Agency; The national intelligence components of the Defense Department (other than NSA); and The National Security Council and its component parts.⁵

The agencies upon which the Committee concentrated are those whose powers are so great and whose practices were so extensive that they must be understood in order fairly to judge whether the intelligence system of the United States needs reform and change.

Having selected the agencies to emphasize, the Committee also had to select representative programs and policies on which to concentrate. There were many more possible issues and allegations to investigate

⁴ S. Res. 21; Sec. 5.

⁵ Substantial work was also done on intelligence activities of the Internal Revenue Service and the State Department.

than could be covered fully and fairly. The principles which guided our choices were:

(1) More is learned by investigating tens of programs and incidents in depth rather than hundreds superficially. Our goal was to understand causes and, where appropriate, to suggest solutions.

(2) Cases most likely to produce general lessons should receive the most attention.

(3) Programs were examined from each administration beginning with Franklin Roosevelt's. This assured understanding of the historical context within which intelligence activities have developed. Fundamental issues concerning the conduct and character of the nation deserve nonpartisan treatment. It has become clear from our inquiry, moreover, that intelligence excesses, at home and abroad, have been found in every administration. They are not the product of any single party, administration, or man.

2. LIMITATIONS AND STRENGTHS

(a) *The Focus on Problem Areas*

The intelligence community has had broad responsibility for activities beyond those which we investigated as possibly "illegal, improper, or unethical". Our reports primarily address problem areas and the command and control question generally. However, the intelligence community performs vital tasks outside the areas on which our investigation concentrated. This point must be kept in mind in fairness to the agencies, and to their employees who have devoted their careers to the nation's service. Moreover, one of many reasons for checking intelligence excesses is to restore the confidence, good name, and effectiveness of intelligence agencies so that they may better serve the nation in the future.⁶

(b) *Caution on Questions of Individual "Guilt" or "Innocence"*

A Senate Committee is not a prosecutor, a grand jury or a court. It is far better suited to determine how things went wrong and what can be done to prevent their going wrong again, than to resolve disputed questions of individual "guilt" or "innocence". For the resolution of those questions we properly rely on the courts.

Of course, to understand the past in order to better propose guidance for the future, the Committee had to investigate the facts underlying charges of wrongdoing. Facts involve people. Therefore, the Committee has necessarily had to determine what particular individuals appear to have done and, on occasion, to make judgments on their responsibility. We have, however, recognized our limitations and attempted to be cautious in reaching those judgments; the reader should be similarly cautious in evaluating our judgments.

The Committee's hope is that this report will provoke a national debate not on "Who did it?", but on "How did it happen and what can be done to keep it from happening again?"

⁶ Indeed, it is likely that in some cases the high priority given to activities that appear questionable has reduced the attention given to other vital matters. Thus, the FBI, for example, has placed more emphasis on domestic dissent than on organized crime and, according to some, let its efforts against foreign spies suffer because of the amount of time spent checking up on American protest groups.

(c) Ability to See the Full Scope of the Problem

This Committee examined a very broad range of issues and compiled a huge factual record⁷ which covers:

- (i) the origins and development of intelligence programs over seven administrations;
- (ii) intelligence activities both at home and abroad; and
- (iii) the programs and practices of the several most important intelligence agencies.

Thus, for the first time, based upon the Committee's investigation, it is possible to examine the patterns of intelligence activity and not merely isolated incidents.

The issues for the country to resolve are best posed by looking, as we have done, at the aggregate, rather than at particular incidents in isolation. Neither the dangers, nor the causes, nor the possible solutions can be fairly evaluated without considering both the broad patterns of intelligence activity which emerge from examining particular cases over the past several decades, and the cumulative effect of activities of different agencies. For example, individual cases or programs of governmental surveillance may constitute interference with constitutionally protected rights of privacy and dissent. But only by examining the cumulative impact of many such programs can the danger of "Big Brother Government" be realistically assessed. Only by understanding the full breadth of governmental efforts against dissenters can one weigh the extent to which those efforts may chill lawful assembly and free expression.

D. THE PURPOSE OF THE COMMITTEE'S FINDINGS AND RECOMMENDATIONS

The central goal of the Committee is to make informed recommendations—based upon a detailed and balanced factual investigation—about:

- (1) which intelligence activities ought to be permitted, and which should be restricted or prohibited; and
- (2) what controls and organizational structure are needed to keep intelligence operations both effective and consistent with this country's most basic values and fundamental interests.

⁷ Some 800 witnesses were examined, approximately 250 under oath in executive sessions, 50 in public sessions, and the balance in interviews. The aggregate number of transcript pages is almost 30,000. Approximately 110,000 document pages were obtained from the various intelligence agencies (still more were preliminarily reviewed at the agencies), as well as from the White House, presidential libraries, and other sources.

Over the course of its investigation the Committee has had generally good cooperation in obtaining information from the intelligence agencies and the Administration. Of course, there were problems, particularly at the outset—compliance took too long; bureaucratic rules such as the "third agency rule" (which required agencies other than the custodian of the document to review it if they were mentioned) were frustrating. But our experience suggests that those problems can be worked out.

The most important lesson to be derived from our experience is that effective oversight is impossible without regular access to the underlying working documents of the intelligence community. Top level briefings do not adequately describe the realities. For that the documents are a necessary supplement and at times the only source.

The first step for this Committee, its successor oversight Committees and the Congress as a whole is to devise the legal framework within which intelligence agencies can, in the future, be guided, checked and operate both properly and efficiently. A basic law—a charter of powers, duties, and limitations—does not presently exist for some of the most important intelligence activities (*e.g.*, FBI's domestic intelligence or NSA) or, where it does exist, as with CIA, it is vague, conflicting and incomplete.

The absence of laws and the lack of clarity in those that exist has had the effect, if not the intention, of keeping vital issues of national importance away from public debate.

This Committee's job was to pose the issues that have been ignored for decades. The technique for doing so was to investigate and then to propose basic laws and other rules as to what can and cannot be done, and on the appropriate command and control structure for intelligence activities.

There are many other questions, such as the efficiency, cost and quality of intelligence, which are also of vital national importance. We have also examined these matters and consider them in this report. But, the main emphasis of our investigation was on what should be done and not on how it should be done. We seek in our recommendations to lay the underlying legal foundation, and the control and oversight structure for the intelligence community. If these are sound, then we have faith that the other questions will be answered correctly in the future. But if the foundation is unsound or remains unfinished—or if intelligence agencies continue to operate under a structure in which executive power is not effectively checked and examined—then we will have neither quality intelligence nor a society which is free at home and respected abroad.

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