ADDITIONAL VIEWS OF SENATOR PHILIP A. HART

The Committee's proposal on domestic intelligence is a carefully crafted system of controls to prevent abuse and preserve vigorous dissent in America. The report lays out the issues, notes the problems, and suggests solutions. Committee members and staff, under Senator Mondale's conscientious leadership, grappled with the exceedingly difficult task of shaping broad principles into workable safeguards.

The recommendations would narrow the scope of permissible intelligence, set standards and time limits for investigations, control dissemination, and provide civil remedies for improprieties.

This comprehensive scheme may be the best we can do to set the delicate balance wheel between liberty and security. It is a considerable accomplishment, and I endorse its consideration by the appropriate legislative committees. I do so, however, with misgivings that the Committee's record fails to justify even this degree of preventive intelligence investigation of American citizens.

Unlike investigation of committed crimes, "preventive intelligence" means investigating persons thought likely to commit particularly serious acts; it is intended to prevent them. Providing, for the first time, statutory authorization of such surveillance is a dramatic and dangerous step. Congress should take that step with the utmost caution.

It is appealing to say we should let the FBI do everything possible to avert bombing of the Capitol or other terrorist acts. But in America we must refuse to let the Government "do everything possible." For that would entail spying on every militant opponent of official policy, just in case some of them may resort to violence. We would become a police state. The question, then, is whether a limited form of preventive intelligence, consistent with preserving our civil liberties, can be justified by the expected benefits and can also be kept under effective control.

The Committee was reluctant to authorize any investigations except those of committed or imminent criminal acts. Nevertheless, our Report concludes that some preventive intelligence is justified because it might prevent a significant amount of terrorist activity without posing unacceptable risks for a free society.

However, the shocking record of widespread abuse suggests to me that before Congress endorses a blueprint for preventive intelligence, we need a more rigorous presentation of the case for it than was offered to this Committee.

The FBI only provided the Committee with a handful of substantiated cases—out of the thousands of Americans investigated—in which preventive intelligence produced warning of terrorist activity. Further, most of those few investigations which did detect terrorism could

not have been opened under the Committee's proposed restrictions.[1] In short, there is no substantial record before the Committee that preventive intelligence, under the restrictions we propose, would enable the Government to thwart terrorism.

Essentially, we are asking the American people to accept the risks of preventive intelligence on the hypothetical possibility that the worst imaginable terrorist acts might be averted. Faced with the specter of bombings or assassination plots, we may be in danger of sanctioning domestic spying without any significant prospect that such intelligence activities will in fact prevent them.

It might be argued that with adequate restraints to focus on hard core terrorism, preventive intelligence should be authorized even though we cannot demonstrate it is likely to prevent much violence. In that view, some insurance would be worth the limited cost.

Assuming that premise, there are two overriding issues:

—When may the Government investigate the activities of Americans engaged in political dissent; and

—When may the Government use informants to spy on those Americans?

If we are to have a preventive intelligence program at all, then I believe the Committee's recommendations on both these issues require refinement.

The Committee found that most improper investigations have been commenced merely on the basis of political advocacy or association, rather than on specific information about expected terrorist activity. The recommendations would preclude mere advocacy or association as a predicate for investigating Americans. In practice, however, that would simply require specific allegations that an unpopular dissident group was planning terrorist violence.

Of course, if the FBI receives a tip that John Jones may resort to bombing to protest American involvement in Vietnam, the Bureau should not be forced to sit on its hand until the blast. But our proposals would permit more than review of federal and local records on John Jones and interviews of his associates, even in a preliminary investigation. On the basis of an anonymous letter, with no supporting information—let alone any indication of the source's reliability—the FBI could conduct secret physical surveillance and ask existing informants about him for up to three months, with the Attorney General's approval.

The Committee was concerned about authorizing such extensive investigations before there is even a "reasonable basis of suspicion" the subject will engage in terrorism. The Report offers examples of how this recommendation would work, and indicates our desire to

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[1] In most of those cases warning came through informant penetration of local chapters of a national organization undertaken because some of the national leaders had indicated a willingness to use violent means. The Committee's guidelines preclude investigating an organization's entire membership throughout the country on the basis of specific information about some individuals.

In the most sinister terrorist conspiracies, only penetration of the inner circle is likely to provide advance warning of an assassination or kidnapping plot. Our record suggests that the only way for the FBI to have much chance to detect such plots in advance would be blanket penetration of every militant protest group in the country. And that would mean a return to precisely the kind of Big Brother government which was attempted in the past.

insulate lawful political activity from investigation of violent terrorism. But these very examples illustrate how inextricable the two may be at the outset of an inquiry into an allegation or ambiguous information. The task of finding out whether a dissident is contemplating violence or is only involved in vigorous protest inevitably requires investigation of his protest activities. In the process, the FBI could follow the organizers of a Washington peace rally for three months on the basis of an allegation they might also engage in violence.

The second major issue is the use of paid Government informants to spy upon Americans. The great majority of abuses uncovered in domestic intelligence involved the pervasive use of informants against dissident political groups. The Committee defers the question of whether judicial approval should be required for targeting informants, until review by the Attorney General alone has been tested.

In my view, control of informants and control of wiretapping can be distinguished only on the basis of present constitutional doctrine; the Supreme Court has not found the use of informants to violate Fourth Amendment guarantees against Government intrusion. However, in terms of the values underlying both the First and Fourth Amendments, our record shows that the use of informants can, if anything be even more intrusive and more easily abused than electronic surveillance. As a matter of policy, they should be stringently controlled.

From the prosecutor's viewpoint, a wiretap is more precise and reliable than an informant. The accuracy of an informant witness may be vulnerable to challenge. But as a source of intelligence, informants can be directed at all of the subject's associates. They can follow the subject from place to place and can even be asked to elicit information through specific questions. In effect, a well-placed informant can be a "walking, thinking 'bug'." The use of such informants is at the heart of the chilling effect which preventive intelligence has on political dissent.

Whether informant penetrations are to be approved by the Attorney General or by a judge, the Committee report recognizes the great dangers they pose.[2] We recommend a high standard for their use: Probable cause to believe the target soon will engage in terrorist activity. My concern is that, in an effort to accommodate the realities of preventive intelligence, our proposals may render this standard illusory.

The FBI argued that, in the case of tightly knit conspiracies, it could not meet that standard without the initial resort to informants.

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[2] Some of the "practical" reasons advanced against judicial warrants for informants do not bear close scrutiny. The Committee was told there is no fixed point when a potential source becomes an "informant," comparable to installation of a wiretap. It was also urged that full supervision of an informant requires day-to-day monitoring of his activities; and that the Attorney General could exercise more comprehensive control. But our proposals do identify a specific event, targeting the informant on particular persons, which requires a decision by the Attorney General. The basic wisdom of the Fourth Amendment is its insistence that a disinterested party apply the appropriate standard *rather than* the head of an investigative agency. The Attorney General's ongoing supervision of informant use could supplement the threshold decision of a neutral magistrate, just as it would for wiretaps. There is no need to choose between them.

Therefore, the Committee would permit "temporary" targeting of informants for up to five months. In effect, the FBI could bootstrap its investigation by employing informants to collect enough information to justify their use. The Committee does require that this use of informants be terminated if probable cause cannot be established within five months. But it is doubtful that such termination would be effective to provide the high standard of protection the Committee feels is necessary for the use of such an intrusive technique.[3]

To a great extent, our proposals for controlling preventive intelligence ultimately rely upon the Attorney General and congressional oversight committees. In view of the performances of the Congress and the Justice Department for the past two decades, it is not easy to have full confidence in their ability to prevent abuses of domestic intelligence without precise detailed statutory prohibitions.

Moreover, our task is not to fashion legislation which seems adequate for the present period of national calm and recent revelations of intelligence abuses. We do not need to draft safeguards for an Attorney General who makes clear—as Attorney General Levi has done—his determination to prevent abuse. We must legislate for the next periods of social turmoil and passionate dissent, when the current outrage has faded and those in power may again be tempted to investigate their critics in the name of national security.

In a time of crisis, acts of violence by a tiny minority of those engaged in political protest will again place intense pressures on officials in the Department of Justice to stretch any authority we provide to its limits. For these reasons we must be extremely careful not to build too much flexibility and discretion into a system of preventive intelligence which can be used against domestic dissidents. As the Supreme Court has wisely observed:

> The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. (*DeJong* v. *Oregon*, 299 U.S. 353, 365.)

PHILIP A. HART.

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[3] The informant would still be in a position to report and the FBI could continue to ask him questions, as they could of any citizen. Indeed, he might volunteer information in order to re-establish a paying relationship. The only constraint is that the FBI could no longer give him direction. After five months, however, even the most unsophisticated informant would be aware of those subjects and targets in which the Bureau was interested.

ADDITIONAL STATEMENT OF SENATOR ROBERT MORGAN

In 1776 the citizens of a new America, in declaring their independence from a repressive government, set forth the goals, ideals and standards of their new government in the Declaration of Independence. As we prepare to celebrate the 200th anniversary of the birth of our country later this year, we will reaffirm the beliefs of our forefathers that America will be a free country, with a government of laws and not one of men. That the Senate Select Committee on Intelligence has completed its year-long investigation into the secret activities of this country's intelligence agencies and is releasing this Report is a great testament to the freedom for which America stands.

During the course of the past year, the Committee has discovered and revealed to the American people many actions of agencies of our government which were undertaken in complete disregard for the principles of our democratic society. The Committee's Report documents many of these abuses, basing its findings directly on the admissions of officials of the governmental agencies being investigated and upon information taken directly from the files of those agencies.

The Report also analyzes those findings and recommends guidelines and procedures designed to protect the rights of American citizens in the future, while at the same time ensuring that our intelligence agencies maintain the capability to function effectively. I fully support the findings, analyses and recommendations, and make this additional statement only for the purpose of sharing with the readers of this Report some of my personal thoughts on the significance of the Committee's work and where we go from here.

The Committee has approached the performance of its obligation mandated by Sen. Res. 21 with an abundance of caution. Many of the Committee's executive session hearings, because of the sensitive nature of the subject matter, were even restricted to Members and only those staff who were assigned specific duties relevant to the inquiry. Because of the dedication of the Members and staff to the seriousness of the undertaking, we are approaching the completion of our work with a remarkably clean record as far as leaks of classified material detrimental to the security of the country are concerned.

From the beginning of our work until the end, the Committee has gone beyond the dictates of normal congressional investigation to try to accommodate concerns of the agencies under investigation for the security of material requested by the Committee. To this end, long hours were spent negotiating over what material would be made available to the Committee in response to its requests and in what form that material would be given to the Committee once access to it had been acquired. Nevertheless, on many occasions the Committee received material from which significant details had been deleted, necessitating further negotiations with the responsible agencies and, in

some cases, severely hampering the Committee's inquiry into important and significant areas.

While it is understandable that executive agencies whose very operations are secret would be in some respect resistant to senatorial inquiry into their activities, I can only interpret the strong resistance to some Committee demands and inquiries as being symptomatic of the atmosphere within the agencies which contributed to the occurrence of abuse in the first instance—one of the basic distrusts of the actions of fellow American citizens who have as their goals the strengthening of this nation's ideals, of its moral fiber.

Just as the American citizen was denied the right to decide for himself what was or was not in the best interest of the country, or what actions of a foreign government or domestic dissident threatened the national security, the impression has been generated by some that the Congress cannot be trusted with the nation's crucial secrets. As the elected representative of the citizens of my state, I am entrusted with the right and duty to properly conduct the business of our government. Without knowledge of governmental actions or effective means of overseeing those actions, my efforts to fulfill the requirements of that obligation are, at least, severely hampered; at most, impossible, and the successful implementation of an adequate system of checks and balances, as set forth in our Constitution, is effectively negated.

The Committee's Report contains clear examples of the denial of the rights of American citizens to determine the course of American history. While the FBI's counterintelligence activities directed at American citizens on many occasions violated the rights of the targets of the programs, a greater abuse was the belief fostered that the ordinary American citizen was not competent enough to, independently of governmental actions, decide, given full knowledge of all facts, what was in his or her best interest or in the best interest of the country. The judicial process, to which we turn for settlement of our disputes and punishment of criminals, was also largely ignored. FBI action was based, for example, on the assumption that all Americans opposed to this country's participation in the Vietnam War might one day take to the streets in violent protest, thereby threatening our national security. It was assumed, for example, that right-wing, anti-communist groups in the 1960s would gain the sympathies of too many Americans thereby impeding policies of the then administration, so their taxes were checked. It was assumed, for example, that every black student on every college campus in America would resort to violence, so procedures were undertaken to establish files on all of them.

All of these actions deny Americans the right to decide for themselves what will not be tolerated in a free society. Justice Douglas, defending the freedom of speech in his dissenting opinion in *Dennis v. U.S.*, 341 U.S. 494, spoke words which vividly reflect the necessity that we, to remain free, must hold high this basic right of self-determination which has enabled us to attain the strength and prosperity that we as a nation now enjoy. Justice Douglas wrote,

> Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political, philosophical, economic, and racial group amongst us. We have counted on

> it to keep us from embracing what is cheap and false; *we have trusted the common sense of our people to choose the doctrine true to our genius and to reject the rest. This has been the outstanding tenet that has made our institutions the symbol of freedom and equality.* We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world. [Emphasis added.]

Furthermore, just as the American citizen must be given the right to validly assess the significance and merit of political change sought by others, the elected representatives of the people must have knowledge of governmental action to properly determine which perceived threats to our way of life are real, Justice Brandeis, in *Olmstead* v. *U.S.*, 277 U.S. 438, said, "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

The continued existence of our democracy demands that we zealously protect the inherent right of all Americans to be free from unwarranted intrustion into their lives by governmental action. History has demonstrated, from the time of the founding of Christianity through the founding of these United States, through today, that there is a place for differences of opinion among our citizenry; for new, bold and innovative ideas. Thomas Jefferson wrote that "the republican is the only form of government which is not eternally at open or secret war with the rights of mankind." To maintain our Republic, we must be willing to tolerate the right of every American citizen to, within the confines of the law, be different.

Throughout the existence of the Committee, I have often said that while the occurrence of the events which gave rise to the investigation were unfortunate and are, in many instances, embarrassing to our country and some of its agencies, public disclosure was necessary in order to clear the air so that the agencies could devote their full attention to properly carrying out their important duties. I feel the Committee as a whole shares this view and has attempted to enhance the performance of the functions of the agencies by making specific recommendations which, when implemented and coupled with the establishment of an effective oversight committee, will guarantee that our country will not be subverted, nor subvert its ideals in the name of national security or other improperly perceived threats. It is my sincere hope that our citizens will view this Report as one of the many expressions of freedom we will make this year and that it will rekindle in each of us the belief that perhaps our greatest strength lies in our ability to deal frankly, openly, and honestly with the problems of our government.

ROBERT MORGAN.

INTRODUCTION TO SEPARATE VIEWS OF SENATORS JOHN TOWER, HOWARD H. BAKER, JR., AND BARRY M. GOLDWATER

Our mutual concern that certain remedial measures proposed by this Committee threaten to impose undue restrictions upon vital and legitimate intelligence functions prevents us, in varying degrees, from rendering an unqualified endorsement to this Committee's findings and recommendations in their entirety. We also perceive a need to emphasize areas of common agreement such as our unanimous endorsement of intelligence reforms heretofore outlined by the President.

Therefore, we have elected to articulate our common concerns and observations, as viewed from our individual perspectives, in separate views which follow.

JOHN TOWER, *Vice Chairman.*
HOWARD H. BAKER, JR.
BARRY M. GOLDWATER.

SEPARATE VIEWS OF SENATOR JOHN G. TOWER, VICE CHAIRMAN

When the Senate mandated this Committee to conduct an investigation and study of activities of our Nation's intelligence community, it recognized the need for congressional participation in decisions which impact virtually every aspect of American life. The gravamen of our charge was to examine the Nation's intelligence needs and the performance of agencies charged with intelligence responsibilities, and to make such assessments and recommendations as in our judgment are necessary to maintain the delicate balance between individual liberties and national security. I do not believe the Committee's reports and accompanying staff studies comply fully with the charge to maintain that balance. The Committee's recommendations make significant departures from an overriding lesson of the American experience—the right of American citizens to be free is inextricably bound to their right to be secure.

I do not question the existence of intelligence excesses—the abuses of power, both foreign and domestic, are well documented in the Committee's report.

Nor do I question the need for expanded legislative, executive, and judicial involvement in intelligence policy and practices—the "uncertainties as to the authority of United States intelligence and related agencies" were explicitly recognized by Senate Resolution 21.

Nevertheless, I question, and take exception to, the Committee's report to the extent that its recommendations are either unsupported by the factual record or unduly restrict attainment of valid intelligence objectives.

I believe that the 183 separate recommendations proposing new detailed statutes and reporting procedures not only exceed the number and scope of documented abuses, but represent over-reaction. If adopted in their totality, they would unnecessarily limit the effectiveness of the Nation's intelligence community.

In the area of foreign intelligence, the Committee was specifically mandated to prevent ". . . disclosure, outside the Select Committee, of any information which would adversely affect the intelligence activities . . . of the Federal Government." In his separate view, Senator Barry Goldwater clearly points up the damage to our efforts in Latin America occasioned by release of the "staff report" on covert action in Chile. I objected to releasing the Chile report and fully support Senator Goldwater's assessment of the adverse impact of this "ironic" and ill-advised disclosure.

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Another unfortunate aspect of the Committee's foreign report is its response to incidents of lack of accountability and control by recommending the imposition of a layering of Executive Branch reviews at operational levels and needless bifurcation of the decisionmaking process. The President's reorganization which centralizes foreign intelligence operations and provides for constant review and oversight, is termed "ambiguous." Yet the Committee's recommended statutory changes would [in addition to duplication and multiplication of decisions] add little except to insure that the existing functions set up by the President's program were "explicitly empowered," "reaffirmed" or provided with "adequate staff." By concentration upon such details as which cabinet officer should chair the various review groups or speak for the President, the Committee's approach unnecessarily restricts Presidential discretion, without enhancing efficiency, control, or accountability. The President's reorganization is a thorough, comprehensive response to a long-standing problem. It should be supported, not pilloried with statutory amendments amounting to little more than alternative management techniques. It is far more appropriate for the Congress to place primary legislative emphasis on establishing a structure for Congressional Oversight which is compatible with the Executive reorganization while eliminating the present proliferation of committees and subcommittee's asserting jurisdiction over intelligence activities.

Another area in which I am unable to agree with the Committee's approach is covert action. It would be a mistake to attempt to require that the Congress receive prior notification of *all* covert activities. Senator Howard Baker repeatedly urged the Committee to adopt the more realistic approach of obligating the Executive to keep the Congress "fully and currently informed". I believe any attempt by the legislative branch to impose a strict prior notification requirement upon the Executive's foreign policy initiatives is neither feasible nor consistent with our constitutionally mandated separation of powers.

On the domestic front the Committee has documented flagrant abuses. Of particular concern were the political misuses of such agencies as the Federal Bureau of Investigation and the Internal Revenue Service. However, while thoroughly probing these reprehensible activities and recommending needed changes in accountability mechanisms, the Committee's "corrective" focus is almost exclusively on prohibitions or limitations of agency practices. I hope this approach to remedial action will not be read as broad criticism of the overall performance of the intelligence community or a minimization of the Committee's own finding that ". . . a fair assessment must place a major part of the blame upon the failures of senior executive officials and Congress." In fact, I am persuaded that the failure of high officials to investigate these abuses or to terminate them when they learned of them was almost as reprehensible as the abuses themselves.

A further objectionable aspect of the Committee's approach is the scope of the proposed limitations on the use of electronic surveillance and informants as investigative techniques. With respect to electronic surveillance of Americans suspected of intelligence activities inimical to the national interest, the Committee would limit authority for such probes to violations of specific criminal statutes. This proposal fails to address the real problem of utilizing electronic surveillance against myriad forms of espionage. A majority of the Committee recommended this narrow standard while acknowledging that existing statutes offer inadequate coverage of "modern forms of espionage." The Committee took no testimony on revision of the espionage laws and simply proposed that another committee "explore the necessity for amendments." To prohibit electronic surveillance in these cases pending such revision is to sanction an unnecessary risk to the national security. In adopting this position the Committee not only ignores the fact that appellate courts in two federal circuits have upheld the Executive's inherent authority to conduct such surveillance, but also fails to endorse the Attorney General's comprehensive proposal to remedy objection to current practices. The proposed safeguards, which include requirements for the Attorney General's certification of hostile foreign intelligence involvement and issuance of a judicial warrant as a condition precedent to electronic surveillance, represent a significant expansion of civil liberties protections. The proposal enjoys bi-partisan support in Congress and I join those members urging prompt enactment.

I am also opposed to the methods and means proposed by the Committee to regulate the use of informants. Informants have been in the past and will remain in the future a vital tool of law enforcement. To adopt the Committee's position and impose stringent, mechanical time limits on the use of informants—particularly regarding their use against terrorist or hostile foreign intelligence activities in the United States—would be to place our faith in standards which are not only illusory, but unworkable.

In its overly broad approach to eliminating intelligence abuses, the Committee report urges departure from the Congress' role as a partner in national security policy and comes dangerously close to being a blueprint for authorizing Congressional management of the day-to-day affairs of the intelligence community. Whether this management is attempted through prior notification of a shopping list of prohibitive statutes and regulations, it is a task for which the legislative branch of government is ill-suited. I believe the adverse impact which would be occasioned by enactment of all the Committee recommendations would be substantial.

Substantial segments of the Committee's work product will assist this Congress in proceeding with the task of insuring the conduct of necessary intelligence activities in a manner consistent with our obligation to safeguard the rights of American citizens. However, we must now step back from the klieg lights and abuse-dominated atmosphere, and balance our findings and recommendations with a recognition that our intelligence agencies and the men and women who serve therein have been and will always be essential to the existence of our nation.

This Committee was asked to provide a constitutionally acceptable framework for Congress to assist in that mission. We were not mandated to render our intelligence systems so constrained as to be fit for employment only in an ideal world.

In addition to the above remarks I generally endorse the positions set forth in Senator Baker's individual views. I specifically endorse:

His views stating the need for legislation making it a criminal offense to publish the name of a United States intelligence officer stationed abroad under cover.

His position that there must be a system of greater accountability by our intelligence operations to the United States Congress and the American people.

His concern that the Congress exercise caution to insure that a proper predicate exists before any recommendations for permanent reforms are enacted into law.

His view that there be careful study before endorsing the Committee's far reaching recommendations calling for an alteration of the intelligence community structure. I also support the individual views of Senator Goldwater.

Further, I specifically endorse:

His assessment that only a small segment of the American public has ever doubted the integrity of our Nation's intelligence agencies.

His opinion that an intelligence system, however secret, does not place undue strain on our nation's constitutional government.

His excellent statement concerning covert action as an essential tool of the President's foreign policy arsenal.

His opposition to the publication of an annual aggregate figure for United States intelligence and his reasons therefor.

His views and comments on the Committee's recommendations regard the National Security Council and the Office of the President. Specifically, comments number 12, 13 and 14.

His views challenging the proposed limitations concerning the recruitment of foreigners by the Central Intelligence Agency.

His views and general comments concerning the right of every American, including academics, clergymen, businessmen and others, to cooperate with his government in its lawful pursuits.

For the reasons stated above, I regret that I am unable to sign the final report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities.

JOHN G. TOWER,
Vice Chairman.

SEPARATE VIEWS OF SENATOR HOWARD H. BAKER, JR.

At the close of the Senate Watergate Committee, I felt that there was a compelling need to conduct a thorough examination of our intelligence agencies, particularly the CIA and the FBI. Congress never had taken a close look at the structure or programs of either the CIA or the FBI, since their inception in 1947 and 1924, respectively.[1]

Moreover, there never had been a congressional review of the intelligence community as a whole. Therefore, I felt strongly that this Committee's investigation was necessary. Its time had come. Like the Watergate investigation, however, for me it was not a pleasant assignment. I say that because our investigation uncovered many actions by agents of the FBI and of the CIA that I would previously have not thought possible (*e.g.*, crude FBI letters to break up marriages or cause strife between Black groups and the CIA assassination plots) in our excellent intelligence and law enforcement institutions. Despite these unsavory actions, however, I do not view either the FBI or CIA as evil or even basically bad. Both agencies have a long and distinguished record of excellent service to our government. With the exception of the worst of the abuses, the agents involved truly believed they were acting in the best interest of the country. Nevertheless, the abuses uncovered can not be condoned and should have been investigated long ago.

I am hopeful, now that all these abuses have been fully aired to the American people through the Committee's Hearings and Report, that this investigation will have had a cathartic effect; that the FBI and CIA will now be able to grow rather than decline. Such growth with a healthy respect for the rule of law should be our goal; a goal which I am confident can be attained. It is important for the future of this country that the FBI and CIA not be cast as destroyers of our constitutional rights but rather as protectors of those rights. With the abuses behind us this can be accomplished.

Long-Term Improvement of Intelligence Community

On balance, I think the Committee carried out its task responsibly and thoroughly. The Committee's report on both the Foreign and Domestic areas are the result of extensive study and deliberation, as well as bipartisan cooperation in its drafting. The Report identifies many of the problems in the intelligence field and contains positive suggestions for reform. I support many of the proposed reforms, while differing, at times, with the means we should adopt to attain those reforms. In all candor, however, one must recognize that an investigation such as this one, of necessity, will cause some short-term damage to our intelligence apparatus. A responsible inquiry, as this has been, will in the long run result in a stronger and more efficient intelligence community. As my colleague Senator Morgan recently noted at a Committee meeting, such short-term injury will be outweighed by long-term benefits gained from the re-structuring of the intelligence com-

[1] Upon the expiration of the Watergate Committee in September 1974, I had the privilege to consponsor with Senator Weicker, S. 4019, which would have created a joint committee on Congress to oversee all intelligence activities.

munity with more efficient utilization of our intelligence resources. Former Director William Colby captured this sentiment recently in a New York Times article:

> Intelligence has traditionally existed in a shadowy field outside the law. This year's excitement has made clear that the rule of law applies to all parts of the American Government, including intelligence. In fact, this will strengthen American intelligence. Its secrets will be understood to be necessary ones for the protection of our democracy in tomorrow's world, not covers for mistake or misdeed. The guidelines within which it should and should not operate will be clarified for those in intelligence and those concerned about it. Improved supervision will ensure that the intelligence agencies will remain within the new guidelines.
>
> The American people will understand and support their intelligence services and press their representatives to give intelligence and its officers better protection from irresponsible exposure and harassment. The costs of the past year were high, but they will be exceeded by the value of this strengthening of what was already the best intelligence service in the world.[2]

The Committee's investigation, as former Director Colby points out, has probed areas in which reforms are needed not to prevent abuses, but to better protect and strengthen the intelligence services. For example, it is now clear that legislation is needed to make it a criminal offense to publish the name of a United States intelligence officer stationed abroad.[3] Moreover, the Committee's investigation convinced me that the State Department should revise its publication of lists from which intelligence officers overseas predictably and often easily can be identified.

Yet we have not been able, in a year's time, to examine carefully all facets of the United States' incredibly important and complex intelligence community.[4] We have established that in some areas problems exist which need intensive long-term study. Often these most important and complex problems are not ones which lend themselves to quick or easy solutions. As Ambassador Helms noted in his testimony during the Committee's public hearings:

> . . . I would certainly agree that in view of the statements made by all of you distinguished gentlemen, that some result from this has got to bring about a system of accountability that is going to be satisfactory to the U.S. Congress and to the American people.

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[2] New York Times, Jan. 26, 1976.

[3] I intend to propose an amendment to S. 400 to make it a criminal offense to publish the name of a United States intelligence officer who is operating in a cover capacity overseas.

[4] For many months, the Committee thoroughly and exhaustively investigated the so-called "assassination plots" which culminated with the filing of our report on November 18, 1975. This investigation was vitally important in order to clear the air and set the record straight. And, it was instructive as to how "sensitive" *operations* are conducted within our intelligence structure. But, it necessarily shortened the time available to the Committee to investigate the intelligence community as a whole.

> Now, exactly how you work out that accountability in a secret intelligence organization, I think, is obviously going to take a good deal of thought and a good deal of work and I do not have any easy ready answer to it because I assure you it is not an easy answer. In other words, there is no quick fix. (Hearings, Vol. I, 9/17/75, p. 124).

Thorough Study Necessary in Several Areas

The areas which concern me the most are those on which we as a Committee have been able to spend only a limited amount of time,[5] i.e., espionage, counterintelligence, covert action, use of informants, and electronic surveillance. It is in these areas that I am concerned that the Committee be extremely careful to ensure that the proper thorough investigatory predicate exist before any permanent reform recommendations be enacted into law.

Our investigation, however, has provided a solid base of evidence from which a permanent oversight committee can and should launch a lengthy and thorough inquiry into the best way to achieve permanent restructuring in these particularly sensitive areas. It is my view that such a study is necessary before I am able to endorse some of the Committee's recommendations which suggest a far reaching alteration of the structure of some of the most important facets of our intelligence system.

Therefore, while I support many of the Committee's major recommendations, I find myself unable to agree with all the Committee's findings and recommendations in both the foreign and domestic areas. Nor am I able to endorse every inference, suggestion, or nuance contained in the findings and supporting individual reports which together total in the thousands of pages. I do, however, fully support all of the factual revelations which our report contains concerning the many abuses in the intelligence field. It is important to disclose to the American people all of the instances of wrongdoing we discovered. With such full disclosure, it is my hope that we can turn the corner and devote our attention in the future to improving our intelligence gathering capability. We must have reform, but we must accomplish it by improving, not limiting, our intelligence productivity. I am confident this can be done.

Cumulative Effect of Recommendations

With regard to the totality of the Committee's recommendations, I am afraid that the cumulative effect of the numerous restrictions which the report proposes to place on our intelligence community may be damaging to our intelligence effort. I am troubled by the fact that some of the Committee's recommendations dip too deeply into many of the operational areas of our intelligence agencies. To do so, I am afraid, will cause practical problems. The totality of the proposals may decrease instead of increase our intelligence product. And, there

[5] The Committee's mandate from Congress dictated that the abuses at home and abroad be given detailed attention. And, there are only a finite number of important problems which can be examined and answered conclusively in a year's time.

may be serious ramifications of some proposals which will, I fear, spawn problems which are as yet unknown. I am unconvinced that the uncertain world of intelligence can be regulated with the use of rigid or inflexible standards.

Specifically, I am not convinced that the answers to all our problems are found by establishing myriad Executive Branch boards, committees, and subcommittees to manage the day-to-day operations of the intelligence community. We must take care to avoid creating a Rube Goldberg maze of review procedures which might result in a bureaucratic morass which would further increase the burden on our already heavily overburdened tax dollar.

We should not over-reform in response to the abuses uncovered. This is not to say that we do not need new controls, because we do. But, it is to say that the controls we impose should be well reasoned and add to, not detract from the efficiency of our intelligence gathering system.

Increased Executive Branch controls are only one-half of the solution. Congress for too long has neglected its role in monitoring the intelligence community. That role should be significant but not all-encompassing. Congress has a great many powers which in the past it has not exercised. We must now do our share but, at the same time, we must be careful, in reacting to the abuses uncovered, that we not swing the pendulum back too far in the direction of Congress. Both wisdom and the constitutional doctrine of separation of powers dictate that Congress not place itself in the position of trying to manage and control the day-to-day business of the intelligence operations of the Executive Branch. Vigorous oversight is needed, but it should be carefully structured in a new powerful oversight committee. I believe this can be achieved if we work together to attain it.

In moving toward improving our intelligence capability, we must also streamline it. It is in this approach that my thoughts are somewhat conceptually different from the approach the Committee is recommending. I am concerned that we not overreact to the past by creating a plethora of rigid "thou shalt not" statutes, which, while prohibiting the specific hypothetical abuse postured in the Report, cast a wide net which will catch and eliminate many valuable intelligence programs as well.

The Committee Report recommends the passage of a large number of new statutes to define the functions of and further regulate the intelligence community. I am troubled by how much detail should be used in spelling out the functions and limitations of our intelligence agencies for all the world to see. Do we want to outline for our adversaries just how far our intelligence agencies can go? Do we want to define publicly down to the last detail what they can and cannot do? I am not sure we do. I rather think the answer is found in establishing carefully structured charters for the intelligence agencies with accountability and responsibility in the Executive Branch and vigilant oversight within the Legislative Branch.

President's Program

It is my view that we need to take both a moderate and efficient course in reforming our intelligence gathering system. In that regard, I think President Ford's recent restructuring of the intelligence community was an extraordinarily good response to the problems of the past. The President's program effected a massive reorganization of our entire intelligence community. It was a massive reaction to a massive problem which did not lend itself to easy solution. I am pleased that many of the Committee's recommendations for intelligence reform mirror the President's program in format. Centralizing the command and control of the intelligence community, as the President's program does, is the best way to ensure total accountability and yet not compromise our intelligence gathering capability.

Therefore, I endorse the basic framework of intelligence reform, outlined by President Ford, as embodying: (1) a single permanent oversight committee in Congress, with strong and aggressive staff, to oversee the intelligence community;[6] (2) the Committee on Foreign Intelligence to manage the day-to-day operation of the intelligence community; (3) the re-constituted Operations Advisory Group to review and pass upon all significant covert actions projects;[7] and (4) the Intelligence Oversight Board to monitor any possible abuses in the future, coordinating the activities and reports of what I am confident will be the considerably strengthened offices of General Counsel and Inspector General. This framework will accomplish the accountability and responsibility we seek in the intelligence community with both thoroughness and efficiency. Within this framework, Attorney General Levi's new guidelines in the Domestic Security area will drastically alter this previously sparsely supervised field. These guidelines will centralize responsibility for domestic intelligence within the Department of Justice and will preclude abuses such as COINTELPRO from ever reoccurring.[8]

Specific Reforms

Within this basic framework, we must look to how we are going to devise a system that can both effectively oversee the intelligence community and yet not impose strictures which will eliminate its productivity. It is to this end that I suggest we move in the following direction:

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[6] My original support for a single joint committee of Congress has evolved, somewhat as affected by the events of this past year's House Intelligence Committee investigation, to support for a single Senate committee. However, I also favor the mandate of the new committee including, as does the present S. 400, a charge to consider the future option of merging into a permanent joint committee upon consultation with and action by the House of Representatives. The moment for meaningful reform is now and we must not lose it by waiting for a joint committee to be approved by both Houses of Congress.

[7] I think a rule of reason should apply here. All significant projects certainly should receive careful attention from the Group. On the other hand, I would not require a formal meeting with a written record to authorize the payment of 2 sources in X country at $50 per month to be changed to the payment of 3 sources in X country at $40 per month.

[8] I applaud the detailed guidelines issued by the Attorney General to reform the Department's entire domestic intelligence program. I think he is moving in the right direction by requiring the FBI to meet a specific and stringent standard for opening an intelligence investigation, i.e., the *Terry* v. *Ohio* standard.

(1) Demand responsibility and accountability from the Executive Branch by requiring all major policy decisions and all major intelligence action decisions be in writing, and therefore retrievable.[9]

(2) I recommend, as I have previously, that Congress enact a variation of S. 400, which I had the privilege to cosponsor. S. 400 is the Government Operations Committee bill which would create a permanent oversight committee to review the intelligence community. The existing Congressional oversight system has provided infrequent and ineffectual review. And, many of the abuses revealed might have been prevented had Congress been doing its job. The jurisdiction of the new committee should include both the CIA and the FBI, and the committee should be required to review and report periodically to the Senate on all aspects of the intelligence community's operations. In particular, I recommend that the Committee give specific careful attention to how we might improve as well as control our intelligence capability in the counterintelligence and espionage areas.

(3) Simultaneously with the creation of a permanent oversight committee, Congress should amend the Hughes-Ryan Amendment to the 1974 Foreign Assistance Act, § 662, which now requires the intelligence community to brief 6 committees of the Congress on each and every major intelligence action. Former Director Colby strikes a responsive chord when he complains that the present system will lead to leaking of vital intelligence information. We must put a stop to this. This can be done by allowing the intelligence community to report only to a single secure committee.

(4) Concomitantly with improved oversight, we in Congress must adopt stringent procedures to prevent leaks of intelligence information. In this regard, I recommend we create a regular remedy to prevent the extraordinary remedy of a single member of Congress disclosing the existence of a covert intelligence operation with which he does not agree. Such a remedy could take the form of an appeal procedure within the Congress so that a single member, not satisfied with a Committee's determination that a particular program is in the national interest, will be provided with an avenue of relief. This procedure, however, must be coupled with stringent penalties for any member of Congress who disregards it and discloses classified information anyway. I intend to offer an amendment to institute such a remedy when S. 400 reaches the Senate floor.[10]

(5) The positions of General Counsel and Inspector General in the intelligence agencies should be elevated in importance and given increased powers. I feel that it is extraordinarily important that these

[9] Never again should we be faced with the dilemma we faced in the assassination investigation. We climbed the ladder of authority only to reach a point where there were no more written rungs. Responsibility ceased; accountability ceased; and, *in the end, we could not say whether some of the most drastic* actions our intelligence community or certain components of it had ever taken against a foreign country or foreign leader were approved of or even known of by the President who was in office at the time.

[10] I would favor a procedure, within the Congress, which would in effect create an avenue of appeal for a member dissatisfied with a Committee determination on a classification issue. Perhaps an appeal committee made up of the Majority and Minority leaders and other appointed members would be appropriate. Leaving the mechanics aside, however, I believe the concept is important and can be implemented.

positions, particularly that of General Counsel, be upgraded. For that reason, I think that it is a good idea to have the General Counsel, to both the FBI and the CIA, subject to Senate confirmation. This adds another check and balance which will result in an overall improvement of the system.[12] Additionally, I feel that it is equally important to provide both the General Counsel and Inspector General with unrestricted access to all raw files within their respective agencies.[12a] This was not always done in the past and will be a healthy addition to the intra-agency system of checks and balances.

(6) I am in favor of making public the aggregate figure for the budget of the entire intelligence community. I believe the people of the United States have the right to know that figure.[13] The citizens of this country have a right to know how much of their money we are spending on intelligence production. But, they also want to get their money's worth out of that tax dollar. They do not want to spend that money for intelligence production which is going to be handicapped; which is going to produce poor or inaccurate intelligence. Therefore, I am opposed to any further specific delineation of the intelligence community budget. Specifically, I am opposed to the publication of the CIA's budget or the NSA's budget. It seems to me we are dealing with the world of the unknown in predicting what a foreign intelligence service can or cannot extrapolate from these budget figures. We received no testimony which guaranteed that, if Congress were to publish the budget figure for the CIA itself, a hostile intelligence organization could not extrapolate from that figure and determine much more accurately what the CIA capabilities are in any number of vital areas. Without such testimony, I am not prepared to go that far. The public's right to know must be balanced with the efficiency and integrity of our intelligence operations. I think we can accomplish both by taking the middle road; publishing the aggregate figure for the entire intelligence community. It is this proposal that I have voted in favor of.

There are a number of other specific findings and recommendations, supported by a majority of the Committee, which require additional brief comment.

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[12] I differ with the Committee in that I would not have the General Counsel and Inspector General file reports and/or complaints concerning possible abuses with the Attorney General. Rather, I think the more appropriate interface in a new oversight system would be for both to take complaints to the Intelligence Oversight Board and the new congressional oversight committee. The Attorney General would remain the recipient of any and all complaints regarding possible violations of law.

[12a] I support the Committee's recommendation that agency employees report any irregularities directly to the Inspector General without going through the chain of command, i.e. through the particular division chief involved.

[13] I do not feel that, despite my personal view that the aggregate budget figure should be disclosed to the public, only six to eleven members of the Senate have the right to release unilaterally the actual budget figures. A majority of both Houses of Congress should be necessary to release such information. And, while I would cast my vote in favor of the release of the aggregate budget figure, I am troubled that there may be no such vote. I am not sure the "right" result, justifies the "wrong" procedures, because the next time the wrong procedure can just as easily be utilized to reach the wrong result.

Foreign Intelligence Recommendations

(1) COVERT ACTION

I believe the covert action capability of our intelligence community is vital to the United States. We must maintain our strength in this capacity, but, we must also control it. The key and difficult question, of course, is how we can control it without destroying or damaging its effectiveness. In my view, the best way to both maintain strength and yet insure accountability is to have strict control of the covert action programs through the Operations Advisory Group, with parallel control and supervision by the proposed permanent congressional oversight committee.

Covert action is a complex United States intelligence capability. Covert action provides the United States with the ability to react to changing situations. It is built up over a long period of time. Potential assets are painstakingly recruited all over the world. Having reviewed the history of covert action since its inception, I do not look upon the intelligence agents involved in covert action as a modern day group of bandits who travel the world murdering and kidnapping people. Rather, a vast majority of covert action programs are not only valuable but well thought approaches through media placement and agents of influence which produce positive results.

Covert action programs cannot be mounted instantly upon a crisis. It is naive to think that our intelligence community will be able to address a crisis without working years in advance to establish sources in the various countries in which a crisis might occur. These sources provide what is referred to as the "infrastructure," which must necessarily be in place throughout the world so that the United States can *predict* and *prevent* actions abroad which are inimical to our national interest.[14] I believe that, were we to completely abolish covert action or attempt to remove it from the CIA and place it in a new separate agency, these sources would dry up; and, when a crisis did come, our intelligence community would not be able to meet it effectively. Not only do I question the effectiveness a new separate agency for covert action would have, but such a re-structuring would unnecessarily increase our already burgeoning bureaucracy.

I think that it is important to realize that covert action cannot be conducted in public. We cannot take a Gallup Poll to determine whether we should secretly aid the democratic forces in a particular country. I do not defend some of the covert action which has taken place in Chile. But, the fact remains that we cannot discuss publicly the many successes, both major and minor, which the United States has achieved through the careful use of covert action programs. Many individuals occupy positions of power in the world today as a direct result of aid given through a covert action program. Unfortunately, we cannot boast of or even mention these significant achievements. In short, we cannot approach covert action from a public relations point of view. We should not forget that we must deal with the world as it is today—with our adversaries employing their equivalent of covert

[14] For example, testimony before the Committee established that the CIA's failure to act more positively in Portugal was a direct result of an absence of sufficient clandestine infrastructure. William E. Colby testimony, 10/23/75; William Nelson testimony, 11/7/75.

action. We must either say that the intelligence community should have the power to address world problems in this manner, under the strict control of the President and Congress, or we should take away that power completley. I cannot subscribe to the latter.

Finally, the issue remains as to how we can best control covert action through statutory reform. First, I believe the Executive Branch can and should carefully review each significant covert action proposal. This will be accomplished through the Operations Advisory Group under the program outlined by President Ford.

Second, Congress can control covert action by passing legislation requiring that the new oversight committee be kept "fully and currently informed." This, I believe, is the appropriate statutory language to apply to covert action . I do not agree with the Committee's recommendation that "prior notice" be given to Congress for each and every covert action project. As a matter of practice, the important and signifcant covert action programs will be discussed with the oversight committee in a form of partnership ; and this is the way it should be. "Fully and currently informed" is language which has served us well in the atomic energy area. It has an already existing body of precedent that may be used as a guide for the future. It is flexible, like the Constitution, and provides a strong, broad base to work from. I am not prepared to say, however, that in the years ahead there may not be some vitally sensitive situation of which Congress and the oversight committee should not be told in advance. While the likelihood of this occurring is not great, we should never foreclose with rigid statutory language possibilities which cannot be foreseen today. Our statutory language must be flexible enough to encompass a variety of problems and potential problems, yet rigid enough to ensure total accountability. "Fully and currently informed" accomplishes both purposes.

(2) CIA PUBLISHING RESTRICTIONS

In the area of restrictions on the CIA's publishing of various materials, I am in complete agreement that anything published in the United States by the CIA, or even sponsored indirectly by the CIA through a proprietary, front, or any other means, must be identified as coming from the CIA. Publications overseas are another matter. We should allow the Agency the flexibility, as we have in our recommendations, to publish whatever they want to overseas and to publish under whatever subterfuge is necessary and thought advisable.[15]

Domestic Intelligence Recommendations

While the Committee's Domestic Intelligence Report represents an excellent discussion of the problems attendant to that field of intelligence, I feel several of the recommendations may present practical problems. Although our objective of achieving domestic intelligence reforms is the same, I differ with the majority of the Committee in how best to approach the achievement of this goal.

[15] I *do not* view the "domestic fallout" as a real problem. To be sure, some publications by the CIA abroad will find their way back to the United States. However, to try to impose severe restrictions to prevent such fallout would cause unnecessary damage to the CIA's valid production of propaganda and other publications abroad.

(1) INVESTIGATIVE STANDARDS

Scope of Domestic Security Investigations

At the outset, I note that most of my concern with the standards for investigations in the domestic security area stem from the fact that "domestic security" is defined by the Committee to include both the "terrorism" and "espionage" areas of investigation. Severe limitations, proscribing the investigation of student groups, are more readily acceptable when they do not also apply to terrorist groups and foreign and domestic agents involved in espionage against the United States. To include these disparate elements within the same "domestic security" rubric, it seems to me, will create unnecessary problems when it comes to the practical application of the theoretical principles enunciated in the Committee's recommendations.

(a) *Preventive intelligence investigations*—The Committee's recommendations limit the FBI's permissible investigations in these critical areas of terrorism and espionage under standards for what the Committee delineates as preventive intelligence investigations. Under these standards the FBI can only investigate where:

> it has a specific allegation or specific or substantiated information that (an) American or foreigner *will soon engage* in terrorist activity or hostile foreign intelligence activity [emphasis added.] [16]

In am not convinced that this is the best way to approach the real problem of limiting domestic intelligence investigations. While in theoretical terms the standards of the recommendations may seem appropriate, I fear the inherent practical consequences of their application to the cold, real world of terrorism and espionage. The establishment of an imminency requirement by not permitting *any* investigation by the FBI unless the allegation or information received establishes that the person or group will "soon engage" in certain activity might prohibit any number of legitimate and necessary FBI investigations. For example, an allegation of an assassination attempt on a public figure at an unspecified date in the future could be precluded from investigation; or, vague information received by the FBI that there was a plan to obtain some nuclear components, but no indication of when or how, could also be prohibited from investigation. Surely, matters such as these should be the valid subjects of investigation—no matter how vague or piecemeal the information is.[17]

(b) *Time limits*—The Committee's recommendations would limit any preliminary FBI investigation of an allegation of wrongdoing in the Domestic Security area to 30 days from the receipt of the information, unless the Attorney General "finds" [18] that the investigation need be extended for an additional 60 days. The FBI investigation may continue beyond 90 days only if the investigatory efforts establish "reasonable suspicion" that the person or group "will soon engage in"

[16] Committee Domestic Report, p. 320.

[17] My experience dictates that many investigations are begun with very limited or sketchy information. FBI agents and investigators in general are not always or even often immediately presented with information which constitutes probable cause of a crime. Probable cause is often established only through painstaking investigation; putting bits and pieces together. I think we must take this into consideration when formulating threshold investigatory standards.

[18] It is unclear what standard is to be the predicate for any such finding.

terrorist or foreign espionage activities.[19] And, even a full preventive intelligence investigation is not permitted to continue beyond "one year," except upon a finding by the Attorney General of "compelling circumstances." [20]

While well-intentioned, I am not persuaded that these are workable standards. I just don't think we can categorize all investigations into these rigid time frames. Investigations just are not conducted that way. Thirty days, for example, is probably not even enough time to obtain a license check return from some states. Moreover, limiting an investigation to one year may not be realistic when it applies to investigating a violence prone group like the SLA or a Soviet Union espionage ring. These investigations are not easily or quickly accomplished. I do not believe that the creation of artificial time limits is the best way to approach the real concern of the Committee, which is that we establish institutional controls on domestic security investigations. I would prefer approaching the control and accountability problems by providing periodic Department of Justice reviews of *all* categories of domestic intelligence investigations; not by imposing specific time limits upon all investigations.

(2) INFORMANTS

The Committee recommends broad new restrictions on the use of informants by the FBI. While our investigation has established that, in the domestic intelligence field, there have been numerous abuses in the use of informants, I do not think that the proposed recommendations are the best vehicles to achieve the needed reform. I cannot subscribe to recommendaitons limiting the use of informants to stringent time standards.[21] To limit use of informants to periods of "90 days" [22] unless the Attorney General finds "probable cause" that an American will "soon" engage in terrorist or hostile foreign intelligence activity is impractical and unworkable. When groups such as the SLA attempt to rob, kill, or blow up buildings, it is clearly necessary to cultivate informants who may provide some advance warning. I am concerned that the Committee's recommendations will preclude this vital function of the FBI. Moreover, specific time limits, it seems to me, will prove to be impractical. For example, at the end of the prescribed time, with not enough evidence for arrests, will informant X be terminated and replaced by informant Y who starts anew, or are informants thereafter banned from penetrating the particular group—even if violence prone or involved in espionage?

It should be remembered that informants are the single most important tool of the FBI, and local police for that matter, in the fight against terrorism and espionage, as well as organized crime, narcotics, and even the ever pervasive street crimes of murder, rape, and robbery. Indeed, they are the very lifeblood of such investigations. Moreover, informants are involved in a wide spectrum of activities

[19] Committee Domestic Report, pp. 320–323.

[20] Compelling circumstances is not further defined, so it is unclear what standards should be applied in making such a determination.

[21] My concerns here parallel those I have with respect to the general investigatory standards recommended.

[22] The Committee allows an additional 60 days if the Attorney General finds "compelling circumstances."

from attending public meetings to actual penetration attempts. I am concerned that theoretical and abstract restrictions designed only for "domestic intelligence", if enacted, would soon limit our legitimate law enforcement efforts in many other fields as well. People and actions do not always fit nicely in neat little boxes labeled "domestic intelligence," particularly in the terrorist and espionage areas to which the proposed restrictions on informants would apply. Congress should carefully consider the scope and ramifications of any recommendations with respect to informants.

It is my view that the better way to approach the problems encountered in the use of informants is to put their use under strict supervision of the Department of Justice. Creation of a special staff or committee for this purpose, centralized in the Department of Justice, would provide effective controls over the potential abuses in the use of informants, yet not hamstring their legitimate and valuable use.[23]

(3) ELECTRONIC SURVEILLANCE

I wholeheartedly support S. 3197, the new electronic surveillance bill sent to the Congress by President Ford.[24] It needs consolidated bipartisan support because it represents a significant advance from existing practice. For the first time, it will bring all governmental electronic surveillance under the scrutiny of judicial warrant procedures. I commend the efforts of President Ford in taking this extraordinary step forward in the regulation of electronic surveillance.

In supporting S. 3197, I do not regard the existing wiretaps presently maintained under the direction and control of Attorney General Levi as being in violation of the Constitution. The present practice of electronic surveillance authorization and implementation rests upon a long-standing body of precedent which provides a firm constitutional base for their continued maintenance. The President's approach is to move from the present practice toward better practices and procedures for authorization. The abuses of electronic surveillance of the past clearly dictate a need for a system of judicial warrant approval. Under the President's proposal the American people will be able to rest easy—assured that electronic surveillance will be employed carefully, yet when needed to combat serious criminal and espionage activity.

I differ with a majority of the Committee insofar as they recommend that before a judge can issue a warrant for electronic surveillance he must find *more* than that an American is a conscious agent of a foreign power engaged in clandestine intelligence activities. The Committee would require that probable cause be established for "criminal activity" before a wiretap can be authorized. I think this departure from the S. 3197 standard would be a dangerous one because it would eliminate certain areas of espionage, particularly industrial espionage,

[23] Attorney General Levi is in the process of establishing guidelines to regulate the use of informants. I recommend, however, that these guidelines be enforced through some appropriate form of Department of Justice review of the FBI's use of informants.

[24] The bill enjoyed a bipartisan co-sponsorship of Senators.

from electronic surveillance. Many areas of espionage do not involve clearly criminal activity. Indeed, forms of espionage may not constitute a criminal offense, but should be the valid target of an espionage investigation. For example, a situation such as American oil company executives providing unclassified but important oil reserve information to a Soviet agent might not be a permissible subject of electronic surveillance if "criminal activity," rather than hostile foreign intelligence, were the standard.[25] I think the Committee proposed standard would harm the FBI's espionage efforts and would therefore be a mistake.

(4) CIVIL REMEDIES STATUTE

I oppose any broad new civil remedies statute in the field of domestic intelligence as both dangerous and unnecessary. It is dangerous because it could easily open the flood gates for numerous lawsuits filed seeking injunctive relief in the courts to thwart legitimate investigations. It is unnecessary because any substantial actions are already permitted under present Supreme Court decisions, such as *Bivens* v. *United States*, for violation of constitutional rights. There is simply no valid reason to carve out a broad new category of lawsuits for those not only injured by domestic intelligence methods but "threatened with injury." [26] No such statutory provisions are available for "victims" in any other specific category of activity. The present avenues of relief provided by law today are clearly sufficient to address any future abuses in the domestic intelligence field. I note that we have not had the benefit of any sworn testimony from the many constitutional and criminal law experts in the country, either pro or con such a proposal. Without the benefit of an adequate record and with my concern about the practical results of such a statute, I cannot support its enactment.

(5) CIVIL DISORDERS

A final recommendation which requires brief comment in the Committee's proposed standards permitting the FBI to assist "federal, state, and local officials in connection with a civil disorder." The Committee's recommendation will not allow any investigation by the F.B.I., not even preliminary in nature, unless the Attorney General finds in writing that "there is a clear and immediate threat of domestic violence" which will require the use of Federal troops.

My reservation about this recommendation is that I think it deprives the Attorney General of the necessary flexibility in dealing with

[25] Those involved in the obtaining of information about our industrial processes, vital to our national security, for our adversaries should be the legitimate subject of electronic surveillance, notwithstanding that no criminal statute is violated. I do not think we can afford to wait for exhaustive reform of our espionage laws. I note that the section of the proposed S.1 dealing with espionage reform has presented great difficulty to the drafters. Indeed, drafting espionage into a criminal statute presents some of the same overbreadth problems that the Committee has been concerned with in the domestic intelligence area.

[26] For example, would a cause of action exist simply because X notices a federal agent following him in an automobile, notwithstanding the nature or status of the particular investigation?

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these delicate matters (i.e., civil disturbances) and might tend to exacerbate a possibly explosive situation. If the Attorney General is not allowed to dispatch FBI agents to the scene of disorders it seems to me that we deprive him of the very means he needs to make the extraordinarily important decision as to whether Federal troops are likely to be used.

I believe the better practice would be to permit preliminary investigation by the FBI of potentially volatile situations so that the Attorney General might make the most reasoned decision possible with respect to what I consider the drastic step of deploying Federal troops to quell a civil disorder in one of our cities.

WATERGATE-RELATED INQUIRY

Finally, I wish to address briefly an area of the Committee's investigation which I pursued for the most part independently. At the close of the Senate Watergate investigation I filed a report as part of my individual views [27] which outlined remaining areas of investigation with respect to the relationships between the Central Intelligence Agency and the former CIA employees who participated in the Watergate break-in.[28] By virtue of my membership on this Select Committee, I have been able to pursue a further inquiry into these matters, and wish to thank the Chairman and the Vice Chairman for the staff assistance and latitude provided me to pursue this area of investigation.

Many of the concerns raised in the Watergate Committee investigation have been overtaken by time and events. For example, the reported references to illegal CIA domestic activities have now been confirmed, as described in detail in the Committee's Report. The reference to the CIA maintaining a file on Jack Anderson [29] proved to be part of a lengthy investigation and physical surveillance of Anderson by the CIA during a "leak" inquiry. Similarly, the detailing of Howard Hunt's post-retirement contacts with the CIA has been supplemented with still more such contacts.[30] Since July 1974, we have witnessed a variety of other disclosures relative to the CIA's domestic activities; indeed, the creation of our Senate Select Committee on Intelligence Activities was due in part to the continuing public concern about these matters.

Unlike the Watergate Committee investigation of CIA activities, which largely was terminated because of the refusal of the CIA to turn over documents,[31] this investigation was conducted in an atmosphere of cooperation. After some initial difficulties, which the Committee en-

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[27] Senate Watergate Committee Final Report, S. Res. 93-981, pp. 1105-1165.

[28] The "Action Required" section of the report, at pages 1150-1157, enumerated unresolved matters and identified materials not provided to the Watergate Committee by the CIA.

[29] Senate Watergate Committee Final Report, p. 1128.

[30] For example this disclosure of personal correspondence (detailing certain of Hunt's activities in 1971 and 1972) between Hunt and the CIA secretary stationed in Paris whom Hunt sought to have reassigned to work for him at the White House.

[31] By letter of March 7, 1974, former Director Colby informed the Senate Watergate Committee that certain items of requested information would not be made available to that committee. Such a withholding of timely information, including that which was totally exculpatory, unnecessarily focused an aura of suspicion and guilt.

countered in a variety of areas, the cooperation afforded by the CIA was exemplary. In particular, I especially want to express my appreciation to former Director William Colby and present Director George Bush for cooperating to the fullest extent in this investigation. I also want to thank Ambassador Richard Helms and former Counterintelligence Chief James Angleton for their patience and extensive assistance in numerous conferences, in trying to reconstruct the elusive details of this significant period.

In pursuing this area of inquiry, the Committee staff examined a great volume of highly sensitive material, much of which contained speculative matters and a multitude of information of marginal relevance. This information, which had not been made available in large part to the Separate Watergate Committee, was examined in raw form and without sanitization deletions. Because of the sensitivity of the material, it was reviewed on the Central Intelligence Agency premises. Thus, it was in a spirit of cooperation that this examination was accommodated; and, this experience indicates that the Congress and the intelligence community can cooperate in an investigation without incurring unauthorized disclosure of sensitive information.[32]

At the close of this Committee's examination of the available record, I wish to state my belief that the sum total of the evidence does not substantiate a conclusion that the CIA per se was involved in the range of events and circumstances known as Watergate.[33] However, there was considerable evidence that for much of the post-Watergate period the CIA itself was uncertain of the ramifications of the various involvements, witting or otherwise, between members of the Watergate burglary team and members or components of the Agency. Indeed, the CIA was apparently at times as perplexed as Congressional investigators.[34] It should be noted that the Agency undertook an extensive internal inquiry in an effort to resolve these uncertainties.

The investigation of Watergate and the possible relationship of the Central Intelligence Agency thereto, produced a panoply of puzzlement. While the available information leaves nagging questions and contains bits and pieces of intriguing evidence, fairness dictates that an assessment be rendered on the basis of the present record. An impartial evaluation of that record compels the conclusion that the CIA, as an institution, was not involved in the Watergate break-in.

HOWARD H. BAKER, Jr.

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[32] For example, the staff was given access to the Martinez contact reports (to which access was refused during the Watergate Committee investigation) in their entirety. This review was accomplished in secure facilities at the CIA, and no notes were taken of sensitive information contained in the reports not related to Hunt or in some other way relevant to the Committee's inquiry. I cite this as an example of how a Congressional investigation can be thorough and yet not threaten the integrity of CIA secret documentation, containing names of officers and other highly classified information.

[33] I am filing with the Committee the detailed results of this investigation in the form of classified memoranda. These memoranda will be turned over to the successor permanent oversight committee to be kept in its secure files. No useful purpose would be served in further publicizing the contents, because much of it is fragmentary and its sum total reinforces the findings stated herein.

[34] For example, a Colby to Helms letter of 28 January, 1974, references seven to nine communications from Hunt while he was at the White House to Helms' secretary, with the query: "Can you give us some idea as to what they were about?"

INDIVIDUAL VIEWS OF SENATOR GOLDWATER

For over a year the Senate Select Committee on Intelligence Activities has been conducting hearings and taking testimony. Almost six months of this time was frittered away in an unproductive investigation into alleged assassinations (see my individual views accompanying the foreign section of this report).

Thanks to extensive and often sensationalized public hearings, the deficiencies of our domestic intelligence agencies have now been exposed, labelled, and largely admitted to. In response, the individual agencies have undertaken substantial reforms and the Administration itself has piloted corrections by a thoughtful and detailed Executive Order 11905, 2/18/76.

Not satisfied, however, the Select Committee's Report sets forth a voluminous and rambling treatise which pillories the nation's domestic intelligence agencies, fixes individual culpability, ignores agency efforts at reform, and urges the adoption of recommendations and findings unsubstantiated by fact.

The Report sets forth frequent and unfounded criticism of "executive power." Ignoring both past and present efforts by the Executive to provide guidance and reform, the Report voices theoretical objection to the conduct of intelligence activities by the "Chief Executive and his surrogates." Unhappily, the sweeping dissatisfaction of theoreticians and academicians is not reflected in the record of the Select Committee's proceedings and is almost wholly unsupported by testimony. The pronouncements within the Report deal in a high-handed manner with matters that received little or no attention by the Committee and are, consequently, utterly devoid of an adequate record.

The free-wheeling, self-righteous, and frequently moralizing thrust of the Report therefore assures recommendations which are bottomed in wish and speculation rather than in fact or testimony. Recommendations, for example, that civil remedies be expanded to cover parties alleging "injuries" from domestic intelligence activity; that statutes be enacted to create a cause of action for those allegedly so aggrieved; that criminal sanctions be enacted for willful violation of recommended statutes; and that the Smith and Voorhis Acts be repealed or amended, are all glibly presented without so much as a shred of evidence having been entered into the record in their support.

Although the Report has flatly assured its readers that "the scope of our recommendations coincides with the scope of our investigation", such assurances are clearly hollow when, for instance, the Report affirms in preamble to certain recommendations that the President has no inherent power to conduct a wiretap without a warrant. Repeatedly and without qualification, the Report reiterates such a proposition, without referring to the unsettled state of the case law, the views of legal scholars, or the relative silence of the Supreme Court on the matter. When, further, the Report counsels restrictions on, say, the use of

informants or the surveillance of foreign intelligence activities, it goes beyond restrictions already in the Attorney General's Guidelines with scant attention to the effectiveness of the guidelines or their application.

Again and again the Report makes far-reaching recommendations which are unsubstantiated by the evidence. Thus the Report urges that the FBI not attempt frustration of hostile foreign intelligence activities by "specialized" techniques unless approved by the Attorney General upon advice of the Secretary of State. What the Report omits, however, is any showing that the Attorney General or the Secretary of State is available, capable, or prepared, to undertake such a role.

In similar fashion, the Report's Recommendations are frequently critical of the Executive Order's determination to repose all domestic oversight in a Board rather than vest it exclusively or principally with the Attorney General. The apparent basis for the Report's preference (and hence its criticism of the Administration's Executive Order) is the brief and fairly bald conclusion that the Attorney General is the "most appropriate official charged with ensuring that the intelligence agencies of the United States conduct their activities in accordance with the law." No examination of feasibility, organization, or jurisdiction, buttresses the Report's conclusion in this respect.

The Report likewise recommends almost wholesale enactment of legislation to prevent recurrence of abuses and repetition of improprieties in the domestic area. In this respect the Report exhibits a decidedly hasty and almost exclusive preference for statute where Order, Rule, or Regulation would provide more expeditious, more particularized, and more flexible remedies. In view of the tentative and even halting nature of so many of the Committee's conclusions, the clamor for statutes is premature and ill-advised. To urge the quick enactment of criminal provisions is even more injudicious, and, in some cases, verges on the fatuous.

To be precise: the Select Committee has endorsed Recommendation 52, which reads: "All non-consensual electronic surveillance should be conducted pursuant to warrants issued under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968." At the same time, however, the Select Committee admits that "industrial espionage and other modern forms of espionage (are) not presently covered" by the criminal law, and that "there may be serious deficiencies in the Federal Espionage Statute (18 U.S.C. 792 et seq.)." In fact, the Report is constrained to admit that it "took no testimony on this subject." Nonetheless, in the very teeth of its own admission, the Select Committee endorses a Recommendation that would restrict *all* electronic surveillance to the narrow and exclusive confines of the criminal law. At Select Committee direction, our counter-intelligence efforts would be forbidden by law to avail themselves of electronic surveillance in the as yet undefined, but admittedly vital, areas of economic, technological, and industrial espionage. With virtual impunity an American could pass, deliver, or sell to the agent of a hostile foreign power any and all secrets of industry or technology—however important to the nation's economy or well-being—while the FBI would be effectively precluded from action. As criminal sanctions do not attach—and, in fact, may very well be incapable of attaching—to "industrial espionage", electronic surveillance would be denied the nation's

intelligence agencies in any effort to forestall, prevent or even monitor, hostile foreign intelligence activity in the economic or technological sphere. While the Report blithely recommends that the espionage laws be modernized to include technological or industrial espionage, it nowhere confronts the massive practical difficulties in such a suggestion.

Federal Bureau of Investigation

During the last decade or so of Mr. Hoover's tenure abuses crept into the operations of the Bureau. Because these are thoroughly ventilated, if not overdrawn, in the Majority Report, I shall not dwell on them here, with one exception: at times, suggestions from the White House or the conjectures of Presidential aides directly sparked eavesdropping and interference with the political process.

Almost invariably, however, Bureau impropriety can be attributed—whether directly or by implication—to higher authority. As in the foreign sector, the record of domestic abuse and excess is a commentary on improper or deficient guidance. While particular programs or personnel cannot be spared their proportionate share of responsibility for impropriety, ultimate accountability for Bureau excesses must rest with a negligent Executive and an inattentive Congress.

While I concur in the general objectives of the Committee to insure no repetition of abuses of which the FBI may have been guilty in the past, I strongly disagree with certain specific recommendations in the Committee's report.

I do not feel the best interests of this country would be served by imposing extraordinary curbs on the FBI or by opening additional channels through which political influence could flow into the inner workings of the FBI. And to a certain extent, the recommendations I find objectionable would tend to accomplish exactly that.

I refer specifically to Recommendation 85, which encourages the Attorney General to exercise his authority to appoint executives in the FBI at the level of Assistant Director.

The Attorneys General, with rare exceptions, have historically been political supporters of the President and his party. By exhorting an Attorney General to by-pass the Director of the FBI and appoint Assistant Directors, we run the risk of further extending White House intrusion into the daily operations of the FBI. FBI Assistant Directors take part in administrative decisions and policy-making, and they exercise day-to-day authority over the operations of their respective divisions. Traditionally, they have been professionals who advanced through the ranks of the FBI. Their law enforcement expertise, combined with administrative ability, are qualities needed by the Director of the FBI in discharging his duties. Moreover, any chief executive officer of a line agency should have flexibility in choosing his principal assistants.

The Office of the General Counsel of the FBI is a career position; and the person who occupies that office has traditionally been selected by the Director. No valid reasons have been given to require his nomination by the President and confirmation by the Senate. As a general rule, the Director or Administrator of a bureau or agency is permitted to choose his own General Counsel.

Personal integrity cannot be assured through such measures as Recommendation 85. Proper supervision by the Attorney General and effective Congressional oversight can, and should, however, serve to discourage abuses of the sort that concern all of us.

I take exception, also, to Recommendations 45, 55–A and 55–B, that impose constraints on preventive intelligence investigations and use of informants. The work of the FBI in this area is far too vital to the security of the American people to impose such stringently restrictive requirements and time limitations on its investigative efforts.

With domestic terrorism burgeoning in this country, I submit it is very risky to forbid the FBI to conduct preliminary investigations of foreigners or citizens unless there is a "specific allegation" or proof that such individuals "will soon engage in terrorist activity or hostile foreign intelligence activity." Here, again, as in some of the foreign recommendations we seem to be saying, "Don't put out the fire while it is small; wait until it becomes a conflagration."

Hostile forces at home and abroad are bound by no such chains. And, I don't want to be party in hamstringing the FBI so that it cannot effectively frustrate those who would espouse the bomb and the gun to impose their evil will on America.

How in the world is the FBI to substantiate information that terrorists and enemy agents will act against Americans without at least preliminary investigation? To require them to have such proof in hand before even initiating investigation seems unrealistic and is potentially injurious to our security.

The recommendation also states that such preliminary investigation must be concluded within 30 days, unless the Attorney General or his designee finds that the facts warrant additional investigation up to 60 days.

Are we truly prepared to say to the FBI: you must conclude your preventive intelligence investigations within 30 or 90 days unless you establish "reasonable suspicion" that individuals *will in fact* commit a terrorist act or engage in hostile foreign intelligence activity?

And, even then, a time limit of one year is recommended for a full preventive intelligence investigation, barring a finding of "compelling circumstances" by the Attorney General. Can we be assured that our enemies will be so obliging as to commit an act within the time span we prescribe?

And I question the effectiveness of the recommended measures in preventing abuses of Americans' privacy or in assuring non-violent dissenters in our country that they will not be inhibited by FBI actions.

I submit that effective and proper Congressional oversight and supervision by the Attorney General obviates the necessity of stringent standards and time limitations where a quick response by the FBI may be needed to avert disaster.

While I tend to agree with the motives and objectives of my colleagues on the Committee on Recommendations 55–A and B, I maintain the requirements and limitations imposed on the FBI's use of informants go beyond what is necessary.

How can we possibly expect the FBI to develop instant security informants, use them for 90 days, and then turn them off like a light switch?

Are we truly qualified to dictate to a professional law enforcement agency under what circumstances it can use security informants and for how long? The value of such informants has been demonstrated over and over again. Good, stable, effective informants with proved credibility are not easy to come by.

The fact is that their cooperation must be cultivated. Their credibility must be tested. Their stability must be evaluated. Time and patience are essential. Does it make sense to state exactly under what circumstances and for how long a period the FBI will be permitted to accomplish these aims?

The stakes are too high to risk imposing unworkable or cumbersome restrictions—the stakes being human lives and the security of our country.

I have misgivings regarding Recommendation 90–B, which provides a new civil action recourse to Americans who feel that their Constitutional rights have suffered actual or even *threatened* violation by Federal officers or agents in intelligence investigations. This provision would have the effect of injecting the courts into the investigative process, even at early stages of investigations when attempts are being made to substantiate or disprove specific allegations of actions requiring legitimate investigation.

We would open the way for individuals and agents hostile to our country and its lawful government to impede and tie up in prolonged litigation investigations required to preserve national security and prevent violence.

Turmoil, upheaval, and readjustment have taken their toll of the FBI. Fortunately for the nation, the many high-caliber and patriotic men and women who are the FBI have continued to serve with dedication and loyalty.

Internal Revenue Service

Nowhere has the perversion of domestic intelligence been more vividly demonstrated than in the Select Committee's investigation of the Internal Revenue Service. With much relish but no excuse, IRS functionaries have pried and spied on countless organizations and activities. Intelligence components of the IRS have indiscriminately investigated hundreds of thousands of taxpayers and have amassed reams of information wholly irrelevant to the IRS's narrow responsibility for collecting the taxes. IRS agents have for decades conducted intrusive campaigns of snooping virtually without let or hindrance, and certainly without justification in fact or in law.

In 1961, for instance, the IRS initiated a program to conduct a test audit of various "right-wing" organizations. Termed the "Ideological Organizations Audit Program," the project attempted intensive investigation of 10,000 tax-exempt organizations that was far removed from even-handed enforcement of the internal revenue laws. Precedent having been established, a Special Services Staff was organized in 1969 to conduct audits of "activist" and "ideological" taxpayers. Audits were run without reference to established tax criteria and the "special service" rendered the nation was the unwarranted targeting of 18,000 individuals and 3,000 groups. Its insatiable appetite

still unsatisfied, the IRS next established an "Information Gathering and Retrieval System" (IGRS) in order to garner still more general intelligence. IGRS was hatched in 1973, and, during its two years of life, proceeded to gather and store information in voracious fashion. Some 465,442 individuals or organizations were examined before the program was terminated in 1975.

Operating secretly and without standards or safeguards, IGRS was typical of the arrogance of the tax collectors. Abuses uncovered in connection with the IRS's Operation Leprechaun (1969–1972) merely represent the expected and logical extension of policies which are as profoundly contemptuous of the American taxpayer as they are characteristic of the IRS's perennial efforts to transform itself into a repository of domestic intelligence.

I have refused to sign the final report of the Select Committee on Intelligence Operations in the belief that it can cause severe embarrassment, if not grave harm, to the Nation's foreign policy. The domestic part of the report has a strong dose of 20–20 hindsight. It will raise more questions than it answers. Reputations will suffer and little will have been gained.

When the resolution creating the Select Committee was presented to the Senate, I endorsed it because I felt it was necessary to conduct such an investigation into any possible abuses on the privacy of American citizens. I thoroughly expected that the Committee would concentrate its efforts in this particular field, but very little work was done on it. Not much can be gained from reading the report as a result of this, and I am, frankly, disappointed that we don't know more today than we did a year and a half ago about questions raised on this subject.

BARRY GOLDWATER.

Supplemental Views of Senator Charles McC. Mathias, Jr.

I fully support the Final Report and the Findings and Recommendations of the Select Committee on Intelligence.

The reaffirmation of Constitutional government requires more than rhetoric. It involves, at a minimum, the rendering of accounts by those who have held public trust. It also demands that we renew those principles that are at the center of our democracy. In my view, the Select Committee's Report is a critical contribution to the process of Constitutional government.

Those who won our independence 200 years ago understood the need to ensure "domestic tranquility" and to "provide for the common defense." Our intelligence services have played a valuable role in the attainment of those goals.

The Founders of our Nation also understood the need to place governmental power under the rule of law. They knew that power carried with it the seed of abuse. In framing the Constitution, they created a system of checks and balances that would preclude the exercise of arbitrary power. For they recognized that the exercise of power by individuals must be constrained. As Jefferson wrote, "In questions of power, let no more be heard of confidence in man, but bind him down by the chains of the Constitution."

When Senator Mansfield and I first proposed the creation of a Select Committee on Intelligence in the wake of Watergate, we were not seeking to weaken the nation's intelligence service but to strengthen it. Effective government rests on the confidence of the people. In the aftermath of Watergate and charges of domestic spying and misuse of the intelligence agencies, that confidence was severely strained. And in the face of excessive claims of presidential prerogative, Congress had abdicated its Constitutional responsibilities to oversee and check the exercise of executive power in the intelligence operations of the government.

Secrecy and democratic government are uneasy partners. Intelligence operations are in essence secret operations. But that does not mean that they can be immune from the rule of law and the standards our system of government places on all government operations.

If we can lose our liberties from a too-powerful Government intruding into our lives through burdensome taxes or an excess of regulations, we can surely lose them from government agencies that collect vast amounts of information on the lawful activities of citizens in the interest of "domestic intelligence." The excessive breadth of domestic intelligence operations investigated by the Committee and many of the techniques used against Americans can severely chill First Amendment rights and deeply infringe upon personal privacy.

The Framers of our Constitution recognized that the vitality of our civil life depends on free discussion. They also recognized that the right of privacy is fundamental to the sanctity of the individual. That is why we have the First and Fourth Amendments. Speech and political ideas are often unsettling. But it is only through free debate and

the free exchange of ideas that the people can inform themselves and make their government responsive. And it is through the protection of privacy that we nourish the individual spirit. These are the characteristics that set us apart from totalitarian regimes.

In this, our Bicentennial year, Americans have a special opportunity to reaffirm the values of our forebears. We have emerged from the dangers of the post-war era and the trauma of the last decade not by forsaking those values but by adhering to them. To be worthy of our forebears and ourselves, we need only have the courage to keep to the course. By bringing the intelligence arm of the government within our constitutional system, correcting abuses, and checking excesses, we will enable the proper range of intelligence activity to go forward under law in the service of the country.

CHARLES MCC. MATHIAS, JR.

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