

**U.S. INTELLIGENCE AGENCIES AND ACTIVITIES:
COMMITTEE PROCEEDINGS—II**

**PROCEEDINGS
OF THE
SELECT COMMITTEE ON INTELLIGENCE
U.S. HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
SECOND SESSION**

JANUARY 20, 21, 23, 26, 27, 28, FEBRUARY 3, 4, 5, AND 10, 1976

PART 6

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DISCUSSION OF FINAL REPORT

TUESDAY, JANUARY 20, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:08 a.m.; in room 2118, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Dellums, Murphy, Aspin, Milford, Hayes, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, Jeffrey R. Whieldon, Roscoe B. Starek III, James B. F. Oliphant, Richard S. Vermeire, and John M. Atkisson, counsel; Sandra Zeune, James C. Mingee, Charles Mattox, Roger Carroll, Vance Hyndman, Emily Sheketoff, Fred Kirschstein, and Gregory G. Rushford, investigators.

Chairman PIKE. The committee will come to order.

First, I would just like to think out loud a little bit with the members of the committee.

If we are to comply with the resolution which created our committee, we have only a very brief time in which to complete a great deal of work. We have a report which has been drafted by our staff. We have some recommendations.

The report will probably be controversial to some degree. I suspect that that controversy will fade into insignificance compared to the recommendations. I think the recommendations are going to be the tough part of our remaining job.

We have two options, as I see it. We can either work very, very hard and try to get the job done, or we can try to get more time. I personally am opposed to getting more time, for a couple of reasons: We have advised all of the members of our staff that the committee work would terminate at the end of this month. Many of them have sought and obtained other jobs. So, we will have staff problems.

I am also concerned by the number of leaks which have developed, and I think that the sooner we finish our business the less this is a problem. I think that it is time that this committee wrapped up its work. I would like to be able to do it within the time frame that we have been given.

I would like to hear the other members' views on the subject.

Mr. McClory?

Mr. McClory. Mr. Chairman, I am as anxious as anyone, I am sure, to conclude the work of our committee. On the other hand, we have

been handed here a draft report of, I think, 335 pages, plus recommendations. I think that it would be a disservice to the work of the committee if we proceeded hastily and inadequately with respect to its final work.

It seems to me that this is a real testing time as to whether or not we can be as responsible, with respect to the report and recommendations, as I feel we have been in connection with the hearings.

My first impression of this so-called staff report is that it is completely unsatisfactory, at least with respect to the history of the work of the committee. I don't think it does justice to the responsible way in which the committee has proceeded or that it is worthy of the very constructive and positive work which the committee has done.

I certainly don't want us to end up by complaining that we were not able to do our job when, as a matter of fact, I think we did our job very well. And so we are going to have to spend some time on the draft report.

Now, I believe that if we file our report in a typewritten form by January 31 we will be in compliance with what the resolution provides. I don't think we have to have printed reports available at that time. This should give us some time. I would like to see us work as hard and as long as necessary and to go into as much detail as possible, with the goal of having the report in the hands of the Clerk on January 31.

I think we should proceed along that line. If we are unsuccessful, rather than doing something inadequate, I would say we should get a brief extension of time—a week or a couple of weeks or something like that—to wind up our work in a competent way, which I am sure we can.

Chairman PIKE. Mr. Aspin?

Mr. ASPIN. Let me just ask a question, Mr. Chairman: Given the other things that have to happen, how many working days do we have if we are going to finish by January 31?

Chairman PIKE. Well, we have quite a few working days. But it would involve changing our committee rules, for example, on the time permitted to file additional or minority views. Our committee rules require 5 days' notice. That wipes out 5 of the days we have left.

Mr. ASPIN. Do you agree with Mr. McClory's thinking? Does a printed version of the report have to be filed by January 31?

Chairman PIKE. No; I don't think it has to be a printed version. I think it could be a typewritten version.

Mr. ASPIN. So, if we were working under our rules about minority views, we would have to wind up by January 26 in order to give 5 days' notice?

Chairman PIKE. No; sooner than that, because 5 legislative days are required.

Mr. ASPIN. Does anybody have a calendar to tell us exactly?

Chairman PIKE. It is Tuesday.

Mr. ASPIN. How many actual working days do we have to file, if we are to comply with our rules?

Chairman PIKE. Well, I would say that we have 9 days, including today.

Mr. ASPIN. Nine working days?

Chairman PIKE. Nine legislative days.

Mr. Treen?

Mr. TREEN. I share the view that we ought to try to wind this up. I know that 5 days for supplemental views present a problem. Just to throw it out for discussion, could we request of the House an additional week, for example, which would still require that we wind up the majority report by January 30? Then the 5 days to be utilized for supplementary views would fall within the following week.

Chairman PIKE. Very frankly, I think that is a reasonable framework to strive for. Does anybody have any great difficulty with that?

Mr. TREEN. I would move it, then, Mr. Chairman.

Chairman PIKE. Well, now, wait a minute. This involves our going to the floor—I don't know quite when, but next week in any event—to request an extension of time.

Mr. TREEN. I would think we could get it by unanimous consent from the floor.

Chairman PIKE. Don't count on it. In even-numbered years it is very difficult to get unanimous consent on the floor of the House of Representatives.

Well, I think we are essentially agreed that we ought to try to get it done as soon as possible. It may be necessary to get an extension of time. I would go for the 1-week extension, with the stipulation that we would get our majority views done within the requisite time and have that last week just for the filing of additional, minority, dissenting, and other views.

Would that be satisfactory to the members generally?

Mr. McCLORY. Mr. Chairman, I move that the committee resolve itself now into executive session for the purpose of further proceedings of the committee.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. Aye.

The CLERK. Mr. Milford?

Chairman PIKE. Mr. Milford votes aye by proxy.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. McClory?

Mr. McCLORY. Aye.

The CLERK. Mr. Treen?

Mr. TREEN. Aye.

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. Aye.

Mr. Lehman votes aye by proxy and Mr. Stanton votes aye by proxy.

By a vote of 11 ayes and no nays, the committee will resolve itself into executive session. I ask all unauthorized personnel to leave the room.

[Whereupon, at 10:18 a.m. the committee proceeded into executive session.]

DISCUSSION OF FINAL REPORT

WEDNESDAY, JANUARY 21, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in room 2154, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Dellums, Murphy, Aspin, Milford, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, Jeffrey R. Whieldon, Roscoe B. Starek III, James B. F. Oliphant, Richard S. Vermeire, John M. Atkisson, and Stanley M. Hecht, counsel; Sandra Zeune, James C. Mingee, Roger Carroll, Vance Hyndman, Fred Kirschstein, Emily Sheketoff, Gregory G. Rushford, and Cheryl Tina Yamamoto, investigators.

Chairman PIKE. The committee will come to order.

Mr. Milford pointed out to me earlier that we were technically in violation of the rules of the House by going into an executive session from an executive session. The vote to go into executive session must occur in an open session. And, therefore, I hereby declare that we are at the moment meeting in open session, and that is why Jim Adams and Charlie Leppert and the BBC camera crew are present in the room.

The Chair will entertain a motion that we go into closed session, although I think that Mr. Milford might like to be heard on that motion.

Mr. MILFORD. Mr. Chairman, could I prevail on the Chair to allow a couple of motions to be introduced in open session before we entertain a motion to go into closed session?

Chairman PIKE. Yes, the Chair will entertain such motions.

Mr. MILFORD. Mr. Chairman, I am seriously concerned about certain classified information that is being unilaterally released in the staff's draft report that is before us at this time. Specifically, I would like to insert in the record a list of the documents and/or items that I am referring to rather than read them. Each member has copies before him found under tab A, B, D, and E of the classified information.

My concern about the release of this classified information is twofold.

I feel that our release of this information is a violation of a solemn agreement between this committee and the administration. I do not believe this committee has authority to act in this manner without the approval of the full House.

It is my understanding—and our committee record clearly reflects this—that the chairman and the President agreed this past September to a procedure under which the executive branch would give this committee access to certain classified material, specifically the documents and the items that I have listed or made reference to above.

Under the provisions of this agreement, there was to be no public disclosure of this classified material—including testimony, depositions or interviews—without giving the executive branch a reasonable opportunity to consult with this committee regarding the release of such materials.

The agreement went on to specifically spell out what would be done in the event of disagreement between any particular agency and the committee. Under the terms of the agreement, such materials as were in dispute would be referred to the President. If he should then certify in writing that the disclosure of such material would be detrimental to national security, the materials would either not be released by the committee or they could be referred to the judicial branch for final arbitration.

As I understand the situation now, the Chair has taken the position that the agreement is not binding insofar as the committee report is concerned. Further, as I understand the situation, the Chair feels that the executive branch would not and does not have the right to edit or dictate what should go into the congressional report.

Mr. Chairman, have I essentially summarized the Chair's position?

[NOTE.—Discussion and data relating to the agreement referred to by Congressman Milford are printed in the October 1, 1975, committee meeting transcript—part 4, "U.S. Intelligence Agencies and Activities: Committee Proceedings"—and in the appendixes of that volume.]

Chairman PIKE. You have essentially summarized the Chair's position on that.

Mr. MILFORD. Mr. Chairman, with due respect to your position on this matter, I must respectfully disagree and point out there is another side to the question.

Our committee record clearly reflects that this agreement was made with the executive branch for the mutual convenience of the Congress and the executive branch. The record also clearly reflects that both parties to the agreement stipulated that no precedents would be established by the agreement. It was to be a one-time situation peculiarly tailored to this particular situation and would have no bearing on future matters.

Furthermore, the agreement specifically dealt with the release of certain classified materials, period.

At the time of the agreement there was no qualification about releasing the material in a congressional report that would be public. We simply agreed not to release the material except with the permission of the President or by a ruling from the courts. We have neither. Yet we are publicly releasing the information.

Mr. Chairman, I submit that we are clearly in violation of that good-faith agreement. I further submit that this committee does not have the authority, without further action by the full House, to unilaterally release classified information.

This committee was given life and direction by House Resolution 591. Nowhere in that resolution can one find either direct or implied authority for this committee to release classified information.

Mr. Chairman, I would agree that the Congress has the authority to declassify information. I simply say this committee does not have such power.

Therefore, I would make the following motion:

Mr. Chairman, I move that: All language in the staff draft that contains all or any part of the classified matters or documents listed in an attachment to this motion, a copy of the attachment having been provided to each member of the committee and to the committee reporter, be struck from the staff draft unless the full House of Representatives shall approve the inclusion of the material or unless the provisions of the agreement between the President and the committee are complied with.

Further, that the reference list of classified materials shall not be included in the public record but rather shall appear in the record of the next executive session of this committee.

Chairman PIKE. Would the gentleman yield for a question?

Mr. MILFORD. Yes.

Chairman PIKE. If we were to strike all of the classified matter from the draft, how would the full House ever know about it in order to decide to release it?

Mr. MILFORD. Mr. Chairman, what I had in mind is a provision where the House, itself, can hold a secret session. The report can be submitted to the House, in secret session if the chairman insists on release of the classified material.

Chairman PIKE. If it is stricken, in what form do we get it to the House?

Mr. MILFORD. Mr. Chairman, for that matter, this entire staff draft could be submitted to the House if it were submitted in secret session.

Chairman PIKE. That is true, but it couldn't be if all of these materials were stricken.

Mr. MILFORD. Mr. Chairman, the resolution reads that either we submit the material in the staff draft to the full House for approval or strike it.

Chairman PIKE. That is not the way I read it. You say, "be struck from the staff draft unless the full House of Representatives shall approve the inclusion of the material," I don't see how you are going to get it before them if it is not in the draft.

Mr. TREEN. Mr. Chairman.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Mr. Chairman, I would like to speak in support of the motion. First, on the comments that the Chair has raised. I think the thrust of the motion is to comply with the undertaking of this committee unless the House of Representatives would make a decision otherwise. And, in the eventuality that the presentation was to be made to the House for that decision, then, of course, the material could be furnished in any form that this committee determined would be appropriate in order for the House to make this decision.

The House could presumably make the decision, I think, without having the substance of the material. The House, in effect, would be

making the decision on whether or not the agreement entered into by this committee on October 1 was binding; but if it was believed by this committee to be necessary that it actually have all the material in order to make that decision, then, of course, it can be supplied in any form whatever.

The motion attempts to prevent the filing of a report that would become public information until we have either complied with the agreement or until the House has made a decision.

Now, on the merits of the motion, I feel very strongly that we obligated ourselves as a committee of Congress to protect this material without respect to the question of whether or not it should be in the public domain. Part of it already is, through apparent gross leaks by someone; we don't know whom.

But we undertook in good faith to work with the executive department, and they undertook in good faith to work with us. Although the Chair has had certain discussions with Mr. Colby relative to the effect of this agreement on the final report, these were discussions, apparently, to which other members of the committee were not privy, and Mr. Colby, in a recent meeting of the committee, has indicated that he disagrees with that interpretation.

It seems to me that the words of the agreement as set forth beginning on page 2204 of the transcript of October 1 are eminently clear, and I don't think we should part from that. I think that is a pretty good rule of interpretation.

Now, to suggest that the intelligence community would be willing to give us classified information that it considered extremely sensitive with the thought in mind that as of January 31—the reporting date—it could all be made public, that it was only sensitive up until that time—matters that dealt with events that occurred many years ago—is a preposterous and outrageous interpretation of the agreement.

Also, I ask that you refer to page 2205 of the transcript. The final clause is: "except the committee would reserve its right to submit the matter to judicial determination," meaning after we had gone through the process and the President had made the determination it should not be released, then we would be free to go for a judicial determination.

Obviously, those words would not have had any import, any meaning, any purpose, if the parties to the understanding believed that this agreement did not apply in the case of a final report; because obviously no judicial determination could possibly be made in a final form prior to January 31, 1976.

So I submit that the words of the understanding of the agreement are abundantly clear. We have an obligation.

Frankly, Mr. Chairman, at this point I am not looking beyond the effect of that. As a member of this committee, I am going to do everything in my power to insure that we live up to the undertaking of this committee, and I fully support the motion by Mr. Milford.

Mr. McCLORY. Mr. Chairman.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I would like to speak on this briefly. I certainly had something to do with encouraging the Executive to provide this committee with classified, secret, and top secret information. It was vital to our work that we have access to those materials.

However, it was not any part of our mandate that we should publicize the classified information which we were required to have in order to carry out our work.

I personally feel that it would be a gross violation, a breach of the agreement that we had with the Executive, and the trust and confidence that was reposed in this committee, if we would make public—if we were the source of the leaks by deliberate release of the classified information which has been entrusted to us, for the most part on loan.

And it was deliberately provided to us on loan so that we could assure the intelligence agencies that access would be limited to the members of this committee.

We followed a precedent which was established last year with the executive agencies and the courts with respect to that type of confidential information. Following that precedent, we have received the information, in large measure, on that basis.

My examination of the report convinces me that we don't have to divulge any classified information in order to make the kind of positive and constructive recommendations for improving the intelligence community which we want and which we should make. For us to deliberately include that and downgrade the reputation of the committee by, in my opinion, violating our agreement or by divulging in a report information that otherwise would remain classified, seems to me to do a great disservice to the reputation and to the important work of this committee.

I want to support the gentleman's motion and also to indicate that I think that all of this classified information should be deleted from the staff report. It should not have been included in the first place.

I don't think it is going to hamper our ability to convince the Members of the House, in any way, as to what the future should be insofar as improving the intelligence community is concerned.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman. I guess we are going to have to—it is being forced to an issue. I think it is very unfortunate that we force the issue on the whole matter of the principle; because I think, when you come to specifics, there may be a case where certain things should be eliminated, on a case-by-case basis.

But to put the thing as a principle—to ask Congress to vote that they should not have equal responsibility with the executive branch to declassify information or to release information—I think is extremely foolish.

I think that for this committee to back off of that principle would be a terrible, terrible disservice to Congress, and to other committees, for years to come. When you vote on the principle—whether a committee of Congress should have an equal right with the Executive to decide what is released and what isn't released—Congress should stand up for itself. On the specifics, maybe there is a case. Maybe if we could talk to Mr. Rogovin or Mr. Colby, or whoever would come and say how this would hurt or how that would hurt the national security, maybe we could decide that, on balance, they have made a good case, and take it out.

But on the motion of the gentleman from Texas, I don't see how this committee can do anything but vote against it and stand up for Con-

gress and the congressional committees' rights—not only the rights of this committee but of all committees in the future.

Mr. TREEN. Will you yield?

Mr. ASPIN. Yes.

Mr. TREEN. I asked the gentleman to yield because I respect your opinion very much, and I am dismayed.

What we are talking about here in this motion is not the setting of a principle or denying that Congress has certain rights. What we are talking about here is the effect of an agreement that we made by which, to a certain extent, Mr. Aspin, there were limits placed on the rights which we think that we have.

Mr. ASPIN. If the gentleman would yield, our problem is that it was not made explicit whether the agreement covered the final report and different members have different interpretations as to whether it does or doesn't.

I was not under the impression that it does. The gentleman from Louisiana was, I know, under the impression that it does. The gentleman from New York was under the impression that it doesn't. The gentleman from Texas is under the impression that it does.

The point is, different people had different views about what that agreement covered as far as the final report goes. So there is no unanimity.

As long as that situation is confused and was not clear at the time, I am trying to make a decision on what is the best thing to do. The best thing to do, it seems to me, is not to do it in principle but to do it in specifics: In other words, not agree in principle that the executive branch should have authority to excise things but take their views into account and maybe decide that in some instances they have a case and in others they don't.

Mr. TREEN. Would you yield to one final question?

Mr. ASPIN. If the chairman says I have the time.

Chairman PIKE. We are not operating under the 5-minute rule.

Mr. TREEN. I wanted to ask this question: Do I understand the gentleman to be saying if the agreement had been specific, or if the agreement is properly interpreted to include the final report, he would agree to that?

Mr. ASPIN. That is correct.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Mr. Chairman, we have a lot of work to go over here.

Chairman PIKE. We have, indeed.

Mr. GIAIMO. And I think we are all familiar with the issues, and I think that, while we could have lengthy discussions on them, we will never get our work done if we don't make some decisions.

I don't like to move the previous question, but unless people really want to debate this—

Mr. McCLORY. Will the gentleman hold it for just this observation? As I understand it, Mr. Aspin's position is that if Mr. Rogovin should come over here and discuss the classified information to be put in the draft report, the question might be resolved.

Now, that, it seems to me, might offer an alternative method of resolving this, and it would be consistent with the method that we have used with regard to—

Chairman PIKE. The Chair is going to state at this point that we provided the executive branch with copies of the document. We told the executive branch that we would welcome their comments on the document. Each of the members has received a top secret document from the CIA which includes their comments on the document.

I don't propose to reopen the hearings and have testimony in addition to what we have in writing at the present time.

Mr. GIAIMO. Mr. Chairman.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. I move the previous question.

Chairman PIKE. The question, first, is on the previous question. All in favor of the previous question, signify by saying aye.

No?

The ayes appear to have it.

The question is on the motion of the gentleman from Texas, and the clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Dellums.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Murphy.

Mr. MURPHY. No.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

[No response.]

The CLERK. Mr. Lehman.

Chairman PIKE. No, by proxy.

I do not have Mr. Hayes' proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Chairman Pike.

Chairman PIKE. No.

By a vote of 4 ayes to 8 noes, the motion is not agreed to.

Mr. MILFORD. Mr. Chairman, I have another motion.

Chairman PIKE. The gentleman from Texas is recognized.

Mr. MILFORD. I must strongly object to the report in its present form. This report is not a product of this committee. Furthermore, this report does not accurately reflect the testimony that has been received either in open session or executive session.

As clearly evidenced by the footnote references, more than half, possibly as much as 75 percent, of the conclusions derived from this

report are based on staff interviews, newspaper articles, agency documents, and unnamed sources such as "confidential interviews"—by the staff—with unnamed agency personnel.

All of these staff interviews were conducted outside the presence of committee members; none were a part of the record. Numerous conclusions are based on documents that have never been reviewed by the members of this committee. Extracts from newspaper articles, books, and periodicals are quoted as fact from which conclusions are drawn, without establishing the creditability or qualifications of the authors—in other words, hearsay evidence.

This is not a committee report that is based on our committee hearings and committee record. This is a staff report based on staff interviews and staff work. A vast number of far-reaching conclusions have been formulated from witnesses who have never appeared before this committee and who have never been questioned by a single member of this committee.

Mr. Chairman, it is not my intention to chastise our staff or to accuse them of wrong-doing. I truly feel that each has worked extremely hard in an effort to do what they thought was correct.

I do say that they have inadvertently been proceeding in an improper direction.

The House of Representatives charged this committee—not the staff—with the responsibility of investigating the intelligence community. The House further charged this committee—not the staff—to render a report of findings and recommendations.

Well over 50 percent of the conclusions and charges made in this report are derived solely from staff interviews. Not a single member of this committee has had an opportunity to read the entire transcript, nor an opportunity to question the witness involved. Not a single member of this committee has had an opportunity to read the numerous agency documents, from which important conclusions are drawn and serious charges are made,

Not a single member of this committee has had an opportunity to correlate all of the vast number of evidentiary factors that would justify the damaging charges and vast conclusions offered in this report.

Mr. Chairman, I am not saying that the charges, conclusions, and findings in the report are incorrect, or that they do not have basis in fact.

I am saying that the contents of this report are not justified by the record that we have had printed for the public. Others that will be reading this record will also quickly notice this fact.

While the full transcript of the staff interviews could be made part of the record—where such transcripts exist—I find that to be unsatisfactory. My constituents would ask, "Why didn't you call the person involved as a witness and find out for yourself rather than delegating it to staff?"

Mr. Chairman, the report that we are about to submit to the Congress will have a long-term impact on this Nation, on our intelligence community, and the careers of every member of this committee.

Researchers from the Nation's press, academic institutions, and authors throughout the world will be coming behind us for years. These

researchers will look at every document, study every shred of evidence, and weigh every conclusion and test every rationale.

Mr. Chairman, we must know what we are saying in this report is correct. We must know that every charge is backed by proper evidence, and we must know that every conclusion has a solid rationale behind it.

None of us can honestly say that we can meet those tests at this time.

Furthermore, our committee record must clearly reflect all evidence to substantiate every charge and every conclusion found in the report. At this time, the record does not reflect this backing.

None of the members of this committee knows whether or not this report has substantial evidentiary backing.

Since the committee has unofficially indicated that it would be opposed to an extension of time that would allow all members to independently confirm the contents of this staff draft report, this forces the committee into a dilemma because we cannot responsibly accept this draft in its present form. No responsible member can accept charges and conclusions from evidence that he has never seen and that is not backed up by evidence in the official hearing records.

Therefore, Mr. Chairman, I make the following motion. I move that: All language in the staff draft that is used to formulate charges, observations, conclusions or statements be struck from the draft, if such language is based on any document, staff interview, or other source of information that is not fully contained, in its full context, in the official committee record.

Mr. McCLORY. Would the gentleman yield?

Mr. MILFORD. Yes.

Mr. McCLORY. I think what the gentleman is indicating by his motion is that if we want to file this as a staff report, that is one thing, but not as a committee report. If we want a committee report, we really should do a redrafting job and prepare our own report; that this does not reflect the committee's work, or the committee's views, but reflects the views of perhaps part of the staff.

Mr. MILFORD. I don't know that there is such a thing as a staff report to the Congress. It should be a committee report, and it should be reflected fully in the committee's record. That is my point.

Mr. GIAIMO. Would the gentleman yield?

Mr. MILFORD. Be glad to.

Mr. GIAIMO. The argument that the gentleman makes goes not just to reports of this committee but to any committee of the Congress. Almost every committee of the Congress develops a report which it then adopts as its committee report, but which has in it a great deal of information, facts, and staff work. I think this was true of the Judiciary Committee, which had thousands of facts and interviews last year in the impeachment hearings. Certainly, if you look at any of our other committees of the House—if you look at the reports which the Appropriations Committee puts out, for instance—why the stack would reach the ceiling of this room. They are based in most part on information, facts, and, if you will, perhaps even opinions which are developed extraneously from the members themselves and by staff.

But the important thing is that we members read this material and adopt it as our position. I think that we will do that when we vote to adopt or not to adopt the report. It is our judgment, and it can't

be anyone else's report. It has to be a report of the committee, and that means the members of the committee. Therefore, I think that what you are challenging is not only the action that was done here, but you are really challenging the action that is done in every committee of the Congress and has been done for decades.

Chairman PIKE. I think the Chair would like to be heard on this, in view of the fact that the criticism seems to be directed both to the procedure that the Chair authorized and to the staff report itself.

First of all, I can't think of anything that would more effectively stop the operation of Congress than the concept that the members of any committee would sit down themselves and write a report. You can't have a committee sit down and write a report. It just doesn't work.

You have to start with a draft, and that is what we have started with.

Now, I could perhaps have participated more in the drafting of this report than I did. Mr. McClory and I could have participated more. I suspect, actually, Mr. McClory, that you did participate more than I, in that during the process of the writing of the report I think your representative was in contact with the staff.

I would simply say that Congressman Pike stayed away from the staff while it was being written. I did not want it to be a report written by me or pushed in any direction by me.

I think that Mr. Giaimo is absolutely correct that every committee of the Congress must operate in this fashion. The items which are included as staff interviews were available to all of the members during our hearings and are today; and to a very large extent excerpts of the interviews were included in our backup books throughout the hearings. They could have been used throughout the hearing for the questioning of witnesses. The materials were gathered by the staff.

I happen to think our staff has done a superb job, and I will add a small personal footnote: With about two exceptions, I didn't have much to do with the creation of this staff. I inherited this staff, and I had certain reservations about it, very frankly, when I started. And I have come to the conclusion that our staff has been as intelligent and objective and conscientious as it could possibly be.

I personally think they have done a superb job, and I think that the procedure which has been followed is essential to the operation, not only of this committee, but any other committee.

Mr. McClory. Mr. Chairman.

Chairman PIKE. I yield to Mr. McClory.

Mr. McClory. I want to assure the chairman that I didn't participate in the drafting of this report. I wanted to participate in the drafting of the report. I would be happy, even at this time, to sit down and try to revise it—particularly the first 139 pages of the report.

Now, reference has been made to the work of the Judiciary Committee last year. Let me say that if we had delineated all of our frustrations in getting information, we would have had 1,000 pages of frustration comparable to the first 139 pages of this staff report, indicating the lack of success we had in getting information and then finally getting down to the point—

Chairman PIKE. Will you yield?

Was it not the gentleman from Illinois himself who offered a count of impeachment based on the failure to get information?

Mr. McCLORY. Absolutely.

Chairman PIKE. It does seem to me that was a pretty legitimate argument to make.

Mr. McCLORY. I recommended a number of subpoenas here. I think subpoenas were the right way for us to approach the subject of getting information and that we should formalize our demands. I think it is a protection for us and for the agencies that provided us with the information. Frankly, I don't think it is a criticism of the Executive that we were compelled to issue subpoenas. I think that is the orderly, responsible way for us to act. Yet, a certain large part of the prefatory information in this report suggests that somehow the executive was derelict or was not responsive because we had to issue subpoenas.

Now, I think we have several alternatives here. One, I would be glad to sit down and try to revise and help rewrite portions of the report. Otherwise, I would suggest that we eliminate the first 139 pages and substitute—

Chairman PIKE. At a subsequent time that motion would be in order.

Mr. McCLORY [continuing]. Substitute a statement that would more accurately, in my opinion, reflect the views of the committee. I am anxious to participate.

Actually, it would seem to me, even at this late stage—where we seem to have rather difficult divisions—that if we could make this a committee report and have it supported by members on both sides and have it reflect, in my opinion, a bipartisan approach, I think we could work it out.

Let me say I am proud of the staff. I think a large part of the report prepared by the staff is commendable. I think it is just a part—and I think it is a result of the frustrations, the disappointments and delays that they have experienced—in which they have come on strong in a way which I think does not give us the kind of balanced presentation that I think we should have.

Mr. MILFORD. Would you yield?

Mr. McCLORY. I will be happy to yield.

Mr. MILFORD. I thank you for yielding.

I would like to make two corrections in the record. First of all, in this motion I am in no way adversely criticizing the staff. I think we have a great staff, and I think we have a great Chair. There have been serious charges made in this report and some very deep conclusions drawn. Those charges and conclusions are made as a result of certain data that are not a part of the official record.

I am simply saying that all base data should be a part of the official record. I am in no way suggesting the members should write the report themselves.

Mr. McCLORY. That is the only part of your motion that I don't want to agree to. I think that part of the investigation just had to be done by the staff, apart from the open hearings here. I requested an investigation of one project, for instance, and it is included in the record. If we eliminate that, I am going to be disappointed because I think it is one of the failures of the intelligence community. It ought to be there but we just didn't have time to call in witnesses and do a lot of work on that.

Chairman PIKE. Mr. Murphy?

Mr. MURPHY. I move the previous question.

Chairman PIKE. The question is on the previous question. All in favor signify by saying aye.

Contrary, no.

It is unanimously agreed to.

The question is on the motion of the gentleman from Texas. Do you want a record vote, Mr. Milford?

Mr. MILFORD. Yes, Mr. Chairman.

Chairman PIKE. All in favor of a record vote raise your hands. A record vote is ordered.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Chairman PIKE. No by proxy.

The CLERK. Mr. Dellums.

Chairman PIKE. No by proxy.

The CLERK. Mr. Murphy.

Mr. MURPHY. No.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Lehman.

Chairman PIKE. No by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. No.

Mr. McCLORY. Change my vote to no.

Chairman PIKE. By a vote of 2 ayes, 10 noes, the motion is not agreed to.

Mr. McCLORY. Mr. Chairman, I now move that we go into executive session.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Dellums.

Chairman PIKE. No by proxy.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Lehman.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. McClory.

Mr. McCLODY. Aye.

The CLERK. Mr. Treen.

Mr. McCLODY. Aye by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of 11 ayes, 1 no, the committee will go into executive session.

I ask all unauthorized personnel to leave the room.

[Whereupon, at 11:10 a.m. the committee proceeded into executive session.]



DISCUSSION OF FINAL REPORT

FRIDAY, JANUARY 23, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Stanton, Aspin, McClory, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, Jeffrey R. Whieldon, Roscoe B. Starek III, James B. F. Oliphant, Richard S. Vermeire, John M. Atkisson, and Stanley M. Hecht, counsel; Sandra Zeune, James C. Mingee, Roger Carroll, Vance Hyndman, Fred Kirschstein, Emily Sheketoff, Gregory G. Rushford, and Cheryl Tina Yamamoto, investigators.

Chairman PIKE. The committee will come to order. We are in open session at the moment because we haven't got a quorum to vote to go into executive session. We will vote to go into executive session as soon as a quorum arrives.

Can you tell us, Mr. Field, in open session, the extent to which we have reconciled our differences with the executive branch?

Mr. FIELD. Mr. Chairman, we began last night. We sat down with representatives from the intelligence community and from the State Department. We had met earlier with people from the National Security Agency, and we had received a package of information from the Defense intelligence groups. The CIA people that we were working with were representing the intelligence community, so they were not just CIA. We also had materials from the FBI—a package of material—so all agencies were covered in the course of our work last night.

We had a list of both factual and classification-type objections. I think each member has before him a Xeroxed copy of that list.

On that list you will notice there is a big mark saying "OK" if we came to agreement on it, either because they dropped their objection or because we made a change in the text or in the footnote. The ones that are not marked "OK" are those that we did not come to an agreement on, and when we go into an executive session we will be happy to describe the background of each of them. That is with regard to foreign intelligence.

As far as the FBI is concerned, they had two security objections. We made changes in those. They had a number of factual objections. We changed all of them. I don't know how many there were, but there were a handful.

Then there were a number that were interpretive.

Mr. McCLORY. What about the FBI? I didn't get that.

Chairman PIKE. What he said was as to any factual objections—

Mr. FIELD. We changed them all.

Chairman PIKE. We acceded as we had agreed earlier. If there were factual objections and we agreed with the FBI, we changed them.

Mr. FIELD. Then there were a number of interpretive areas where I would say we split. The ones that we did not agree to were not of any great significance. They were relatively minor, and I would be happy to have Mr. Vermeire confirm that if he wants to.

Chairman PIKE. Don't say anything that you can't say in open session. That is all I am asking you.

Mr. VERMEIRE. That is a fair characterization. The objections they had to interpretation were, for example, with respect to the U.S. Recording situation.

Chairman PIKE. Stop right now. I will entertain a motion.

Mr. McCLORY. I move we resolve the committee into executive session.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye. Mr. Lehman votes aye by proxy. Mr. Milford votes ayes by proxy. Mr. Dellums votes aye by proxy. Mr. Murphy votes aye by proxy. By a vote of 11 to nothing the committee goes into executive session now. I invite all those nice people from the press to leave.

[Whereupon, at 10:15 a.m., the committee proceeded into executive session.]

PROCEDURAL DISCUSSION: CONSIDERATION OF COMMITTEE RECOMMENDATIONS

MONDAY, JANUARY 26, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, Hon. Robert N. Giaimo presiding.

Present: Representatives Giaimo, Stanton, Aspin, Lehman, McClory, Treen, and Johnson.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, Stanley M. Hecht, Jeffrey R. Whieldon, Roscoe B. Starek III, Richard S. Vermeire, and John M. Atkisson, counsel; Sandra Zeune, James C. Mingee, Roger Carroll, Vance Hyndman, Fred Kirschstein, Emily Sheketoff, Gregory G. Rushford, and Cheryl Tina Yamamoto, investigators.

Mr. GIAIMO. The committee will come to order.

The Chairman, Mr. Pike, should be joining us as soon as the flight service from New York to National Airport is resumed. In the meantime, he asked that we begin consideration of the committee's recommendations. The gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, before we start on that—and I do want to start on it promptly—I just want to make this statement:

I have taken a special order on the floor of the House today with respect to the committee's receipt of confidential, secret, top secret information. I want to discuss the basis upon which we received the information; the agreement or the procedures that we adopted as a result of our receiving large volumes of this material; in my opinion the confidence which is reposed in the committee; and, in my opinion also, a breach of that confidence by the publication, or the proposed publication, in the committee's report of information based upon documents and testimony which were received by the committee in confidence.

I know that other members will be participating in that, and I certainly invite a full discussion of it by those who have joined in the majority report, as well as those who are taking minority and offering additional views with respect to this subject.

Mr. GIAIMO. Will the gentleman yield?

Mr. McCLORY. I am happy to yield, yes.

Mr. GIAIMO. I wonder if you could coordinate your special order so that the chairman, who is a very vital part of that discussion, would have the opportunity to be present. He is not here because of inclement weather, as you know, and his presence depends upon the airlines.

Mr. McCLODY. I would be very happy to have him there. I have made these plans, and there are a number of others who want to participate, and I think it's important that we set this on the record at this time; because if, for instance, the President should elect to make a statement, I think that we should have our discussion preliminary to that, and if there is anything else to be done with respect to the proposed publication of the committee's report, I think we have to provide time for that.

I do not intend to attack anybody or anything like that. I merely want to set the record straight, as far as I understand it, with respect to the basis upon which the committee received this information, and the authority, if any, for the committee to release such information.

Now, really, this doesn't have anything to do with the question of leaks, although I would say that the committee, by deliberate action, is divulging information which in my opinion we are bound not to release without going through the procedures that we adopted on October 1.

Mr. ASPIN. Mr. Chairman, would the gentleman yield?

Mr. McCLODY. I am happy to.

Mr. ASPIN. I ask the gentleman from Illinois whether it is his intention to do this today, because there is actually no business on the floor today.

Mr. McCLODY. Right.

Mr. ASPIN. You are going to do it today.

Mr. McCLODY. Right. As a matter of fact, I would like to have the opportunity for us to recess at 12 o'clock so that I could go to the floor and make an announcement, so that the other Members who might want to participate would be apprised of it—although I haven't made any secret of the fact that I was going to do this, and there are other Members who are prepared to participate in it.

Mr. GIAIMO. Would you yield?

Mr. McCLODY. I will be happy to yield.

Mr. GIAIMO. Weren't these agreements that you talk about basically understandings entered into between the executive branch, yourself and the chairman?

Mr. McCLODY. Right.

Mr. GIAIMO. The two of you.

Mr. McCLODY. Initially they were, but then this understanding was brought to the attention of the committee. We had a full discussion of it and we had a vote October 1.

Mr. GIAIMO. True. But my point is that your interpretations of these so-called agreements may not be the same as the interpretations by the chairman. The point is that you and the chairman were the two people who were directly involved in these conversations and agreements. It seems to me that he should be here. That is my only point.

Mr. McCLODY. I hear the acting chairman.

Mr. GIAIMO. I assume he will. I would hope he will be able to get here in time for the floor discussion.

Mr. McCLODY. I hope so, too.

Mr. GIAIMO. Unfortunately the planes aren't flying this morning because of the bad weather. In any event, let me make one other comment on this subject of leaks. The question of leaks disturbs me. I am

sure it disturbs every member of this committee, and I think you made some reference to leaks by the committee. If you did so, I want to say that I don't know where the leaks are coming from, but they could be coming from any place—from the committee, from the staff, or from the executive branch. Our report is in the possession of the executive branch, and I suspect it has been circulated quite widely in the executive branch. Leaks can be self-serving and come from any place, and they can do great harm to the work of this committee.

Mr. Field, you have a series of recommendations. I suggest you begin to explain the first one to us.

Mr. FIELD. Thank you, Mr. Chairman.

The recommendations that the staff has put together are hopefully just food for thought, so we may at least have some guidelines as to the areas you want to move into. A brief word about them in general. The first recommendation, as you will notice, is that we recommend to the House that it set up a standing committee on intelligence.

The second area of recommendations is the control and release of information.

The third topic is on covert action.

The fourth topic deals with the NSA as an independent agency. Then we move on to disclosure of budget totals, fund transfers, the DCI as Cabinet rank, full GAO audit authority, internal financial management, full disclosure to Congress of information, a new foreign operations subcommittee of the National Security Council, Defense Intelligence Agency, the media, detailees and so forth; but it seemed to us that the first few were really where some of the more obvious and detailed work needed to be done and that included the possible setting up of a committee, and the whole business of release and control of information in the Congress.

The first recommendation:

A. A House Committee on Intelligence.

1. The select committee recommends that there be formed a standing Committee on Intelligence of the House of Representatives. The committee membership shall reflect a broad representation of political and philosophical views.

Mr. JOHNSON. Are you going to go over this line by line, item by item?

Mr. FIELD. I thought I would read through it.

a. No Member may serve more than three consecutive terms on the committee.

b. The staff director and chief counsel may not serve more than 6 years, may not be reappointed to the staff, and may not be selected from a present or former member of the staff.

c. Notwithstanding Rule XI(e) of the Rules of the House of Representatives, the committee shall determine access to its records and files by other Members of the House.

d. The committee shall have the right to release any information and documents in its possession or control, and may consult with the executive branch with regard to the release of classified material or information.

e. Any committee member who shall release, without authorization of the committee, materials or information obtained by the committee shall be subject to a recommendation by the committee to the Democratic Caucus or the Republican Conference that such Member be removed from the committee, or a recommendation to the House that such Member be censured.

f. Any committee member desiring to release classified materials or information notwithstanding the disapproval of the committee shall, upon petition of one-fifth of the membership of the House, be entitled to inform the House in a secret session.

g. Any past or current member of the committee staff who shall release, without authorization of the committee, materials or information obtained by the committee shall be immediately terminated from employment and shall be fully subject to criminal and civil action, notwithstanding legislative immunity.

h. The committee shall be vested with subpoena power and shall have the right to enforce its subpoenas in the U.S. District Court for the District of Columbia or any other court of competent jurisdiction, without authorization from the House. The committee staff shall be given statutory standing to represent the committee in any proceeding arising from the issuance of a subpoena.

i. The committee's jurisdiction shall include all legislative and oversight functions relating to all U.S. agencies and departments engaged in foreign or domestic intelligence. The committee shall have exclusive jurisdiction for budget authorization for all intelligence activities and for all covert action operations. All remaining oversight functions may be concurrent with other committees of the House.

Those seem to us to be the major points that we should consider in regard to this committee. The control or release of information section which follows deals not so much with the control or release of information by this committee but by other Members of the House.

It also recommends an expansion of the U.S. Criminal Code dealing with the disclosure of secrets.

Mr. GLAIMO. You have completed the reading of the first recommendation.

Mr. JOHNSON, do you seek recognition?

Mr. JOHNSON. Yes, Mr. Chairman. I don't know how we should proceed on this, because it seems to me that the assumption here is that the recommendation with respect to covert action will be followed. I don't know what order of procedure should be followed, but the assumption that covert action is going to be one of the items of jurisdiction of this committee is something that I would question for this reason:

This recommendation creates a supercommittee in the Congress. This committee would allow a committee of limited numbers in effect to have warmaking power, if the covert operations which have been allowed to go on in the past are followed in the future. If this committee is allowed jurisdiction over the CIA's providing arms, engaging in assassination attempts, deciding which countries in the world's governments we do not like and will therefore attempt to subvert, you are giving an enormous amount of power to a small number of Members in the Congress.

Now, as I look over here at the covert operation recommendation, I gather you are talking about a kind of a concurrent jurisdiction with the executive branch involving a small number of people. I challenge that whole premise.

Mr. LEHMAN. Would the gentleman yield?

Mr. JOHNSON. Yes, I will be glad to yield.

Mr. LEHMAN. I share the same concern as the Congressman from Colorado. However, I think with regard to recommendation "a," although there exists the possibility for a strong committee, there will in fact be no strong individual members of this committee, because the membership is self-destructive after 6 years. Nobody can really create, over this short period of time, a sense of authority and dominance. I think this is one of the really important parts of this committee—that the committee itself can be strong, but that there cannot emerge from this committee a particular personal philosophy that

could prove dangerous. I think this is the actual intent of our own committee's recommendation. Recommendations "a" and "b" can, in some ways, be helpful in preventing this from happening.

I yield back to the gentleman from Colorado.

Mr. GIAIMO. Before we continue, let me just interrupt. We will operate under the 5-minute rule. Do we have someone keeping time?

All right. We had better operate under the 5-minute rule. It's your time, Mr. Johnson, so you may proceed.

Mr. McCLORY. Will the gentleman yield?

Mr. JOHNSON. I already yielded to the gentleman from Wisconsin. If he yields I will yield to you, Mr. McClory.

Mr. McCLORY. I just question, Mr. Chairman, what we are doing here. I thought we were having a little general discussion. We don't have a quorum here. We can't take action.

Mr. GIAIMO. We are not going to vote this morning.

Mr. McCLORY. We are under the 5-minute rule for purposes of discussion.

Mr. GIAIMO. Right.

Mr. ASPIN. What is the intention of the Chair? Is it the intention of the Chair that we just have discussion this morning, or how will we proceed?

Mr. GIAIMO. I certainly think that we are in no position to vote on any recommendations this morning, before we have discussed them, and I think it's a good idea to have some basic discussions such as we are having. Now Mr. Johnson raises a very key point. No. 1, you raise the question of whether we are sanctioning covert actions, period.

Mr. FIELD. Mr. Chairman, I think one of the things we are looking for here is some feedback from the members to the staff so we can re-draft those recommendations on which there are questions.

Mr. GIAIMO. I think it is important for us to give some of this feedback to the staff.

Mr. ASPIN. Will you yield?

Mr. JOHNSON. Yes, I yield.

Mr. ASPIN. To follow up on the procedural question again, is this what we are going to operate from? I thought the original idea was that we were going to have some alternatives to look at—that the staff was going to lay out several alternatives. I see no alternatives for any of the recommendations. What is the procedure we are going to follow?

Mr. FIELD. We found, as we began to go through the recommendations, that they got very lengthy and confusing, especially with alternatives, and we felt that perhaps we could offer options to individual members. I know, for instance, Mr. Johnson has a few ideas on covert action. We thought we would offer options to him that he could then offer to the committee and we would hopefully operate with something in the middle here. But our general feeling was that members who might have a stronger view one way or the other could offer options.

Mr. GIAIMO. The time of the gentleman has expired. The gentleman from Wisconsin.

Mr. ASPIN. Let me ask further: It seems to me that when the committee comes to vote on these things, although it seems to make sense from the standpoint of general interest, it doesn't make much sense

from the standpoint of general organization. Because the question that the gentleman from Colorado raised is not on one question; it raises a whole bunch of others.

The committee is in a sense the last thing that ought to be considered, because after you have decided what you are going to do about organizing the intelligence community, after you have decided what you want to do about covert operations and what you want to do about other kinds of structural changes within the system, then I think you ask: All right, now what kind of congressional oversight over this process do you want to have?

I think starting with the committee is in a way kind of going at it backward, because we are then going to have to be plugging in—if we decide to have covert operations, we will then have to see how they fit into the committee's recommended jurisdiction.

If you start with the committee, and later we decide we are going to have covert operations, then the question is: What is the relationship between covert operations and the committee? And then you are back to the committee question, if you see what I mean.

It seems to me that when you are talking about what we ought to do about the intelligence committee, the discussion ought to revolve around three essential questions, because there are really three things that this whole thing is leading up to.

The first of those is prevention of abuses. How do you prevent abuse within the intelligence system—abuses being everything from opening mail, all of the things that the FBI did that we found out that were illegal, the things that came out in the Rockefeller report.

That is the first question.

Mr. GIAIMO. Would you yield?

Don't you really mean prevent illegality?

Mr. ASPIN. Illegality, abuses, whatever the word is. That is the first and fundamental issue that this committee has to address itself to.

The second fundamental question that I think this committee has to address itself to is: What do you do about covert operations? Do you ban them entirely? If you don't ban them entirely, who should have the say as to what role Congress should play? That is the second big question that the committee has to address.

The third big question I think the committee has to address is: How do you improve the intelligence product? How do you improve the intelligence? How do you restructure the agencies in the intelligence community to improve the intelligence product? That is what we are talking about. Our recommendations ought to focus around those three questions.

Mr. GIAIMO. Would you yield?

Mr. ASPIN. I will be happy to yield.

Mr. GIAIMO. It seems to me that in those three questions you left out probably the biggest drawback and downfall in the whole business of intelligence, and that is the absolute, or near absolute, lack of congressional interest in oversight of these agencies. I think that is the real downfall here. I think the fault must be placed at the feet of Congress.

Mr. ASPIN. I agree.

Mr. GIAIMO. Congress, for 20 years or more, rather than anyone else, has not wanted to know what is going on.

Mr. ASPIN. Exactly.

Mr. GIAIMO. How do we cure this?

Mr. ASPIN. That is part of the question.

Mr. GIAIMO. We assume we are going to have covert action. Actually, if that was going to be banned we wouldn't need a committee to look at it or provide oversight or anything else. Assuming it is not going to be banned, how do we get adequate oversight on it?

Mr. ASPIN. That is part of the question. If you are talking about how you prevent illegalities or abuses, one of the questions is what Congress does about that. If your question is how you control covert operations, obviously one of the questions is how does Congress do that. If you want to ask how you improve the intelligence product, obviously one of the things is what Congress can do about that. That is one of the aspects of these questions, but I think that we would be wrong, and the danger that I feel is that Congress is usually mesmerized by its own procedures. Congress loves to talk about its own committees and its own rules and its own procedures, and I have a horrible feeling here that we are going to spend an awful lot of time discussing a joint committee or a single committee. I think that is important and we ought to discuss it, but it is not the only thing that has to be discussed.

If we start looking at it in terms of the various problems that we have to face, rather than thinking first Congress and then the executive branch—let's look at DIA and then NSA. Let's think of it in terms of the problems we want to address in our recommendations.

I think the three problems we want to address in our recommendations are abuses, covert operations, and improving the intelligence product.

Mr. McCLORY. Mr. Chairman.

Mr. GIAIMO. The time of the gentleman has expired. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman. I think we should begin our consideration of the structure of the intelligence community. With respect to the mechanism by which intelligence activities are carried out, I think initially I had great faith that the House intelligence committee or oversight committee could participate rather actively with respect to the whole intelligence function, and that the oversight capability of the House could be such that we could review the nature of the intelligence activities, the budget and a great variety of things.

I must confess, Mr. Chairman, that I am not confident at this moment that a House committee can be trusted with that kind of responsibility. I question whether—

Mr. GIAIMO. That is not a new thought on your part, is it?

Mr. McCLORY. That is not a new thought on my part. At least it is not a new thought within the last few minutes. It's a new thought within the last few days, I might say, because I did have confidence up to that time that the House committee could be entrusted with these secrets and could guard them, and that we could be equally as trusted with secrets as those in the executive branch.

I do feel that the primary responsibility with respect to this whole operation, and with respect to guarding the secrets, must rest with the

executive branch, if we are going to have secrets. I am fearful that if a House oversight committee is to be established; and if a Senate oversight committee is to be established; if a review of covert activities is to be given in advance; if authority is going to be required of the Congress—I question whether or not any intelligence agency would say that covert activities could be carried on under conditions such as that. And if that is not possible, of course we are going through an idle operation here in establishing a mechanism which we know in advance can't work.

I think that the intelligence operations have broken down in our examination—in those cases which we have examined—where the mechanism that has been established has been circumvented, where the regular procedures have not been complied with, where some person has injected himself in contrast to the committee—which should have been consulted for purposes of giving authority.

In view of the fact that we have had duplication, we have had circumvention, we have had terrible waste as far as funds are concerned, little control with respect to expenditures, I think it is extremely important that we initially establish a mechanism which will enable the intelligence community to operate more efficiently and more economically.

I think we should grant to the GAO specifically—and we haven't done that in the past—authority to audit the books and the records of the intelligence agencies. That in itself can give the Congress the kind of a check on expenditures that it seems to me we require. I think we are going to debate a long time with respect to a House committee and its authority, and we are going to debate a long time with regard to covert activities—if there are to be any—and I think we could make some real progress if we undertake those recommendations for the establishment of a Director of Foreign Intelligence with Cabinet rank close to the President, with overall authority in the intelligence community—who could, in my opinion, vest in the executive branch, where it belongs, the kind of control of intelligence functions which I feel it is essential for the Congress to oversee.

Mr. JOHNSON. Will the gentleman yield?

Did you read the article in yesterday's paper by Gary Wills talking about the road to the Presidency? Do you disagree with that totally?

Mr. McCLORY. I don't know that I have the article in mind right now. I did read it.

Mr. JOHNSON. Well, he was trying to illustrate that, rather than it being the CIA that is the rogue elephant, it is the President who is the rogue elephant. We have been through this before. I don't know how much we can disclose in open session that has been disclosed secretly, but there hasn't been any doubt in most of the members' minds that the abuses have occurred because of the power that is concentrated in the Presidency. The CIA hasn't run off willy-nilly and conducted all kinds of these silly, goofy operations.

Mr. McCLORY. Right.

Mr. JOHNSON. It has been the office of the President that has authorized this. How are you going to control what you are talking about?

Mr. McCLORY. That would strengthen my position, because it would impose on the President and the agencies under the President com-

pliance with the recommendations that we make. We build it into the gentleman from Colorado raised is not only one question; it raises Executive order—of regulation.

Mr. GIAIMO. The time of the gentleman has expired.

The Chair is going to take the prerogative and recognize himself for the purpose of asking you a couple of questions, Mr. McClory. The thing that bothers me is what is a Member of Congress, who finds out about a foreign policy initiative in a country named Angola, supposed to do about it? Now, here is a decision to have a U.S. foreign policy initiative made by someone in the executive branch—presumably the President. A Member of Congress is briefed about it in one of six intelligence committees. What is the mechanism this Member of Congress can use to inform his colleagues in the Congress and to inform the American people, who apparently are the only ones who don't know about this particular involvement in Angola? This is what we are really faced with, and it troubles me. And I think it also troubles the gentleman from Colorado.

That is a covert action, but it is a covert action not approved by anyone outside the executive branch except possibly some oversight Members in Congress who are not allowed to inform other Members or to discuss it.

Now, the Senate led the way last month, and I think they are to be commended for it. They had a secret debate on it in the Senate. What do we do in the House? This is what I am trying to find out. How do I inform my people what my Government is doing in Angola, what they may have done in Laos, what they may have done in Chile, what they may have done in who knows what other countries?

Mr. McCLORY. If you are asking me the question, I think that if it is our national policy—and I believe it is—to help persons in other countries, covertly and overtly, to establish their own independence and freedom, then we have to support that policy. If the Congress of the United States is going to inject itself into every activity, with respect to our foreign relations, why, then we are going to have a different system of Government than the one we have now.

The policy of supporting freedom-loving people throughout Latin America, throughout Western Europe, and in countries of Africa and Asia, has been a policy which has been inherent in our national policy in Republican and Democratic administrations. Of course, we can, through the purse strings, cut off all foreign aid covertly and overtly, if we want to do that; but on a day-to-day basis, to decide whether or not people who are fighting for freedom, who are combating the so-called national liberation movements—if we are going to cut off support for our friends in the allied countries, why, I think we are then coming into a new era in our experience. And I think that is extremely unfortunate.

Mr. GIAIMO. Who makes these determinations about which you are talking? Are they made in secret by the executive branch without any knowledge on the part of Congress or the American people?

Mr. JOHNSON. Will you yield?

Mr. McCLORY. You are asking me a question. I would like to have a chance to answer it.

Mr. JOHNSON. You have raised the question.

Mr. McCLORY. Let me say this—

Mr. GIAIMO. Let him finish.

Mr. McCLORY. Foreign policy decisions are made by the executive branch—by the President, by the Secretary of State. They are made through diplomatic channels. They are made through conversations between heads of state; and if the Congress doesn't like it and the people don't like it, they can throw the President out.

Mr. GIAIMO. Don't they have to know about it first?

Mr. McCLORY. If you are going to have intelligence agencies.

Mr. GIAIMO. That is the whole point.

Mr. McCLORY. If you are going to have private diplomatic discussions, you can't know about them in advance; no.

Mr. GIAIMO. You are saying that if we don't like it in Congress we can throw them out, but we mustn't know about it.

I yield to the gentleman from Colorado.

Mr. JOHNSON. Thank you for yielding.

In the first place, there is nothing in the Constitution which says the President has sole and exclusive jurisdiction over foreign policy. That is a fiction which has arisen primarily since World War II, and the Congress has dealt itself out of foreign policymaking decisions. Why, I have never understood.

Second, you are making the point that we support freedom-loving peoples, and that is a fiction of the highest order. Our support of the freedom-loving peoples of Chile, the freedom-loving peoples of Argentina, the freedom-loving peoples that we have supported around the world—in dictatorship after dictatorship—has in my opinion resulted in our loss of moral leadership, because we haven't been moral. We haven't supported moral leaders around the world. We have supported dictators and we have provided arms and we have engaged in nefarious activities around the world. How can you say that we have supported freedom-loving peoples through our support of the governments that we have been backing? You know that that is a fiction, and just to blanket everything we have done under a cloak of secrecy and say, "Well, we just support freedom-loving people" has been a misnomer.

Mr. GIAIMO. My time has expired, gentlemen. Let's try to get back—

Mr. TREEN. Mr. Chairman.

Mr. GIAIMO. The gentleman from Louisiana.

Mr. McCLORY. Will the gentleman yield for just a brief answer?

Mr. TREEN. Ninety seconds.

Mr. McCLORY. I would like to say that the Allende government was a Communist government. We were opposed to that. We were opposed to that beginning long before this committee and the Senate committee started operating. The forces that we fought against in Western Europe and in South America were Communist-inspired countries that we were opposed to. In my book that is in support of people who want freedom and independence, and it was those elements which our Nation supported as a policy, and the Congress supported it for a long time. And now suddenly we are going to let down our friends. We are going to give comfort and aid to the Communist elements, as we are doing today in Angola, through actions and expressions from this very Congress.

Mr. GLAIMO. I think we have posed the issue quite clearly here as to the job that lies ahead of us in trying to bring some accomplishments in this Congress.

Mr. TREEN. Back to some mundane things, Mr. Chairman. This is not on the point of the recommendations, but I intended to bring it up the first thing this morning.

I got the revised pages of the report Saturday, and reviewed them yesterday, and it appears that four pages have not been amended in accordance with—or at least three have not been amended in accordance with our motion.

I wish you would take a look at them. Pages 161, 180, and 185. I didn't bring my volumes. I can't call your attention to exactly what it is. I know on 180 it was a footnote that we had agreed to eliminate.

Then on page 78. This didn't come up in our meeting because I discussed it with you privately. I think you have a factual inaccuracy with regard to the votes that the committee took on the Johnson motions with regard to release of information, and I find that is still in on page 78. It's simply a factual inaccuracy.

Mr. FIELD. Mr. Treen, we will check those.

Mr. TREEN. In my remaining time, Mr. Chairman, I want to look at these new written recommendations. I have the ones that were sent to us under cover of Mr. Donner's letter, and I notice there are some substantial changes in approach—at least on the House Committee on Intelligence. I want to have some time to think about it, but I for one don't want to discard the idea of a joint committee. I recognize that there are some problems with it. One of the advantages I believe—or one of two advantages—is that we limit the number of people who will be obtaining sensitive information. That is apart from what we ought to do with it afterward.

Second, of course, it will conserve the time of people involved in these agencies who have to come and testify to a multiplicity of committees.

Incidentally, on the radio this morning I heard that the committee has already made a recommendation on this. I was quite surprised as I was driving in and thinking about coming down here to talk about our recommendations. Have these recommendations been released to the press? They are not classified, but I just wonder if they have been.

Mr. FIELD. No, sir.

Mr. TREEN. Have they been as far as you know?

Mr. FIELD. We just typed them up this morning.

Mr. TREEN. Do we know how Mr. Schorr got that business on Senator Jackson that he reported?

Mr. FIELD. No, sir.

Mr. TREEN. You don't have any idea?

Mr. FIELD. We have no idea, sir.

Mr. TREEN. In the recommendations that came through Mr. Donner, he talked about the committee having the right to access without respect to classification, and then he had some strong recommendations that even went as far as expulsion of a member. As I read the recommendations we have before us now, we don't really talk about access. I wonder if that means that this recommendation is based on the premise that maybe we ought to leave that to be fought out between

the two branches of Government. But you can comment on that—or perhaps your section on subpoena powers is designed to answer that—that if the Congress would put into effect the absolute subpoena power, then that would cut across the question of classification.

Then I wish you would comment, if you would, please, on the business of a member being subject to the recommendations for expulsion by his party—how that would work. I am referring to “e”:

Any committee member who shall release, without authorization of the committee, materials or information obtained by the committee shall be subject to a recommendation by the committee to the Democratic Caucus or the Republican Conference that such Member be removed from the committee, or a recommendation to the House that such Member be censured.

I think the extreme sanction would be censure by the House, apparently. How would it work to have the committee recommend that a political party remove a member?

Mr. FIELD. Thank you, Mr. Treen. First of all, as to the stories that appeared in the press, just let me say that from the point of view of the staff, I am as certain as I possibly can be—and I was around all weekend and I think I have extremely good knowledge as to who had access to these reports and who did not, and so forth—that nothing came out of the committee staff as to individual members or as to the executive branch, which I know is putting on a tremendous campaign to show that oversight can’t work. I can’t be absolutely sure. I do know that there are literally dozens of copies now in the State Department, the Pentagon—all over the world as a matter of fact. They have been telegraphed, so as far as its remaining secret in the executive branch, it would seem to me incredible that it could.

In light of the fact that they are trying to discredit oversight, I just want to alert the committee that we must not necessarily assume that it is our own people that have done us in on this. But I do think it is the leaks that have done us in. It is a very severe blow to the future of oversight.

Moving along to some of the specific questions, if I could, I would just like to briefly back up to Mr. McClory’s comments. We do recommend that the DCI have Cabinet rank in a recommendation on the structure of the intelligence community. It is an important issue.

Mr. TREEN. Mr. Chairman, I know my time has expired, but may I respond to the first point?

Mr. GRAIMO. Sure.

Without objection, the gentleman will be recognized for 5 additional minutes. Go ahead.

Mr. TREEN. I detect in your remarks the suggestion that you feel that it is more plausible to believe that leaks have come from the executive branch, and, of course, this is possible; but considering the fact that the New York Times apparently had portions of the initial report very shortly after its dissemination to the committee members, I find it a little bit difficult to believe that that happened.

I am not pointing my finger at the staff or at this committee, but I think that your suggestion that it more probably originated in the executive branch would be as much without foundation as my pointing to the committee or to the staff. Some newsperson—at least one—has indicated to me that leaks came from a member of the committee. I did not press him as to which member of the committee.

In addition to that, the way that stories like the one this morning are written suggest that the source is the committee. Again, this doesn't indicate that the leak on the Jackson material came from the committee or the staff, but maybe Mr. Schorr would at least tell us. I don't know. No one has ever really asked him, but in any event I just want to make that comment. I don't think the evidence justifies your suggestion that it came from the executive any more than I might be justified in accusing the legislative branch.

Thank you.

Mr. FIELD. Moving on to Mr. McClory's comments, we do have a recommendation here for Cabinet rank for the DCI. As to the committee and your feelings that perhaps in the last few days committees have not shown the ability to keep secrets and so forth, there are a number of important points. There will be an oversight committee on intelligence somewhere. There is one today, so if nothing new is set up I suppose the existing one would continue to have oversight as it has had.

Perhaps there is an improvement here in the sense that we recommended that this committee have exclusive jurisdiction over covert action in the House. So to some degree you would be limiting the number of people who would have access, and this seems to be the area that has caused the greatest problem as far as dissemination of classified information is concerned. So in one sense it might be an improvement to be able to vest exclusive jurisdiction in this area. It makes it terribly important that this committee have a broad representation of views, and it was put in there specifically to counter the problem that has been raised by the briefing of so many committees in Congress.

Second, there is a recommendation here as to rule XI, which as you know, allows other Members of Congress to have access to all files and records of all present committees. I believe the Joint Committee on Atomic Energy has a right to keep its records under its own control, so we recommend that rule XI be waived as to this proposed committee, which again I think would help the problems that have come up.

Third: We do set up a specific procedure for dealing with a member—and, I think as important, with staff—who may leak information. As to staff members, there is very little now that Congress can do really except fire somebody. If somebody leaks something after they have left the committee, there is almost nothing they can do.

In this case we are recommending that legislative immunity not be provided to these staff members, and that they be subject to the normal criminal and civil penalties that they would be subject to if they were to release sensitive information any other way. I think that is an improvement, particularly when it is combined with another recommendation that the United States Code be amended. So that signals not only that that information be criminally proscribed as far as its release is concerned, but also anything that would tend to identify a U.S. intelligence officer.

As I say, we have recommendations as to the members and how they should be treated in these instances.

Mr. TREEN. May I make a comment on that?

Mr. FIELD. I would like to move to that—the reason we did not cover the expulsion of members and how this other recommendation would work. In reviewing the expulsion of members if they violate

secrecy classifications, the law seems to indicate that that would be unconstitutional, that there is a constitutional right to hold your seat if you have been elected. There are certain criteria that underlie that. The Constitution stipulates the right of the House to make its own rules, but this then gets into one of these balancing tests. The Court has held that the right to hold your seat, if you are elected, would prevail over the right of the House to make rules, and that the Constitution probably did not intend that the right to make rules would include the right to take away the franchise of people who have elected you.

Mr. TREEN. What did the *Powell* case hold? Is that one of your authorities?

Mr. FIELD. Yes; as you know, he won his case in a sense. The Court held that the House can censure him. They can work their will internally on him. They can even perhaps take away his seniority but they can't take away his seat. And so it seemed to us that that would probably be unconstitutional.

Mr. TREEN. How would this work—the recommendation of the committee that a member be removed from the committee? Would the recommendation go to the respective party caucuses, and would the recommendation be made by the full committee or by the respective members of each party?

Mr. FIELD. It was the initial recommendation, which was a very creative one in a way, that a majority of the majority and a majority of the minority on the committee could expel somebody from the committee. It was intriguing.

Mr. TREEN. Taken together or either one?

Mr. FIELD. Taken together, so it couldn't be a partisan attempt. If both Republicans and Democrats voted as a majority to remove one member, then he could be removed. In reviewing that with the Parliamentarian, he said that that couldn't be done—that a committee cannot remove one of its own members by itself. That in the case of a standing committee—

Mr. TREEN. We could change the rules, though. The Parliamentarian says it can't be done, but we are talking about basic changes in the structure here, aren't we?

Mr. GLAIMO. Yes; and recommended rules changes.

Mr. FIELD. Under the existing rules you would have to go back to the caucus and the conference. In fact, you couldn't even go to the floor of the House. The way they are now-appointed, you would have to go back to the people who appointed them. Now, as you say, if we changed the rules and made an exception in this case, I suppose you could have the committee vote to expel somebody.

Mr. TREEN. Mr. McClory reminded me of the constitutional provision in article 1, section 5, that "Each House may * * * punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member."

Of course you would have to equate this as being disorderly behavior, which I don't have any difficulty with, but that might be examined as a means of expulsion. If your problem is the constitutional question, I think that one ought to be looked at.

Mr. FIELD. I think the Constitution does create a problem.

The second thing which I would raise is a very pragmatic point. It's a little bit like Congress is always making rules making things criminal in election fraud violations and so forth. If you make expulsion of Members from Congress so odious, I think as a practical matter the likelihood of its ever being used is zero. It's just going to be so odious that you are not going to get a two-thirds majority of the Congress. If we could get a procedure that would be a little more reasonable, it might be used. I think that is one of the big problems here: Will the committee ever do anything? Frankly, I even question in this case how often they would.

Mr. GLAIMO. The time of the gentleman has expired. The gentleman from Florida.

Mr. LEHMAN. Thank you, Mr. Chairman.

I am trying to look beyond this committee's rules to the House rules, to see just what kind of goals we should seek as a result of this committee's work I guess our primary concern is still national security, but I think this has to be balanced against a continuing need for an open society in this country, and for this country's moral position throughout the world. If this country doesn't maintain a moral position throughout the world, there is no other substitute.

The world, as bad as it is, is going to get worse. With this in mind, if I were a CIA Director or a director of some intelligence organization, I would be happy to see a strong congressional oversight committee, because that would be the only effective instrument I see which would be a safeguard against the abuses from the executive branch that we have seen. We have elected people to this Congress who are just as concerned with the welfare and security of this country as those who are appointed by the President. As I used the quotation once before, "Upon what meat does this house of Caesar feed that he had grown so great?" What kind of hamburger does the State Department eat that we don't eat that they have got to be so much better or so much more powerful in regard to the welfare of this country than we are?

I was concerned that this committee itself is not going to be any better if we form it than the support it gets at the grassroots. I don't know how many of you saw "Sixty Minutes" last night, but I was dismayed at the statements of ex-CIA agent Mr. Phillips.

Did you see it, Mr. Johnson?

He told two stories, one of which was that he had always told his teenage children when they got to be 15 that he was a secret agent and they always were proud of him for that. But last year he told his fifth child, who had become 15, that he was a secret agent, and she turned to him and said, "Daddy, that is dirty," and he was doing this melodramatically. That was one of the main reasons he resigned from the CIA.

Then he told the story of how, after he resigned, he went to an agency in New York that does lecture tours, and he said to this agency, "I am retired. I have had 25 years. I want to be able to lecture on the intelligence community. I want to support the intelligence community. How much can I earn?"

The lecture agent said, "We could probably get you \$7,000, maybe \$10,000 in fees over the next year if you spoke in favor of support for the intelligence community."

Then he said, "The lecture bureau told me 'if you come out against the intelligence community you can earn from \$50,000 to \$100,000.'"

This is the kind of unfortunate circumstance, unfortunate propaganda that too many people in this country feel—that such committees as this oversight committee is going to have to overcome, in order to be able to deal with the kind of support we are going to have to have for this committee in order to maintain an open society, a moral posture in this world, and yet maintain a responsible capacity for our national security.

I think we have to weigh these and weigh them in the total aspects that our country so deserves.

That is the sermon for today.

Mr. GIAIMO. Thank you very much. All right, I think everyone has had an opportunity to express some general views. We all have these four or five recommendations in front of us. I suggest that what we really should do now is take them back to our offices and become more familiar with them.

Does anyone have any suggestion as to the manner in which we should take them up? There was some question earlier as to whether or not we should go to the question of a House committee but address ourselves instead to the question of whether there should be covert actions at all.

Mr. McCLORY. Mr. Chairman, I think we will get a large measure of agreement on the committee if we go initially to the subject of a structure of the intelligence community that we want to recommend. I think we are going to get into a long hassle with respect to covert operations with regard to the authority and power of the House committee, or even whether we should have a House committee or a joint committee. So I would suggest we first of all go to the question of the structure of the intelligence community, then we go to the question of the GAO authority to examine the budget and expenditure aspects of the community and some of these other relatively noncontroversial subjects.

Mr. GIAIMO. I would hardly call the structure of the intelligence agencies noncontroversial. I can see us being on that for 6 months.

Mr. ASPIN. Will the gentleman yield?

Mr. McCLORY. Yes, I yield.

Mr. ASPIN. I agree with what the gentleman said. I think if we can get away from the committee and start with the structure it will just make more sense, because what we want to do in the way of a committee will in a large measure determine the structure. I would say start with the structure of the intelligence community; go to the GAO and other financial controls, and then move to covert operations and decide whether we want them, how to operate them, and finally go to the committee.

Mr. GIAIMO. All right. We don't have a quorum here so we can't decide that now, but we will bring these recommendations to the committee when we meet again.

Mr. FIELD. Mr. Chairman, may I suggest that if we could have people move a recommendation, say "g" or "f" or "h," and take it up in that order, we can move on the question of the motion—we can move to the DCI as Cabinet rank and to whatever structural questions there are, and then come back.

Mr. McCLORY. Recessing until 10 o'clock tomorrow morning!

Mr. GIAIMO. No, let's recess until 2 o'clock this afternoon unless otherwise told. As of now we will meet again at 2 o'clock this afternoon.

Mr. ASPIN. Back here?

Mr. GIAIMO. Yes.

[COMMITTEE NOTE.—The recommendations subsequently discussed and acted upon by the committee are printed as H. Rept. 94-833, February 11, 1976.]

Mr. McCLORY. As I indicated to the chairman, I am forthright in indicating my—

Mr. JOHNSON. We are off the record now.

Mr. GIAIMO. The committee is adjourned.

[Whereupon, at 11:08 a.m., the committee adjourned.]

DISCUSSION OF COMMITTEE RECOMMENDATIONS RELATING TO NSA AS AN INDEPENDENT AGENCY, DISCLOSURE OF BUDGET TOTALS, AND PROHIBITION OF FUND TRANSFERS

TUESDAY, JANUARY 27, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m., in room 2212, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, Stanley M. Hecht, Jeffrey R. Whieldon, Roscoe B. Starek III, Richard S. Vermeire, and John M. Atkisson, counsel; Sandra Zeune, James C. Mingee, Roger Carroll, Vance Hyndman, Fred Kirchstein, Emily Sheketoff, Gregory G. Rushford, and Cheryl Tina Yamamoto, investigators.

Chairman PIKE. The committee will come to order.

I would like first to apologize to the committee for having missed the sessions yesterday, both in the committee room and on the floor. I can only assure you I tried as hard as I could to get here, and I would have enjoyed participating in both discussions.

Second, I would like to announce to the committee that as soon after the House convenes as I can get recognized today. I will ask unanimous consent that the committee have until midnight Friday night to file its report. This is necessary only because the House is not going to be in session on Friday. I will ask further that the committee have until a certain date to file its recommendations, which will be deemed to be part two of the report.

The question is what date to fill in on the recommendations.

Mr. MURPHY. Mr. Chairman, I agree with everything the chairman has said so far, but, as you know, we are running into problems with part of the draft of the report regarding the FBI and IRS. I wonder if we could get unanimous consent from the House to be allowed to file that part of the report along with our recommendations?

Chairman PIKE. I think the answer must be no. If we do that, we are then changing the report itself. Since we have already voted on the report, we would have to start the time periods running for the filing of additional views all over again. So I am afraid the answer from a purely parliamentary point of view will have to be no.

Mr. MURPHY. I refer to the filing of additional views.

Chairman PIKE. I suppose we could do it by unanimous consent. We can do anything by unanimous consent. My guess is, the mood of the House being what it is, in this even-numbered year it will be very difficult to get unanimous consent just to file our report on midnight, Friday. So I will be prepared, in the event unanimous consent is not given, to offer a resolution and go the Rules Committee route on the resolution; but as far as attempting to rewrite any portion of the report at this time, I think we would be making an awful mistake.

Mr. McCLORY. The House will recess at the close of business on February 11, I believe, for several days. I wonder if it might not be appropriate to ask for February 11 for filing the recommendations of the committee. I throw that out as a suggestion. That gives us but 1 week and 2 days.

Chairman PIKE. The 11th is a Wednesday, as I recall.

Mr. McCLORY. That is right.

Chairman PIKE. My suggestion would be if we go beyond a week from Friday, that we go a week beyond a week from Friday; and if we had to meet for a couple of days during that recess, it wouldn't kill any of us.

Mr. JOHNSON. It would the Republicans, Mr. Chairman.

Chairman PIKE. That is true. I forgot. This is a Republican holiday.

Is it the consensus of the committee that the 11th would be an appropriate day to put in for the filing of the recommendations? Until midnight on the 11th?

If so, that is what I will ask for.

Do you have any indication on your part that unanimous consent will not be agreed to, Mr. McClory?

Mr. McCLORY. No, I would recommend it.

Chairman PIKE. If it can be done by unanimous consent. I think it would be a real milestone. We will try to do it that way and we will see what happens.

Finally, I would like to say, in conformance with the unanimous-consent agreement which we have been operating under, the staff has a number of minor technical changes in the report, as a result of its discussions with the executive branch. They are minor technical changes.

Mr. TREEN. Mr. Chairman, I raised the point yesterday in our formal session about four pages—or at least three—that we agreed would be changed that were not in my revised copy, and one other which I thought contained a factual error.

Mr. FIELD. You are correct on all four. They have been changed.

Chairman PIKE. Now, let us address ourselves to these recommendations.

The first question is procedural. The procedural one is very simple: Would we be more likely to get our job done if we met in executive session than if we met in open session?

I would like to have the feelings of the members of the committee on that. I am quite prepared to play it either way.

Mr. TREEN. I think we would make no progress in closed session, myself.

Chairman PIKE. Is there anyone who feels very strongly that we should try to work out these recommendations in open session?

Mr. ASPIN. Is there any reason why we would think any classified information would come up that would cause us to meet in closed session?

Chairman PIKE. The reason for doing it in executive session would not, in my view, be because of classified information. It would be because it seems to me quite possible that we might get it done faster, that is all.

Mr. ASPIN. Let me take up an argument on the other side, Mr. Chairman. I have a feeling if we do this in closed session it is going to be a case where, after every session, there will be news stories about what we have recommended and what we have not recommended, and maybe it is going to be true and maybe it is going to be garbled; but again it is going to be the problem that Congress can't keep secrets and will add more confusion and disarray.

I think if no information of a classified nature is going to be discussed, let's do it in open session and then there is no problem.

Chairman PIKE. I think the gentleman makes a good point. It doesn't send tremors through me because all we are talking about are recommendations and not anything which anybody would feel should be classified.

Mr. TREEN. I haven't strong feelings about it one way or the other. I prefer the open session. But I am afraid some members may feel a little restrained in their arguments about some of our recommendations if they don't feel they can get into the background of some of the actions. That is my main concern. Particularly on the covert actions. We are going to make these recommendations in the context of what we have learned in our investigation. It might be awkward to make the arguments and always be conscious of the need to avoid reference to certain items until the final report is released. I really have no strong feelings one way or the other.

Chairman PIKE. Then let us proceed for the time being in open session and see how far we get.

Can we then agree on the manner we will proceed? It is my understanding that you had a rather general discussion yesterday which crossed the whole gamut of these staff recommendations. Is that true, Mr. Giaimo?

Mr. GIAIMO. We had a general discussion of the question of covert action, the possible need for covert action, and the question of how we should proceed. The suggestion was made that we should first address ourselves directly to the possible restructuring of the intelligence community.

Mr. ASPIN. Mr. Chairman, the order of the recommendations presented by staff starts with the congressional committee and I guess that is of great interest to everybody; but, as we were discussing the procedural matters yesterday, it became clear that the discussion on that committee would really follow from a number of discussions on other things.

For example, in order to decide what input that committee will have in covert actions, you have to first discuss whether you are going to have covert actions; so to start with the committee was probably

starting at the wrong end. The general discussion was that we probably ought to start with whatever recommendations we have—and I think this is right, Mr. McClory—to start with whatever recommendations we have in the report having to do with structural changes. That would be, for example, section “D,” section “G,” and those kinds of structural changes we have in there. Then we would move to financial, or perhaps structural and financial together, and then discuss the covert operations and finally the committee.

Mr. McClory. I agree with that. I think we can make more rapid progress and I think we will be discussing areas where we will have substantial agreement and leave the more controversial subjects until later. Perhaps they will not be as controversial then.

Chairman PIKE. Mr. Aspin, are you in a position to cite fully those portions of the staff recommendations which come within that?

Mr. ASPIN. Yes.

Let me make this suggestion, Mr. Chairman: The pages aren't numbered, but start with “D,” going then to “E,” “F,” “G,” as they come up.

“A” is “A House committee on intelligence.” “B” is “Control and release of information” “C” is “Covert action.” In other words, skip over “A,” “B” and “C,” which are the committee, covert actions, and so forth. Start with “D” on “NSA as an independent agency.”

Chairman PIKE. That seems to be the consensus.

[The staff draft of recommendation “D” reads as follows:]

D. NSA AS AN INDEPENDENT AGENCY

1. The select committee recommends that the existence of the National Security Agency should be recognized by specific legislation and that such legislation provide for civilian control of NSA. Further, it is recommended that such legislation specifically define the role of NSA with reference to the monitoring of communications of Americans.

Mr. McClory. Mr. Chairman, I wonder if we could have the staff explain this?

As I recall, NSA is now organized under an Executive order. It doesn't have statutory authority.

I will say I support the recommendation as drafted, but I would like to have our recollection refreshed as to what occurred as a basis for the recommendations.

Chairman PIKE. Mr. McClory, I certainly will go along with you, but let's not spend too much time on it.

Mr. FIELD. Mr. Donner did most of the work on these. I think they are well drafted and I think he can respond to this better than I can.

Mr. DONNER. Going back to our original subpoena directed to the NSA, even NSA's creation was classified. Even the document or Executive order was classified. Then we come to the question that apparently the NSA is a very large organization, and the testimony we had was greatly involved in the field of monitoring communications in general.

There were questions as to whether or not there had been sufficient oversight of its authority. There was a question as to some of its functions from a constitutional, as well as a legal, point of view. It was felt that with an organization of such a nature—and especially

with some of the testimony which would seem to indicate that much of the field of intelligence is passing into the realm of economics, as well as political in the current arena—it would be more appropriate that an organization of such a size and such an impact to be a creature of legislation specifically created by Congress and controlled by Congress. In a sense, as far as its creation is concerned, it would almost bring it under an oversight function much clearer than in its present status.

There was testimony that some of the activities of the NSA may have gone further afield than most of the members had known at the time of the testimony, and the question of whether or not there should be a more specific guideline as to the functions of the NSA was the basis or the genesis of the idea that it should be the subject of specific legislation and should be a civilian agency as opposed to a military agency.

Chairman PIKE. Is there any member of the committee who does not agree with that recommendation?

Mr. MILFORD. In all honesty, I am not sure. I am a little concerned about making such a recommendation without first making a specific record on the other side, if there is another side.

It seems to be a good idea, but I am somewhat reluctant to vote for it without looking into it more closely. Again, I am thinking out loud here, but it might be an item to hold over for the permanent committee where it could be given close study.

Mr. TREEN. I wanted to raise a point with Mr. Donner.

The recommendation calls for providing for civilian control of NSA. A little while ago you said, "Make it a civilian agency." That is not in the recommendation. I realize we will be voting on this language, but when you say make it a civilian agency, do you mean not to have military personnel?

Mr. DONNER. No, I refer only to control.

Mr. GIAIMO. Mr. Milford, you raise a good point. However, is our committee the one that should do that? If we were to do that and if we were to develop hearings on every one of these recommendations, not only would we not finish this week, we wouldn't even finish this year.

Isn't it a fact that what this committee is designed to do is to give, let's say, a prima facie opinion in this area—that we think there is something wrong with the NSA; that it is too subservient to the military; that we are troubled about that; and that we suspect or feel that if we passed specific legislation to restructure the NSA with civilian control, this might help? Once having made that recommendation, then does it not go to the pertinent legislative committee of the Congress, which in this case I assume would be Government Operations?

Mr. DONNER. I would think so; yes, Mr. Giaimo.

Mr. GIAIMO. And would they not then hold the hearings and act favorably or unfavorably on our recommendation and aren't we thus protected in that area?

Mr. MILFORD. I would not like to go on record as making a hard case recommendation, rather than saying, "Here is a trouble spot that somebody needs to look at in detail." Perhaps it is the way the thing is worded. In other words, I am not willing to say we definitely should do it because I don't think we have enough information to say that. It certainly should be looked at, and looked at in depth.

Chairman PIKE. We are not a legislative committee. All any of our recommendations are going to be are recommendations for other committees which have jurisdiction to look at them and act upon them.

Mr. MILFORD. Will there be wording to that effect?

Chairman PIKE. I don't think it is necessary.

Mr. MILFORD. Will there be a foreword or something to make that clear?

Chairman PIKE. I would say certainly, yes, there could be a foreword to our recommendations. Our recommendations will go many different places. Some will go to congressional committees; some of them, I suspect, will go to the executive branch because they will call for action by the executive branch without the necessity for legislation. Some, which will go to the House of Representatives, will pertain to House rules, and won't require any legislation.

Mr. KASTEN. I wonder if the staff could answer a couple of questions?

Mr. DONNER, why was NSA not recognized by specific legislation?

Mr. DONNER. It grew up as a military function. It was originally a part of Signals Intelligence, and when it was to be institutionalized into a separate agency, it was created by an Executive order. Like many things, it probably just worked out that way, rather than by plan or design. Just in the nature of things, since it came out of the military, its genesis was military, and it became a part of an executive function.

Mr. KASTEN. Has specific legislation ever been proposed that would cause the National Security Agency to be recognized officially?

Mr. DONNER. Not to my knowledge.

Mr. KASTEN. Has this recommendation been discussed with NSA or the administration and, if so, have they expressed their support or opposition?

Mr. DONNER. We have had discussions with some of the intelligence community representatives in an informal manner, but I will state here that these recommendations were not arrived at specifically in consultation with any of the agencies.

Mr. KASTEN. I don't think they should be done in consultation with the administration, but I asked you if you have had any consultation with them on this particular point?

Mr. DONNER. The agencies themselves, having somewhat separate interests, it depends on who you talk to.

Mr. KASTEN. Who did you talk to on this recommendation and what did they say?

Mr. DONNER. We talked to some of the representatives of CIA about it and these were discussions ancillary to other matters. They presented technical questions which may have been that some of the NSA functions will have to remain partly military in nature, and we discussed how we would work out the jurisdiction with the respective military services; but as I recall, that was primarily the question that was addressed.

Mr. McCLORY. I have looked at the Murphy Commission report and recommendations and they do not specifically refer to this. I would say the Murphy Commission refers to it rather generally; but when General Allen appeared before the committee, as I recall, I asked the question of him as to whether or not he would be opposed to having

his authority established by statute in lieu of being established by Executive order and he said he would have no objection to that. I think we have on the record of the public hearing the acquiescence of the NSA.

Chairman PIKE. How did he feel about civilian control?

Mr. McCLORY. We did not ask him that question and he may not feel the same about that; but I feel strongly that all components of the intelligence community must be under civilian control, just as all the military must be under civilian control. So I think that is important to put in here.

I would suggest the use of the word "established" instead of "recognized"—that we "establish" this authority by legislation. And then I am not certain that we should use the exact words used in the last phrase. I mean I think there are many things that we want to define, or we want to see defined, in legislation other than the implication that somehow they are listening in on private conversations of American citizens. That is somewhat controversial insofar as what they actually get and what they don't get; but in general I think it is a very sound and very important recommendation for us to make.

Mr. GIAIMO. I think it is downright illegal—not somewhat controversial—to listen to the conversation of American citizens.

Mr. McCLORY. If the American citizen happens to be a spy for a foreign country, I don't know whether it is illegal or undesirable at all. As I recall, the monitoring system doesn't necessarily involve this kind of wholesale listening in on conversations, but I think those are questions which can be handled by legislation without necessarily frightening people by implying that all their communications are being listened in on.

I don't want to say anything more about this now.

Mr. TREEN. Is the NSA not under civilian control now? Isn't it under the Defense Department?

Mr. BOOS. The Executive order, Mr. Treen, provides that the Director of NSA must be a military man and the Deputy Director must be a career cryptologist. So it is under military control to that extent.

Mr. TREEN. Who is the appointing authority for the NSA? The Secretary of Defense?

Mr. BOOS. It is the President.

Mr. JOHNSON. That is the point I wanted to raise. I don't think this is a sufficiently specific recommendation. There is a certain amount of civilian control, if you think of the Armed Services Committee as being a civilian organization.

The recommendation, it seems to me, should point out which committee we believe should have jurisdiction, and whether the head of the Agency should be subject to the Director of Central Intelligence; whether he will come under his jurisdiction; whether he will have separate authority; whether it will be a part of the intelligence community, or whether it will be a separate organization.

Chairman PIKE. It seems to me that all of the questions you raise are valid, but they would be covered by the specific legislation of which we speak—and I don't think we can write the specific legislation.

Mr. JOHNSON. Of course not, but we can make recommendations. It seems to me if we are going to make a recommendation about commit-

tee jurisdiction, we might very well consider that it could go to the Armed Services Committee. I don't know where else it would go.

Chairman PIKE. Frankly, I don't think this committee ought to get bogged down—and I think we would get bogged down—in the realm of deciding which other committees of Congress should have specific jurisdiction. It is my personal feeling that jurisdiction over large chunks of NSA should go to a new, standing committee on intelligence; but we haven't gotten to that point yet.

Mr. JOHNSON. What about the idea of the head of the Agency being responsible to the Director of Central Intelligence? Would he come under his jurisdiction?

Mr. FIELD. That is referred to elsewhere in the recommendations.

Chairman PIKE. Let's try to evolve a procedure which will allow us to move forward.

Mr. McCLORY. I move tentative approval of "D" with the substitution of the word "established" for "recognized."

Mr. FIELD. The National Security Agency is already established, so we used the word "recognized" so it could be recognized by statute. We originally had "establish" in there. I don't believe it really makes any difference.

Mr. McCLORY. Very well. I don't feel strongly about the word "established." I felt that could be a more specific word.

Mr. MILFORD. You might say "recognized and established."

Mr. McCLORY. I will withdraw my suggestion and move for tentative approval.

Chairman PIKE. What does "tentative approval" mean?

Mr. McCLORY. It seems to me we should have the right to come back at a later time with respect to all of these items. It might be that in our later consideration we might cover something that we haven't included, or we may want to come back and supplement some recommendation. I don't think we have to be ironclad.

Chairman PIKE. I think we can proceed in that manner for the time being, but there will come a point where "tentative" has to yield to "final."

Would the staff discuss item "E" please?

Mr. ASPIN. Do we have to vote on the first one?

Chairman PIKE. No; it is without objection.

[The staff draft of recommendation "E" follows:]

E. DISCLOSURE OF BUDGET TOTALS

1. The select committee recommends that all intelligence-related items be included as intelligence expenditures in the President's budget, and that there be disclosure of the total single sum budgeted for each agency involved in intelligence, or if such an item is a part or portion of the budget of another agency or department that it be separately identified as a single item.

Mr. DONNER. The committee has spent a substantial amount of time on this, and the end of our report is directed to the financial aspects of it. I would almost say it would be better to refer to Mr. Giaimo, who has been more of a participant in the battles directed to this subject than anyone else.

It was our feeling that, as a staff recommendation, there be a disclosure of the total budget of the intelligence agencies. This was mainly because, first of all, the investigation, in the staff's opinion, has come

up with items that we feel should be addressed, and that the Congress has been ignorant of for a long period of time—and also, of course, the American people have been.

As to the total cost of intelligence and handling of funds within the intelligence community, it is a very broad recommendation. Possibly there are other specifics stated further on. But we feel this is an area, the secrecy of which—as Mr. Schlesinger stated on “Firing Line” one time—is not a secret from the Russians; but it is a secret from the American people and it is a secret from Congress. He stated that the disclosure of the intelligence budget would be just a whittling-away on the floor. That was the only reason to keep it secret. We feel that it would be very important for the Congress and the American people to know what this item is costing them.

Mr. FIELD. In the first phrase we recommend that all intelligence-related items be included in the intelligence budget. This would have to be drafted into specific legislation, obviously; but it is intended to get into the problem of what is and is not included—trying to enforce some standard here, and trying to get intelligence-related items into the budget.

Mr. MURPHY. There was testimony before this committee, I think in executive session, that we would get into what you referred to—we would be detailing fields where our intelligence agencies were active.

Mr. FIELD. This would be a lump sum total.

Mr. GIAIMO. What you propose to do is put in the budget for the CIA x dollars for NSA. One line item. For DIA you also would put in x dollars. For FBI—well, that is in there. Isn't that right? That is what you intend to do?

Mr. DONNER. Yes.

Mr. GIAIMO. Does that one lump sum for the CIA—we will use that one as an example because that is a controversial agency—does that divulge anything to anyone? That is the question.

Mr. DONNER. Really, there is no end to that discussion. You can't go behind it. However, once again we have discussed our military budgets in very great detail as to a specific weapons system. They are discussed publicly. They have discussed long-range programs of the United States' military programs. There have been detailed discussions of weapons systems, and other items are discussed.

If somebody says “Is it possible,” of course, anything in the world is possible. However, measured against what the staff has felt is a system that has allowed for misuse of funds—misuse in the sense of not being directed as Congress had thought when it approved—

Mr. MURPHY. Mr. Donner, the second part of the paragraph says, “* * * if such an item is part or portion of the budget of another agency or department that it be separately identified as a single item.” My question is, how can you identify it as a single item of another budget and not disclose exactly what we are doing?

Mr. GIAIMO. I think what you are intending to do with that language is to stop the practice which is used presently with the CIA budget. The CIA budget—as came out in the House debate on September 3—is in “Other Procurement, Air Force” in the Defense Appropriations bill. What is it doing in that classification?

Mr. DONNER. Yes, and with reference to the FBI, there was a question about stating its budget as a separate item.

Chairman PIKE. It seems to me the first serious problem you are going to get into is the business of deciding what is an intelligence-related item and what is not an intelligence-related item. We have, for example, found situations where one thing in, say, the Defense budget, is listed as an intelligence cost item, and an almost identical thing is not listed as an intelligence-related item. The whole problem of defining what is and what is not intelligence-related—and I think this is the most expensive part of the intelligence budget—is not dealt with in the intelligence budget in any manner.

I think we have to define, somehow, what is intelligence-related, and in my judgment it ought to refer to those actions or systems, more than half of the mission of which is devoted to the gathering, or analysis, or dissemination of intelligence.

If we do that, I think we will have some guidelines that will be useful.

There is one thing I think we might well consider doing. The argument has been made by the executive branch that they started the Atomic Energy Commission's budget with a one-line item and it is now broken down into a great many line items. I personally don't think this has hurt the operation of the AEC one bit, but this is the fear which is continually voiced by the executive branch—that if we start with a lump sum it will wind up with a whole bunch of line items. So I think one of the things we should consider saying is, "A lump sum, but no more than a lump sum."

I don't know how other people would feel about that.

Mr. DONNER. Mr. Chairman, that carries with it, in my opinion, sort of an awful assumption.

That awful assumption is that someone else is deciding this question and that Congress has no right to address itself to this question if it so desires. In other words, it carries with it an assumption that, well, maybe those people will then define it further. But this gets at the base of the entire problem. If Congress decides to define it further, it has a right to define it further and shouldn't take the attitude that "Those people will define it further." And of course, the whole guts of the question is that Congress can decide to define it further.

Mr. MCCLORY. Mr. Chairman, I am opposed to this recommendation the way it is drafted. I think we have to make a clear distinction here between the budgets of agencies that operate at least in part with respect to secret activities and the budgets of those activities of Government where secrecy is not inherent. To try to put the CIA and other intelligence agencies in the same basket isn't realistic. We have had voluminous testimony here, revealing that the budget of the intelligence agencies does provide information, a part of that information from which deductions can be made and, as a result of which, their activities can be hampered.

In the first place, I think perhaps the most important work of this committee has been its examination into the question of the cost of intelligence. For the first time I think a committee of the Congress has got a handle on this subject, and I think it could be the most important function of the oversight committee to review the cost of intelligence.

We have also considered the question of the General Accounting Office's review of expenditures of the intelligence community, which is

another opportunity for the Congress to determine for itself what is happening to the money that it authorizes and appropriates with regard to the expenditures that are made.

I think neither the lump sum budget nor the lump sums of the individual agencies should be made public. I think they should be available to the oversight committees or perhaps several other committees of the Congress, as is presently done. I understand the chairman of the Appropriations Committee, at the present time, makes available to any Member of the Congress the opportunity to examine and review the cost of intelligence activities which are available in the budget figures that he has. It is just a question of whether or not you want to broadcast it—whether you want to put it out in the public.

If we are going to continue to have intelligence agencies with a measure of secrecy surrounding them, it seems to me that a most vital part of the secrets that must be retained are those with respect to costs, budgets, expenditures—those related to economic and financial aspects.

I would either vote against it or I would suggest a substantial revision, which would delegate this general authority of review to the proposed oversight committee.

Mr. DELLUMS. Mr. Chairman, may I first ask a question? I was not here yesterday and perhaps this was discussed then.

Chairman PIKE. You missed a great session, Mr. Dellums.

Mr. DELLUMS. Perhaps you answered this question, but will the recommendations ultimately be presented in legislative form to the Congress?

Chairman PIKE. Not by this committee. Hopefully by other committees.

Mr. DELLUMS. Thank you.

Mr. Chairman, I move tentative approval of item "E."

Chairman PIKE. I do not propose to cut-off debate on your motion, but would you like to be heard on it?

Mr. DELLUMS. Mr. Chairman, we have heard a great deal of debate on this question. As members of this committee, we certainly are at this point aware of whether you see 1 item and break it down into 5 or 10 or 15 items. There is no way one could determine from that disclosure the hundreds and hundreds of projects carried out by our intelligence community. We have looked at this issue. I think at this point it is appropriate for the Congress, as representatives of the people, to have that information.

It seems to me the American people ought to be able to make a decision with respect to how much money is enough in the area of intelligence.

I think it is important for us to go to the fundamental concept that this is a representative democracy, which means people move on the basis of consensus. No consensus has ever been established in this country with respect to what is an appropriate amount of money to spend on intelligence.

There has never been a consensus-oriented debate, even on the basis of what is a legitimate intelligence-gathering activity. As we go back to the fundamental principle that there is a democracy, it would seem to me that to disclose the total budget of the various and sundry intelligence agencies is totally consistent with that.

I think our report and recommendations ought to spark an important debate in this country—not only in this Congress—about what is intelligence, what we mean by legitimate intelligence, and how much money we need to spend. I think this recommendation will trigger that discussion in a broad community and I have hope that it will trigger a nonpartisan, nondemagogic debate on the floor of Congress.

Mr. JOHNSON. I voted against the Giaimo amendment when it was brought to the floor because I felt we hadn't concluded our work on the committee and it was premature for me at that point, but I support that position now and I support the gentleman's motion.

Mr. McCLORY. Wouldn't you agree that the Representatives in Congress, as representatives of the people, should be vested with the authority to make decisions—whether they are decisions made in public or whether they are decisions that are not made in public? With respect to secret agencies, I assume any oversight committee we establish will carry on a large part of its activities behind closed doors; and if we are going to retain secret agencies, intelligence agencies—and, of course, that may be a decision which will arise soon—it would seem to me inherent that we have secrecy, including secrecy with respect to budgets.

Mr. DELLUMS. I think what we have to do is look at this issue in relative terms. First of all, the Atomic Energy Commission prints its budget and there was question about that. Everyone in the world can look at our bombers and determine how many B-1 bombers we want, how many Trident submarines, where our troops are around the world, how many tanks we want, how many tanks we have, how many strategic nuclear weapons we have. That is all in there. The R. & D. program is broken down in reasonably specific terms. As we look at it in relative terms, total secrecy with regard to money in my opinion is absurd.

It is necessary to determine whether this is consistent with the concept of representative democracy. I think we have a responsibility when billions of dollars are appropriated without our knowing. One committee voted that it didn't want to know the figures itself when it is charged with the responsibility of appropriating money.

I think when we get to that point with our public officials, then we have reached a level of absurdity from which we won't be able to retreat. I think we have the responsibility to say, "make the budget public."

Chairman PIKE. On that high note, the time of the gentleman has expired.

Mr. MURPHY. My objection to this paragraph "E" does not involve the publication of the total amount used in intelligence. My objection concerns the last four lines. We all know that we use different parts of the military for intelligence-gathering information. My point is, how specific are you when you tell what the Navy uses for intelligence? How specific must you get in that category? If you get too specific, then I think we will be tipping our hand as to what we are doing with the money.

The last four lines make me a little leery that when you get to the Navy or to the Army you are going to specify the area in which our intelligence apparatus is working.

Chairman PIKE. Isn't the corollary, however, the fact that we know that the Navy spends huge amounts for intelligence, which never show up at all in the intelligence budget?

Mr. MURPHY. I would be willing to have a one-line item saying "As far as intelligence in the Navy is concerned, such and such amount." But what concerns me is a single item. If we are going to get into where they are spending it and break their budget down, then we are going to tell our potential enemies exactly where we are operating in intelligence.

Chairman PIKE. I agree with the gentleman, but you have no objection to an item for the Navy?

Mr. MURPHY. What does the recommendation imply when it refers to a single item? Does it refer to a specific area or "Navy \$10 million," or "Navy, \$100 million"?

Mr. GIAIMO. That language deals with being "a part or portion of the budget of another agency or department."

Mr. MURPHY. Can the gentleman assure me that is exactly what it means?

Mr. GIAIMO. They won't hide a Navy intelligence function in the FBI budget. Isn't that what you mean by it?

Mr. DONNER. Exactly, Mr. Giaimo. That is exactly what we are trying to identify.

Mr. MURPHY. You are just talking about the branch of service and the total amount. You are not talking about a specific instrument or an area. The other gentleman shook his head no.

Mr. Boos. No; I concur with Mr. Donner.

Mr. McCLORY. When we get to the next point, it is a suggested prohibition against transfers of funds from one agency to another, but without the approval of the proposed intelligence oversight committee.

Now, it seems to me that all of these activities—all of these things we are talking about here—should be within the jurisdiction of the oversight committee; but to have it all out in the public domain, I think, is something quite different.

Mr. MURPHY. I am concerned with specific items. If counsel assures me that what I am talking about is just one line item about how much the Navy, Army or Air Force is using, I can buy it; but if you get into any further specifics I will be against it.

Mr. FIELD. Our intention was that it be a one-line item.

Mr. DELLUMS. For example, if a percentage of the CIA budget was found in the Navy budget, that item would be highlighted.

Mr. GIAIMO. It wouldn't be allowed.

Mr. DELLUMS. Under "F," it wouldn't be allowed?

Mr. DONNER. We try to address the idea that there is a general lack of knowledge as to the total cost of intelligence. I am not going to attribute any motives to it. The motives might have been good, but the point is that the gross intelligence budget is composed of many items in many agencies. A more cynical approach would be that it is hidden in various agencies and departments, and Congress—in voting to approve these items—does not know what it is voting to approve. This recommendation would allow Congress to know the total intelligence budget of the United States.

Mr. KASTEN. Would the gentleman from Connecticut yield for a question?

Mr. GIAIMO. I don't have the time; you do.

Mr. KASTEN. How does this section "E" differ from the amendment you proposed? What is in this section "E" that makes you think this would pass on the floor of the House if your amendment did not?

Mr. GIAIMO. How do I know what motivates 435 Members of Congress less 148? My amendment dealt strictly with the CIA budget. This, I assume, deals with all intelligence.

Mr. DONNER. Yes, sir.

Chairman PIKE. I do not know that the results would be different, but I do say that a great deal of the debate on the issue pertained to the fact that this committee would study this issue and had not yet answered this issue, and a great many people on our side of the aisle were in the same position Mr. Johnson was in. So if this committee made this recommendation it might materially affect the results.

Mr. KASTEN. Then essentially this amendment is the same as the amendment you proposed, except it includes not only CIA—to which your amendment addressed itself—but all other intelligence agencies of the Government?

Mr. GIAIMO. Part of my amendment was that we should take the CIA budget and publish it as one line item on its own, rather than continuing to put it in "Other Procurement, Air Force."

Mr. KASTEN. This is essentially the same issue you raised on the floor.

Mr. GIAIMO. But this goes to other branches of the intelligence community also.

Mr. KASTEN. Mr. Chairman, I would remind the committee of the testimony we received, I think in both executive and open session, from Mr. Colby and others who felt very strongly that revealing the total dollar amounts to the public—it has nothing to do with revealing it to committees of Congress—revealing total dollar amounts to the public would damage or lessen their effectiveness because in their opinion it would disclose trends in our funding levels and efforts. And their feeling was that the trend over a period of time would be damaging to our national security.

I think all of us want to support congressional oversight, and clearly committees of the Congress have not been as diligent as they ought to have been in determining exactly how much the CIA was spending or how much other intelligence agencies were spending; but in my opinion the disclosure of the trend would in fact work against our intelligence efforts overseas. So I think the motion of the gentleman from California should be defeated.

Mr. McCLORY. I would like to add I concur with the gentleman entirely, and I hope that the committee will oppose this recommendation.

Mr. MILFORD. The question here is a problem encountered throughout the life of this committee. In our open hearings and in our report, no one can point to any single item which reveals a national secret. In other words, we did not publish our code book, or plans for our latest weapon.

What we did do, and what the disclosure of budget totals would do, was to provide an important clue or a bit of information which an

experienced intelligence analyst can put with other bits of information and form a picture.

Revelation of budget totals and enumeration of intelligence-related items would seriously compromise our intelligence efforts.

Furthermore, Mr. Chairman, this recommendation is moot. Essentially this issue has been thoroughly debated before the House in the present Congress and the proposition was defeated resoundingly.

I then ask, why demean our report by including this recommendation? We are offering no new argument and no new recommendation.

Therefore, Mr. Chairman, I offer a substitute to Mr. Dellums' motion and move that we strike section "E" from the committee recommendations.

Mr. HAYES. Mr. Chairman, we really only have two choices. One would be to use the recommendation of "E"—the budget totals—or else we can attempt to involve ourselves in the accountability process for the expenditure of funds. I think, for example, if it was a workable solution, the accounting procedures used internally by the various intelligence agencies to account for what they expended would be a satisfactory substitute.

I think, however, the state of the record supports the conclusion that we cannot depend on any accounting procedures to tell us how the moneys were spent—whether they were spent on legitimate intelligence functions—and I also doubt the power of Congress to ultimately involve itself in the executive's accounting procedures, so we do in fact know how those funds were used.

I might yield an appropriate amount of time to Mr. Giaimo to confirm that as a member of the Appropriations Committee. Is it not true that, while Congress can authorize funds for a specific purpose, it cannot demand an exact accounting, nor does it set up accounting procedures for the executive? Is that correct?

Mr. GIAIMO. It is true that we can get it and are beginning to get it—and I think it is important to stress the progress that these demands of ours bring about. Now we are getting accurate information in our budget after many years of struggle in the Appropriations Committee. Remember, we went from situations just a few years back where only a very limited number of people knew what was going on. Now, at least, the whole subcommittee knows. As a matter of fact, it is because we are getting accurate information that we are beginning to learn more about what is happening in the intelligence community. So, what we are really doing here is reestablishing—if it ever was established and I don't think it was—some form of congressional oversight, and the way we are doing it is through the money.

I have to be very careful, Mr. Chairman, because we are in open session, but I am of the belief that it is because we are beginning to sharpen up budget accounting awareness and accountability that we are learning about some of the things that we are doing in certain countries of the world. This has come out in debate in the Senate; I will mention Angola. In the old days—up until a few years ago—there were swappings of money right and left between the different agencies of the Government in the area of intelligence. We have restricted that. So that is a plus.

All I am saying is that we have to do a little more.

Mr. HAYES. I think some of the intelligence budget isn't spent on intelligence. I don't view the Angola operation as an intelligence operation. Therefore, I don't accept the premise it was a legitimate expenditure of intelligence money.

The state of the record indicates some of the money that was earmarked for what could be interpreted as intelligence work was in fact simply shop money channeled off, in a way—in essence, stealing of the money. That is my belief. That is a rather extreme statement. I think I will let it drop, and I'll just end by saying that if we disclose the budget total everybody can make up their own mind. I believe that is the key point which we may be missing.

Mr. LEHMAN. I feel the disclosure of such budgets would be a mistake. I have had 6 months' experience in intelligence, but I have had 25 years in accounting. What bothers me is, is it really possible to get an honest figure? In the event one of the branches of the armed services details a vessel or an airplane to gather intelligence, is the cost of that vessel or airplane a part of the intelligence cost? Can you really get an honest figure?

Can you determine what an honest figure is in our intelligence community? I think if we come up with a figure that is sound accounting-wise, it might not conform to principles of sound practice, and we may be playing games again with our intelligence figures. That would in no way be helpful in reaching the goals I would like to see this committee attain.

Chairman PIKE. The next motion would be Mr. Milford's motion to strike section "E," and Mr. Dellums has asked to be recognized.

Mr. DELLUMS. I realize there have been many people who say if we print the budget in some form that other intelligence-gathering agencies in other countries will be able to establish trends, et cetera. I would suggest at best that is conjecture.

Prior to the beginning of this committee, I would dare say probably all of us assumed a level of sophistication and expertise on the part of our intelligence community that went beyond human capabilities.

Now that we have studied the community, we are grimly aware of the all too human aspects of the intelligence community. We are aware that we cannot predict war; that we have difficulty in establishing certain facts; that we have difficulty in assessing certain data.

What makes us assume that, if this awesomely capable intelligence-gathering apparatus we have designed in this country can be all too human, we can attribute to some other intelligence-gathering apparatus superhuman powers? I would suggest it is conjecture. If there is any risk, I would say the ultimate risk is the continuous eroding of the confidence of the American people by too much Government, cloaked in too much secrecy.

I believe people are saying we ought to be doing a job, and an important part of that is to be involved in the decision of how moneys are appropriated. I think to assume that somebody can look at a figure and come out with all these elaborate trends is absurd. Our own intelligence-gathering community has had extreme difficulty on less difficult projects. What is to make us think any other communities are going to be better?

I think on the basis of that, Mr. Chairman, if there is a risk, we ought to opt on the side of the risk of guaranteeing that democracy is

real in this country. In many instances, the intelligence community is operated as a fourth branch of Government. It has been beyond control. Certainly the money has been beyond control. I think this item gets us back to where we should be: With the Congress of the United States charged with the responsibility it constitutionally has, and that is to oversee the appropriation of all funds. And that ought to include the intelligence-gathering community—unless we decide by our vote here that we are establishing a fourth branch of Government.

As long as there are three branches of Government, we have to be involved in a very clear way because we do have the purse strings. For us to opt not to know is saying to the American people that there is a part of our job that we don't want to assume. If we have knowledge, we have to assume the responsibility of that knowledge.

I think knowledge is important and knowledge does bring responsibility, and if we know the figures maybe we will start asking questions on how it is spent and why it is spent.

Mr. McCLORY. Mr. Chairman, I prepared my views on the recommendations which were circulated to all the members. I would like to speak in support of Mr. Milford's remarks.

If Mr. Milford's motion is successful, then I will offer my recommendation in lieu of the one proposed here in the material we have before us. If you don't mind, I would just like to read these paragraphs. They consist of my recommendation and the reason for it.

Under the title "Fiscal Procedures:"

In the absence of any compelling evidence to the contrary, I think we must be guided by the intelligence agencies concerned, that publication of even single overall dollar totals for their annual budgets would reveal vital information of benefit to hostile foreign interests and would have a detrimental effect on their operations. Full budgetary information must, of course, be available to the Congress. I fully support the proposal that the Director of Central Intelligence should prepare a consolidated budget for the intelligence community as a whole, which would include a comprehensive statement of intelligence and intelligence-related costs, as well as full accounting of the number of public and contract employees and proprietary entities which are engaged in intelligence activities.

Their budget should be available to the Appropriations and Intelligence oversight committees of the Congress, but it should not be made public.

I also concur with the suggestion that funds for intelligence should be authorized by the Congress in the same manner that we authorize funds for other agencies, to prevent intelligence spending from being made public.

Authorizations for intelligence should be considered in executive sessions of the Intelligence Oversight Committee or committees and then included in authorization legislation in the same manner as intelligence appropriations are now included in Defense appropriations.

Mr. Chairman, that reflects my position. If the motion of Mr. Milford is supported, I would plan to put in appropriate language a substitute for the recommendation we have before us.

Mr. KASTEN. I have a parliamentary inquiry, Mr. Chairman. It is my understanding the motion is to delete section "E." Is it the Chair's opinion that that section becomes part of our recommendation unless we have a vote to delete it? It would be my understanding that there are no recommendations until the committee has a vote to include the recommendations.

Chairman PIKE. The basic motion was the motion of the gentleman from California, Mr. Dellums, to adopt section "E." The substitute offered by the gentleman from Texas is to delete section "E."

Mr. KASTEN. I don't think there are any recommendations until we have a vote in favor of the recommendation. In other words, a 5-to-5 vote would mean that the recommendation not be adopted. You could do it this way if you wanted to have two votes in a row, but I think we should have a vote on whether to include the recommendation.

Chairman PIKE. We could have done it that way, but from a parliamentary point of view there is nothing wrong with Mr. Milford's motion to delete.

Mr. Giaimo.

Mr. GIAIMO. Mr. Chairman, whenever we get into a discussion on what we should do when it comes to publicizing certain aspects of the intelligence community, we always get the same argument: Whatever you publish could be of assistance to possible enemies of the United States.

We know that, and there is no question that absolute secrecy would guarantee the ability of intelligence agencies to operate with the greatest degree of safety and the greatest degree of nonknowledge by anyone. But you know the other side of that coin is of importance too; namely, the insistence, which has brought about this committee, that the American people are demanding from Congress that we know what is going on in our Government.

We have ignored this for many years and we have to justify our unwillingness at the present time to know what our intelligence agencies are doing. Over the last couple of years, we have begun to get some sort of a handle on the intelligence agencies in the existing committees. I know this from my service on DOD Appropriations. It has been a long, tough struggle, and every time we try to establish some sort of congressional oversight we are told: "You are putting the United States in jeopardy."

That is not so in this case. This proposal is one of the least harmful that this committee can make. Just think of what the headlines will be if this committee were to vote this down: "Congress still does not want to know what the CIA or any other intelligence agency is doing; Congress still wants to put its head under a basket and let them go their merry way, as they have these past 25 years."

What are these merry ways? Look at Angola and you will get the answer today, when we have a vote on moneys for Angola on the floor of the House. We can't afford to do this any longer. The Rockefeller report, itself, recommended that we publicize the CIA budget. What are we afraid of?

I have discussed this at length with Mr. Colby; I have discussed it with Secretary Schlesinger; I have discussed it with others. Sure, they all make the argument about security. They also make another argument, either on or off the record, and that argument is this: The real concern with publishing an intelligence budget is that you are going to put it out there where Congressmen can see it, and once they see it they are going to be able to offer amendments to it, such as "Reduce the CIA's budget or DIA's in a given year," or "increase it." Therefore, they say the pressures are going to be insurmountable to resisting a direct attack on the intelligence money in the budget.

Now, I submit to you, what is wrong with that? What is wrong if the American people, through their representatives, want to have

the ability to challenge the dollar figure in our appropriation bill? The alternative is to continue the system we have now where you can't challenge it because the average congressman hasn't any idea as to what is in that budget. Sure we have made some progress this year. For the first time now, Members of the Congress can go to a committee and find out what the budget of the CIA is, or what those of other intelligence agencies are.

That is not how legislation works. Legislation works in many ways.

It works on and depends on an awareness of the American people as to what it is in particular budgets, and the expressions of the American people to their representatives on these matters.

We can't—I can't, you can't—inform the American people as to how much is in a given intelligence budget that you can go to the committee and read but are prohibited under present House rules from publicizing what you learn in any way.

The American people today—with all of the mistrust and concern with Government, and because our way of doing things since the days of the cold war in the early fifties has changed—now want to know. They can then voice their approval or disapproval. Again, Angola is a classic case in point.

How could the American people voice approval or disapproval of any American involvement in Angola if they do not know we are involved, if they do not know funds are spent in Angola? How can we regain civilian control over our governmental agencies?

I submit that the quickest way of doing it, of at least getting some control, is by way of the budget.

Chairman PIKE. The time of the gentleman has expired.

Mr. GIAIMO. I urge the adoption of "E."

Chairman PIKE. The question is on the motion of the gentleman from Texas, Mr. Milford. All in favor of the motion signify by saying aye. Contrary, no.

The noes appear to have it, and the motion is not agreed to.

Mr. MILFORD. Mr. Chairman, I ask for a record vote.

Chairman PIKE. All those in favor of a record vote will raise their hands.

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Mr. MURPHY. No.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. No.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. MCCLORY. Aye.

The CLERK. Mr. Treen.

Mr. McCLORY. Aye by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. I vote no, and Mr. Stanton votes no by proxy.

By a vote of 4 ayes and 9 noes, the motion to delete section "E" is not agreed to.

The question is on the motion of the gentleman from California, Mr. Dellums. All in favor of the motion signify by saying aye. Contrary, no.

The ayes appear to have it.

Mr. ASPIN. May we have a record vote?

Chairman PIKE. All those in favor of a record vote—a sufficient number. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. No.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. McCLORY. No by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of 9 to 4, the motion to approve section "E" is agreed to.

The next item is item "F," which in my judgment ought to be a little less controversial.

[The staff draft of recommendation "F" follows:]

F. PROHIBITION OF FUND TRANSFERS

1. The select committee recommends that there be appropriate legislation to prohibit any significant transfer of funds, significant expenditures of reserve, contingency funds in connection with intelligence activities without specific approval of the proposed intelligence committee.

Mr. McCLORY. Mr. Chairman, I move adoption of "F."

Chairman PIKE. Is there any further discussion?

Mr. JOHNSON. Mr. Chairman, I move that we strike that portion of the paragraph which says, "without specific approval of the proposed intelligence committee."

Chairman PIKE. The gentleman is recognized for 5 minutes in support of his motion.

Mr. McCLORY. Will the gentleman yield?

Mr. JOHNSON. Surely.

Mr. McCLORY. My principal reason for supporting this paragraph would be because I would like to have that authority vested in the oversight committee. I would not like to make this as a prohibition, but rather to limit the authority of the intelligence agencies with respect to their budget—make them put it all in one budget, or prohibit them from transferring funds. I think if you are going to retain any measure of secrecy, if you are going to continue any secret agencies at all—and maybe we are not going to when we get through with these hearings. But if we are going to continue them, then I think you have to continue to authorize portions of the budget to be spread throughout the overall appropriations and then permit any transfers that are made to be reviewed by the oversight committee. That gives Congress an overview of it and it seems to me—

Mr. ASPIN. Will the gentleman yield?

Mr. JOHNSON. I think maybe I better speak on behalf of my own motion before you people use up all my time.

One of the areas which disturbs me about this whole thing is the availability of slush funds to be transferred back and forth in a way that nobody can keep track of them.

If we decide that surplus funds should be thrown into an account, as one agency has them, that is all right. It is all right if Congress decides that; but this practice of transferring funds back and forth with the approval of the standing committee—and the standing committee, in my judgment, is ultimately not going to wind up operating any differently than the alleged oversight committees have in the past—is going to wind up being continuous.

That is, they will have slush funds and when they run out they will be able to go to the Defense Department or some place else and get funds which the Congress is not aware of having authorized or appropriated for that specific reason.

If you stop the transfer of funds, then you make a specific appropriation for a specific agency. When they come in and say, "This will be our program for the year," then you will be stopping one of the major abuses as I see it.

There is another agency of the Government which we say should have unlimited use of funds. Everybody else has to come up and say, in effect: "We have to have this program and we are going to spend in accordance with the authorization and in accordance with the appropriation, with the exception of this magic system which we find so important to our national security." And I use that in quotes because to me it is unrelated to the national security when you start transferring these funds.

You don't use the slush fund for the intelligence-gathering operation; you use it for the covert operation you are trying to hide. If you want to have an intelligence community that is operating under some system of control, you have to have accountability for their funds. You can't hide them and you can't slide them back and forth.

Mr. GAIAMO. We are talking about reprograming here; aren't we?

Mr. JOHNSON. I don't know whether you are or not.

Mr. ASPIN. I think that is a good question. I think reprograming is something else. Transfer of funds, as I read it here, means transfer from one agency to another agency. In other words, transfer of funds from "Other Procurement, Air Force" to the CIA—not a reprograming within CIA.

Mr. FIELD. We are talking about both. Reprograming and transfer of reserve funds.

Mr. ASPIN. The language doesn't make that clear.

Mr. FIELD. I find difficulty with your proposal.

You are binding agencies and not allowing them to adjust to circumstances that could not have been known at the time fund transfers were made.

Mr. JOHNSON. That is not necessarily so. We do provide excess funds to a specific account, as the gentleman is aware.

Mr. MILFORD. There comes a time when funds have to be moved and moved rapidly in an intelligence situation.

Mr. JOHNSON. Now just a minute. This is my time. Any time you want to move and move rapidly as the gentleman is saying, it is not in an intelligence-gathering operation; it is in a covert operation. The intelligence-gathering funds are known. We know what we need. You are talking about providing funds for somebody down there—higher authority some place, to make a decision to go into Angola, or try to assassinate somebody, or engage in all of these damned covert operations which have been so despicable, and that is where they do it. They use their slush funds which they can transfer back and forth and hide them. In intelligence gathering, they don't need excess funds.

Chairman PIKE. The time of the gentleman has expired.

Mr. DELLUMS. I would like to make a suggestion. Mr. Chairman, given the fact that the language in line 2 of section "F," says, "* * * significant transfer of funds, significant expenditures of reserve, contingency funds"—those are two different items.

What I would suggest that might facilitate debate is that we take these in two parts and discuss the issue of the validity or the lack of validity with respect to transfer of funds. And then we could address the issue "significant expenditures of reserve, contingency funds," which is another matter, and that may allow us to discuss the issue with more precision.

At this point it seems to me there is conflict with respect to what is meant. I would think if we had "F" and "G," and one related to transfer of funds and one related to reserve or contingency funds, the debate may be facilitated and we could vote one up and one down or both of them up or down.

Mr. JOHNSON. I think that is a good point.

Chairman PIKE. I think it is a good point also. I think it might now be appropriate for the staff to state whether they are opposed, as a

matter of principle, to the reprogramming within the intelligence budget from, say, "Intelligence-Navy," to "Intelligence-Air Force," without the approval of the oversight committee. But I think that members of the committee must understand precisely what it is we are talking about. The reprogramming of funds without the approval of the committee. Is that what you are saying?

Mr. FIELD. Mr. Chairman, the reason we used the words "transfer of funds," as you know, is that reprogramming means going between one line item and the next. There is only one line item for CIA today.

Chairman PIKE. If the House, in its infinite wisdom, decided to go along with our prior recommendation and have a line item for Army Intelligence and a line item for Navy Intelligence, would you prohibit transfers by the Defense Department from one to the other?

Mr. FIELD. We are referring to two transfers here: One is the Economy Act transfers and the other is the so-called reprogramming. It is really two. That is another reason we use the words "transfers of funds."

As to the reprogramming, we are thinking of transferring funds from the Deputy Director of Intelligence over to the Deputy Director of Operations, which is covert action; and there are transfers which would ordinarily be line items in a budget but they are not in CIA's. So we would like to address that, along with the Economy Act transfers where Navy may lend CIA a boat and write it off to another agency. We would like that to be reported to Congress as well.

Chairman PIKE. Now, I would like to go back to the gentleman from Colorado and ask him whether his motion is designed to prevent a reprogramming within, say, the Department of Defense—moving money from Navy Intelligence to Air Force Intelligence?

Mr. JOHNSON. Yes, Mr. Chairman. I don't think there is any justification for an adjustment during the course of the year for any of these funds. In other words, what is appropriated for Naval Intelligence and what is appropriated for Air Force Intelligence during the year, I think, is sufficient during the course of the year.

We always provide for a surplus in there. At least we have in one of the agencies; and the transfer of funds back and forth will inevitably go back to the transferring from Defense Department to CIA and so forth. I think transfer of funds is one of the potential areas of abuse.

Chairman PIKE. It is Mr. Dellums' suggestion that this includes parts of the money, and that is valid. We will first vote on Mr. Johnson's amendment to strike the words "without specific approval of the proposed intelligence committee" as it applies to a transfer of funds, and then we will vote on his amendment as it applies to "significant expenditures of reserve"—

Mr. JOHNSON. I would suggest you withdraw the prohibition against "significant expenditures of reserve, contingency funds * * *." That surplus is there for a purpose, and I think a legitimate purpose.

Mr. ASPIN. What Mr. Johnson's amendment does is prevent transfer of funds from one agency to another, but it does not prevent reprogramming with the approval of the appropriate committee.

Mr. JOHNSON. Yes.

Mr. ASPIN. One other question: The language is "expenditures of reserve, contingency funds." That means something very specific in the intelligence community because they have something called the Director's contingency fund.

I can't remember now, but there was something peculiar about the way that operates. For example, reprogramming had to come before the committee or had to go to the Office of Management and Budget, but they could spend money on the contingency fund without going to OMB. Something minor had to be cleared through OMB and the major thing didn't.

Chairman PIKE. There was no restriction of any kind, as I recall, except the Director's seal of approval on the expenditures of contingency funds.

Mr. ASPIN. There is nothing in the law that says he has to report those to Congress.

Mr. McCLORY. Mr. Chairman, I have a motion.

Chairman PIKE. Is it an amendment to Mr. Johnson's motion?

Mr. McCLORY. It is a substitute for paragraph 1 which I think reflects what we have been talking about here. May I state it?

Chairman PIKE. Certainly.

Mr. McCLORY. I move that we amend the paragraph to read:

The select committee recommends there be appropriate legislation to prohibit any significant transfer of funds and, with respect to significant expenditures of reserve or contingency funds in connection with intelligence activities, there shall be no transfers without specific approval of the proposed intelligence committees.

I move the adoption of the substitute. It is what you are talking about and I have put it all in one paragraph.

Chairman PIKE. I would like to ask Mr. Johnson what he thought.

Mr. JOHNSON. No, of course not.

Mr. FIELD. Is the last word "transfers" or "expenditures"?

Mr. McCLORY [continuing].

And with respect to significant expenditures of reserve or contingency funds in connection with intelligence activities there shall be no transfers * * *.

Chairman PIKE. I think what we are bogged down in is a drafting problem. I have to be on the floor at noon. I would suggest that the committee stand in recess until 2 o'clock this afternoon.

Mr. JOHNSON, if you and the staff, and Mr. McClory, if you and the staff, can work out your language so it is available to all the members this afternoon, we will appreciate it.

Mr. JOHNSON. Mr. Chairman, with respect to the meeting this afternoon, we have Angola on the floor; we have a veto override coming on.

Chairman PIKE. Do you not want to have a meeting this afternoon?

Mr. JOHNSON. I would like to meet after those two things are taken care of.

Chairman PIKE. The committee will stand in recess until 10 a.m., tomorrow morning.

[Whereupon, at 11:40 a.m., the committee was recessed, to reconvene at 10 a.m., Wednesday, January 28, 1976.]

DISCUSSION OF COMMITTEE RECOMMENDATIONS RELATING TO PROHIBITION OF FUND TRANSFERS (CONTINUED), DCI AS CABINET RANK, AND FULL GAO AUDIT AUTHORITY

WEDNESDAY, JANUARY 28, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2216, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Dellums, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, counsel.

Chairman PIKE. The committee will come to order.

As most of the members are aware, despite the unanimous agreement of this committee as to our procedures henceforth, when I asked unanimous consent on the floor that the committee have until midnight Friday night to file its report—which consent, you will recall, is necessary only because the House will not be in session on Friday—and until midnight, February 11, to file our recommendations, objection was made by Mr. Bauman. Accordingly, I am going to the Rules Committee this afternoon to ask for a resolution, to be approved by the House, stating exactly the same thing.

That is where we are on that.

The matter before the committee, as I recall, when we recessed yesterday, was a motion pending from Mr. Johnson which, it had been decided, would be better broken into two parts and redrafted.

Do we have the redraft before us at the present time?

Mr. DONNER. I think they are in your book, Mr. Chairman.

Mr. JOHNSON. They are on the page just prior to the page that has the section "F" called Prohibition of Fund Transfers. In my book it was inserted in the page before. It is broken down into three paragraphs.

Chairman PIKE. "Prohibition of Fund Transfers."

Mr. JOHNSON. Yes, sir; it is on the page before that, I believe.

Chairman PIKE. Isn't this the original language?

Mr. JOHNSON. Yes; and there are three separate paragraphs on the page before that in my book.

[The redraft of section "F" follows:]

F. PROHIBITION OF FUND TRANSFERS

1. The select committee recommends there be appropriate legislation to prohibit any significant transfer of funds between agencies or departments in connection with intelligence activities.

2. The select committee recommends there be appropriate legislation to prohibit any significant reprogramming of funds within agencies or departments in connection with intelligence activities without the specific approval of the intelligence committee and/or appropriate committees of Congress.

3. The select committee recommends there be appropriate legislation to prohibit any significant expenditures of reserve or contingency funds in connection with intelligence activities without specific approval of the intelligence committee and/or appropriate committees of Congress.

Chairman PIKE. I see. That is right.

Mr. Johnson, do you want to be recognized now?

Mr. JOHNSON. I spoke about that yesterday, and I believe that the language speaks for itself. It is quite clear.

Chairman PIKE. Mr. McClory, you will recall you had originally moved to adopt this entire section, and if you now have any reservations as to any of these three separate paragraphs—

Mr. McCLORY. I don't have the page you are talking about.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. I question in Nos. 2 and 3 the "and/or"—"without the approval of the intelligence committee and/or appropriate committees of Congress."

Either the intelligence committee has sole jurisdiction over these things or is going to continue the jurisdiction which presently exists, certainly in the Appropriations Committee and probably in the Armed Services Committee.

Now what do you mean by "and/or"? That is sort of loose phrasing.

Mr. JOHNSON. I suppose we should remove the "or."

Mr. GIAIMO. I think you should. Is there a reason why you put in the "and/or"?

Mr. DONNER. We weren't sure how it was going to come out. We know there are concurrent jurisdictions of some of these items, and we were not sure what the committee would finally recommend as far as the future intelligence committee is concerned—whether it would have exclusive jurisdiction or concurrent.

Mr. GIAIMO. Mr. Chairman, if I may be recognized further.

Chairman PIKE. For 5 minutes.

Mr. GIAIMO. Wouldn't it be sufficient for us to make the recommendation that we leave any further rearrangement of House jurisdiction up to the legislative committee that will actually implement this recommendation?

Mr. DONNER. Yes, sir.

Mr. GIAIMO. That also eliminates the problem of having a struggle on the House floor.

Chairman PIKE. So you are moving to leave out the "or," with which Mr. Johnson concurs.

Mr. McCLORY. Mr. Chairman.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I don't know that I necessarily want to move this, but I think we should give consideration to eliminating the other "appropriate committees," if possible. It would certainly be preferable for the intelligence oversight committee to have authority to pass upon

this, without requiring that we involve many other committees. In the first place, we are going to involve at least two, if there are two—one in the Senate and one in the House. We will have two committees, and if we get additional committees involved, it seems to me it is going to be a very cumbersome procedure. So I would suggest for your consideration, at least—with the idea that maybe amendments will be offered on the floor if this gets that far—that we recommend limiting it to the intelligence oversight committee. That is the one that we want to vest authority in, with respect to information and knowledge and approval with respect to transfer of funds—with respect to authorizing perhaps specific activities that may not have been known at the time the authorization or appropriation legislation was enacted.

Chairman PIKE. Well, I would say to the gentleman that essentially I agree with him. I am not going to be in favor of simply adding one more layer of committee oversight. I think that if we don't get some of the present committees to relinquish some of their jurisdiction, we are wasting our time. I think that nothing useful is going to come out of it.

By the same token, I don't think we are going to get all of the committees to give up all of their jurisdiction. I don't think you will get jurisdiction from the Appropriations Committee, for example, nor, as far as the transfer of funds is concerned, do I think you should. I think the Intelligence Committee probably should have to authorize it, and the Appropriations Committee should probably have to appropriate funds also; and my feeling would be it ought to be without the specific approval of the Intelligence Committee and the Appropriations Committee.

Mr. JOHNSON. Mr. Chairman, it would seem to me that the "appropriate committees of Congress" would be the proper language, because we don't know whether or not the Congress will say that the CIA, or whoever, still has to come back to report to the Foreign Affairs Committee of the Senate and the International Relations Committee of the House. So it seems to me that whoever is going to have continuing jurisdiction over the intelligence programs should be involved in these kinds of decisions.

If it only turns out that there is one committee, a standing committee, and then the Appropriations Committee, why that would be all. But if we have continuous reporting requirements to the other committees, they should be involved with these kinds of decisions.

I think that should be recognized.

Chairman PIKE. Does anybody have any objection to paragraph 1 of that draft?

Without objection, it is tentatively approved.

Does anybody have any objection to paragraph 2 of that draft modified or amended by striking out the slant sign and the word "or"?

Without objection, it is tentatively approved.

Does anybody have any objection to paragraph 3 of that draft, as amended by striking out the slant sign and the word "or"?

Without objection, it is tentatively approved.

We will go on, then, to recommendation "G," "DCI as Cabinet Rank."

[The staff draft of recommendation "G" follows:]

G. DCI AS CABINET RANK

1. The select committee recommends that the office of the Director of Central Intelligence be accorded Cabinet rank, to be nominated by the President and subject to confirmation by the Senate. This office shall have the following powers and duties:

a. The DCI shall be the chief foreign intelligence officer of the United States, and shall be responsible for the supervision and control of all agencies of the United States engaged in foreign intelligence.

b. The DCI shall be a member of the National Security Council.

c. The DCI may not hold a position or title with respect to any other agencies of Government.

d. The DCI shall, along with such other duties, constitute an Office of Inspector General for all of the foreign intelligence agencies, including other agencies of Government or branches of the military which have foreign intelligence functions. Such agencies shall have the obligation to report all instances of misconduct or allegations of misconduct to the DCI. This shall not constitute a limitation upon the respective agencies reporting to the DCI from maintaining their own Inspector General staff or similar body.

e. The DCI shall have an adequate staff for the purposes expressed herein and be responsible for the national intelligence estimates and daily briefings of the President.

f. The DCI shall be responsible for the preparation of the national intelligence estimates and such reports shall be immediately supplied to the appropriate committees of Congress.

g. All budget requests shall be prepared by the agencies under the jurisdiction of the DCI. As to those parts of budget of the military services or components of Department of Defense, they shall be submitted as an independent part of such budgets to the DCI.

h. The DCI shall be charged with the functions of coordinating foreign intelligence agencies under its jurisdiction, the elimination of duplication, the periodic evaluation of the performance and efficiency of the agencies in question, and shall report to Congress on the foregoing at least annually.

i. The DCI shall conduct a comprehensive inquiry into the causes of intelligence failures, including: inadequate collection tasking; analytical bias; duplication; unusable technical output; excessive compartmentation; and withholding of information by senior officials, and report to the committee on intelligence within one year.

Chairman PIKE. Does the staff wish to be heard on that? Or any members?

Mr. Aspin?

Mr. ASPIN. Mr. Chairman, this one I think is probably one of the most important recommendations that we are going to have in all of the things that we are discussing. It is important because one of the problems that we uncovered in our hearings was the intelligence product—how good the intelligence product is, and what can you do about it?

One of the things that you can do about it is to try and restructure the intelligence community in a few specific ways which would help to improve the intelligence product, and the splitting of the DCI from his job as the head of the CIA is, I think, a very, very important recommendation.

Right now, the DCI is the head of the CIA. They are the same thing. Mr. Colby is both the DCI and the head of the CIA. It doesn't work very well for a number of reasons.

No. 1, Mr. Colby is just too busy. He is the head of the CIA, so he has to be in charge of running that Agency. Because the CIA is in charge of covert operations, he is also involved very heavily in whatever is going on in covert operations with all of the flap potential that that can create. So he is spending a lot of time on covert operations.

He is also the chief intelligence figure for the administration, which means he attends a lot of meetings within the executive branch and comes up and testifies before Congress as being the spokesman; and on top of that, he is also the DCI—which means that he is supposed to coordinate the budgets of all these other agencies and help to create a combined budget for the agencies.

It is just too much for one person to do, and clearly the DCI's job is a job that ought to be separated from the head of the CIA. I think it is one of the most important recommendations that we could possibly be coming up with.

I would like, Mr. Chairman, though, to focus on a couple parts of it, because I have a different version of it.

If I could direct people's attention toward the back of the book where some of my alternative recommendations are, there is one on the DCI. It is a little bit different from the recommendation for the DCI which the staff has.

Let me say I think there are three essential decisions that have to be made.

Chairman PIKE. Just for the benefit of the members, is this your recommendation with a roman numeral X?

Mr. ASPIN. That is the one, roman numeral X, just behind the reference.

[Mr. Aspin's alternative recommendation "G" follows:]

X. THE DCI

A true Director of Central Intelligence shall be created separate from any of the operating or analytic intelligence agencies for the purpose of coordinating and overseeing the entire intelligence community with a view to eliminating duplication in collection and promoting competition in analysis. The DCI shall be nominated by the President with the advice and consent of the Senate.

The DCI shall be a member of the National Security Council and shall chair the NSC's Foreign Intelligence Subcommittee.

The DCI shall be the chief foreign intelligence officer of the United States.

The office of the DCI shall comprise the current National Intelligence Officers, the intelligence community staff, the IRAC and such other existing agencies or committees as the President shall direct.

The DCI shall prepare national intelligence estimates for use of the executive and such other reports and studies as shall be directed by committees of the Congress.

The DCI shall present an annual intelligence budget to Congress. The budgets of the independent intelligence agencies shall be prepared under the direction of the Office of the DCI; the budgets of other agencies (service intelligence operations, INR, ERDA's intelligence arm) shall be presented as part of their parent agencies' budgets after being coordinated through the office of the DCI. The DCI shall fully inform the appropriate committees of Congress of the full details of those budget components as part of the committees' ongoing oversight functions.

The DCI shall be analogous in many ways to the chairman of the Council of Economic Advisers in that he will, at one and the same time, be close to the President as a White House official and yet answerable to Congress by virtue of his confirmation by the Senate.

Mr. ASPIN. There are three essential questions that I think we have to decide about this DCI and what kind of DCI we want to have. The first one is do you want to make the DCI a Cabinet rank? The recommendation that we have before us done by the staff does make the DCI a Cabinet rank. The recommendation that I had leaves it up to the discretion of the President as to whether he wants his DCI to be Cabinet rank or whether he wants him to be a sub-Cabinet figure. That is the first question.

The second question—and this is a question which has been at the heart of the intelligence debate for years—is how much centralized authority should that DCI have? It is a debate that has gone on for years and years. There is a faction that has said over the years that we really should have a very heavily centralized DCI—somebody who really is the czar over the intelligence agencies, who is in charge of all the resources and who really runs it.

The second point of view is that you really want to have a decentralized intelligence, that you want to have some competition, that you don't want to have a czar.

The advantage of a czar is that he eliminates duplication and can better control resources. The advantage of decentralization is that you have various other people and are able to have some competition in the analysis, and you are not stuck with one set of analysis, you have competing analysis. It is a debate that has gone on for a very, very long time. That is a matter that has to be decided.

I think the recommendation from the staff is that we have a DCI who is fairly heavily centralized. The recommendation that I had made is a little less centralized.

The third question that should be decided—or that the office of DCI raises and the recommendations raise—is what is the relationship of that DCI to Congress? Does Congress have full access to the DCI, or does the DCI work for the President only?

I don't think the versions that the staff has and that I have differ very much on that. The version that the staff has says, in effect, that any report that the DCI—

Chairman PIKE. The time of the gentleman has expired. Does anybody want to ask unanimous consent to yield time to Mr. Aspin?

Mr. GLAIMO. I do.

Chairman PIKE. The gentleman is recognized for an additional 5 minutes.

Mr. ASPIN. I thank the gentleman. I need only 1 or 2 more minutes to explain.

On the question of Congress access to the DCI, the staff recommendation here has a provision whereby Congress has access to all reports the DCI sends to the President. The way I wrote it was that Congress can also levy requirements on the DCI. They don't automatically get the same reports going to the President, but Congress can also ask the DCI for recommendations.

Those are the three areas, and if we want to discuss it a little, I would eventually like to make some motions.

Those are the three areas. Do you want, a DCI who is Cabinet rank? How centralized an authority do you want the DCI to have? And, No. 3, what is the relation of that DCI to Congress?

Chairman PIKE. Mr. Aspin, I think you very properly put this in perspective.

I will lead off with my own views on one subject. I don't think that I want the DCI to be a member of the Cabinet. It seems to me that if we are first going to split it from covert actions, the DCI is going to wind up with somewhat less immediate jurisdiction than he has at the present time. And again, it seems to me that the difficulties of Congress in getting access to intelligence would be enhanced if we increased his role, rather than ameliorated if we increased his role.

The history of this committee has been—and this may not be a reasonable analogy—that we have had somewhat more difficulty getting access to information from members of the Cabinet than we have from those who are not members of the Cabinet. I do not think that this is necessarily what would happen in the future, but it certainly is our track record. And I think there does come a point at which further increasing the authority of the possessor of the facts is going to make it more difficult for Congress to get at the facts, rather than less difficult for the Congress to get the facts.

That is all I want to say.

Mr. MILFORD. Will the Chair yield?

Chairman PIKE. Yes.

Mr. MILFORD. Did I understand the Chair to say we are separating the DCI from covert activity?

Chairman PIKE. I gather that is some portion of Mr. Aspin's recommendation. Am I not correct, Mr. Aspin?

Mr. ASPIN. The way it is now the DCI is the same person as the head of the CIA, so right now he is not separated. So what you would do is make another person the DCI and have two people—one person the DCI and one person the head of the CIA.

The DCI would not be entirely separated from covert action, according to both the staff's recommendation and the recommendation I had. The DCI would still be involved in deciding whether a covert action goes ahead. He would not be the immediate boss of the action the way he is now.

Chairman PIKE. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, I feel in order to get the most efficient and most economical, the most accountable intelligence community, we are going to have to repose principal authority and responsibility in the executive.

I think for us to do anything which would impair or limit the control of the executive and of the President, primarily, and undertake to have the Congress somehow be clothed with authority to administer the intelligence community, in any respect, wouldn't work. It would be perhaps an overreaction with regard to those relatively few abuses that have occurred during the long 27- or 28-year history of the CIA and other intelligence agencies.

I tend to support at least the Murphy Commission report. I am not sure about the Rockefeller Commission at this point, but it was my feeling that we should have the Director of Foreign Intelligence, if that is what we are going to call him—and I think it would be good to change the title and refer to it specifically as "foreign intelligence" instead of "central intelligence"—the Director of Foreign Intelligence should be in a position to be very close to the President.

I think we should give serious consideration to directing that this be a Cabinet post so that we know that that relationship is going to be such that the President cannot avoid accountability—any President in the future—and that the President, at the same time, will have ready and immediate access to the best intelligence at the very top with respect to the extremely important and sensitive policy decisions that he ultimately is required to make.

I think this other provision which is in the staff recommendation—I guess it comes next and is part of Mr. Aspin's, the Inspector Gen-

eral authority under the Director of Foreign Intelligence—is likewise the kind of authority that we want to insist upon. That way, in the first instance, we could see that responsibility and accountability is reposed in the place where I think it should be—in the agency that is going to be administering, and this is the executive department of our Government.

Mr. JOHNSON. Will the gentleman yield on that?

Mr. McCLORY. Yes.

Mr. JOHNSON. I think the gentleman is correct in saying that we have to pinpoint the responsibility with the President. It seems to me, though, that we are talking about elevating the head of the intelligence community to a Cabinet post and that may be placing undue emphasis on it. It may be creating a conflict between the head of the DCI and to the Assistant to the President for National Security Affairs.

I don't really know what the position of the President is in relation to the assistant to the President on a formal basis; but informally we know that in the past that individual has had more access to the President than any other person, and we may be duplicating that role by placing this person in a Cabinet post without trying to consider the relationship between those two jobs.

Mr. McCLORY. It would not be my intention that we should do that.

Mr. MILFORD. Would the gentleman yield?

Mr. McCLORY. Yes.

Mr. MILFORD. Is the position of assistant to the President a statutory position, or is this a position that Presidents can change at will from time to time?

It seems here that we may be writing in a position that doesn't exist.

Mr. McCLORY. I am not aware. I don't think the Assistant to the President for National Security Affairs is a statutory post.

Mr. MILFORD. Then the question that comes to my mind is whether we should be—

Mr. ASPIN. It is one of the few that is.

There are several ways to do it. For example, there are assistants to the President which are not in the statutes. There are assistants to the President which are in the statutes. The Assistant to the President for National Security Affairs is statutory. There are assistants to the President who are not confirmed—which is most of them—and assistants to the President who are confirmed, such as the head of the Council of Economic Advisers, and things like that.

There are certain ones that are confirmed and certain ones that aren't, and I think we have a choice how we can do it.

The way I had envisioned it, as opposed to having a Cabinet officer, would be to have this person more like the Chairman of the Council of Economic Advisers, who is essentially an adviser to the President but is still at the call of the Congress to come up and testify.

The head of the Council of Economic Advisers does respond to the President, and to any call from Congress to come and testify; but he is on the President's staff, and he is subject to confirmation.

There are various gradations of this thing, and the thing I think you want—if you have a DCI who is not a Cabinet rank, but is some other kind of official—is to make sure Congress has access to him in hearings.

Chairman PIKE. The time of the gentleman from Illinois has expired.

Mr. TREEN, did you want to be recognized?

Mr. TREEN. Yes.

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. TREEN. I wanted to ask one question, and then I will yield to Mr. McClory.

Under the 1947 act which set up the CIA, wasn't this the purpose really—that he was supposed to be a coordinator of intelligence activities? I don't think there was anything in the act, itself, which at least expressly gave operational authority.

Mr. Aspin, is that correct?

Mr. ASPIN. That is absolutely true; yes.

Mr. TREEN. So essentially what some of us are suggesting is that we do what Congress thought it was doing in 1947; is that correct?

Mr. ASPIN. I think that is right.

Chairman PIKE. If the gentleman would yield, it is my view that the Congress did do in 1947 what it intended to do, and that over the years the Central Intelligence Agency has taken the language in the act—and I may not be quoting it precisely—"and such other intelligence activities affecting the National Security as the National Security Council may from time to time direct," to justify the whole realm of operations.

That is the only statutory language which they ever rely on for their covert operations.

Mr. TREEN. One other question that I have: What is the import of saying that the DCI is a member of the Cabinet or he isn't?

Is it a word of art that you are a member of the Cabinet? Are we talking about Cabinet level in terms of pay or the Cabinet, itself? What is the significance of whether he is Cabinet level or not?

The Director of the Veterans' Administration is not a member of the Cabinet, yet he has the largest agency in Washington. What is the importance of it?

Mr. McCLORY. If the gentleman will yield, it is important in this respect: When the President has a meeting with his Cabinet, he has the members of the Cabinet there, and, of course the Secretary of the Department of Defense and the other secretaries—the Secretary of State and others—who are involved in the daily policy affairs of the Nation are there; and this person, who is the head of the intelligence community, is likewise there to keep the President and others fully and currently informed.

Mr. TREEN. Well, if he wants to have him there, whether we call him in the colloquial sense a member of the Cabinet or not, is not important, is it?

Mr. McCLORY. The members of the Cabinet are relatively close to the President, and they must be confirmed by the Senate.

Mr. TREEN. Let me pose this question: Is the term "Cabinet" a word of art? Does that by itself signify something?

Mr. ASPIN. Yes.

Mr. TREEN. I yield the balance of my time to Mr. McClory.

Mr. McCLORY. That is a recommendation of the Murphy Commission, as well.

As I look at the specific recommendations, I feel they are excellent. They are very thoughtfully and carefully put together, including the authority for the Inspector General, and also the paragraph that would repose responsibility for daily intelligence estimates going to the President—which is something I think we should insist upon in our recommendations, and which, of course, can prevent the President's not being fully advised of the intelligence decisions.

Chairman PIKE. Would the gentleman yield? Mr. Treen, I guess, has the time.

Mr. TREEN. Yes.

Chairman PIKE. Let me make sure, Mr. McClory, that we understand what we are saying here. I think I agree with you, but I am not sure you do.

You say in the staff recommendations the DCI may not hold a position or title on any other agencies of Government.

Does the staff not mean that the DCI may not be the head of the CIA?

Mr. FIELD. Yes; that is correct.

Mr. MCCLORY. That is the way I understand it. I want it that way.

Chairman PIKE. Good; I want it that way, too.

Mr. ASPIN. Would the gentleman yield?

Mr. TREEN. Yes.

Mr. ASPIN. I think with regard to the question about whether it is a Cabinet rank or not, a Cabinet rank does have certain kinds of prestige connected with it in the executive. A person who has a Cabinet rank has greater prestige. It also means confirmation by the Senate, and it also means that any member of the Cabinet, of course, is subject to being called before a congressional committee.

Mr. TREEN. What committee, incidentally, would have the confirmation process under your proposal?

Mr. ASPIN. I suppose the intelligence committee of the Senate if it were set up, is the way it would probably work. Right now, confirmation of the DCI is the same as the CIA, and that is in the Armed Services Committee in the Senate.

Chairman PIKE. The time of the gentleman from Louisiana has expired. Does anybody else wish to yield time?

Mr. HAYES. Yes; I will.

Chairman PIKE. Mr. Hayes is recognized for 5 minutes.

Mr. HAYES. I yield my time to Mr. Aspin.

Mr. ASPIN. I don't think it is a major point. The other two are more important: How centralized should it be, and the access of Congress—whether it is Cabinet rank or whether it isn't?

My proposal was not to suggest specifically that it be a Cabinet rank, but that the President could have it Cabinet rank if he desired. My concern was to make sure that the Senate confirms this person—whoever the DCI is—and by that very process that the DCI be subject to call of the congressional committees. I think there is some advantage in not having it a Cabinet rank, but I agree with some of the things Mr. Johnson is saying about potential conflict—that if we write in a special Cabinet rank, there would be potential conflict with the Secretary of State or other kinds of things.

Mr. JOHNSON. Secretary of Defense.

Mr. ASPIN. Yes. You already have two Cabinet officers involved in foreign policy.

Chairman PIKE. If there are no further requests for time, Mr. McClory, since you like the staff draft as it has been submitted—and I like most of it other than the Cabinet rank proposal—why don't you move the adoption of such portion as you wish or the whole thing, if you wish.

Mr. McCLORY. I move the adoption, as a recommendation of this committee, Mr. Chairman, of paragraph "G," subparagraph 1, and then subparagraphs "a" through "h," inclusive.

Chairman PIKE. And there is an "i" on the next page.

Mr. McCLORY. And including subparagraph "i."

Chairman PIKE. Then Mr. Aspin, if you want to be recognized for substitutes to any parts of it or amendments, let's proceed in that manner.

Mr. ASPIN. Let me first make an amendment that we substitute that first paragraph, after No. 1—"The select committee recommends that the Office of Director of Central Intelligence be accorded Cabinet rank, to be nominated by the President and subject to confirmation by the Senate"—that sentence be replaced by the first paragraph on my recommendation sheet:

A true Director of Central Intelligence shall be created separate from any of the operating or analytic intelligence agencies for the purpose of coordinating and overseeing the entire intelligence community with a view to eliminating duplication in collection and promoting competition in analysis. The DCI shall be nominated by the President with the advice and consent of the Senate.

Chairman PIKE. That is roman numeral X again.

Mr. ASPIN. Yes, just the first paragraph to be substituted for the first paragraph of the committee recommendations.

Mr. McCLORY. Would the gentleman yield?

Mr. ASPIN. Yes.

Mr. McCLORY. Would you agree to the word "foreign" being inserted between "entire" and "intelligence"—"the entire foreign intelligence community"?

Mr. ASPIN. Yes; that would be fine.

Mr. TREEN. Would the gentleman yield?

Mr. ASPIN. Yes.

Mr. TREEN. What is the importance of your word "true," where you say "a true Director"?

Mr. ASPIN. All right; strike the word "true."

Mr. TREEN. I wouldn't want to imply the one we have isn't honest. I think he is.

Mr. ASPIN. No, the word "true" means that it be a real Director of Central Intelligence as opposed to a hybrid—doing two jobs.

Chairman PIKE. Strike the word "true."

Mr. ASPIN. Yes.

Any other change like that I would be happy to entertain.

Chairman PIKE. The question is on the amendment of Mr. Aspin.

Mr. TREEN. Mr. Chairman.

Chairman PIKE. Yes, Mr. Treen.

Mr. TREEN. Are we, in the substantive paragraphs, limiting his budget functions to foreign intelligence functions? Maybe we are.

Chairman PIKE. Let's take it one at a time.

Mr. TREEN. We are now voting to insert the words "overseeing the entire foreign intelligence community," and I am wondering, does that correspond with his budget functions?

Mr. ASPIN. Let's leave "foreign" in here now, but we are going to have to make that decision later.

Chairman PIKE. The question is on the motion of Mr. Aspin. All those in favor of the motion, signify by saying aye. Contrary; no.

The ayes appear to have it, and the amendment is agreed to.

Mr. ASPIN. Mr. Chairman, there are three issues altogether. Let me go to the second issue.

Chairman PIKE. Go ahead.

Mr. ASPIN. If you look on the staff draft recommendations "a" and "g," "a" says:

The DCI shall be the chief foreign intelligence officer of the United States, and shall be responsible for the supervision and control of all agencies of the United States engaged in foreign intelligence.

And then "g" says:

All budget requests shall be prepared by the agencies under the jurisdiction of the DCI. As to those parts of budget of the military services or components of Department of Defense, they shall be submitted as an independent part of such budgets to the DCI.

Here is the second issue—centralization. How much power do you want this DCI to have? And I think here our draft is a little vague.

Point "a" seems to be setting up a DCI who is a czar, and the second sentence of point "g" maybe is backing away from it.

I would like to ask the staff if they could clarify what controls.

In section "a" we set up a chief of foreign intelligence who is responsible for supervision and control of all agencies of the United States engaged in foreign intelligence, and over in "g" all budget requests shall be prepared by the agencies under the jurisdiction of the DCI. But then you say:

As to those parts of budget of the military services or components of Department of Defense, they shall be submitted as an independent part of such budgets to the DCI.

My question is: In your view, does the DCI have control over all foreign intelligence budgets—absolute control? In other words, are they the last authority? Or, in the case of the intelligence within the Pentagon, are those budgets under the jurisdiction of the Secretary of Defense?

Mr. DONNER. I understand your point, Mr. Aspin. The question really is, though, that we assumed that the Defense Department would remain in its present structure, and I have to agree with the point that you have made.

However, we assumed that, because he was the head of an agency, the components of the agencies under the jurisdiction of the DCI would submit their budget requests or budget recommendations to this DCI, and, in effect, just as an administrative process in the assembling of the foreign intelligence budget, it would be submitted to that officer. That was the purpose.

Mr. ASPIN. Would he have final authority over it?

Mr. DONNER. Yes.

Mr. ASPIN. In other words, if you have, for example, let's say the Office of Naval Intelligence, and they are doing their budget, does their budget go to the DCI for approval under your proposal, or does it go up through the Navy chain?

Mr. DONNER. It goes to the DCI, because it would be assumed he would then have the ability to coordinate possibly overlapping parts of budgets of various components and to also work within certain budgetary limitations.

Mr. McCLORY. If the gentleman will yield.

Mr. ASPIN. Before I yield, let me point out that this is the nitty-gritty. This has been an enormously hard-fought issue over the years, as to where the budgets for the intelligence of the services should lie; and the question before this committee, I think, is do we want the DCI to be the czar in the sense that he shall have final authority over service budgets, as well as over the CIA budget? Or should he have a coordinating function, which is a much looser arrangement?

In other words, the service budgets would still go up through the service, but the DCI, working with OMB, could lean on people and try to eliminate duplication—a much looser arrangement—or should he have more control?

That is the issue before the committee; and the way Mr. Donner explained it and the way I read it, they are recommending a very tightly centralized system, and the screams of anguish are going to be very loud. I mean that is a tough one. It is very tough.

Mr. McCLORY. Would the gentleman yield?

Mr. ASPIN. Yes.

Mr. McCLORY. I realize that through this new office we are reposing a great deal of responsibility, likewise a great deal of accountability, in one individual, and I think that is the way we want it to be. At the same time, we are emphasizing that we want this entire function, no matter how widespread, to be under civilian control.

That is why I think it is important, even if it seems repetitious, to indicate that with regard to those parts of the military budgets which relate to intelligence we want them to come through the DCI.

The initial briefing that I had from the Library of Congress with respect to the overall operation of the intelligence community convinced me that there exists at the present time a circumvention of civilian control with regard to military intelligence activities. I don't think we want that to continue, and I think that is one reason why we have a breakdown; that is one reason we have duplication—too much intelligence, so that it is impossible to analyze and utilize it all—and a further reason that we are not getting good accountability and good dollar value for the intelligence that we are paying for.

That is why I think even repeating it and putting it all under this one umbrella is a very sound and very important recommendation.

Chairman PIKE. The time of the gentleman has expired.

I recognize Mr. Giaimo.

Mr. GIAIMO. I yield to Mr. Aspin.

Chairman PIKE. Just as a matter of procedure, we still have before us Mr. McClory's basic motion to approve the staff recommendations,

as amended. I would suggest if you have another amendment, now is the time to produce it.

Mr. ASPIN. All right; let me offer another amendment and give arguments both for and against it and see which way you want to go.

Chairman PIKE. Your enthusiasm overwhelms me.

Mr. ASPIN. The amendment I have would replace in the staff draft here letter "a"—these are the subsections, little "a" and little "g"—those two things relating to the power and the budget authority, with a statement, again going back to the sheet at the back of my recommendation X on the DCI. It is the fifth one down of the dashes, and it says:

The DCI shall present an annual intelligence budget to Congress. The budgets of the independent intelligence agencies shall be prepared under the direction of the Office of the DCI: the budgets of other agencies (service intelligence operations, INR, ERDA's intelligence arm) shall be presented as part of their parent agencies' budgets after being coordinated through the office of the DCI. The DCI shall fully inform the appropriate committees of Congress of the full details of those budget components as part of the committees' ongoing oversight functions.

Those are the two choices. The one choice is to put the DCI in charge of the budgets of everything, which is what the staff recommendation does. My alternative here would give the DCI a coordinating function. He would report to the Congress on the overall budget. He would be coordinating it and he would work with OMB to eliminate duplication, but he would not be in charge.

Let me give the argument for both sides. The argument in favor of a centralized budget is clearly that you have to have one person in charge of the whole thing, and you want that person to run the thing and be able to eliminate duplication—eliminate the waste and the problems—and in order to do that, he has to be in charge of the budget. And there is nothing like being in charge of the budget to make people pay attention to what you are doing. You really have to have one person in charge; otherwise, it is a mess.

The other side—and the services will make this argument very strongly—is that the services have intelligence needs other than the concerns of the DCI. They have tactical intelligence needs, and they need tactical intelligence, and if you have a DCI controlling all the budgets and the budget squeezes come, the attention of the DCI is not going to be concentrated on the tactical need of the service. It will be national, and they will start squeezing the tactical budget, and they will get short shrift because the DCI really is concerned with national issues.

In order to preserve their tactical intelligence, the services will argue heavily that they should continue to be able to budget their intelligence through the Defense Department budget, with a coordinating input from the DCI rather than a controlling input from the DCI.

Mr. JOHNSON. Would you yield?

Mr. ASPIN. Yes.

Mr. JOHNSON. The difference between tactical and foreign intelligence, as I would see it, would be about the same difference that you would find for tactical as opposed to strategic. I bet you the staff wasn't thinking about tactical intelligence here, were you?

Mr. DONNER. Yes; we were.

Mr. JOHNSON. You were thinking about it.

Mr. DONNER. Yes.

Mr. JOHNSON. I can see where the tactical intelligence is something that should obviously come under the Defense Department; but when you are talking about the foreign intelligence activities that are more national in scope, I don't see why it shouldn't come under the DCI in the budget preparations so he can coordinate the various armed services' intelligence gathering.

Mr. ASPIN. Yes.

Mr. JOHNSON. Can't we define that?

Mr. ASPIN. It is hard to.

Mr. HAYES. Will you yield a moment?

Mr. ASPIN. Yes.

Mr. HAYES. I don't know, Mr. Johnson, where the obvious logical break is between tactical and strategic. It seems to me in the course of the hearings we have seen how they intermesh, and that bad tactical intelligence and the effort to give it dignity and truth and make it the light, all of a sudden overwhelms the other intelligence estimates that are being made.

If we want to believe a lot of the witnesses or even if we don't, we can admit that those possibilities do exist.

Mr. MILFORD. If the gentleman will yield.

Mr. ASPIN. I yield to the gentleman.

Mr. MILFORD. I am with you until we get to the last sentence: "The DCI shall fully inform the appropriate committees of Congress of the full details of * * *"

I am wondering if the gentleman would be willing to strike the words "appropriate committees of Congress" and insert in lieu thereof "the permanent committee on intelligence"?

Mr. ASPIN. I do mean the permanent committee on intelligence, if that is what we have at that point.

Mr. MILFORD. That should be made clear.

Chairman PIKE. The time of the gentleman from Wisconsin has expired.

I would like to express my own views first.

I am going to go with Mr. McClory on this, and I am going to go for the overall control of all intelligence.

First of all, I don't believe for a minute that any Director of Central Intelligence is going to be either unaware of or indifferent to the tactical intelligence needs of the services. It seems to me that, as it would work out in practice, in all probability he would pretty much take the services' recommendations in that regard.

But I think today, theoretically, we have this kind of coordinating effect, not just through the DCI, but through the Office of Management and Budget, and it hasn't worked. The coordination has been there in theory, but it hasn't worked, and I think it hasn't worked because there hasn't been the proper kind of responsibility and accountability in one person for the intelligence budget.

I think that the staff position is right. I think that if we don't do it this way, what you will see is no cut whatsoever in these huge intelligence outlays. There will be a wholesale flight of missions from foreign intelligence or strategic intelligence to tactical intelligence.

What they are calling strategic intelligence today they will call tactical intelligence next year, and the missions will fly around to follow the dollars. So I think we must have a tough, coordinated line of responsibility, and it is a shock and a delight for me to be able to say I agree with the gentleman from Illinois.

Mr. HAYES. Mr. Chairman.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Just a question, if you will yield for one, in regard—

Chairman PIKE. I am through. You have the time.

Mr. HAYES. I simply wanted to ask a question of you in regard to your statement about coordination. Do you think that, by establishing this one central figure, we could possibly diminish the possibility of something that we have seen happen—which I think has been a relatively healthy thing without making a judgment on the fact—and that is that the Secretary of Defense, as far as his ability to participate in policy estimates and using intelligence gathered probably through his offices, can be diminished and perhaps on the negative side? In other words, we have a kind of—

Chairman PIKE. Would the gentleman yield?

Mr. HAYES. Yes.

Chairman PIKE. I think it has been a very real problem, and I think one of the things that we ought to make quite clear is that intelligence which is gathered by the Director of Central Intelligence shall, without question, be made available to the Secretary of Defense and the Secretary of State. I think that has been a problem, and I think the business of the Director of Central Intelligence withholding intelligence from members of the Cabinet is absolutely bad.

Mr. ASPIN. Would the gentleman yield?

Mr. HAYES. Yes.

Mr. ASPIN. Now that the chairman has taken one side of the argument, that means I can take another side.

Let me put forth the alternatives just to make sure everybody has a chance to consider how they want to vote on it.

First of all, the danger that will be raised by people who oppose our heavily centralized DCI is that there is too much control in the hands of one person; that when you put too much control in the hands of one person, you run the risk that intelligence is going to be biased. And the nice thing about having lots of competing centers is they will argue yes, there is going to be some waste, and yes, there is going to be some duplication, and yes, some overlap, but that helps build in a little protection because they may not all come to the same conclusion.

If you have a DCI in charge, and he is running it and he can fund this guy and not fund that guy, he is going to start funding the people he agrees with and not funding the people he doesn't, and eventually you will get only one source of intelligence. That issue will be raised.

The second point is that, yes, coordination has not worked, as the chairman has suggested; but it has not worked because it has not been tried, and the reason it has not been tried is because right now the DCI is also the head of the CIA—which means Mr. Colby spends most of the time worrying about CIA and covert action, coming to Congress and testifying, going to meetings—and he doesn't have the

time to do the coordinating function which the DCI is supposed to do. And that is part of the reason for this separation.

If you have a person whose job it is to coordinate, and who can work with OMB to coordinate, you can get a lot more coordination and more elimination without the necessary centralized control. That is the point on the other side.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

I guess we have a new line up, because I am going to split with Mr. McClory on this and go with Mr. Aspin.

Mr. HAYES. Aspin one, or Aspin two?

Mr. TREEN. Aspin two.

The basic motion in the staff draft in subsection "g" apparently means that the Secretary of Defense should be bypassed altogether. The budget would be prepared at the service levels, somehow separating out the intelligence part of that budget, and then instead of going through the Office of the Secretary of Defense it would go directly to the DCI; and if that is what it means, I think it would be very, very counterproductive for the Office of the Secretary of the Defense at the top not to be able to see the budgets that are coming out of the different services.

I would think at a very minimum, if these budgets are going to go to the DCI for presentation—that is, the preparation will be done at the intelligence level in the Defense Department, INR and ERDA, and so forth—they should go up to the top of that particular agency before they come to the DCI for presentation.

But even further, I prefer the language as proposed in Aspin No. 2, because I think you are going to have a great deal of difficulty separating out your assets that are related to intelligence and those that are not, particularly in the military.

I think the same is going to be true with ERDA, although I am not at all familiar with the operations of ERDA. But to cause these agencies to have to go through the budget and say this is intelligence and this is not—we have to do it this way because it is going to be presented by someone other than our agency—I think you cause a great deal of practical problems.

I think that what most of us want to accomplish—which is to have one person with oversight over the entire intelligence budget—can be accomplished through the coordination language in Mr. Aspin's No. 2, which we might strengthen; and, second, by the fact that the coordinator—in this instance, the DCI—would be subject to being called as a witness by the various committees that are considering the budgets of the Pentagon, ERDA, INR, State Department, and so forth. So I very strongly would support Aspin No. 2.

Mr. ASPIN. Would the gentleman yield?

Mr. TREEN. Yes.

Mr. ASPIN. Just to respond to a question that Mr. Milford raised earlier, Mr. Chairman—which I didn't have a chance to answer because I ran out of time—about the appropriate committees of Congress. If we do set up an intelligence committee, that would be the appropriate committee.

It is understood that the standing intelligence committee would be either a joint intelligence committee or intelligence committees of the House and Senate, which would be the appropriate intelligence committees when we get to that point in the recommendation where we set that out.

Chairman PIKE. Mr. Treen, would you yield to me briefly?

Mr. TREEN. Yes.

Chairman PIKE. I would like to say that I would agree with you that the budgets of the various departments of the Department of Defense—the Army, Navy, Air Force—should first be coordinated through the Office of the Secretary of Defense, but should then, as to the intelligence budget, be forwarded to the DCI for approval. I am talking about authority. I would certainly not bypass the Secretary of Defense.

Mr. TREEN. Subsection "g" doesn't enlighten us on that.

Chairman PIKE. Well, I am trying to establish a little legislative history here.

Mr. BOOS. Mr. Chairman, I might point out that is what the staff had in mind—that the budget for the Navy, for example, would go all the way up to the Secretary of Defense. He would isolate the intelligence portions and refer them to the DCI.

Chairman PIKE. If the gentleman would yield further: The problem, as we have seen, is that they just don't list things in the Department of Defense budget, which we know perfectly well are intelligence, as intelligence. Huge expenditures which have no purpose other than intelligence just never show up.

Mr. TREEN. Aren't there lots of assets used for intelligence?

Chairman PIKE. Yes; and that is why I started off yesterday saying that we are going to have to define what is the gathering of intelligence. I offered the suggestion that any mission, more than half of the purpose of which is to gather intelligence, would be defined as intelligence gathering. It is going to be arbitrary and somewhat clumsy, but you know the missions I have in mind—those which utilize vehicles which have no other purpose, which are built to gather intelligence and are used to gather intelligence. Those never show up in the budget.

Mr. TREEN. I think there are a lot of other assets.

Chairman PIKE. I agree that some of the decisions will be arbitrary. Are we ready for the question? The question is on Mr. Aspin's amendment to Mr. McClory's motion.

Mr. TREEN. Are just "a" and "g" involved?

Mr. ASPIN. Yes. My language substitutes for "a" and "g."

Mr. TREEN. You don't want to make them separate?

Mr. ASPIN. It is more or less the same thing. What I am trying to say is to take out section "g" in the staff draft and replace it with the section I have in my draft, the first line of which is: "The DCI shall present an annual intelligence budget to Congress."

Chairman PIKE. The question is on the motion of the gentleman from Wisconsin. All those in favor of the motion, signify by saying aye. Those opposed will say no.

The noes appear to have it.

Mr. TREEN. I request a record vote.

Chairman PIKE. A record vote is requested. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Murphy.

[No response.]

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. No.

The CLERK. Mr. Lehman.

Chairman PIKE. Mr. Lehman votes no by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Chairman Pike.

Chairman PIKE. No.

Mr. DELLUMS. Upon reflection, I would vote no.

Chairman PIKE. By a vote of 3 ayes and 9 nays, the motion is not agreed to.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Let me make one more motion. Section "f" in the committee report says the following:

The DCI shall be responsible for the preparation of the national intelligence estimates and such reports shall be immediately supplied to the appropriate committees of Congress.

I would like to make a motion that we substitute for that the fourth item that I have on my sheet, which says:

The DCI shall prepare national intelligence estimates for use of the executive and such other reports and studies as shall be directed by committees of the Congress.

It seems to me that what we are talking about is that if you automatically request that every report by the DCI go to Congress, you are going to have a biased situation. You are going to start to propagandize—that you really want Congress to have access to their expertise, that Congress can levy requirements on the DCI occasionally, that Congress can ask that the DCI do a study; but that Congress really does not want the same reports.

I think the second point is that very often Congress wants the information in a very different form than the executive does. Congress very typically would like information of a much more definitive nature. The executive tends to like staff studies, you know, on the one hand; but, on the other hand, they can then plug in their own assumptions and they get daily briefings and daily updates and things like that.

Congress wouldn't like a report which has a daily update and daily briefing. I don't think any of us would have the time to do that.

On the other hand, there are maybe four or five times a year when there is an important foreign policy matter that comes before the Congress where Congress would like to have some intelligence input. We should be able to levy a study, and committees of Congress ought to be able to call the DCI up for testimony, call up the other parts of the intelligence community for testimony and levy a requirement on the DCI to produce the study.

Mr. GIAIMO. Would you yield?

Mr. ASPIN. I would be happy to.

Mr. GIAIMO. Isn't the problem here that in the past there have been national intelligence estimates and other reports which have been made but which have been refused to congressional committees? Isn't that what we are trying to resolve?

Mr. ASPIN. Yes; there are.

Mr. GIAIMO. In effect, then, aren't you putting a stamp of approval on the executive branch's continuing to refuse us information?

Mr. ASPIN. No, I don't want to do that. I just want to say—

Chairman PIKE. Mr. Aspin, would you yield?

Mr. ASPIN. Sure.

Chairman PIKE. I tend to agree with you that Congress does not want to drown in all of the intelligence reports. Couldn't we take care of that problem simply in the staff recommendation "f," if, after "to the appropriate committees of Congress," we add the words, "on request"?

Mr. ASPIN. All right.

Mr. MILFORD. I had a similar suggestion.

Chairman PIKE. Wouldn't that take care of it all?

Mr. ASPIN. That helps. I would also like to include that a committee of Congress could also request a particular study of the DCI. That was in my motion—that a committee of Congress—like the International Relations Committee or the Armed Services Committee—could say to the DCI, "I want a report from you on whether or not there are SALT violations," and lay out a requirement that they come up with a study.

Mr. MILFORD. If the gentleman would yield, isn't that already the case?

Mr. ASPIN. No; they can call them to testify; they can ask Mr. Colby to come up and give a briefing and ask him questions. But there is no way now where you can formally request a written intelligence evaluation of a particular foreign policy situation.

Mr. HAYES. Would you yield for a question?

Chairman PIKE. I don't know who has the time. At the moment, however, you are recognized for 5 minutes.

Mr. HAYES. If I might yield such time as you need to answer. What about the question of executive privilege involved here, or the claim to it, or the general problems that we ran into in connection with it?

I don't mean to raise that specter; but I am asking, for example, about the objections raised by Secretary Kissinger about access of a committee of Congress to those estimates or those opinions done by so-called middle- and lower-echelon administrative officials. Is that a problem? Are we getting ourselves into that thicket?

Chairman PIKE. What I hope our committee makes very, very clear is that Congress is to get access to intelligence. And I think both Mr. Aspin's language and the staff language mean that Congress shall get access to intelligence. I think that the staff language—with which I am frankly more familiar than Mr. Aspin's—is very clear that the phrase "shall be immediately supplied to the appropriate committees of Congress on request" means just that.

Now, I think that Mr. Aspin's suggestion that Congress should also have the right itself to get intelligence reports, or ask for intelligence in certain areas, is a good one; but I think it should be made as a separate motion.

Mr. ASPIN. Would the gentleman yield?

Mr. HAYES. Yes.

Mr. ASPIN. Mr. Chairman, by unanimous consent can we ask that your words "on request" be added to the language?

Mr. JOHNSON. Just a moment, if I may, because Mr. Field picked on me—I think because he can't get to anyone else in these crowded quarters—and he said the staff should have added at the end of paragraph "f": "* * * as well as such other reports as Congress may request," which would not limit it to national intelligence estimates.

I think the national intelligence estimate is something the Congress should have because that is a word of art. Those are words of art. They refer to specific reports—not the daily intelligence reports or anything else. Those are specific critical estimates which are not prepared daily, and Congress wouldn't be necessarily inundated with great amounts of paper if they get this.

Chairman PIKE. Would the gentleman yield?

Mr. HAYES. Just briefly, but I want to make this point: What are we going to do about the Boyatt style estimate? What do we do about the Adams' style estimate? In other words, if the DCI is preparing and furnishing the estimate, that is simply all we have asked for. Do we do anything about, or do we want to do anything about, those instances where there is a Boyatt style document or Adams style document?

Mr. McCLORY. If the gentleman would yield, that would bury us. While we sought and didn't quite get the Boyatt memorandum, there undoubtedly are large volumes of intelligence reports and information and recommendations which ultimately would go into the national intelligence estimates.

Mr. HAYES. Does the "on request" language in "f," if amended that way, give the appropriate committee of Congress access to it within the definition?

Chairman PIKE. This gets back to what Mr. Johnson stated—that the staff wants to add the language "as well as such other reports as Congress may request."

Mr. JOHNSON. Of course, if you don't know they exist, you can't request them.

Chairman PIKE. That is always true.

Mr. JOHNSON. That is why I think there should be a requirement that some of these things should be given to the Congress, rather than Congress having to request it. Because if you don't know it exists, you can't request it. We have seen that happen.

So, the NIE, being a specific document—of course, they can change the name and come up with something else—but as it stands now, we know what an NIE is.

Mr. McCLODY. Will the chairman yield to me?

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. TREEN. If you would yield for a parliamentary inquiry, is the motion in writing before us? Is it somewhere in our book?

Mr. ASPIN. We are talking about "f."

Mr. McCLODY. I wanted to address myself to the recommendation that the staff apparently has passed on to Mr. Johnson, and that is that the oversight committee is going to have general oversight authority; it is going to have authority to call before it those who are engaged in intelligence activities. So to build into a statute, or into our recommendations, a provision that the committee can have such other reports as they request, I think would just indicate that we were having coordinate jurisdiction with the executive with regard to the administration of this business of intelligence, and would, in my opinion, be objectionable.

I think in the course of the oversight experience, if there is information that the oversight committee wants, and is entitled to receive, they should receive it. But to state that the oversight committee shall have such other reports as in their opinion they deem necessary, or they want, just seems to me to be too much.

Mr. JOHNSON. Mr. Chairman, just to clarify. I would move to amend the substitute to the motion made by the gentleman from Wisconsin to add to paragraph "f": "* * * as well as such other reports as Congress may request."

Chairman PIKE. How about, "* * * well as such other *intelligence* reports as Congress may request"?

Mr. JOHNSON. Yes.

Mr. TREEN. Would the gentleman yield?

Mr. McCLODY. Yes.

Mr. TREEN. I would like to suggest—and I apologize for not knowing exactly what the motion is—that we take out that section and deal with it under the "powers of the committee." I, for one, don't want to deal with the question of getting the information—the question of access—until we deal with the question of how we are going to handle it, what we can do with it, and what sanctions may be applied against those who release information to unauthorized sources. So is it important that we have "f" in this section?

Chairman PIKE. I don't know who you are asking, but if you are asking me, the answer is yes.

Mr. TREEN. Well, I won't ask you, then.

Mr. McCLODY. If the oversight committee is going to be doing any real overseeing, it seems to me they are going to have to have the national intelligence estimates.

Mr. TREEN. Does that have to come in this particular section?

Mr. McCLODY. It has to come sometime in our recommendations, and I think if you include as a blanket requirement, "such other reports as the committee may request"—

Chairman PIKE. The language was "as Congress may request," not "as the committee may request."

Mr. McCLORY. Is that right?

Mr. JOHNSON. That is what they said.

Mr. ASPIN. Appropriate committees of Congress.

Mr. JOHNSON. " * * * as well as such other intelligence reports as Congress may request."

Chairman PIKE. Yes; and I frankly find it very difficult to believe that Congress itself would vote not to get such information as it might request.

Mr. McCLORY. Well, that is the authority which the Congress has at present under a resolution of inquiry.

Chairman PIKE. But we are now making the DCI responsible for providing it.

Mr. TREEN. Will you yield?

Mr. McCLORY. Yes.

Mr. TREEN. May I ask what the pending motion is?

Chairman PIKE. The pending motion is a motion by Mr. Johnson to amend paragraph "f" of the staff draft to read in total as follows:

The DCI shall be responsible for the preparation of the national intelligence estimates and such reports shall be immediately supplied to the appropriate committees of Congress—

and you don't want the words "on request"; is that correct?

Mr. JOHNSON. "As well as such other intelligence reports as Congress may request."

Mr. ASPIN. "On request."

Chairman PIKE. He doesn't want the words "on request."

"As well as such other intelligence reports as Congress may request."

Mr. HAYES. May I ask, how would you envision Congress requesting such other reports? Would it be in the form—

Mr. JOHNSON. I suppose it would be a committee report.

Chairman PIKE. I think it is useful to have a little legislative history here. We do not mean every Member of Congress. We do mean the appropriate committees of Congress.

Mr. HAYES. Then should the language not be clarified so that the word "Congress" in the last clause doesn't appear, so, in other words, we have a smooth—

Chairman PIKE. Would you agree by unanimous consent, Mr. Johnson, to let it read "as may be requested by the appropriate committees of Congress"?

Mr. JOHNSON. Sure. You don't know which committees have jurisdiction, and if you cut out the International Relations Committee as part of the requesting apparatus, are you going to say they can't get it?

Mr. HAYES. My idea would be to clarify that. I realize there may be some problem. Simply eliminate the word "Congress" in the last clause.

Mr. Giaimo, did you want me to yield to you?

Mr. GIAIMO. If you say "as Congress may request," I don't think that would be interpreted to mean an individual Member of Congress.

Mr. HAYES. I am not so concerned about that as about the fact that a resolution would have to be brought to the floor of the House.

Mr. McCLORY. If the gentleman will yield, I think if we use "Congress," it might be interpreted you would have to have concurrence.

I think if we are going to add this clause, I would say it should be "as the House of Representatives"—we are only making a recommendation for the House of Representatives—"by a resolution of inquiry," which is the formal way that we request.

Mr. GIAIMO. I thought we were only recommending in this committee.

Mr. HAYES. Is it not true, Mr. Johnson, that your discussion of the recommendation in "f," and yours, Mr. Aspin, have to do with what the appropriate committees of Congress can and cannot do?

Mr. JOHNSON. Yes. I ask unanimous consent to amend that phrase to say "as those committees may request."

Chairman PIKE. We have debated the question enough.

The question is on Mr. Johnson's motion. All in favor, signify by saying aye. Contrary; no.

The ayes appear to have it, and the motion is agreed to.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. I would like to again raise the question about whether we should include the thought that the committees of Congress levy requirements on the DCI to do reports and studies for them.

Chairman PIKE. I believe that is in his language.

Mr. ASPIN. In other words, if what he does is say that these committees do not get just the NIE's, but they get any other studies that are kicking around.

The question I raise is whether the Congress should have the authority to request a special study on a specific subject.

Chairman PIKE. I think that is a new issue. I happen to agree with you that it should have, and if you want to propose the language—

Mr. Giaimo.

Mr. GIAIMO. The problem with that suggestion, Mr. Chairman, is that in effect you, and I think for the first time, are going to have Congress in a position where it mandates the executive branch to do work for it—like it does the GAO or other people.

I don't believe we function that way in any area, let alone in the intelligence area. I think the way we function is that we ask executive branch people to come down and we then ask them what we want to know, or we ask them to tell us about such and such a thing. But to deliberately instruct them to work for us, I think, would be doing something that I don't believe we do in other areas.

Mr. ASPIN. If the gentleman will yield, it is a fundamental question, and goes again to the basic kind of question about the role of this DCI we are creating here. Is it an arm of the Presidency—

Mr. GIAIMO. No question about it, in my mind.

Mr. ASPIN. Yes; let me lay it out. Is it an extension of his office and his staff? In other words, is the staff essentially for him and we get occasional reports, or is it really an office which is kind of above the battle and which calls them the way he sees them—whether the executive likes it or not—and from which Congress can get information, too?

It is a very fundamental question as to what kind of DCI you want to have. It goes to the question about what kind of Presidency do you

want to have. Do you want to have an information-rich or information-poor Presidency? Or, in other words, do you want an intelligence community which is separate from the decisionmaking structure on which various people who are involved in making decisions can call for information? Or do you want an intelligence community that is built into the decisionmaking structure in which Congress calls on it in the way they call on the Secretary of Defense or the Secretary of State?

It is a really fundamental question of what DCI are we creating.

Mr. GIAIMO. To use your last word, if you call on him in the way you call on the Secretary of Defense and the Secretary of State—which is the classic manner in which we call upon any executive branch official—then you are getting into a basic constitutional problem and going way beyond the area of intelligence. We have enough problems, I think, without getting into that.

Chairman PIKE. Let me suggest procedurally that it is time we moved the adoption of subparagraph “f,” as amended.

Do you so move, Mr. McClory?

Mr. McCLORY. I plan to vote against the paragraph.

Mr. GIAIMO. I move it.

Chairman PIKE. Mr. Giaimo moves that subparagraph “f,” as amended, be adopted. All those in favor of the motion, signify by saying aye. Contrary, no.

The ayes have it, and it is agreed to.

Mr. McCLORY. I now move the adoption of paragraph “G,” as amended.

[The text of recommendation “G” as amended follows:]

G. DIRECTOR OF CENTRAL INTELLIGENCE

1. The select committee recommends that a Director of Central Intelligence shall be created, separate from any of the operating or analytic intelligence agencies, for the purpose of coordinating and overseeing the entire foreign intelligence community with a view to eliminating duplication in collection and promoting competition in analysis. The DCI shall be nominated by the President with the advice and consent of the Senate. This office shall have the following powers and duties:

(a) The DCI shall be the chief foreign intelligence officer of the United States, and shall be responsible for the supervision and control of all agencies of the United States engaged in foreign intelligence.

(b) The DCI shall be a Member of the National Security Council.

(c) The DCI may not hold a position or title with respect to any other agencies of Government.

(d) The DCI shall, along with such other duties, constitute an Office of Inspector General for all of the foreign intelligence agencies, including other agencies of government or branches of the military which have foreign intelligence functions. Such agencies shall have the obligation to report all instances of misconduct or allegations of misconduct to the DCI. This shall not constitute a limitation upon the respective agencies reporting to the DCI from maintaining their own Inspector General staff or similar body.

(e) The DCI shall have an adequate staff for the purposes expressed herein and be responsible for the national intelligence estimates and daily briefing of the President.

(f) The DCI shall be responsible for the preparation of the national intelligence estimates and such reports shall be immediately supplied to the appropriate committees of Congress on request.

(g) All budget requests shall be prepared by the agencies under the jurisdiction of the DCI. As to those parts of budget of the military services or components of Department of Defense, they shall be submitted as an independent part of such budgets to the DCI.

(h) The DCI shall be charged with the functions of coordinating foreign intelligence agencies under its jurisdiction, the elimination of duplication, the periodic evaluation of the performance and efficiency of the agencies in question, and shall report to Congress on the foregoing at least annually.

(i) The DCI shall conduct a comprehensive inquiry into the causes of intelligence failures, including: inadequate collection tasking; analytical bias; duplication; unusable technical output; excessive compartmentation; and withholding of information by senior officials, and report to the Committee on Intelligence within 1 year.

Chairman PIKE. The question is on the motion. All those in favor of the motion, signify by saying aye. Contrary, no.

The ayes appear to have it, and recommendation "G" is adopted as amended.

Mr. McCLORY. I move the adoption of paragraph "H"—"Full GAO Audit Authority."

[The staff draft of recommendation "H" follows:]

H. FULL GAO AUDIT AUTHORITY

1. The select committee recommends that the General Accounting Office be empowered to conduct a full and complete management as well as financial audit of all intelligence agencies. There shall be no limitation on the GAO in the performance of these functions by any executive classification system, and the audit function of GAO shall specifically apply to those funds which presently may be expended on certification of a director of an agency alone.

Mr. ASPIN. Hey, wait.

Mr. McCLORY. If the chairman doesn't get an extension until February 11, we are going to file the recommendations tomorrow night.

Chairman PIKE. Hey, what a great idea.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. I have a point I would like to raise.

Let me just drop the point we were discussing, Mr. Giaimo, and think about it a little bit. Let's not do anything more with that right now, because there is a point I would like to raise—a section that I would like to add a little later which would have something to do with "G," which we just passed. But let's leave it for the moment and continue on.

Chairman PIKE. Mr. McClory, your motion is now in order.

Mr. McCLORY. Mr. Chairman, I move the adoption of paragraph "H." I would like to be heard on it.

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. McCLORY. The only qualification I would have here that I would suggest for the consideration of the committee—and I don't want to advance it as an amendment—is the question of the extent to which we want the General Accounting Office to have this authority. We certainly want them to have authority to review fiscal responsibility. Whether we want them to go into the whole subject of analyzing particular projects, and considering whether or not they were well-managed and whether they were conducted in a manner which the Congress might want to review or support, may be a little more than we intend.

My interpretation of the management function concerned the management of the intelligence community, not with respect to analyzing

and consideration, for instance, of a covert operation—whether or not too many people were assigned to it, or different types of analyses that might be carried on in kind of a post mortem, second-guessing, of that kind of a project.

So with that explanation and that qualification, I would move the adoption of paragraph "H."

Chairman PIKE. I think we have to discuss the point you raise a little bit and not just let it hang there. I think there are those of us who feel it would be appropriate if the GAO did look at whether they had a thousand men involved in a covert operation which might well have been undertaken by 10. I wouldn't limit the GAO's authority to review in that regard.

I think they do it within the Department of Defense. I don't know of any other area where they do not do it. I think the GAO has been responsible, and I wouldn't want to limit their authority.

Does any other member wish to be heard?

Mr. TREEN. Yes.

Chairman PIKE. Mr. Treen.

Mr. TREEN. I propose an amendment.

Chairman PIKE. The gentleman is recognized.

Mr. TREEN. On the third line strike out "and complete management as well," and also that phrase near the last line which reads "* * * and the audit function of GAO shall specifically apply to those funds which presently may be expended on certification of a Director of an Agency alone." I would like to speak briefly to that.

Chairman PIKE. The gentleman is recognized.

Mr. TREEN. I concur with Mr. McClory's remarks about the management function. I think we are setting up an oversight committee of the House here, and I think this committee, with its staff, would really be the one looking into the management function.

In order to get any legislation through Congress, I think a lot of Members are going to have to be assured that we don't have more people involved in the actual operations of the intelligence activities than is necessary.

When we talk about the GAO, we are talking about a very large organization with a lot of people that would get into the business of management and have access to this type of information. I realize that is different than the GAO's authority with respect to other agencies, where they get into the management and make judgment calls and everything else; but I think we are dealing with an entirely different situation here.

With respect to the second part of the amendment, I recognize what that is directed to—that we have perhaps a substantial amount of money that can be spent by an intelligence agency chief on his certification alone, but this, of course, can be controlled by the Appropriations Committee at the time. It can limit the amount of money that can be spent on certification alone, and I think that the reasons for permitting him some leeway to make expenditures on his certification alone are to protect what he is doing.

I think we can control that through the Appropriations Committee. If the committee wants to give him a thousand dollars a year to spend on his own, and they give him a thousand dollars, and if he wants to

have more to spend on his own, he would have to come back to the Appropriations Committee.

Mr. DELLUMS. Would the gentleman yield?

Mr. TREEN. Yes.

Mr. DELLUMS. Thank you. I would call my distinguished colleagues' attention to paragraph 3 of the "Prohibition of Fund Transfers," and it says:

The select committee recommends there be appropriate legislation to prohibit any significant expenditures of reserve or contingency funds in connection with intelligence activities without specific approval of the intelligence committee and appropriate committees of Congress.

We have already zeroed in on the question of significant funds not being utilized without approval of the appropriate committee, and it would seem to me that this language in the latter part of the paragraph entitled "Full GAO Audit Authority" speaks specifically to that question. It would seem inconsistent for us, on the one hand, to provide appropriate controls in the utilization of significant expenditures in that category of funds that can be certified by a director of an agency alone and for us not to come back and allow GAO to do an audit specifically designed to address itself to that question.

Mr. TREEN. I would certainly say GAO can determine the gross amount of money he spent. That is no problem. We are only talking about the GAO authority here. We are not limiting the committee's right to ask, "How did you spend that \$900 that you spent on your own certification?" We are not limiting that at all.

I understand the gentleman's point. I yield to the gentleman from Illinois.

Mr. McCLORY. As I recall the recommendation made by Mr. Staats, the Comptroller General, it was that he wanted authority to make financial reviews and financial audits. I don't think he requested authority to make management studies of particular projects.

I would like the staff to clarify that for me.

Mr. DONNER. In some areas of the methods of purchasing and some areas where funds were expended upon certification, it was the opinion of the staff that it wasn't the question of accounting for the dollars involved only; it also involved the question of whether or not certain procedures which were employed were wasteful and inappropriate for the purpose involved. So to conclude, just on a dollar basis, that they accounted for their money, we thought was not sufficient, and we felt that the GAO should also be in a position to recommend procedures that would save money—even in their own internal management.

Mr. McCLORY. That is with respect to the management or the operation of the agency?

Mr. DONNER. That is correct, sir. And we also felt that this intelligence committee would not have to develop its own GAO arm and, in effect, could almost use as an adjunct of its performance the facilities of the GAO in doing its work.

Chairman PIKE. The time of the gentleman has expired. I think the issue is rather clear. The question is on the motion of Mr. Treen.

All those in favor of the motion, signify by saying aye. Contrary, no.

The noes appear to have it, and the motion is not agreed to.

The question, then, is on the motion of Mr. McClory.

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you. I would like to ask this question: If you recall, Mr. Chairman, the same criticism and limitation of function expressed by GAO is also a factor in the audit of OMB, and I was wondering whether or not we wanted to say that OMB shall also have the right to do this, or would we cover that in another area?

Chairman PIKE. I don't think that is our problem.

Mr. DELLUMS. As I recall the testimony of OMB, they were also limited in their ability to conduct an appropriate audit on the grounds of compartmentation.

Mr. GIAIMO. Not by law they are not.

Chairman PIKE. The OMB is wholly a child of the executive branch, and they can do what the executive branch lets them do. There is no law which restricts OMB. They just haven't done it.

Mr. DELLUMS. May I pursue that for a moment? As I recall the testimony, it did not appear that OMB did not want to do it; it was made clear that OMB could not do it if they wanted to do it. Because of the classification, compartmentation, need-to-know, OMB was limited in their ability to pursue the audit.

Chairman PIKE. If the gentleman would yield, I think all they would ever have to do is clear certain staff of the OMB for the classified information, and that is wholly within their prerogative.

Mr. HAYES. Mr. Lynn's testimony, if you will yield, was specifically that there were internal audit procedures within CIA they could rely on and then later on, pursuing that, it became clear, I think.

Chairman PIKE. If we can, I want to vote on Mr. McClory's motion.

Mr. McCLORY. If the gentleman would yield, I would like to say, based on the interpretation given us by Mr. Donner, that I am not satisfied my motion reflects my view.

Chairman PIKE. The question is on the motion. All those in favor of the motion, signify by saying aye. Contrary, no.

The ayes appear to have it, and recommendation "H" is agreed to.

At this particular point, I am going to suggest that we break.

Mr. KASTEN. Mr. Chairman?

Chairman PIKE. Go ahead, Mr. Kasten.

Mr. KASTEN. I have been trying to get a question about security within the committee brought before the committee this morning. I have been trying to look for an appropriate time, and I wonder if I could be recognized for 5 minutes?

Chairman PIKE. Now is the time. Go right ahead.

Mr. KASTEN. Mr. Chairman, I wanted to address to the attention of the committee a letter which was sent by Mr. Rogovin on January 27, and I would like to read the letter so that we have it in the record and then address a couple of questions to the chairman.

Chairman PIKE. Please go right ahead.

[Mr. Kasten, reading]:

Dear Chairman Pike: As you are undoubtedly aware, the Agency and the intelligence community are deeply disturbed by the pervasive and premature leaking of your committee's final report. We have already communicated to you our feeling as to the report's bias. What troubles us particularly at this time are items in the news attributed to your staff director, Mr. Field, alleging that the leaks may have come from the executive branch.

Let me assure you that as far as this Agency goes, there is no basis whatsoever for Mr. Field's allegation. I feel confident in making this statement since the New York Times story of January 26 quoted from a memorandum concerning a 1973 meeting with Senator Jackson and the draft Mr. Field gave us did not contain any reference to such a memorandum. Consequently, the latter draft—the one Mr. Field refused to supply—was the edition of the report leaked to the New York Times.

Furthermore, even the recipients of these leaks are now indicating quite specifically the sources from which they have received their information. The article in today's New York Times by John Crewdson refers directly to sources within your committee. In one instance the Crewdson article deals with the purchase of armored limousines for a foreign chief of state. In our largely fruitless sessions with your staff, we had asked that any particular reference to the chief of state or the dates on which the limousines were purchased should be deleted. Your staff agreed to do this. This agreement was totally academic, for as Mr. Crewdson put it, " * * * the Agency obtained two armored limousines for a third world leader *whom committee sources* identified as South Korean President Park Chung-Hee." [Emphasis added] There are two other similar references to committee sources in the article which make it clear that they supplied either fact or innuendo to Mr. Crewdson. These references are but the latest in a series of leaks. The pattern which they represent has become so clear that I felt it necessary to call the matter to your attention.

One final word regarding the 1973 memorandum concerning the conversation with Senator Jackson. We have checked our files and records and have determined that we have not sent that document to you officially. Ms. J. Hess, your security officer (who we feel, incidentally, has done a very fine job in maintaining her records), acknowledges that she has no record of having received the document officially. To compound the matter, a copy of that memorandum is missing from a set of files to which one of your staffers had access in early December. We suggest that you may wish to determine for yourself how your staff procured the document and how the report was leaked to the press.

[COMMITTEE NOTE: Copies of the above letter were sent to Mr. McClory and the other members. By letter of January 28, 1976, Mr. Field responded as follows:]

SELECT COMMITTEE ON INTELLIGENCE,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., January 28, 1976.

MITCHELL ROGOVIN, *Esquire*,
Central Intelligence Agency,
Washington, D.C.

DEAR MITCH: It is nice to receive a letter from you not under a "secret" cover so that I may respond openly and frankly.

The principal point in your letter of January 27, 1976, lies in the fact that certain leaks which have appeared in the press could not possibly have come from CIA because they contained information which was not in the draft report which you had received.

I can only respond that it appears in this case as in so many others, that intelligence gathered by the Central Intelligence Agency is faulty. While the information in question was not in the original draft given to you, it was contained in a revised draft given to Mr. Don Gregg and Mr. Seymour Bolten of CIA and Mr. Martin Packman of the State Department at a meeting several days before the story to which you allude appeared in newspapers.

I do not know whether the misstatement of fact contained in your letter is calculated or not. I prefer to think it is not. I believe it more likely that the compartmentation with which you surround yourself prevented either you, or Mr. Colby, or the President of the United States from knowing what was already in your hands. A third alternative, of course, would be simple bureaucratic inefficiency.

As to the quote from Mr. Crewdson's article in the New York Times, I believe Mr. Crewdson to be an honorable man, not in the employ of the CIA, and for the purpose of this discussion will assume that he is correct. It is time that the Agency made up its mind. For weeks and months it has been telling us that newspaper speculation and news stories attributed to unimpeachable, but unidentified sources are one thing, an official statement from a member of the executive branch or a

committee of Congress is very different. If you are now taking the position that such distinctions are totally academic, we can, of course, fill in many details in the report which we had deleted at your request.

One additional comment about leaks as to foreign leaders. Names of foreign leaders who may have been targets of CIA pornographic movies were unknown to this committee, but appeared in the same newspaper you refer to.

As I am sure you know, there are apparently hundreds of copies of our report in the State Department, the Pentagon, and the White House, which locations are not noted for their absence of leaks. Approximately a dozen copies are in circulation in Congress, including this committee. It is not, as your spokesmen are quoted as saying, a "secret" report. It is a final report which has not been published for purely technical reasons: individual views are not yet attached, and some 5 days are required for printing. As soon as these steps take place, the report will be circulated and your nonpremature comments will be welcomed.

I might add that CIA's media campaign of slurs, innuendo, and misstatements directed at the committee report violates a specific agreement between you, as a lawyer representing CIA, and myself, as a lawyer representing the committee. A draft report was supplied for comments on classified information, with specific promises that it would not be used for press attacks or gratuitous public book reviews before the American people had a chance to judge it for themselves.

Mr. Colby's totally irresponsible violation of our agreement is compounded by his use of innuendo without facts, such as his failure to produce facts that he claims were left out of the report, or his unsupported claim that there are inaccuracies. We had resolved factual questions with your representatives, and would appreciate your waiting until these facts can be judged publicly before you repudiate their efforts.

Finally, you are absolutely correct that our security officer, Ms. J. Hess, has done an outstanding job. I can only suggest to you that her employment with our committee will shortly be coming to an end and she will be available. Perhaps she could not only assist you in knowing what documents you do have and do not have, but also in helping you find some which you may have lost. We do not have them.

Cordially,

A. SEARLE FIELD,
Staff Director.

Mr. KASTEN. Mr. Chairman, I would just like to ask you if you have determined for yourself how the staff procured this document and how the report was leaked to the press?

Chairman PIKE. First of all, I am going to respond not just to that particular question. I am going to respond to the whole letter.

And the first thing I am going to say is I regret to say that once again the CIA's intelligence is faulty. The principal allegation in this letter is that the leak could not have come from the executive branch of the Government. The original draft which was given to the CIA did not in fact contain the information which they say it did not contain.

A subsequent draft given to two members of the CIA and one member of the State Department did contain the information and was delivered to them several days before the story to which they refer.

It is perfectly possible that their compartmentation makes it impossible for the counsel to know what documents are in the CIA's files, but the fact of the matter is that the documents were in the CIA's possession. So Mr. Rogovin is wrong about the matter as to which he said he had absolute confidence in.

Now, as to your last question: I know how the so-called Jackson memorandum got in the possession of the staff. If they really wish to accuse a member of our staff of stealing, I wish they would just plain have the courage to do so flatly.

The fact of the matter is that all our staff ever saw was a Xeroxed copy of the original memorandum. They did not have possession of the Xeroxed copy. They did not remove it from any files of the CIA at any point in time.

We are an investigating committee. The thrust of Mr. Rogovin's letter seems to me to be that we are not allowed to investigate anything that they don't give us. We have, indeed, investigated and we have indeed obtained that information.

I am going to protect our sources and our methods, also.

Mr. KASTEN. Mr. Chairman, I think everyone on the committee is desperately concerned about the security problem this committee is having, and I think it is demonstrating that our committee—hopefully not like other congressional committees—has been unable to keep classified information classified.

Chairman PIKE. Mr. Kasten, I am just plain flatly going to disagree with you. Mr. Rogovin is wrong in his basic premise in the letter. He is incorrect.

Mr. KASTEN. If we received this information, why is it, Mr. Chairman, that our security officer acknowledges that she has no record of receiving the document—the Jackson memorandum—officially? Are we receiving information officially and unofficially?

Chairman PIKE. It is perfectly possible she did not receive it officially. It is perfectly possible that it came in the form of notes and not in the form of a document. It is perfectly possible that it came to the committee in another form. And in fact, it did come in another form.

Mr. KASTEN. Why then was it—

Mr. McCLORY. Would you yield to me on this subject?

Mr. KASTEN. If it was not received by our committee officially—and to my knowledge the Jackson memorandum never came up in any of our discussions—why is it then that this report which was not received officially, and was never discussed, turns up in a footnote and is leaked to the newspaper? Why wasn't there any discussion of this particular memorandum, prior to leaking it to the papers, if we say it wasn't even received?

Chairman PIKE. We did not say it was not received. It was received.

Mr. KASTEN. Have we received information other than receiving it officially? We have a lot of information we have not checked in through our security process; is that right?

Chairman PIKE. I don't believe there is a lot, but there is some.

Mr. KASTEN. Is there information, other than this classified document that we have, that we have received and have not acknowledged the receipt of?

Chairman PIKE. Yes, by and large at the request of the executive branch.

Mr. FIELD. Mr. Chairman, could I respond?

Chairman PIKE. Certainly, Mr. Field.

Mr. FIELD. First of all, we did discuss this in closed session. You may or may not have been here. We discussed it and the committee voted on it. There was a lengthy discussion on the Jackson memo.

Mr. ASPIN. When was that, Searle?

Mr. FIELD. Wednesday, the 21st.

Mr. KASTEN. Of what?

Mr. FIELD. January. The committee discussed it when it was reviewing the report.

Mr. KASTEN. But at that point the report had already been leaked to the press.

Mr. FIELD. No, it had not. As I recall, it did not appear until Friday.

Mr. KASTEN. Why wasn't it discussed in the sessions of the committee—not when we were going over the report, but when we met earlier?

Mr. FIELD. It was discussed in the sessions when we reviewed the report.

Chairman PIKE. Mr. McClory is recognized.

Mr. McCLORY. If we are going to discuss proceedings that occurred in executive session, it seems to me we have to resolve ourselves into executive session to discuss them.

I would be very interested in that, because I took part in the discussion at that time and the questions that I have, Mr. Chairman, are two:

One is the question of whether or not the staff circulated a draft of the report to the members of the committee which was different from the draft of the report that was provided to the Central Intelligence Agency? I would like—

Chairman PIKE. I would respond to that as follows: The draft which was given to the CIA was the same draft that I received. I believe it is the same draft that you received.

As you recall, there were changes made constantly, as we had discussions with the executive branch—changes which they wanted; but Mr. Rogovin's premise that they did not have the document which appeared in the press, at the time it appeared in the press, is wrong. It is factually incorrect.

Mr. McCLORY. The question I am raising is: Did I receive a draft of the report which did not contain the Jackson memo? I don't have any record of having received that.

Mr. FIELD. Yes, Mr. McClory. Your first draft did not have that in it, and theirs didn't.

Mr. McCLORY. I have the first draft that I received. I still have it. And it contains the Jackson memo.

Mr. FIELD. Mr. McClory, we went around and took the first draft and replaced it that very Monday afternoon. That is why you will notice it is a duplicate page—whatever number it is.

Chairman PIKE. I am going to recess the committee, but it does seem to me that the fundamental issue at this point is whether any allegation is being made by you, Mr. Kasten, or by the CIA, that the document to which we are referring is not accurate or is not real.

Mr. KASTEN. Mr. Chairman, I think I am referring to a much broader issue than that. I am concerned about the security leaks we have had in this committee, and how we should deal with them.

The basic problem is that we, as a committee of Congress, have leaked materials to the press, and somehow or other we should deal with that problem.

Mr. TRENN. Would you yield to me?

Mr. KASTEN. Yes.

Mr. TREEN. I am concerned about it, too, and I realize what we read in the newspaper we cannot conclude as true; but in the Washington Star of Monday afternoon, there was an Associated Press story, filed by Mr. Adams, which said, and I quote:

In the Associated Press was read portions of the CIA memorandum involving Jackson by a committee source, while other items in the final report were described by a source close to the committee.

Again, we can't conclude that because it is stated that way it was a committee source, but I certainly think—and I agree with the thrust of Mr. Kasten's position—that this committee should address itself to the question of whether there are committee sources who are leaking information we receive.

Chairman PIKE. And, Mr. Kasten, what is your recommendation?

Mr. KASTEN. Mr. Chairman, to begin with, I would renew the suggestion that was made by the gentleman from Louisiana about 3 or 4 weeks ago, that the chairman appoint a subcommittee or that we do something else to try to deal——

Chairman PIKE. What are you recommending—lie detector tests for the members of the staff?

Mr. KASTEN. I am asking you, Mr. Chairman, to work out a system——

Chairman PIKE. Which will prevent leaks from occurring.

Mr. KASTEN. I would like for you to attempt to do that; yes, sir.

Chairman PIKE. What do you recommend precisely? Lie detector tests for the Members of Congress?

Mr. KASTEN. Whatever you would feel is appropriate.

Chairman PIKE. I do not feel that is appropriate.

Mr. KASTEN. You are not satisfied with the results of the last 4 or 5 weeks of the committee's work, are you?

Chairman PIKE. With the last 4 or 5 weeks of the committee's work? Yes, I am satisfied with the last 4 or 5 weeks.

Mr. KASTEN. You don't mean to say you are satisfied that there have been a number of important security leaks from this committee, do you?

Chairman PIKE. I am saying that I am satisfied that the committee work has been satisfactory. I do not know where leaks have come from. I am simply saying that the basic premise of the letter from Mr. Rogovin is wrong, and that the leaks could have come from the executive branch of the Government just as well as from this committee—because they did, in fact, have possession of the information which was "leaked" at the time the leaks occurred.

Mr. TREEN. I have a motion to make, Mr. Chairman.

Chairman PIKE. The committee is going to stand in recess.

Mr. TREEN. I cannot be recognized for a motion?

Chairman PIKE. What is the motion?

Mr. TREEN. The motion is that the chairman appoint a three-man subcommittee to investigate the charges that have been made during the last few days, and the leaks that apparently occurred during the last few days, and report back to this committee before its termination.

That is the motion.

Mr. ASPIN. Can we take it up when we meet again?

Chairman PIKE. No, we will take it up now.

The question is on the motion. All in favor of the motion signify by saying aye. Contrary no.

The noes appear to have it.

Mr. TREEN. I request a roll call vote.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

[No response.]

The CLERK. Mr. Hayes.

Mr. HAYES. No.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Chairman Pike.

Chairman PIKE. No.

By a vote of 4 ayes and 8 noes the motion is not agreed to.

The committee will stand in recess until 10 tomorrow morning. We cannot meet this afternoon.

[Whereupon at 12:07 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, January 29, 1976.]

[COMMITTEE NOTE.—The meeting scheduled for January 29 was postponed until Tuesday, February 3.]

DISCUSSION OF COMMITTEE RECOMMENDATIONS RELATING TO INTERNAL FINANCIAL MANAGEMENT, FULL DISCLOSURE TO CONGRESS, NEW FOREIGN OPERATIONS SUBCOMMITTEE OF NSA, DEFENSE INTELLIGENCE AGENCY, AND MEDIA

TUESDAY, FEBRUARY 3, 1976

**HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.**

The committee met, pursuant to notice, at 2 p.m., in room 2216, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, deputy general counsel.

Chairman PIKE. The committee will come to order.

We are through with the proposed recommendations to item "H." and the staff has prepared a document entitled "Recommendations Already Agreed to."

Mr. DONNER. There is an error in that. Mr. Johnson pointed out we did not include all of the alternatives for financing. That is being corrected now.

Chairman PIKE. We are down to proposed recommendation "I" which has to do with the internal audit. The members still do not have their books of proposed recommendations. They are on the way. In the meantime, Mr. Field and Mr. Donner, you might just discuss the proposed recommendation.

Mr. FIELD. Mr. Chairman, our final report goes into some detail on the audit procedure at CIA.

Chairman PIKE. Don't talk about anything that is in that report.

Mr. FIELD. Mr. Chairman, it is hard to consider this without discussing in general terms some of the problems which we went through in the report.

Chairman PIKE. It is indeed.

Mr. FIELD. We investigated the number of auditors, the types of audits they do, the frequency of the audits. It critiques, I think fairly, some of the problems with the audit. This recommendation grows out of that section of the report. It is hard for me to argue in favor of it without telling you the numbers of auditors, why we feel they are inadequate, and some of the problems they came across. If you will refer to your final report, I think you will see that there are problems

which an expanded audit staff, doing annual comprehensive audits without the problem they have had, could solve.

Chairman PIKE. The members are unable to proceed with their final report because the members don't have the final report. The Chair, pursuant to the direction of the House of Representatives last Thursday, filed the final report with the Clerk of the House on Friday, together with such additional, minority, and other views which had been submitted—none of which I have seen, frankly. The Chair also directed the Government Printing Office that all jurisdiction over the final report resided in the Clerk of the House.

We have had delivered to the office 10 copies of the final report. I have one copy. The copy to be filed was delivered to the Clerk of the House, the other eight copies in our safe in the committee office. I frankly don't know whether they can be delivered to the members of the committee or not because, under the language of the resolution, they are to be delivered only to persons authorized to receive them and I don't know who is going to do that authorizing.

The Clerk has jurisdiction over 2,293 copies of the report. I invite you all to ask him for one.

Mr. DELLUMS. Mr. Chairman, with respect to additional views or supplemental views, do we have any control over our own views?

For example, many of us have written rather extensively in providing additional views. Do our additional views come within the scope of the resolution?

Chairman PIKE. If they were included in the report, I would say yes, they are included under the resolution.

Mr. ASPIN. Are the additional views printed with the report?

Chairman PIKE. The report per se was printed as a committee print before the additional views were submitted, but I did advise the Clerk of the House that I believe the additional or minority views should be printed and disseminated, if ever, with the report.

Mr. ASPIN. A further question: Is it the feeling of the Chair that any or all distribution of the report is now up to the Clerk?

Chairman PIKE. That is the opinion of the Chair. The jurisdiction of the committee ended at midnight last Friday as to anything except filing the recommendations, which will be part 2 of the final report.

Mr. ASPIN. It is not the Chair's intention then to submit the same to the President, to follow the procedure laid out in the resolution?

Chairman PIKE. We have no further jurisdiction. We filed with the Clerk of the House an uncensored report, and what happens to it from here on is not within our jurisdiction.

Mr. ASPIN. Is it the intention of the Chair, then, that we should finish the recommendations and file those recommendations on the 11th of February?

Chairman PIKE. On or before. That is the only authority we have left.

Mr. LEHMAN. In regard to the question of the gentleman from California, I had my additional views examined by a member of the staff in charge of security. Who is to write me in a letter that there is nothing in them that is classified. But there is still no way I could publish any of these additional views in the record?

Chairman PIKE. If they are made a part of the report, my answer would have to be that I can't authorize it: no.

Mr. McCLORY. Mr. Chairman, with respect to the recommendations, I think there is no reason why we can't continue on with respect to the one currently before us. I doubt there will be the kind of disagreement which will require a reference to the report. I think the members all have sufficient background of information so we can discuss the recommendations without reference to the report one way or the other.

I am not suggesting immediate action, but I am suggesting this for consideration by the members of the committee, and as a method by which this committee can resolve the present dilemma: We do have the action which was taken rather decisively by the House, and it did provide that the report should not be published unless the classified material was deleted, or other steps were taken. That was the so-called Young amendment to the rule. It seems we should give consideration to complying with what the House directed in the resolution that was adopted, and to have whatever information is classified eliminated—to at least provide the opportunity for those deletions to be made in accordance with the House and Rules Committee's action—and then have the committee report published. I see no reason why that can't be done; and I see no reason why this committee, acting in response to what I think amounts to the direction of the House, can't follow that path, or that procedure.

I am offering that as one suggestion as a way out of the dilemma.

Mr. GIAIMO. May I raise a parliamentary inquiry? Is it not true that this committee has gone out of existence for all purposes except one, and that purpose is to make recommendations?

Chairman PIKE. Yes.

Mr. GIAIMO. Isn't it true we settled the question of the report last week and it was filed with the House? The report is over and done with. Isn't our only purpose in meeting now to come up with some recommendations to submit as part 2?

Chairman PIKE. That is our only authority.

Mr. GIAIMO. Why are we referring to the report?

Mr. McCLORY. If the gentleman will yield, the staff suggested that they wanted to make reference to a report which is, as I understand it, sealed and in the sole custody and possession of the Clerk of the House, subject to the resolution of the House.

Chairman PIKE. That is where we are, and I cautioned the staff that they can't talk about the contents of the report.

Mr. MILFORD. Mr. Chairman, I would request an opinion of the Chair and of the committee on a matter: Would it be the opinion of the Chair and the committee that it would be possible for an individual member of the committee to take a copy of the report, and to then consult with the administration for the purposes of identifying the specific classified information contained in the report? Then, after having identified that specific classified information, could that individual member—on his own—publish the report in the Congressional Record, after himself having removed the classified information?

Chairman PIKE. It would be my opinion that that would be beyond our jurisdiction at this time.

Mr. MILFORD. Would the Chair care to hazard an opinion whether it would be in any way abusive to the committee or an affront to the committee itself if such an act was taken?

Chairman PIKE. I don't know whether I would feel abused or affronted. I think it would be a violation of the instruction provided in the resolution passed by the House Thursday night.

Mr. MILFORD. I am the author of said resolution. I drafted it myself, and certainly there was no intent in the resolution to do anything other than to prevent the publication of classified information. There was no intent whatsoever in that resolution to deny the House of Representatives the full report, nor to deny the public the full report, less classified details.

Chairman PIKE. I would simply suggest to the gentleman, then, that his proper procedure would be to go to the Clerk of the House and discuss it with him. But this committee no longer has any jurisdiction over that report.

Mr. ASPIN. Just to make it perfectly clear, are you saying we no longer have any jurisdiction over the report as a committee and that if the procedure of sending it to the Executive is to be followed, that is all up to the Clerk of the House?

Chairman PIKE. That would be my opinion.

Mr. ASPIN. That is how you read the resolution?

Chairman PIKE. The resolution says that we shall file our report by midnight on the 30th of January. We did file our report by midnight on the 30th of January. Under the basic resolution creating the committee, the committee expired on midnight, the 31st of January; and the basic resolution was modified only to the extent of giving us until the 11th of February to file our recommendations.

This committee has, in my judgment, no life of its own except for the purpose of filing recommendations.

Mr. McCLORY. My staff has been in touch with the Clerk of the House. The Clerk is in a bit of a quandry himself. The Clerk would appreciate an expression on the part of this committee as to a recommendation with respect to advising him as to how he should handle the report.

I have prepared a motion which I now offer:

Mr. McClory moves that the House Select Committee on Intelligence recommend to the Speaker and the Clerk of the House of Representatives that the report of the committee, together with additional and minority views filed with the Clerk of the House on Friday, January 30, 1976, shall be examined by a representative of the President of the United States for purposes of indicating classified information as materials required to be deleted from the report prior to publication in accordance with House Resolution 982 adopted by the House of Representatives on January 29, 1976; and that, upon the elimination of such classified information and upon the further formal approval by a majority of the House select committee, the Clerk of the House of Representatives may release for publication the committee's report as revised in accordance with House Resolution 982.

Mr. JOHNSON. A point of order, Mr. Chairman.

Mr. GIAIMO. I make a point of order against the resolution. It is no longer within the jurisdiction of this committee at the present time; we sit strictly for the purpose of making recommendations.

Chairman PIKE. The Chair sustains the point of order.

Mr. McCLORY. May I be heard on the point of order?

Chairman PIKE. Certainly.

Mr. McCLORY. This motion does not represent formal action. It represents an expression of opinion; it represents a recommendation

which I understand is something that the Clerk of the House would find useful to him. I don't think that we can sustain the position that we have no opinions to express with respect to our report. And I would hope, even at this late stage, and despite the differences of opinion that have arisen, that we could revert to the attitudes we had originally—those of working together, reconciling our views, and trying to come forward with action which would represent committee action.

I invite any amendments to this expression of opinion. It is sort of a "sense of the committee" attitude, and it is consistent with what the Clerk invites the committee to do in order that he may be guided with respect to action that he undoubtedly will have to take some time with respect to the committee's report.

Mr. DELLUMS. Mr. Chairman, a parliamentary inquiry.

Chairman PIKE. No. If you are through, I will simply say individual members, of course, are free to express their views to the Clerk of the House, but the committee has no jurisdiction.

Mr. TREEN. Has the chairman ruled finally?

Chairman PIKE. Yes. I sustained the point of order.

Mr. TREEN. I appeal the ruling of the Chair and ask for a rollcall vote.

Chairman PIKE. All those in favor of a rollcall will raise their hands.

[Show of hands.]

Mr. JOHNSON. Mr. Chairman, I would like to be heard on this.

I voted for a record vote on this because I think otherwise the chairman would be accused of a "Pike's Pique" once again. It seems quite clear that the resolution passed by the House prevents the committee from doing anything other than filing the report. We have filed the report, and that is the end of the committee's responsibility. For the committee to take on a further responsibility—to submit this to the executive branch, or to make the determination as to who has access to the report—is something that is not designated in the resolution. The resolution is deliberately vague in my judgment and the committee has done what it was directed to do. To go beyond that would be a violation of the House directive. This committee has been pretty well told by the House what it wants done, and there is no way that we can take further action without violating the House resolution.

I think the gentleman is trying to have it both ways.

The resolution specifically directs us what to do and what not to do. We are to do nothing but file the recommendations.

Mr. TREEN. I think the point should be made here that this committee is recommending action to the Speaker and to the Clerk of the House of Representatives. We, ourselves, are not taking action. If the Speaker and the Clerk of the House of Representatives feel that we are not empowered to make a recommendation, then they can simply disregard it. It seems to me that since we are now making recommendations with regard to what should be done in terms of oversight, and other recommendations with regard to our intelligence community, to suggest that we can't even make a recommendation—an informal recommendation—to the Speaker of the House and to the Clerk of the House as to what they should do with this report is patently ridiculous.

Mr. McCLORY. I want to point out that the committee does have jurisdiction and authority until February 11 to make recommendations. This is a recommendation.

Mr. DELLUMS. Mr. Chairman, I would like to add what I consider a technical interpretation of this situation. By a vote of 9 to 4, this committee voted to approve, file, and publish a report which included classified information. The gentleman from Illinois, Mr. McClory, and the gentleman from Louisiana, Mr. Treen, were in the minority, voting against the report.

It would seem to me if the gentlemen were seeking action that would in any way alter, amend, or change the action taken by the committee by a vote of 9 to 4, the two gentlemen would be asking for a reconsideration.

As I understand parliamentary procedure, the two gentlemen did not vote in the affirmative. Therefore they have no opportunity to request reconsideration of the motion and I would agree with the Chair. I think it is out of order and I would vote with the chairman.

Chairman PIKE. Now, the issue here—

Mr. DELLUMS. We voted to print a report containing some information classified by the executive branch.

Chairman PIKE. I know what we voted to do. The question now is simply a request for a record vote on a parliamentary ruling of the Chair. The gentleman is entitled to his record vote.

Mr. ASPIN. As one who voted against the original arrangement we made in September and one who voted against the idea that the President should have the right to have prior censorship over the report. I am going to vote in favor of Mr. Treen's motion because I think it excessively legalistic to say this committee cannot recommend to the Clerk of the House what be done with that report.

However, I do not think the report should be sent to the President. I have always been against that, but I don't think it is right to say the committee cannot make a recommendation to the Clerk at this time.

Mr. DELLUMS. Just to clarify my position, Mr. Chairman, I was not speaking with respect to this motion challenging your ruling. I was speaking to the original motion offered by the gentleman from Illinois, Mr. McClory, which I think is a reconsideration of the issues.

Chairman PIKE. I understand.

Mr. MILFORD. A parliamentary inquiry, Mr. Chairman.

Mr. Chairman, as I understand the parliamentary situation, the vote we are about to take would be a vote to overrule the Chair's ruling and if that should carry we would then have an opportunity to vote on the resolution offered by Mr. McClory. Am I correct?

Chairman PIKE. That is correct.

Mr. MILFORD. I would only say, with great respect for the Chair, that in this instance I think we should have an opportunity to vote on the resolution even though I am going to be opposed to the resolution.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

Chairman PIKE. If you are with the Chair then I would simply say the vote would be aye. That is the way I interpret it. Someone tells me I am wrong.

Your vote was correct then, Mr. Giaimo.

The CLERK. Mr. Stanton.

Chairman PIKE. Mr. Stanton votes no by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Chairman PIKE. Mr. Murphy votes no by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

[No response.]

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. No.

Four yeas and seven nays. The motion is not agreed to.

Would the staff please proceed to discuss these recommendations without referring to the report?

[The staff draft of recommendation "I" follows:]

I. INTERNAL FINANCIAL MANAGEMENT

1. The select committee recommends that the CIA internal audit staff be increased and given complete access to CIA financial records, and that overseas stations be audited at least annually. It is further recommended that all procurement mechanisms be subjected to annual comprehensive review.

Mr. FIELD. The staff would like to recommend an amendment that a word be left out. In the second sentence where it says "It is further recommended——"

Mr. ASPIN. Where are you talking about?

Mr. FIELD. In the second sentence of "I" it says, "All procurement mechanisms." Change that to "proprietary and procurement mechanisms." Adding "proprietary and."

Chairman PIKE. Is there any member of the committee who would like to be heard on that particular draft recommendation, or who would like to move on it?

Mr. McCLORY. Not necessarily speaking with respect to that recommendation, which I don't believe I have objection to, but I wonder if we do not need to have a few words added at the very end of the section to indicate who is going to do this review. Is it going to be by the internal audit staff, or somebody else in the executive?

Mr. DONNER. That was the intention of the wording, Mr. McClory. The recommendation would direct the internal audit staff of the CIA to do this work.

Mr. McCLORY. Could you add "by the internal audit staff"?

Mr. DONNER. CIA internal audit staff.

Mr. McCLODY. I didn't understand who was going to do it. I would like to add those words by amendment.

Chairman PIKE. Without objection, the words "by the CIA's internal audit staff" will be added at the end of the paragraph.

Mr. McCLODY. Mr. Chairman, I move the adoption of the article as amended.

Chairman PIKE. All those in favor signify by saying "aye." Contrary, "no." The ayes have it and the section is agreed to.

We move to recommendation "J."

I suggest the members read the section entitled "Full Disclosure to Congress."

[The staff draft of recommendation "J" follows:]

J. FULL DISCLOSURE TO CONGRESS

1. The select committee recommends that existing legislation (National Security Act of 1947, sec. 102(d)(3)) restricting the Directors and heads of foreign intelligence agencies from providing full information to Congress should be amended to exclude committees of Congress having appropriate jurisdiction.

Mr. FIELD. Mr. Chairman, the first half of the report dealt with this problem of access by Congress to information and the disclosure of information; and we chronicled, I think in some depth, the problems we had with full disclosure of information. Again, the focal point in the report was the sources and methods problem: The problem that the Director of Central Intelligence has in revealing to Congress information which might disclose sources and methods.

We felt that first half of the report made a strong case for Congress not being subject to that restriction.

Mr. MILFORD. This refers to the National Security Act and gives a section. What does that section deal with?

Mr. FIELD. That is a requirement that the Director of Central Intelligence protect sources and methods of intelligence. Where we feel that is a valid authority, we also feel it should not stand in the way of the appropriate oversight committees in Congress having that information, if it is necessary for their work. That section refers to the mandate to him to protect sources and methods of intelligence.

Mr. MILFORD. I would be very much opposed to the inclusion of section "J," because I think it is well known that secrets within the Congress at this time are not protected perhaps as well as they should be, and the sources and methods are the very backbone of intelligence gathering.

Therefore, Mr. Chairman, I would move to strike section "J."

Chairman PIKE. I am going to speak in opposition to the motion.

While I appreciate and have a great deal of sympathy with the statements of the gentleman from Texas, the problem is that whenever there is a legislative exception to disclosure to Congress, the executive branch manages to cram everything they want to hide, or do not want to reveal, into the language of that legislative exception.

The Congress, I think, shares with the executive branch the desire to protect the names of employees of the CIA which is a source, certainly. But we found they used this ridiculous exception to try to take out of our report the names of employees of the CIA who testified in open session, representing the CIA; and I believe that, given proper safeguards within Congress, committees of Congress having jurisdiction over the subject matter must have access to information.

I think that is a very, very fundamental issue that we have argued over all these many months.

Mr. McCLORY. Mr. Chairman, in supporting comprehensive oversight of the intelligence agencies, I nevertheless want to make my position very emphatic: the principal accountability must rest in the executive branch and with the intelligence agencies themselves.

As to the oversight committees, or other committees, of the Congress, receiving information about sources and methods—to weigh sources one against the other, to second-guess the intelligence community with respect to evaluation and decisionmaking as a result of intelligence gathering—is not consistent with the role that I think the Congress should be playing.

Certainly sources and methods provide a very sensitive area. In addition to the question of names, sources can also reveal the identities of foreign individuals and endanger the safety of such foreign individuals. While many might like to reveal those sources, it seems to me that that is quite out of keeping with what I think the oversight committee's jurisdiction should be.

Mr. STANTON. Assassination is a method. Secret wars are a method. Opening mail is a method. Would you keep that from the American public?

Mr. McCLORY. I think the committee could designate activities which would be inconsistent with intelligence actions or covert intelligence activities. We would have no problem in doing that. But to blanket the right of the Congress to receive all information regarding methods—and we would have that right if this were enacted into law—

Mr. MILFORD. Would the gentleman yield?

Mr. McCLORY. I will be happy to yield.

Mr. MILFORD. I would disagree with my colleague on what a source and a method is. A source and a method is a technique utilized, and a method is—I mean sources and methods deal with techniques or persons as opposed to particular acts.

Mr. STANTON. Would the gentleman like an example?

Would you consider the act of plotting an assassination by the CIA in a particular country a method?

Mr. MILFORD. No; I would not. If you want to use that specific example, I would consider the way it was done as being a method, not the act itself. The fact it is being done would be an act.

Mr. STANTON. Would you consider pornographic movies used and developed by an agency of the U.S. Government as a method?

Mr. MILFORD. Again I consider that an act. A method consists of the techniques of carrying out an act.

Mr. STANTON. How would you stop these practices? These practices have occurred in the past. How would you stop them in the future, under your guidelines?

Mr. MILFORD. By very strict congressional oversight.

Chairman PIKE. That is the entire point. You can't have strict congressional oversight if they aren't obliged to tell you about these things, and it doesn't matter whether we think that these are methods or not. They will claim that these are methods, and then they won't tell Congress about it, and Congress won't exercise any oversight.

Mr. LEHMAN. I would take issue with the statement that Congress itself is not exactly the safest place to prevent leaks from coming

out in regard to such methods and procedures. I don't think Congress has any monopoly on such a problem. I really learned more about what goes on in the CIA by reading a few books by ex-CIA agents than in this committee. I think Congress can take its own licks, but I think the CIA, the executive branch, and others are going to allow leaks occasionally.

I think we would be pulling the rug out from under a strong part of our open society.

Chairman PIKE. The question is on the motion of the gentleman from Texas to strike section "J." Those in favor of the motion signify by saying aye.

Mr. GIAIMO. I ask for a record vote.

Chairman PIKE. Those in favor of a record vote raise their hands. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Mr. STANTON. No.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Chairman PIKE. No; by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

[No response.]

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. MCCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Present.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. No.

By a vote of 2 yeas, 9 nays, and 1 present, the motion is not agreed to.

Mr. GIAIMO. Mr. Chairman, I move the adoption of section "J."

Chairman PIKE. The question is on the motion. All those in favor, signify by saying aye. Contrary, no.

The ayes appear to have it, and section "J" is agreed to.

We might ask for comments from the staff on recommendation "K."

[The staff draft of recommendation "K" follows:]

K. NEW FOREIGN OPERATIONS SUBCOMMITTEE OF NSC

1. The select committee recommends that the National Security Act of 1947 be amended to provide for the establishment of a permanent Foreign Operations

Subcommittee of the National Security Council. The subcommittee's jurisdiction, function and composition shall be as follows:

a. The subcommittee shall have sole jurisdiction over all activities of U.S. foreign intelligence agencies except those solely related to the gathering of intelligence.

b. All recommendations of covert action considered by the subcommittee as described in "a" above shall be specifically acted upon by all members of the subcommittee and their respective positions set forth in writing signed by each member.

c. The subcommittee shall be chaired by the Assistant to the President for National Security Affairs and shall be composed of:

Assistant to the President for National Security Affairs; Director of Central Intelligence; Under Secretary of State for Political Affairs; Deputy Secretary of Defense; Deputy Director for Intelligence of CIA; Chairman of the Joint Chiefs of Staff.

Mr. DONNER. Mr. Chairman, this committee had the opportunity of examining 10 years of records of covert operation, as well as examining in depth certain actions taken. The actions taken, of course—I will just say to you, Mr. Chairman, that I am usually more articulate than this, but I am trying to avoid saying the words which I will say now—that the report contains the basis for recommendation, because, frankly, Mr. Chairman, the recommendations were prepared with the idea that the committee would have the report in front of it. I beg the Chair's indulgence.

Mr. ASPIN. I would like to talk a little bit about this section. I think this is one of the most important recommendations we have, along with the recommendations we were discussing some time ago regarding the DCI. This recommendation would set up an NSC Foreign Operations Subcommittee. What it does, which is so important, is to institutionalize the 40 Committee. What we have heard indicated is that a lot of times there is no formal procedure for approving covert operations. They are approved at the Presidential level and forced on the whole system, or they are heard by the 40 Committee, or sometimes not. Sometimes they are bypassed; sometimes they are consulted on the phone. Sometimes they meet. What this does is to institutionalize the process. It is not going to be foolproof. None of these things are ever going to be foolproof; but what you are trying to do is prevent covert operations, which are ill advised or ill considered, from taking place.

What we hope to do by this kind of recommendation, I think, is to institutionalize the 40 Committee and thereby build in responsibility for the approval of covert operations within the executive branch. This has nothing to do with congressional approval of it. It builds in a little bit more responsibility and institutionalizes a little more system within the executive branch. I would like to offer a couple of amendments which I think are important to this section.

Chairman PIKE. I would simply say that it seems to me that the language within this recommendation—which calls for the approval of covert operations in writing by the members of this new subcommittee of the National Security Council—would, itself, act perhaps as a better deterrent than almost anything we can think of.

I think the business of telephonic approval without records of these operations has been one of the more dubious things we have considered.

Mr. McCLORY. I would like to be heard generally on this subject. I will not reveal any portions of the report—classified or unclassified.

I think we should talk to unclassified matters. It is my feeling that by and large we have found that the operations intelligence agencies have been successful over the past 28 years. In a few instances, actions occurred which resulted in deficiencies. They are, perhaps, more the result of not having this kind of spelled-out, precise mechanism which, it seems to me, is important that we pursue.

I think one of the important things for this committee to do is to recommend a definite, specific pattern which must be followed with respect to any and all covert activities, and have strict responsibility and accountability there. I feel this is an extremely important recommendation.

I will be happy also to consider the amendments that may be offered.

Mr. JOHNSON. Mr. Chairman, I am terribly disappointed in this recommendation "K." It has to be considered along with "C," which is entitled "Covert Action." You can't consider "K" by itself without understanding what has been authorized. There is not one covert operation this committee studied that would be prevented under this recommendation by the staff. The 40 Committee does not have an elected representative; there is not a member of the Cabinet—perhaps the Director of Central Intelligence, should he become a member of the Cabinet.

This is the same kind of operation we have in existence now. It will be subject to the same kinds of coverups and so forth that all subsequent Presidents will want to utilize.

I can't understand wanting to legislate in light of the present administration or the past administration. Can't we forget the Democratic Presidents in the past and the Republican Presidents in the past who have to be protected, and look down the road and recognize that people abuse power? That Presidents have abused power in the past and they will in the future; that we are not putting the responsibility where it belongs—and that is jointly with the President and with the Congress, by putting the responsibility for all the covert operations that this committee studied, and that the majority of this committee don't want to see repeated, back to the Director of Intelligence the Under Secretary of State, the Deputy Secretary of Defense, the Deputy Director of Intelligence of CIA, and the Joint Chiefs of Staff. I can tell you right now that whatever covert operations will be approved, somebody will say it is important to the national defense, whether it is important to the national defense or not.

We have no kind of protection by definition here. We have no kind of procedural protection against abuses in the future, and we are just going to go back through the same process.

It seems to me that if we are serious about doing anything about covert operations—and I don't think we really are as a Congress; perhaps as a committee, but I am not sure about that when I look at these recommendations—we would at least describe what kind of covert operations would not be engaged in or make an attempt to try to prevent the use of the term "national security" from sanctioning a pro forma operation.

At the present time, it has to be decided by the President that a covert operation is important to the national security, so they make

a pro forma decision: "We want to do this; therefore, it is important to the national security." There is nothing in here that changes that.

I would like to see us describe the kind of covert operations we are engaged in, as we have done with the recommendations about assassinations. Beyond that, I might say it seems to me the National Security Council should be the agency responsible for making decisions about covert operations.

Who are these guys that you are trying to give the responsibility and authority to? They are the same ones that have had it in the past. Why don't we make the NSC the ultimate authority that is going to be responsible and make the President sign his name to that, with his knowledge that ultimately the light of history will judge him.

Mr. GLAIMO. Don't we get some sort of control over covert actions under the law we passed last year, since that law requires the CIA to come up and inform three committees in the House and three in the Senate of covert actions? Albeit, it is after the fact, but the CIA still has to come and inform us of the covert action. Doesn't that give us some added protection?

Mr. JOHNSON. I refer to the one instance where something was done on that. Action was taken because of one Senator. Not as a result of the reporting process.

Chairman PIKE. It is also necessary to say the action was taken——

Mr. JOHNSON. There is nothing in the present procedure to prohibit this thing from recurring.

Mr. DELLUMS. Mr. Chairman, I would like to agree wholeheartedly with my distinguished colleague from Colorado, Mr. Johnson, and make several brief comments.

First of all, Mr. McClory, in his statement in support of this section, makes the assertion that, based upon investigation of this committee, the overwhelming majority of the covert operations were very successful.

No. 1, this committee only looked at a select number of covert operations. I will suggest to the Chair and members of the committee that if you recall the so-called unclassified chart that our staff classified and that the chairman suggested be immediately unclassified, it listed a number of covert operations in various places around the world that totaled a very extraordinary number. This committee only investigated a microscopic degree of covert operations. Perhaps less than 10 percent, perhaps less than 3 percent, perhaps even less than 1 percent.

I would suggest to my colleague from Illinois that even if people were able to read the report, one cannot factually sustain the assertion that the overwhelming majority of covert operations are successful, because we are in total ignorance of that.

No. 2, I agree with Mr. Johnson that, if there is going to be any change in the procedure used by the 40 Committee as a subcommittee of the National Security Council, we should go beyond the present structure; and I agree with the gentleman that the President should be tied very carefully to these issues.

Now, with respect to covert operations, I agree with Mr. Johnson, and I certainly would like to be able to express my opinion with respect to them. I am totally and unequivocally opposed to covert operations. Given what we have learned in this committee, I do not believe covert operations in anyway enhance the role of this country in the world. In fact, I think they detract from it.

If it is the opinion of the Chair that we should proceed with this particular recommendation prior to making any decision with respect to covert operations, I would simply join my colleague from Colorado in saying I think we ought to rewrite this section and strengthen it—perhaps making the subcommittee a committee that recommends to the National Security Council in writing and then ties the National Security Council and the President in writing to these operations, giving us greater balance and greater accountability. And I also think there ought to be someone from the public sector elected to sit on that body as well.

Mr. McCLORY. In the public statements that have been made by the former Director of Central Intelligence, Mr. Colby, he has delineated a large number of operations of the CIA over a long period of time which have been eminently successful, and if anybody has come off well as a result, I would say it is former Director Colby who established a reputation which is respected throughout the country.

Chairman PIKE. I would like to say that my reading of what we learned in this committee corresponds with your reading of what we learned in this committee. Mr. Dellums. We have looked at a very tiny number of covert operations. We were led to them by looking at where the dollars were going. I don't know whether what we looked at was representative, but I would say what we looked at was not very good; and if it is representative, I don't think anybody could ever allege that our covert operations overall are very successful.

Finally, I would honestly not expect either a past or a present Director of Central Intelligence to go around saying that they were lousy.

Mr. ASPIN. Let me again talk about the recommendation which is before us and address myself to the concerns of the gentleman from California and the gentleman from Colorado.

I think the most important part about this recommendation is not that it is going to control covert operations by itself. We have something in a later recommendation about Congress role in that which we will deal with.

I don't think we can look just one way to control covert operations. There is just not one quick fix that we can deal with. This is part of the way to do it. It is not a very strong thing. If it was the only thing we had done, I would be disappointed, but I think it is a step in the right direction.

The gentleman is right; we ought to tie it in more closely to the President and not have an amendment, which is what I hope we will do.

I think it goes to the chairman's point that if you ask people to recommend an action in writing over their own name, they will take it more seriously; there are lots of examples of that throughout the Government.

When President Kennedy asked for recommendations on what to do in Laos, he asked each of the services individually for their recommendation.

Mr. DELLUMS. I ask for unanimous consent to have 1 additional minute.

Chairman PIKE. Without objection.

Mr. ASPIN. We learned there were a lot of different opinions about Laos. It wasn't until Nixon and Kissinger sent out that first questionnaire that they discovered lots of people in the military thought bombing the north was doing any good. It was after they put it over their own signature and it was not a bureaucratic decision.

That is the important part about it. It is getting these people to write their own recommendations over their own signature.

We can fix the responsibility on the President and I think that will help.

Mr. DELLUMS. I have one very brief comment, Mr. Chairman. I am willing to support a strengthened version of this section of the recommendation, but I do not want my vote in any way to indicate that I support the notion that covert operations are legitimate in any way.

Mr. MILFORD. I support the section. I am concerned about some minor technicalities. In subparagraph "a" under section "K," the first sentence states: "The subcommittee shall have sole jurisdiction over all activities * * *."

I am wondering if we shouldn't say, "they, as advisers to the President, shall have * * *."

The second one, Mr. Chairman is on the next page, subparagraph "b," again in the first sentence. That sentence seems to mandate that there would always have to be a unanimous approval because it is stipulated that all members of the subcommittees have to submit their positions in writing. Perhaps we could say, "The subcommittee, as described in 'a' above, shall be specifically acting by the leave of the subcommittee."

Chairman PIKE. I would object to that particular motion as offered. Why don't we take amendments offered to the section?

Mr. ASPIN. The first amendment I would like to offer—do you all have the book of amendments?

"New Foreign Intelligence Subcommittee, NSC." Substitute a capital "A" for the small letter "a" in the committee recommendations. Let me explain the difference. Small letter "a" says: "The subcommittee shall have sole jurisdiction over all activities of U.S. foreign intelligence agencies except those solely related to the gathering of intelligence."

My capital "A" says, "The subcommittee shall advise the President on all proposed covert or clandestine activities for collecting intelligence and for other purposes."

There are two differences. One is, it advises the President.

The second point is, it covers collection of intelligence and not just covert operations. We have learned that there are a lot of dangers and a lot of risks involved in intelligence collection, as well as in covert action. The staff recommendation here says, "except those solely related to the gathering of intelligence." The recommendation I have covers all clandestine activities—both collecting and noncollecting.

Mr. MILFORD. Including the words "or clandestine" bothers me, because if this was indeed carried out, the President would have no time to do anything but listen to briefings. There are many normal intelligence-gathering activities—in fact, most of them—which are done by clandestine operations. I would agree with including the word

"covert," but putting the word "clandestine" in means that you would literally have to have the President briefed on everything.

Mr. ASPIN. There is no distinction between covert and clandestine.

Chairman PIKE. Would the gentleman explain the difference between covert and clandestine?

Mr. ASPIN. I guess there isn't a difference.

Chairman PIKE. Mr. Milford is making a distinction between them. I have some trouble with the distinction.

Mr. ASPIN. I don't know that there is any distinction. I just wanted to cover all bases.

Chairman PIKE. It grieves me a little bit that Mr. Milford is right. We would be bothering the President with everything that the intelligence operatives would be doing. They do gather their intelligence covertly. They do gather their intelligence without talking about how they are gathering it. It just seems to me that the President would be drowned.

Mr. ASPIN. Mr. Chairman, would you feel better if we said, "The subcommittee shall be responsible for advising the President"—

Chairman PIKE. I think what we are getting into is something that isn't going to work. Either the President is going to drown in this kind of briefing or it is going to be a rubber stamp operation under which something is forwarded to the President.

Mr. ASPIN. I am not interested in how much the President gets or doesn't get. The important thing I am trying to get in here is that he ought to be advised—and this committee ought to be responsible to him—not only on covert operations, but also on risky collection.

Chairman PIKE. I agree with the risky collection.

Mr. ASPIN. I don't know that we should define in the recommendation what they ought to advise the President about. I think it is up to the committee and the President to work it out between them.

Mr. GRAYMO. Mr. Chairman, what we are really interested in, I believe, is covert action. Is that not what we are concerned about?

If I recall the definition, covert action is the classic term used for what we interpret as dirty tricks or dislocation of political organisms and the like. Clandestine action does not connote this. Clandestine action has more to do with whatever is done of a secret nature, whether it is seeking intelligence or information.

It is covert action to which you are trying to direct your attention—in other words, covert action in Laos, Cambodia, Angola, and many other places that are undoubtedly in the public domain, to say nothing of the ones Mr. Dellums speaks about which are not in the public domain. These are the ones to which we are directing our attention.

I don't think you should have "clandestine" in there.

Now, you get to the collecting of intelligence and you are really putting a burden on the President. Let me ask this: If we insist upon a greater documentation on the total budget of the intelligence community, wouldn't we then get a better oversight over the collection of intelligence matters?

Chairman PIKE. I would say yes, we would get a better oversight over it; but I am not sure that addresses the point.

I think Mr. Aspin is correct when he says that operations are conducted which have no purpose other than the gathering of intelligence,

the collection of intelligence, which are so risky that the President ought to be involved in them. But the question is, how do you accomplish that end without drowning the President in all collection operations?

Mr. GIAIMO. Practically, the President is supposed to be involved in everything that is going on. The question is how do we find out about it? Is that not what you are concerned about, and why you wanted to set up the subcommittee?

Mr. ASPIN. The purpose of the subcommittee is to make sure that the President is informed about those things he should be informed of, and that other people give their opinions to him by themselves.

Mr. GIAIMO. If we have more detailed budgets presented to us in Congress, and also in OMB—and such is the case today—would we not be able to glean from those budgets those collection methods you consider hazardous or dangerous?

Mr. ASPIN. I don't think so.

Mr. DELLUMS. I would like to ask Mr. Aspin a question. As I look at your alternatives—

Mr. ASPIN. Not all of them do I want to offer.

Mr. DELLUMS [continuing]. I do not see a provision whereby someone eventually ends up approving this. In the original recommendation, it is clear that the members of the subcommittee that has been recommended would approve in writing, but it doesn't say in your recommendation who ultimately ends up approving.

You suggest the President have the information of the assessment of each person in writing. Do you ultimately put responsibility on the President to sign off?

Mr. ASPIN. Yes.

Mr. DELLUMS. I think we should say that.

Mr. JOHNSON. It seems to me we have two problems connected with this one paragraph. One is the ongoing jurisdiction of the 40 Committee as a kind of superadvisory unit, and the other is the recommendations.

I think Mr. Aspin has a very good point about engaging in the kinds of activities which could be very dangerous and that the President might not be aware of. If the President is drowned in material where we are involved in that many operations, I think we have to accept that. Why don't we try to meld the two of these things together and point out that the subcommittee has an ongoing jurisdiction? If you left it up to the staff, they would just leave sole jurisdiction with that subcommittee. That doesn't make any sense. No one wants to leave it solely within the jurisdiction of that subcommittee, except insofar as perhaps oversight within the intelligence community itself is concerned. They have to make their recommendations to the National Security Council.

Mr. HAYES. Mr. Chairman, I think the point Mr. Milford raised is really not that well taken. Judging from other opinions, the fact is that we have to let the President cook in his own stew, no matter what. The more we work with language, distinguishing between clandestine and covert, I don't think there is really a material difference between the two. What may be covert, and therefore eliminated, can become clandestine simply by definition.

Chairman PIKE. Mr. Aspin, as an alternative to yours, how about language which would read something like this: "The subcommittee will advise the President on all proposed covert or clandestine activities and on hazardous collecting activities"?

Mr. ASPIN. That is fine. I have no objection to that.

Mr. HAYES. These are not words of art. These are literary terms. When Mr. Colby comes down here and uses these poetic terms of art on us, as terms of art, that is simply not true. They don't appear in the law. They may well appear in somebody's mistake of what law ought to look like when you go back to the committee hearings of 1946 and 1947 and look at the National Security Act, but that is silly; they are literary terms. What we should do is simply make the attempt I think Mr. Aspin is making here, and the chairman is suggesting, to bracket in some categories.

We might consider some other poetical terms we may run into later on.

People have some difficulty in determining what is an act of war and what had to be reported back to the Congress under the War Powers Act.

If we add "covert, clandestine, hazardous collection activities," then we have left out the ordinary things such as nonhazardous collecting activities.

Where are the President's recommendations that were so highly touted? I thought those were going to be down here a long time ago.

Chairman PIKE. I get a feeling that the President is waiting for us.

Mr. HAYES. I get that feeling too, but that wasn't the public statement earlier. I think it would be well to have that kind of thing around.

Mr. JOHNSON. It seems to me we could combine subsection "a" of the staff recommendation and section "A" of Mr. Aspin's. Those are in essence two different recommendations. It seems we ought to add a third.

First of all, the subcommittee should have jurisdiction over all authorized activity of the intelligence agencies. The subcommittee shall have jurisdiction over all authorized "ongoing" activities.

Second, it would have the responsibility to advise the President. Third, I think we have to make it clear that it should be responsible for making the recommendations to the National Security Council and the President with respect to the initiation of covert operations.

Chairman PIKE. We have a motion by Mr. Aspin.

Mr. McCLORY. Mr. Chairman, I am opposed to the amendments offered by the gentleman from Wisconsin. I think the staff has put together here the appropriate mechanism which relates to all activities and sets forth something I think is extremely important for us to recommend.

It does not necessarily relate to the question of whether or not the Congress shall first approve covert activities or whether a select committee of the Congress shall do it—or shall we require prior approval of covert activities that might involve military action and that sort of thing, which is covered in another section?

I notice there is a desire here to include the President in this. My attention has been called to the Murphy Commission report where they advise against that. I can understand why they do.

Some other statements have been made about it. You cannot bog down a President in all of the decisionmaking with regard to all intelligence activities. The Commission says, "We also believe that the current requirement of law that the President personally certify to the Congress." They feel that is harmful. They recommend Public Law 93-559 ask for reporting covert actions and omit any requirement for the President.

I go back to the staff recommendation which I think is well drafted. It sets forth a positive mechanism which I think should be followed in all intelligence activities. It places the accountability in the Executive and the subject of covert activities, insofar as congressional involvement is concerned, can be covered in this section.

Chairman PIKE. Perhaps it would be wise at this time if we had the staff comment on differences between their proposals and Mr. Aspin's proposals and why they chose theirs over his.

Mr. DONNER. First of all, there are other subcommittees of the NSC which also have intelligence functions. The SALT Verification Panel has foreign intelligence functions, and other committees do, and these recommendations don't touch them. It was our intention to deal with the problem of covert action alone.

Since it is difficult to consider everything at the same time, I am calling the attention of the committee to the fact that the staff has recommendations regarding covert action which address themselves to an approval process also, and which, in the options presented by the staff, call for Presidential involvement in the approval of covert action.

Then one other fact is that under the enlarged definition of the jurisdiction of this committee it would involve many other intelligence activities than the committee has been involved in historically—such as certain reconnaissance functions that may or may not be carried out.

Therefore, extending it into an area beyond covert action was not the intention of the staff in the preparation of this recommendation. It directs itself solely to a mechanism for improving a present 40 Committee function.

Mr. ASPIN. The point, of course, is that all those other committees are created solely at the discretion of the President. The 40 Committee could go out the window unless we get something in there, and that is the purpose of this recommendation—to set up the NSC subcommittee—and that is why I think it is important this committee not only consider covert actions, but hazardous collections as well.

How you put the President in there is less important to me than that this committee also cover hazardous collections, because I think that is the important thing. We have seen that there are a lot of purely collection activities which involve great risk to the United States, and this committee ought to also consider those. There ought to be a process for those being considered in a systematic manner, just as covert action is, because the risks are the same.

Mr. DONNER. The staff thinks that point is well taken, Mr. Aspin.

Chairman PIKE. Mr. Aspin, coming back to something Mr. Johnson said, what would be wrong with having the staff "a" and your "A" amended to include this?

Mr. ASPIN. No problem.

Chairman PIKE. Without objection.

Mr. DELLUMS. Except Mr. Johnson added one very important word—"authorized."

Mr. JOHNSON. I would strike out the word "sole" and say, "the subcommittee shall have jurisdiction over all authorized activity."

Mr. DELLUMS. Now we have to determine how they get authorized.

Chairman PIKE. We are doing that elsewhere.

Mr. MILFORD. If we approve this, we are still putting in covert and clandestine. Are we concerned about clandestine and covert having different meanings?

Mr. FIELD. I think the covert action has been defined in our conversations with the CIA as being non-intelligence-gathering activities that are conducted clandestinely. It is possible there is another group of clandestine activities which are related to collection of intelligence. That is why our original definition here in subsection "a" said "intelligence activities solely related to the gathering of intelligence."

Really, covert action, as we have come to know it, is the non-intelligence-gathering side of CIA. Then there is the other side, which does do clandestine work. That is why we did not use the words "covert" or "clandestine."

Mr. MILFORD. I am concerned about using the word clandestine in there. It means anything they are doing undercover, which is a hell of a thing to put on the President.

Chairman PIKE. Without objection, the staff "a," as amended by Mr. Johnson, is agreed to.

Without objection, Mr. Aspin's capital "A" is relettered "B," as amended, and agreed to.

Now, that gets us to the staff "b."

Mr. ASPIN. I have one more amendment which I would like the committee to think about. This amendment is a little more descriptive of what I think "b" ought to be; "b," up in the staff recommendation, says:

All recommendations of covert action considered by the subcommittee as described in "a" above shall be specifically acted upon by all members of the subcommittee and their respective positions set forth in writing signed by each member.

Let me read what I think it should say:

B. Each member of the subcommittee shall be required by law to submit his individual assessments of each proposal to the President in writing. The assessment should cover such matters as the likelihood of success, the benefits of success, the damage resulting from failure or exposure, the risks against the potential benefits and alternative ways of accomplishing the goal.

In other words, I am trying to get away from the idea that they just write a piece of paper saying "I agree with this recommendation. [Signed] John Smith."

Chairman PIKE. I like your language.

Mr. DELLUMS. I like the gentleman's language, except there is one significant difference. The staff "b" ties the subcommittee to an approval process and it says their approval shall be in writing.

Now, what you do is submit something in writing that is rather detailed. At some point, we have to substitute the provision the staff has developed for purposes of approval in writing for a mechanism that you submit.

Are you saying the President ultimately should be the one?

Mr. ASPIN. I am saying the President ought to be the one who approves it because, as Dr. Kissinger testified in open session, he is already the one who approves it. So let's make him the one who approves it.

If you want to add a sentence that makes that specific, that would be OK with me.

Mr. JOHNSON. That is exactly what I thought—that we should say “No covert operation shall be commenced without prior authorization or order in writing, signed by the President,” and then go into the requirements.

Chairman PIKE. We do have that elsewhere.

Mr. JOHNSON. Why shouldn't the National Security Council be responsible? It is under the original legislation. What happened is that the original legislation says the CIA will do such other things as the National Security Council shall direct.

The original authorizing legislation says the National Security Council shall authorize it and not delegate it to another committee. It seems to me that if we are going to go on with this kind of committee, we ought to have them make their recommendations in writing and have the members of the National Security Council sign on also, before the President makes his recommendation.

Mr. ASPIN. I think the advantage of the subcommittee in the National Security Council is that you are getting away from the people who are constantly dealing with a lot of other issues, and people who can give some time and thought to these things.

Mr. JOHNSON. This is personnel.

Mr. ASPIN. It is not the Secretary. The National Security Council is made up by the Secretary of Defense, the Secretary of State—

Mr. JOHNSON. None of those people is responsible to the political process. You have no political input into this thing.

Mr. ASPIN. I think it is important there not be two committees. Everybody is passing the buck. The point about having one committee is that you have people on there who are then held responsible, and they are responsible to the President. If the thing goes wrong, the President turns to these guys and says, “Here, I have it in writing you recommended it. What is wrong?”

Their necks are on the line. I think it is important we have one committee. If you want to recommend some other names to be added to the committee, I think that is an open point; but I hope we don't go to two committees, because then you diffuse the responsibility and no one will be responsible.

Mr. JOHNSON. That is a good point. I don't question that.

Under the original authorizing legislation, the Congress says the National Security Council shall be responsible. Now, the National Security Council has delegated that responsibility to a bunch of people who are Government employees. You are changing that original legislation.

I would prefer to leave it with those members of the National Security Council. Those are people who are more aware of how the public would feel. I think eventually they would become removed and remote, but they are closer in terms of political responsibilities than these other people. It has been demonstrated time and again

that these people are not aware of the desires of the American people; they are not responsive to the wishes of the American people. I am perfectly satisfied with that.

Mr. ASPIN. The point is that you don't want to write legislation solely with the current situation in mind. I don't see how, if you recommend a change of these people with the NSC, you are any better off.

Chairman PIKE. I am a great believer in placing the responsibility at the highest level.

Mr. ASPIN. Who is on this committee is a matter of whatever you want to add. I think it should be a subcommittee of the National Security Council. We ought to make it legislatively something different than the National Security Council. If you want to add members to that list or subtract members from that list who are on the National Security Council, that is fine.

I was not going to make any recommendations when we came to "c," which is the section which deals with who is on it. If the gentleman would like to propose amendments to that section, that is all right with me.

Mr. DELLUMS. What about the staff recommendations? Perhaps we ought to make changes in three. Rather than the Deputy Secretary of Defense, the Secretary of Defense.

Mr. ASPIN. That is in section "c." We are at the moment in section "b."

Mr. JOHNSON. I would like to hear what somebody else has to say.

Mr. BOOS. I would like to explain, Mr. Chairman, that what we had in mind here was to make sure that the decisionmaking body having authority for covert action and for sensitive operations received as much input as possible.

The report reflects that part of the problem is that on various occasions there has not been enough input—that a small circle of people have made momentous decisions.

Now, restricting the approval of covert actions to the National Security Council means, in effect, that four individuals would have this authority without guaranteeing that there is sufficient input.

In fact, you will notice one of the things the staff has done in its recommendation is to broaden the circle—to widen the input—by adding to the subcommittee the Deputy Director of Intelligence of the CIA. This would insure that, as happened in the Bay of Pigs operation, no covert action would be undertaken without a full appreciation of the intelligence impact and the intelligence justification for the operation.

So, in sum, the staff view is that people who make these decisions ought to benefit from as broad a survey of expertise as possible. For that reason, we have the Director of Intelligence and the Deputy Director for Intelligence there. We have the State Department and the Defense Department there, to make sure that all angles are covered whenever these terribly important decisions are made.

Mr. DELLUMS. I appreciate what you are saying. Would there be any substantial difference, in the impact of your recommendation if, rather than having the Under Secretary of State for Political Affairs, we have the Secretary of State; and rather than have the Deputy Secretary of Defense, we have the Secretary of Defense, and all the other people that you name?

Mr. Boos. Yes, sir, the tradeoffs are obvious. You like to have the head man in a department taking responsibility for the action. On the other hand, our experience on this committee indicates to us that part of the problem with the existing setup is that the people who are on the 40 Committee—the second tier—are already preoccupied with other responsibilities. They don't have enough time. That can be remedied by more staff assistance; but I am afraid, if we go up to the first tier, you will be dealing with people who are so preoccupied with running the department and with numerous other activities that are going on at any given moment that they won't be able to devote sufficient time. So that even with enhanced staff input, the kind of contribution we anticipate won't be forthcoming.

Mr. JOHNSON. Would you comment on my suggestion that this committee make its recommendations to the National Security Council and the National Security Council then go on? Mr. Aspin opposes that as involving too many committees. However, it seems to me it will do what you are saying, which is to broaden consideration. Presently, you are just recommending continuation of the 40 Committee.

Mr. Boos. There is a difference in broadening input and diffusing responsibility. We want to broaden input but pinpoint responsibility.

Mr. JOHNSON. Isn't the President pinpointed with the responsibility under your recommendation?

Mr. Boos. The President, in any case, has that responsibility, but by adding another committee I think it does tend to blur differences between the subcommittee and the full National Security Council.

Mr. McCLORY. I would like to speak in opposition to including Mr. Aspin's substitute, and also I would be against including any other than those already designated by staff.

I think our problem is that we are referring back to some disappointments we have on some of the ways in which things were operated, and we are going to try to correct everything by spelling out in detail what individual responsibility should be with respect to each of these members.

I don't know that every authorized activity should include only those which have a likelihood for success. I can think of a great many underprivileged, minority, freedom-seeking elements in the world that the CIA and our Government, by policy, might want to support, not because they are going to succeed, but because our interests correspond to theirs.

I don't know that all of these individuals would have the kind of expertise to make all of these different judgments, but those judgments should be made and they should vote and make decisions with respect to them. But I don't see why you have to have five or six different people, all of whom are involving themselves in all of these different elements.

I think the point was very well made by Mr. Boos: If you are going to place all of the responsibility in one man, you will have a bogging down of the operation.

If the Secretary of State is supposed to be there to vote on and make decisions in writing on all of these points, and he is out helping in a step-by-step negotiated peace program in the Middle East, you may have operations that are supposed to be handled that won't be handled until we locate him.

There are many reasons why this thoughtful presentation by the staff, it seems to me, merits our support.

I am fearful we will get too ambitious with regard to all the things we think in hindsight should have been done; and we will just end up burdening the entire intelligence community, which will have a destructive influence, instead of the constructive influence I would like this committee to have.

Chairman PIKE. The question is on the amendment of Mr. Aspin which seeks to substitute his capital letter "B" for the staff's small letter "b." All those in favor of the amendment signify by saying aye. Contrary, no. The ayes appear to have it and the substitute is agreed to.

The question is on adoption of that substitute which will now have to be relettered small letter "c."

Mr. JOHNSON. Mr. Chairman, I would like at least to substitute Secretary of State.

Mr. ASPIN. We are talking about the next one.

Chairman PIKE. All we are doing is relettering the section. All those in favor signify by saying aye. Contrary, no. It is adopted.

Now we get down to the staff small "c."

Mr. JOHNSON. I recognize what the staff says is perfectly true. At the same time, it seems to me it is ignoring the experience we have had; and that is that once one of these operations has gone sour, you can't pinpoint high-level responsibility for it.

We find those people who were engaged in the operation say "higher authority" authorized this and evidently nobody knows who "higher authority" is.

It seems to me you have to pinpoint the responsibility. The National Security Council had that responsibility and they sloughed it off on the 40 Committee. I think we ought to make it quite clear that this responsibility resides at the highest levels and cannot be hidden.

Chairman PIKE. I understand the gentleman's feelings on the matter. I do think that by adopting Mr. Aspin's substitute—which requires that every member of this group put down in writing his feelings on every proposed operation; and by our proposal found elsewhere—that no covert operation can be approved without the President's approving it in writing—we have pretty well pinned down the question of responsibility.

Whether the individual operation should or should not be undertaken, we can argue about until the cows come home; but I think that if we adopt these recommendations there isn't going to be any question whatsoever in anybody's mind but that the President had the final authority for authorizing them, and also who recommended for them and who recommended against them.

Mr. JOHNSON. I think that is obviously true, but you are not giving the President the benefit of his two senior advisers, the Secretary of State and the Secretary of Defense.

Chairman PIKE. As a practical matter, wouldn't the gentleman agree the President could always ask them if he wanted to?

Mr. JOHNSON. That is true, but it seems the two secretaries could be involved in the National Security Council meetings and if they could direct their under secretaries to prepare the papers, you are not having a big argument about confusing their responsibilities. They

obviously can't fulfill all their responsibilities today, anyway, without staff.

It seems it would be much better to have Rumsfeld as a current example, giving advice and so forth. I know who they are, but how many people out here know? They are not the President's top political advisers and the Secretary of State and the Secretary of Defense are. It seems to me those are the people. Looking down the road, who do you want to see making these recommendations?

We know the President is busy and he has authority to sign all these things without considering them. I would move we change it from Under Secretary of State to Secretary of State, and Secretary of Defense rather than Deputy.

Chairman PIKE. The question is on the motion of the gentleman from Colorado. All those in favor of the motion signify by saying aye. Contrary, no. The Chair is in doubt.

Those in favor of the motion signify by raising their hands.

The ayes are four. Those opposed, raise their hands. The nays number three. The motion is agreed to.

Mr. McCLODY. Mr. Chairman, I ask for a rollcall.

Mr. ASPIN. I put this out just to catch people's attention before trying it as an amendment. The only others I thought to add were the Ambassadors and Assistant Secretaries of State for the affected countries and areas. In other words, where you wanted to conduct a covert operation in Cyprus, you would have to get in writing the Ambassador's opinion and that of the Assistant Secretary of State concerned. Or, if you wanted to conduct one in Angola, you would have to get it from the Ambassador and Assistant Secretary for African Affairs.

In other words, whoever happens to be concerned would also put their recommendations on these covert operations in writing for the President.

Chairman PIKE. How about the fellow in charge of the desk in the State Department?

Mr. ASPIN. I don't know.

Mr. MILFORD. I think the gentleman has put covert operations out of business. By the time they get through all this book work, it will be too late to do anything anyway. I would be concerned about including the Ambassadors because of the logistical problem he would bring into it.

Mr. ASPIN. Ambassadors can get their information through the mails without too much trouble. Whatever he recommended, we would know the President could consider it. I see some advantage to that. I think it would be a very nice idea if ambassadors were consulted on a covert operation to take place in the country they were ambassadors to.

These are the people who have some input, or some working, day-by-day, knowledge of the area; and I move that we include the Ambassador and the Assistant Secretary of State for the affected countries and areas.

Mr. McCLODY. Mr. Chairman, I am very, very much opposed to that. I think it would be very, very damaging to the entire spectrum of our entire diplomatic relationships with all countries—friendly and

unfriendly—to include the ambassadors in considering the covert CIA activities of the Nation. I think they should be as removed from clandestine and covert activities as they possibly can be. I can see many instances where it would be completely incompatible with their positions as our diplomatic representatives—where the entire covert activity might relate to trying to subvert the military operations of some other country, and where the Ambassador wouldn't want to be involved in any way at all.

I think we are going to go too far in this thing. I think it would be most unfortunate.

Mr. ASPIN. It is very clear that in some cases some ambassadors already know. If the Ambassador is a strong-willed individual who has enough bureaucratic clout to insist he knows what is going on in this country, he can be helpful. Some ambassadors don't know. Other ambassadors would prefer not to know at all. But I think it is important, if you are conducting these operations, that the Ambassador have a say-so as to whether he thinks it is a good idea.

After all, he is the guy who is supposedly in charge of our overall foreign policy in that country, and covert operations are part of our foreign policy. I think we ought to stick it to him. If you want to build in responsibility, let's build in responsibility. The guys who are involved in the day-to-day operations of foreign policy are the Assistant Secretary of State for that part of the world and the Ambassador in that country.

Mr. FIELD. Before you can conduct covert operations in many parts of the world, you would have to recognize the country. We don't have ambassadors in many, many nations where we conduct covert actions. That would entail our recognizing the country or not conducting covert operations in Albania and the like.

Mr. ASPIN. I say if you have an ambassador, you ought to consult him. If you want to amend the recommendation, that is fine. You might say "Ambassador, if there is one, and Assistant Secretary of State for the affected countries and areas."

Mr. McCLORY. Some of the ambassadors are there because they are businessmen, some are there because they have social attributes which make them attractive as ambassadors. I think any who have expertise in intelligence are in the minimum. You may have some like that, but I would like to consult our new Ambassador to the Court of Saint James on this because I don't think she wants to be involved in this.

Mr. ASPIN. We want to have different people looking at this thing from different points of view. If they are businessmen or contributors, or for whatever reason they are appointed ambassadors, that is fine; add them to the list. If they send in embarrassing reports, maybe it will improve the quality of ambassadors.

Chairman PIKE. The Chair would like to speak in support of the gentleman's amendment. It seems to me the whole concept of us as a Nation pretending these things are not going on is one judgment that we can make if we wish to; but it seems to me even more deadly to say that the person who is our official representative to any foreign country should not be made aware of what we as a Government are doing in that foreign country. If the quality of our ambassadorship is as Mr. McClory has described it, I think that it is a criticism of our system of ambassadorships. But it would seem to me that if I were the

Ambassador to the Court of Saint James or anywhere else, I would want to know what America was doing secretly in that nation; and I think that an input from the ambassador and from the appropriate people in the State Department, as to whether such a covert operation is good or bad, is a desirable input.

It is not a veto; it is an input. It is the right to know what is going on in the country in which you are nominally, at least, the representative of the President of the United States of America.

The question is on the motion of the gentleman from Wisconsin. All those in favor signify by saying aye. Contrary no. The ayes appear to have it and the amendment is agreed to.

The question is on the section small letter "c," which will now be reidentified as small letter "d." All those in favor of the adoption signify by saying aye. Contrary, no. It is so ordered, and recommendation "K," as amended, is approved.

[The text of recommendation "K," as amended, follows:]

K. NEW FOREIGN OPERATIONS SUBCOMMITTEE OF NSC

1. The select committee recommends that the National Security Act of 1947 be amended to provide for the establishment of a permanent Foreign Operations Subcommittee of the National Security Council. The subcommittee's jurisdiction, function and composition shall be as follows:

(a) The subcommittee shall have jurisdiction over all authorized activities of U.S. foreign intelligence agencies except those solely related to the gathering of intelligence.

(b) The subcommittee shall advise the President on all proposed covert or clandestine activities and on hazardous collecting activities.

(c) Each member of the subcommittee shall be required by law to submit his individual assessments of each proposal to the President in writing. The assessment should cover such matters as the likelihood of success, the benefits of success, the damage resulting from failure or exposure, the risks against the potential benefits and alternate ways of accomplishing the goal.

(d) The subcommittee shall be chaired by the Assistant to the President for National Security Affairs and shall be composed of:

Assistant to the President for National Security Affairs;

Director of Central Intelligence;

Secretary of State;

~~Secretary of Defense;~~

Deputy Director for Intelligence of CIA;

Chairman of the Joint Chiefs of Staff;

The ambassador(s), if there is one, and Assistant Secretaries of State for the affected countries and areas.

Mr. McCLORY. I move the adoption of recommendation "L."

[The staff draft of recommendation "L" follows:]

L. DEFENSE INTELLIGENCE AGENCY

1. The select committee recommends that the Defense Intelligence Agency be abolished and that its functions be transferred to the Assistant Secretary of Defense for Intelligence and the CIA.

Chairman PIKE. Is there any discussion?

Mr. MILFORD. Mr. Chairman, I don't feel we have looked into that particular problem enough to make such a recommendation. It is true we have had some adverse testimony, but we didn't really study that problem in the committee.

I would be reluctant to vote to eliminate or abolish this particular part of the defense intelligence community without further hearings. I recommend against adoption of section "L."

Chairman PIKE. Obviously this committee is not about to hold any hearings.

Mr. Boos. Mr. Chairman, I might just point out that two members of the staff were assigned to this problem and did nothing else for about 4 months. And the report, to which I cannot refer specifically, talks about what is common knowledge as well—the frequent reorganizations of DIA, the fact that DIA's management functions are now vested in the Assistant Secretary of Defense for Intelligence; the fact that the DIA performance has been unsatisfactory; the fact that DIA military functioning has been assumed by the services; that DIA has failed to coordinate defense intelligence functions as was the idea in 1961.

In other words, Mr. Chairman, I think that the report and the open testimony are replete with justification for this recommendation.

Chairman PIKE. The question is on the motion of the gentleman from Illinois, Mr. McClory. All those in favor signify by saying "aye." Contrary, "no." The ayes have it and it is agreed to.

The next item, recommendation "M," Media.

Mr. DELLUMS. Mr. Chairman, recommendation "M" reads:

M. Media. 1. The select committee recommends that U.S. intelligence agencies not use general circulation journals of the electronics media, or their employees or stringers for purposes of cover or information gathering.

I am in wholehearted support of this particular provision, but I am so thoroughly impressed with it I would like to add something to it, Mr. Chairman.

You may or may not recall that I asked one of the witnesses a question with respect to this, pointing out that the intelligence community has the awesome potential for corruption—the awesome potential to corrupt the press, to corrupt the clergy, and to corrupt our educational institutions. One could debate the question of whether or not the capacity has been totally utilized, but they certainly have the potential and the capability to corrupt institutions.

I would suggest, Mr. Chairman and members of the committee, that our Constitution sets up freedom of the press. We corrupt members of the press. Our Constitution sets up freedom of religion. We have, in fact, corrupted members of the clergy. We have operated in this country within the framework that politics shall not enter into our educational institutions. And it would seem to me, if we are going to protect and defend institutions that are ostensibly free in a democratic society, that we should address not only the issue of protection of the media from the potential corruption or real corruption by the intelligence community but we should also prohibit members of the clergy from being corrupted by our intelligence community—we do have separation of church and state. And I think that students and professors and employees of colleges and universities in this country should likewise not be corrupted.

Either we believe in these freedoms or we don't.

The question I posed to Mr. Colby was, how do you handle the value conflicts between the need to protect and defend important, delicate institutions in this country and the desire on the part of some persons in this country to gather information, or engage in clandestine or covert action?

I think this committee ought to come down hard and clean on the side of stopping any intelligence agency in this country from utilizing, corrupting, and prostituting the media, the church, and our educational system.

Mr. HAYES. I see you are serious. I wasn't sure that you were and I apologize for that. I think the recommendation is probably unconstitutional in the sense that it is apparently attempting somehow or other to exclude a particular classification of persons from employment, whether formal or informal. Your point about attempting to protect the press from corruption or the clergy from corruption, or students and professors from corruption is—I think, with all due respect—impossible for a Government to undertake, and certainly it is impossible for us to undertake.

I would recommend we simply drop the recommendation.

If you want to go even beyond the legal problem—and I think that is certainly insurmountable; I don't think there is any way to overcome the unconstitutionality of the recommendation. Who are we to say that a politician who on the side writes a column, writes a newsletter, uses U.S. mail to translate that into the public realm, isn't in fact breaching this proposal?

I think it is far too difficult an undertaking to get involved in.

We think it is an abuse that some members of the press respond oversensitively to suggestions made by William Colby or by Henry Kissinger. That is an ethical and professional problem for the media person.

Mr. DELLUMS. There are enough right-wing members of the press, left-wing members of the press, middle-of-the-road members of the press—members of the press covers the entire gamut and I am willing to take my lumps in that regard; but if we are going to say there is a tenet known as the freedom of the press, then we ought to underscore it and document it. It seems to me our most important vehicle in a democratic society is a free press. I don't want any undercover CIA agent interviewing me or planting stories in the press that distort or pervert the opinions of the American people because a Government agency did it.

Take that one step further and you have the Government in the business of determining what is and what is not news. I think the Government is already in that business. I think that it is too far in that business. We may never know to the end of time how far the Government is in the business of perverting and distorting the news in this country. But at least we in this committee tried. We didn't get the answer to it but we know it is there.

It would seem to me we ought to make a clear statement that if the Constitution says freedom of the press, then let a member of the press quit his job on a given newspaper, television station, or somewhere else and go to work with the intelligence agency; but do it as a prostitute, don't do it as a perverted individual under the guise of being a person protecting and defending my democratic rights in a free society with an open press. Don't go to members of the clergy—priests, nuns, preachers—and pervert and destroy them when the Constitution says we have freedom of religion. Don't go to students and professors and make them stooges, when they are supposed to have the right to function freely in our society.

I am not mentioning this as a joke. This is a very serious thing to me. Members of the press should not be in anyway corrupted by our intelligence-gathering agencies. That is one step from a Fascist government where the United States, if we move further down that road, will determine what is and what is not allowable in the press.

If we had that situation we would not have had uncoverings of Watergate—the revelations of our intelligence agencies, including the FBI, CIA, and IRS. Many things would not have come to light if not for courageous people in the press who had the guts to go out and find a story. I think that should be protected, and I don't think it should be in any way distorted by the intelligence community. If it is not constitutional, I am not a lawyer and plead ignorance in that regard. Whatever we have to do within the confines of the Constitution, we ought to make a clear and unequivocal statement to end this practice for all times.

Mr. HAYES. You refer to character problems that may or may not be inherent with those classes of persons that you have outlined.

Mr. ASPIN. I, like Mr. Hayes, have some problems with it. Not because I don't think that the media should not be in this business. I think it is very clear the media shouldn't be in this business; but the question is, why do I pick out the media?

Mr. DELLUMS. I want to add two more.

Mr. ASPIN. And I can think of half a dozen more we ought to add after those two.

Here we are dealing with one. If we stop at one, that doesn't make any sense because you ought to add education and religion and then you ought to add other things as well. When you come up with a list, the question is: Does that automatically mean anything that you haven't covered is OK? I think once you have a list of 10 or 12, and say "These you can't do," the implication is that everything else is all right.

Mr. JOHNSON. That is correct. I think any statute would be interpreted that way.

Mr. ASPIN. We are not going to be able to think of all the cases where we don't want them involved. I don't know how we deal with this.

I agree absolutely with what the gentleman says. We do not want them corrupting the media, but how do we accomplish that?

Mr. JOHNSON. I think your argument about constitutionality is not necessarily correct, Phil. There isn't anything wrong with the Congress prohibiting who is going to work for the U.S. Government.

Mr. HAYES. You can't be arbitrary.

Mr. JOHNSON. Yes; you can. You can say we do not want to hire members of the press. If they want to challenge it as being unconstitutional, let them. I don't see where there is anything wrong with the U.S. Government prohibiting who is going to work for it. To say you are not going to allow the press to be used for purposes of cover or information gathering seems to me to be a perfectly legitimate statutory requirement. Perhaps Mr. McClory would care to comment on that. I see nothing wrong with saying you can't hire these people, as long as you don't fall into the race or religious discrimination area.

Mr. McCLORY. Mr. Chairman, I don't think I have any special problem with this on grounds of constitutionality, but I wonder if we are

not talking about U.S. journalists. We wouldn't want to prohibit hiring a representative of Pravda. That wouldn't infringe on the constitutionality of our Bill of Rights.

I wonder if we shouldn't recess at this point until tomorrow morning.

Chairman PIKE. I think the gentleman makes a good point. I think this is a subject that deserves a great deal of thought, and we should not move on it too rapidly.

I would suggest the committee stand in recess until 10 o'clock tomorrow morning.

I want to reiterate to the members of the committee that while it is my feeling that the committee has no further jurisdiction over our late lamented report, the members are absolutely free to convey their individual views to the Speaker and to the Clerk of the House.

[Whereupon, at 4:15 p.m., the committee was adjourned, to reconvene at 10 a.m., Wednesday, February 4, 1976.]

DISCUSSION OF COMMITTEE RECOMMENDATIONS RELATING TO DETAILEES, MEDIA (CONTINUED), ASSISTANT FOR NATIONAL SECURITY AFFAIRS, RESTRICTIONS ON POLICE TRAINING AND RELATIONSHIPS, RESTRICTIONS ON MILITARY INTELLIGENCE, INSPECTOR GENERAL FOR INTELLIGENCE, RELEASE OF INFORMATION, DISCIPLINARY ACTION FOR UNAUTHORIZED RELEASE, AND ACCESS

WEDNESDAY, FEBRUARY 4, 1976

**HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
*Washington, D.C.***

The committee met, pursuant to notice, at 10:20 a.m., in room 2154, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Dellums, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, deputy general counsel.

Chairman PIKE. The committee will come to order. We can't vote on anything because we still don't have a quorum present. When we broke up yesterday, we were discussing the subject of media, a subject in which Mr. Dellums, in particular, is very interested. We are advised that he has automobile trouble this morning. Somebody has gone to get him, and he has requested that we move temporarily from the media subject to the next subject, the subject of detailees, pending his return.

Again, all we can do is discuss it. Is there any objection?

Without objection, the committee will proceed on the subject of detailees, which is recommendation "N."

Mr. Field, would you care to discuss the issue?

[The staff draft of recommendation "N" follows:]

N. DETAILEES

1. The select committee recommends that intelligence agencies disclose the affiliation of employees on detail to other Government agencies or departments to all immediate colleagues and superiors.

Mr. FIELD. Mr. Chairman, detailees was one of the subjects of the initial Inspector General's report of 1973, which looked into internal CIA abuses, and when we began our investigations, we picked up on that. We interviewed a large number of people who are detailees in the Government today. I would estimate there are perhaps 50 or more people who are detailees. We were concerned with the presence of CIA in other Government agencies, whether or not this was disclosed,

and whether or not it caused a conflict of interest. We have a section in the final report which deals with detailees, which I think comes to a fair conclusion on it. Without getting into details, it basically concludes that it is not a serious problem, but that there are some minor problems connected with it. The main one, we felt, was that in most of the cases where we interviewed detailees, their colleagues—the people they worked with—did not know if they were from the CIA. In many cases, this knowledge would be helpful, particularly where they were serving on committees in the Government dealing with problems such as the Freedom of Information Act proposal and recommendations—that type of thing. We felt that their colleagues should know that they had worked with CIA for many years and represented that point of view. We found that in many cases a detailee's own secretary didn't know that he was from the CIA.

Also, detailees were drafting proposals for covert action and the people who were reviewing the proposals didn't know it had been drafted by somebody from the CIA.

In order to avert these problems, we recommend that when somebody is detailed, they be required to make some affirmative effort to disclose to their immediate colleagues and to their supervisors that they are from the CIA. CIA maintains that they do this, but there is no real requirement.

Chairman PIKE. Don't they maintain that they do disclose it very high up—to the head of the department—but not to their colleagues?

Mr. FIELD. They say there is no reason why detailees shouldn't tell their colleagues, but they don't. The obvious thing is you don't walk around a new office and tell everybody where you are from. What we are saying is we want you to make the positive effort to inform your colleagues.

Chairman PIKE. Mr. McClory.

Mr. MCCLORY. In line with that, it seems to me that perhaps requiring that all detailees make known their affiliation to all colleagues and superiors would be sort of the reverse of what the tradition of the CIA has been—of concealing their identity. They would have to wear some name tag and say, "I am with the CIA." I am wondering if it wouldn't reflect our views more if we said their identity should not be concealed from their immediate colleagues or superiors?

Mr. FIELD. They maintain that in all cases where somebody is a detailee, it is no longer a covert situation. I mean, you are now talking of somebody basically going out for training. Once they are overt, they never go back into covert status. This is a kind of rule-of-thumb of the Agency. They say they are not trying to conceal their affiliation. In fact, they say everybody discloses it. Our problem is that we found people did not know. They have no objection to people knowing. At this point in their life or in their career, a detailee is not in anyway clandestine. He is definitely overt. I don't think it would conflict with any desire on their part to keep this under cover. They do occasionally have people under cover in other agencies, but that is not a detailee. That is a different status.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. Mr. Field, you mentioned the Freedom of Information Act. How is this in conflict with the Freedom of Information Act?

Mr. FIELD. We interviewed a detailee who, while serving on the National Security Council staff, had represented the National Security Council on a committee which was making recommendations as to what should be done with Freedom of Information Act amendments and how the policy should be followed in the Government. The committee he served on also had an overt representative from CIA. I think there were five people on the committee. So, in effect, CIA had two of the five positions on the committee, and none of the other members of the committee knew that the fellow from the National Security Council was from CIA. It may be important because when he spoke, he represented, I think in his case, 20-some years of a viewpoint which he had developed from having served in CIA, and his views should have been weighed in that light. We felt this was double representation—two current employees of CIA on that committee, while no other group had two votes—dealing with the Freedom of Information Act amendments, which are directly related to CIA, so they had a definite interest in it. There was no indication this fellow did anything except the most honorable thing.

Mr. MILFORD. While you correctly stated that once a CIA employee or agent becomes overt, he never again operates covertly, I think perhaps it should also be explained that is only in the case where he is publicly and openly identified and is working in the capacity of a CIA agent or an employee.

That does not necessarily hold true if the particular work he is doing does not publicly or overtly identify him as being from CIA. In other words, he could be working in a foreign agency of some type as a detailee, and having never been publicly identified as a CIA employee could then accept a covert assignment elsewhere.

If this particular section goes through, I am afraid that we are again going to be exposing agents in later work, because if they can work as a detailee without having been identified as being from CIA, this, then, allows a later assignment—sometimes in another country—as a covert employee.

Second, I really don't see any particular gain in telling other employees and thereby exposing an agent who could be used at some future time, because it is very difficult to train these agents.

Mr. Chairman, I would be opposed to the inclusion of this recommendation.

Mr. FIELD. Mr. Chairman, could I respond?

Chairman PIKE. You may respond. We now have a quorum present and we can proceed to vote on these things.

Go ahead, Mr. Field.

Mr. FIELD. I want to make sure that we are very clear on this point of agents, because the innuendo is raised so often that somehow we are going to expose an agent. I would never propose anything or write anything in a final report that would in anyway ever expose an agent.

No detailee is covert, and once they are overt, the CIA has never—and they categorically stated that to us—put them back into a covert status. I don't want that innuendo to stand. These people are not going to go back into some kind of agent status overseas where, because we forced them to be identified, they are going to get shot. Absolutely impossible.

The second point is that these people are already identified. The problem is that the identification is ad hoc. It is intermittent. The proper people may or may not know, but in all cases somebody knows they are from CIA and somebody public—not somebody on a private covert basis, but somebody who has access to the media and is not part of the cleared top secret group.

What we are trying to do is make sure disclosure takes place in an organized fashion, and takes place properly with their own colleagues, particularly with superiors. While they are on the payroll of the operation side of CIA—which is what carries out covert action—this does not expose any agent.

I just want to reiterate that point. We are not exposing any agents. We are merely trying to make our Government be a little more candid and honest about who is who.

Chairman PIKE. I think we all understand the issue. The issue is, shall the people with whom these people are working be aware of the fact that their colleagues are employed by the CIA.

Mr. McCLORY. Mr. Chairman, may I offer an amendment that we eliminate the words "to all" and add the words "should not be concealed from their"?

Chairman PIKE. Would you read the entire paragraph as you would amend it?

[Mr. McClory reading.]

The select committee recommends that intelligence agencies disclose the affiliation of employees on detail to other Government agencies or departments and this information should not be concealed from their immediate colleagues and superiors.

Chairman PIKE. Without objection, the amendment—

Mr. ASPIN. I think that weakens it quite a lot.

Chairman PIKE. All right. The gentleman's objection is heard. The gentleman from Illinois is recognized for 5 minutes in support of the amendment.

Mr. McCLORY. I move the adoption of the amendment.

Chairman PIKE. The gentleman from Wisconsin is recognized.

Mr. ASPIN. I think the point that it should not be concealed isn't right. I gather the policy now is that everything is already known and the fact is that it is not known. The point of this recommendation—and I think the committee staff is absolutely right on this point—is that, for example, with a detailee from the Army, even though the person is operating in civilian clothes, you always know it is a detailee from the Army because they go by their titles—lieutenant colonel, or whoever it is. So you can immediately detect any conflict of interest. But there are no titles associated with the CIA.

I think it is very clear what we need to do is have this recommendation as the staff wrote it, because I think it is very important that any potential conflict of interest involving a detailee—when he gives recommendations or states his position—ought to be known to the other people in the room, and to his superiors and colleagues. I think the wording is correct.

Mr. GRAMO. Would you yield? I agree with what you say, but I don't understand that Mr. McClory's recommended change takes away from it.

Mr. ASPIN. He wants to say it should not be concealed from immediate colleagues and superiors. That is what it is now. It is now not concealed from them. The point about the staff recommendation is that they should take an active role in telling their colleagues and their immediate superiors.

Mr. GIAIMO. I understand. Does the gentleman think it is a positive obligation on their part rather than a negative one of not concealing their identity?

Mr. ASPIN. Exactly.

Chairman PIKE. The question is on the amendment offered by the gentleman from Illinois, Mr. McClory. All those in favor of the amendment, signify by saying aye. Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

Mr. GIAIMO. I move the section.

Chairman PIKE. All those in favor of the draft as written signify by saying aye. Contrary, no. The ayes appear to have it, and the draft is agreed to.

We will now return to the subject we were discussing yesterday, the question of the use of the media by the CIA.

Mr. Dellums, as I recall, you were about to offer an amendment, or had offered an amendment, to expand that section to include other lines of endeavor. Would you please restate your position?

Mr. DELLUMS. Yes. Thank you, Mr. Chairman.

At this time, in order to facilitate debate, I would like to move an amendment to the paragraph entitled "Media," by adding the following language:

It is further recommended that the clergy, students and employees of U.S. educational institutions not be used for these purposes.

And, Mr. Chairman, if I could be recognized.

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. DELLUMS. Thank you, Mr. Chairman.

The paragraph on media, in effect, says the U.S. intelligence community shall not use general circulation journals, electronic media, their employees, for the purpose of cover or information gathering. I am, by this amendment, including the clergy, students and employees of educational institutions. I think it is important, if we believe in the concept embodied in the first amendment, that our press should, in fact, be free of the Government, free of political coercion, corruption, or prosecution; and I think that when the intelligence community utilizes, or attempts to utilize, members of the press it endangers a tradition we have in this country, and that is freedom of the press.

No. 2, we have a concept that our Government is based on, Mr. Chairman, that includes the notion of separation of church and state. For our intelligence community to utilize members of the clergy for purposes of cover or gathering intelligence community information, in my opinion, is a violation of that concept. I am also including students and employees of institutions of higher learning, because I think our education should be beyond manipulation, coercion, and corruption by the Government. And I would add a note that if my memory serves me correctly, Mr. Chairman, former President Johnson, upon recommendation of one of his commissions, issued an Executive order saying that the intelligence community shall not contract or otherwise use employees or students of educational institutions.

So I would simply summarize that I think we should adopt this amendment with respect to the media. And I would like to further expand it to include the clergy and to include our educational institutions, because I think it is vital and necessary that our Government, represented by our intelligence community, not be able to infringe upon rights that are clearly embodied in the principles that underlie this Government.

With that I yield back the balance of my time.

Mr. GIAIMO. Mr. Chairman.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. I would like to ask a question of the staff as to the basic proposal before we get to the amendment:

Does that apply just to the electronic media? I notice there is no mention of the writing press. Is that because of the first amendment?

Mr. BOOS. No; there is a typo. Mr. Giaimo. Line 3 of subparagraph 1 should read "journals or electronic media * * *."

Mr. GIAIMO. OK.

Mr. McCLORY. Mr. Chairman.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I certainly agree that the CIA should not actively go out and solicit the press. I assume this section would be limited to representatives of the press abroad, since we are talking about foreign intelligence activity. We certainly wouldn't want the CIA engaging domestic press representatives. They shouldn't be engaged in domestic operations anyway, so we should probably cover that generally.

I am wondering about this kind of situation for instance, where a freelance writer—someone who may have a contractual affiliation of some kind for feature articles, or other types of press service, or service with respect to electronic media, for that matter—who comes to the CIA or other intelligence agencies and volunteers. As a loyal American and one who wants to help out his country in the course of his service overseas, he feels that he will have access to information or sources of information which would be useful to his country, and he wants to make some kind of arrangement with the CIA or other intelligence agencies, and wants to know with whom he should make contact and other arrangements.

It seems to me that we would be interfering with that individual's constitutional rights to write into the law that he is not able to engage in that kind of activity.

Also, I am thinking, as I indicated yesterday, about overseas representatives of foreign journals of general circulation abroad.

There seem to me to be a great many areas about which we might be speaking and we don't want to speak. I think we should be very wary, and I think the intelligence agencies should be very wary, of utilizing students and clergymen and others who are going to be regarded as innocent of any kind of intelligence activities. I suppose we could spell that out in some kind of general language, but it should apply to scientists, and philosophers, and lawyers and Members of Congress and all kinds of individuals.

As a matter of fact, I think that there is some criticism of employing representatives of the business community, and I think it has

been a source of embarrassment to representatives of the business community that they were working for our intelligence services, or supplying information valuable to them. So I think it is going to be hard to cover in our language all of these different kinds of individuals.

I don't know exactly how to handle that. I don't know whether we can spell that out in particular language. I am wary of this kind of paragraph because of its limitations as much as I am because of its scope, especially with regard to the news media, where we may be going further than we intend to go with respect to that.

So I question the wisdom of our including this as a part of our recommendation.

Chairman PIKE. I am going to state to the gentleman that I share some of his views. As I read the recommendation as it is now drafted—with or without Mr. Dellums' amendment—the language says that we could not, given an opportunity to do so, get information from a reporter for Pravda.

I think that is wrong. I think if we had an opportunity to gain information from students in Russia, that wouldn't offend me as just simple intelligence gathering.

Mr. DELLUMS. Mr. Chairman, would the distinguished chairman's concerns be rectified if we limited the impact of this amendment to American citizens?

Chairman PIKE. Yes, it sure would; but I think as soon as we do that, obviously we are creating a big loophole that you may not want. And I am troubled. My sentiments are with you, but my feeling as to the language is that we are writing restrictions that we don't really want to impose on the CIA.

Mr. DELLUMS. If you just would yield for another brief statement, I am not suggesting that this is a very easy question, but as I said earlier, I think there is an obvious, important value conflict here.

We have our press which should be independent; we have our church, which should be separate; we have our educational institutions, which should be beyond politics. And the value conflict is, how do you determine what is more important?

I think it is more important to protect and defend these institutions than it is to gather intelligence. When the question was asked, the response was, we in the intelligence community have been left alone to make these decisions. I don't want them to be left alone again, and I think we have to grapple with it.

I am not sure whether this language is appropriate, but I think, in some way, we must not allow the intelligence community to be able to make the decision that they shall endanger free and democratic institutions for the purpose of gathering information.

Chairman PIKE. May I recoup a little bit of my time?

Mr. DELLUMS. I would ask unanimous consent that the chairman be given an extraordinary amount of time.

Chairman PIKE. I don't have much more to say. I think that it is wrong to use the press as cover for CIA. I think it is wrong to use the clergy. I could very easily live with language limiting it to American citizens, but I am concerned that it will provide a loophole which the CIA could live with easily. Does the staff wish to comment?

Mr. FIELD. I would like to make a couple of points, and I know Aaron and Jack want to comment.

In connection with a situation where somebody volunteers and comes in with information, this recommendation does not cover that. It deals with the CIA using people. That is not where somebody comes to them. This is where they go out and use somebody. So if somebody from Pravda wanted to volunteer information, it is not our intention—it may be poorly drafted—to prevent the volunteering of information, or CIA access to somebody coming in with it. Rather, it would apply to the CIA program of going out and hiring somebody, and where they overtly or positively take an action to use somebody.

I know that Jack Boos has some comments on whether or not this should be limited to Americans.

Chairman PIKE. Let's hear from Mr. Boos.

Mr. Boos. I hesitate to go into this ad nauseum, but I think we have heard testimony on, and the report does reflect, the fact that foreign news articles do find their way into American publications, either as direct translations or by being picked up by American correspondents overseas. As the chairman points out, we would be leaving a significant loophole if we don't purport to embrace all news publications around the world. The danger of contamination of American news is great otherwise.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I think the committee shares the opinion that the chairman stated a moment ago. Could we get at that problem by just leaving off "or information gathering"? Could we say that we are opposed to the use of general circulation journals, and so forth, for purposes of cover, period, and omit the question of information gathering, which would take care of the gentleman from Pravda, or whoever was coming forward to give information?

I think we all understand what we want. We don't want to use television or newspapers or any kind of a press person for the purpose of cover or for covert operation, or whatever. We don't want to do that.

But, on the other hand, we don't want to prevent those people from coming forth with information, and we don't want to prevent the use of these people in an information-gathering effort. We get into a problem, I guess, where we have covert information gathering. But if we said that CIA couldn't use these people for purposes of cover, wouldn't we take care of that?

Mr. Boos. No, Mr. Kasten. There are two different situations.

The cover situation is that of a fellow who is masquerading as a reporter and has the title of a journalist, but who in fact works full time for the CIA.

The other case is that of a full-time or part-time stringer who does have a journalistic function, but works on the side for CIA.

The point the staff is making here is that unless intelligence gathering on the part of journalists is restricted, all legitimate journalists—whose access very much depends on good will around the world—would be severely compromised. Other nations, other leaders, may have to assume, for their own security, that the man might be an intelligence agent.

Mr. KASTEN. But wouldn't both the individuals in your example be under cover? In other words, wouldn't they both be covered by this

prohibition if we included the guy operating as a stringer for purposes of cover and working for the CIA, in one case?

Mr. Boos. The cover situation includes only bogus journalists, not those working for both a publication and the CIA.

Mr. KASTEN. I don't believe that our committee wants to prohibit a person who has valuable information which would be of help to our country from coming forth with information that would help our national goals.

Mr. FIELD. This is not the intention. This is not to prohibit somebody from coming forward with the information. The staff doesn't want that, either.

Mr. JOHNSON. As I read it, it would actually prevent debriefing by the CIA of anybody who had been abroad and come back, and I think that is true of Mr. Dellums' recommendation. What we are really concerned with is propagandizing or the use of individuals in the church or the educational institutions for the covert operations—not necessarily for information gathering.

Can't we rewrite this thing in such a way as to make that recommendation just in general terms? Can't we pass it by for the time being and have the staff rewrite it? It is not written in such a fashion that anybody agrees with the specifics of it, and yet we seem to be in general agreement.

Mr. KASTEN. I will yield to the gentleman from Illinois.

Mr. McCLORY. It is my idea that perhaps we want to communicate or recommend a sense of the committee statement and maybe we will have to put it in narrative form. I think we have a pretty good understanding—all the members of the committee and the staff, for that matter—and perhaps we would ask the staff to prepare such a statement.

Chairman PIKE. The time of the gentleman has expired. I think that is a pretty good idea. I think the present language just doesn't work. Let's try a redraft.

Mr. Aspin?

Mr. ASPIN. The second point I would like to raise is the one raised earlier. Besides the problem of redrafting the section so it covers the point we were talking about, I am still worried about the problem of how you draw the line. The original draft covered just media. Mr. Dellums has suggested two other very good categories of people who should be covered. Mr. McClory says there are many more, and I agree.

I still am bothered by this point: Once you start down that road, where is the stopping point? And even if there is no stopping point, how do we know we have covered everything we want to cover? I am worried about the concept of starting this.

Mr. DELLUMS. Will you yield?

Mr. ASPIN. Yes.

Mr. DELLUMS. I think on virtually all the issues we have discussed, somebody has said there is an endless list we can involve ourselves in. I don't think these three are three you grab out of the air. We say freedom of speech has been interpreted to cover an independent press. We talk about separation of church and state, and a Presidential commission said several years ago you should not distort, misdirect—use in

anyway—employees or students of educational institutions in the country. That is a concept that we have lived with for a long time.

So I don't think these are three examples of an endless list. I think there is a valid justification for all three.

Maybe what we are saying here is that these three groups that ostensibly are embodied or protected in our form of Government should be protected from use in covert or clandestine activity. That would then get to the objection of the Chair, the objection of the ranking minority member, and one of my more junior members on the other side from Wisconsin. It would handle their concern so we get away from the notion of somebody from Pravda giving us information or someone coming back on a debriefing.

I am suggesting here that members of the clergy, members of the press, members of our educational communities should not be used for covert, clandestine activity.

Mr. GIAIMO. Mr. Chairman.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. We are going to hand this back to the staff to rewrite. I would like to make one comment, and that is that we should be very careful and not be too broad in this area. I think the real purpose of the original language, and the real concern that I and many other people have, is the concern of the CIA employing people in the United States who work for the news media in any form. Isn't that the real concern?

Mr. FIELD. Yes.

Mr. GIAIMO. And I think that is the major one to which we should direct our attention, because it is frightening to Americans that people who portray themselves as free representatives of a constitutionally guaranteed free press are, in fact, employed or have been employed by the CIA or other secret arms of Government. That is offensive to many Americans, and it certainly is offensive to me.

You start getting into the other area, and you get into all kinds of traps and pitfalls. Therefore, I suggest that we move carefully and try to cover that one major area of concern; namely, those in the news media.

Mr. McCLORY. Would you yield?

Mr. GIAIMO. Yes.

Mr. McCLORY. I think if we would add at the end of paragraph "M" the words "in the United States," that would cover your recommendation, Mr. Giaimo, and then we could go on from there with the narrative sense of the committee.

Chairman PIKE. My feeling is that if you limited it to "within the United States," you are saying it's OK to use UPI, and AP, and the organizations that operate overseas.

Mr. Milford, I know you have been waiting patiently to be heard on this issue and I know Mr. Lehman has, also.

Mr. MILFORD. Thank you, Mr. Chairman. I would like to offer a substitute motion. I move that we strike paragraph "M" from the staff draft.

Mr. Chairman, I am disturbed by some of the debate that has occurred on this issue, both yesterday and today. Throughout our committee's discussion, there has been an inferred, if not stated, assump-

tion that when journalists or others cooperate with the CIA or other agencies in our intelligence community, that that cooperation is tantamount to being corrupted. Clearly, these inferences mean that our intelligence people, who are simply doing their job, are some kind of devious devils that are operating illegally. There has been talk about corruption of the press, the church, and so forth. Mr. Chairman, I submit that such remarks can be construed to be an insult and a slap in the face to thousands of loyal, dedicated Americans working in our intelligence community.

Furthermore, such remarks are also a slur on members of the press. Most journalists I know are not helpless babes in the woods. Furthermore, they, more than anyone else, are more concerned with protecting freedom of the press and maintaining a total independence from Government influence.

I would like, though, to get this particular issue into a proper perspective. First, let me point out that a very minimum amount of human intelligence, or Humint, is gathered directly by full-time professional agents in our intelligence community. By and large, Humint comes from thousands of loyal Americans working in all types of industries and professions. Most of these people are volunteers. Others are sometimes paid small amounts to accommodate some of the expenses incurred during their assistance to our agencies.

Freelance writers and members of the press in foreign countries provide very vital assistance to our intelligence community. These journalists have good contacts with the kind of people that our agencies need to reach. The voluntary cooperation between journalists and our intelligence community does not in any way mean that the CIA is controlling the press or trying to influence these journalists or influence what these journalists are trying to write.

The CIA and other agencies receive very valuable assistance from journalists in meeting these contacts and in supplying information. In the case where journalists are hired full time by the CIA or other agencies, this would only be done in a foreign country in connection with a clandestine or covert operation. Such writers would not be producing copy for consumption in this country.

Should we approve this section, we would be depriving our intelligence agencies of a very valuable tool, and, at the same time, such a prohibition would accomplish nothing in the way of reform.

Regardless of the remarks that have been made here on the intent of the recommendation, it clearly states when one reads it, that "for purposes of cover or information gathering," and that term—"information gathering"—would certainly cut off these sources.

Chairman PIKE. The question is on the motion made by the gentleman from Texas.

Mr. ASPIN. Mr. Chairman, if we vote against the motion, does it mean that the draft will go back to the staff for rewriting?

Chairman PIKE. That is correct. The question is on the motion of the gentleman from Texas. All in favor, signify by saying aye. Contrary, no. The noes appear to have it. The motion is not agreed to.

Mr. Lehman?

Mr. LEHMAN. I want to make a brief remark, Mr. Chairman. In the version they bring back, I would like to know exactly what "general

circulation" is—whether it includes scientific journals or medical journals, and things like that. I don't know what "electronic media" is—whether a citizen's band radio salesman could be an electronic media person.

Intelligence gathering is not very pure, and I think this is one of the things that we are going to have to endure if we are going to have an intelligence system. So I want to be careful we don't work ourselves into a box on this. I have concern about whether we are going to put ourselves—

Chairman PIKE. In view of the fact that we have decided to send it back for redrafting, let's not spend any more time on it.

Mr. ASPIN. Mr. Chairman, one more point on it. I think there is another way we could do this, as I think about it.

We are talking about whether, and how, it should cover media, whether it should cover educational institutions, the clergy, and maybe business. Maybe we should take a different approach, and we would have to think about this a little. How about if you just made a recommendation or made it a law that the CIA cannot use for cover any organization that wrote to the CIA and asked that it not be used as cover? In other words, if the head of UPI wrote in and said, "I do not want this organization to be used as cover," they would not be used. If the head of the New York Times wrote in, or if any other news organization wrote in and said, "I do not want my organization to be used as cover by the CIA," it would not be used.

Chairman PIKE. My own feeling is that it would not be any more appropriate or binding for UPI to tell all the members of UPI that they couldn't do what they wished. My guess is that there would be almost unanimous agreement among the members of UPI that the organization would not wish to be used for cover. But if one member of UPI did want to be used for cover, I don't see how we can recommend that the UPI bind them.

Mr. ASPIN. I don't know that you can bind them. I am just thinking of a way to get around the box we are in—of either defining all of the organizations or establishing a systems whereby they do it, and can make their letter public.

I am trying to find some way out of the box. Maybe there isn't any way out. But it is a different approach to the problem than the one that we have discussed, which is to start listing the different categories which must be banned.

Chairman PIKE. I would suggest that the gentleman discuss his ideas with the staff as they redraft this and perhaps come up with alternative language.

Let's move on.

The next item is paragraph "O," "Assistant for National Security Affairs."

[The staff draft of recommendation "O" follows:]

O. ASSISTANT FOR NATIONAL SECURITY AFFAIRS

1. The select committee recommends that the Assistant to the President for National Affairs be prohibited from holding any Cabinet-level position.

Mr. McCLODY. I move its adoption, Mr. Chairman.

Chairman PIKE. Is there objection? Without objection, recommendation "O" is agreed to.

The next item is paragraph "P." "Restrictions on Police Training and Relationships."

[The staff draft of recommendation "P" follows:]

P. RESTRICTIONS ON POLICE TRAINING AND RELATIONSHIPS

1. The select committee recommends that no agency of the United States engaged principally in foreign or military intelligence, directly or indirectly engage in the training or the supplying of domestic police agencies of the United States, and that contracts between police agencies of the United States and foreign police agencies be limited to those circumstances which shall be required on account of internal security or the normal requirements and functions of such police agencies.

Chairman PIKE. Does the staff want to comment on this recommendation?

Mr. FIELD. Mr. Chairman, first, there are a couple of corrections we would like to make in the recommendation. The fifth line down, after the comma, reads, "and that contracts * * *." It should read, "and that contacts between police agencies of the United States and U.S. foreign or military intelligence agencies." So it would say: "and that contacts between police agencies of the United States and U.S. foreign or military intelligence agencies be limited to those circumstances which shall be required * * *" and so forth. I think Mr. Boos can describe the general recommendation.

Mr. Boos. Mr. Chairman, you will recall that the 1973 Holtzman amendment to the Omnibus Crime Control and Safe Streets Act prohibited CIA from direct cooperation with the Law Enforcement and Assistance Administration. It did not speak to relationships between the CIA and State or local police agencies.

Subsequent to the passage of the Holtzman amendment, the CIA voluntarily withdrew from all but purely routine contacts with State and local law enforcement agencies. However, that is a voluntary move on their part, and it is only an internal regulation. It has not been codified. The Rockefeller Commission drew attention to this, and we suggest that the restraint be made permanent.

Mr. McCLODY. Mr. Chairman, I move the adoption of this recommendation. I think it is in line with our findings, and our recommendation, and as Mr. Boos said, it is also a recommendation of the Rockefeller Commission.

Chairman PIKE. Is there objection?

Without objection, recommendation "P" is agreed to.

[The corrected staff draft recommendation "P," subsequently relettered "O," follows:]

O. RESTRICTIONS ON POLICE TRAINING AND RELATIONSHIPS

1. The select committee recommends that no agency of the United States engaged principally in foreign or military intelligence, directly or indirectly engage in the training or the supplying of domestic police agencies of the United States, and that contacts between police agencies of the United States and U.S.

foreign or military intelligence agencies be limited to those circumstances which shall be required on account of internal security or the normal requirements and functions of such police agencies.

Chairman PIKE. Recommendation "Q".

[The staff draft of recommendation "Q" follows:]

Q. RESTRICTIONS ON MILITARY INTELLIGENCE

1. The select committee recommends that the intelligence functions of the armed services of the United States are limited solely to the gathering of intelligence and such military services be specifically prohibited from engaging in any other clandestine activities within or without the United States.

Mr. FIELD. Mr. Chairman, I believe this recommendation came from Mr. Dellums.

You may prefer to talk to it, or we can, if you like.

Chairman PIKE. Well, we are moving along so nicely at the moment. Is there objection to the adoption of paragraph "Q"?

Mr. MILFORD. Mr. Chairman, I would appreciate an explanation of that section.

Chairman PIKE. Who on the staff wants to respond?

Mr. FIELD. Mr. Chairman, I believe this is directed primarily to situations where the military was used in spying during the anti-Vietnam protest period. There were many problems with that. There were problems with interference of rights. It was probably a misuse of the military and, quite frankly, it was very inefficient. They had huge battalions involved in watching 20 people.

Mr. GIAIMO. Will the staff yield for a question? When you say, "be specifically prohibited from engaging in any other clandestine activities," wouldn't that prohibit the military from counterintelligence activity? You really want to prohibit them from covert action, don't you?

Mr. FIELD. We are primarily interested in restricting them from spying in the United States.

Mr. GIAIMO. You say you prohibit them from engaging in any "other clandestine activity." The way I read that it means they couldn't engage in counterintelligence.

Mr. FIELD. Your point is well taken. "Clandestine" should be "covert."

Mr. GIAIMO. It should be covert; yes.

Chairman PIKE. Wouldn't the language also preclude the military even from such things as parachuting behind enemy lines in time of war?

Mr. FIELD. If the word was changed to covert, I don't think it would.

Chairman PIKE. Well, there is nothing covert about a paratrooper trying to drop behind enemy lines and surviving.

Mr. FIELD. Mr. Chairman, I believe if you had declared war, or were in a warlike situation, you wouldn't be in a covert action type of situation.

Mr. McCLORY. Would the chairman yield?

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I think the phrase "or without the United States" at the end should be eliminated because we do expect our military to engage in intelligence activities without the United States. I think our

whole intelligence apparatus has developed from the OSS, which acted entirely "without the United States."

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Do you make that a motion?

Mr. McCLORY. I make the motion.

Mr. DELLUMS. May I speak to the motion?

Chairman PIKE. You may indeed.

Mr. DELLUMS. Before we take this beyond reality, what I was concerned about in restricting the military intelligence is, one, that our military not be able to spy on American people as they did in the peace movement—to disrupt it and to harm it. Certainly, a while back there was a very large episode with respect to the allegation of the military intelligence community spying on American citizens abroad—in NATO countries, in Western Germany, for example, and other places. There was a great deal of furor caused by that.

I don't want to restrict it to "within the United States." I am saying that I think our military intelligence should be restricted in such a way it cannot harm, harass, or intimidate American citizens in this country or abroad, and I think to take out "or abroad" doesn't speak to at least 50 percent of the concerns that we have in terms of limiting military intelligence.

I am not in anyway trying to limit them from parachuting behind enemy lines. I don't want them to parachute behind American citizens' lines when they are simply expressing their will with respect to a policy they don't agree with—like the Vietnam war, or other matters, whether in this country or abroad.

Mr. JOHNSON. I don't think the language achieves what you desire. When you say "the intelligence functions of the armed services of the United States are limited solely to the gathering of intelligence * * *," that is what they said they were doing in the Vietnam war. We had an army intelligence unit in Fort Collins, Colo., for God's sake, and you know how much Communist activity we have going on out there.

Chairman PIKE. There might be disagreement on that.

Mr. JOHNSON. I suppose. But they were doing it on the ground they were gathering intelligence, presumably among the college students. Is that a function for the military or the FBI? There actually were some students there who were engaged in blowing up transformers and things like that. It doesn't seem to me that is a function of the military. It is a function of the FBI, but the military services were involved in a way that nobody really knows.

We didn't get a chance to get into that, and I don't think your language would prevent that from occurring again.

Mr. DELLUMS. Does the gentleman have some suggestion to offer?

Mr. JOHNSON. No, I don't, but I think we should be able to develop it. I don't think this would prohibit what you would like to do.

Chairman PIKE. The committee does have a motion before it by Mr. McClory, to strike the words "or without." All those in favor of the motion, signify by saying "aye." Contrary, "no."

The Chair is in doubt. All those in favor of the motion raise their hands. Five ayes.

All opposed, raise their hands. Three nays.

The motion is agreed to.

Mr. DELLUMS. We don't have a legitimate paragraph before us. It doesn't make sense. I realize that may sound like sour grapes, but how do you strike out "without the United States" when we don't have a paragraph we have agreed on, which we are going to vote on in the first place?

Chairman PIKE. We have a draft. All we have been doing thus far is trying to perfect the draft and vote on it.

Mr. Aspin?

Mr. ASPIN. Can I move that the matter be turned back to the staff to see if they can come up with a new draft?

Chairman PIKE. Certainly. The motion is in order. Is it the will of the members of the committee that this be returned to the staff? All those in favor, signify by saying aye. Contrary, no.

The ayes have it, and the motion is agreed to.

[The discussion on "Restrictions on Military Intelligence" is continued on pp. 2302-2306.]

Now that we have not disposed of those two items, we will proceed to one that might be more controversial.

Mr. Giaimo?

Mr. GIAIMO. Mr. Chairman, can we go now to the question of the Parliamentarian's proposal?

Chairman PIKE. Yes, but that precedes roman numeral III, entitled "Release of Information by the Committee."

Mr. GIAIMO. I was going to suggest that we go to that before we get to the—

Chairman PIKE. We are going to paragraph roman numeral III, and the subject of release of information by the committee.

Mr. ASPIN. At some point—and I don't know whether this is the right point to do it—I would like to try to convince the committee that we ought to add something to a section of this recommendation concerning "An Inspector General for Intelligence."

Is this the appropriate place to put it in, or would that come later?

Chairman PIKE. The gentleman can make his own decision. I don't think it matters.

Mr. ASPIN. All right; let me try to sell the idea to the committee.

If you will look at my recommendations, which appear after the committee recommendations, there is a recommendation there on "An Inspector General for Intelligence"—on the second to the last page of the recommendations that I have in there. Do you see where it is, Mr. Chairman?

Mr. Chairman, let me read what it says. If I may, I would like to read the entire paragraph:

There shall be established an independent agency, the Office of the Inspector General for Intelligence, who shall have full authority to investigate any possible or potential misconduct on the part of the various intelligence agencies or the personnel therein. The IGI shall be appointed by the President, with the approval of the Senate, for a term of 10 years and shall not be permitted to succeed himself. The IGI shall have full access on demand to all records and personnel of the intelligence agencies for the purpose of pursuing his investigations. He shall make an annual report to Congress of his activities and make such additional reports to the intelligence committees or other appropriate oversight committees as he may choose or the committees may direct. The IGI shall have prosecutorial authority and be authorized to take allegations of violations of the laws and char-

ters governing the various intelligence agencies and intelligence divisions of agencies to the appropriate grand jury. The Office of the IGI shall not be permitted to employ more than 20 persons either part-time or full-time. The various agencies reporting to the DCI may also maintain their own Inspector General staff or a similar body.

And this is important:

It shall be made a punishable criminal offense to violate any of the laws or charters of the intelligence agencies and a punishable criminal offense to fail knowingly to report any evidence of violations to the IGI.

Mr. Chairman, under our present draft, the IGI and the DCI are the same person. The DCI is, the way we have established him, working for the President of the United States. He is the President's assistant. And to make him also the Inspector General, I think, is not doing what we really want to do.

One of the important areas that this committee has uncovered, and that the Rockefeller Commission has uncovered, involves a lot of abuses that go on within the intelligence agencies: opening mail, a whole range of things. The interesting thing came out in the Schlesinger "family jewels." As the Director of Central Intelligence, Schlesinger sent a memo to all his people, saying, "Write me a memo telling me of all the things that go on that you think are illegal." This amazing stack came in, which we eventually got after a struggle. And you look through it and you see all of the things that have gone on. A lot of people reported things twice, and several people reported on the same incident, but the interesting thing about it was the large number of people who knew about things going on, and who also knew they were illegal, needed prodding to come forward.

I don't know how we as a committee—or any other permanent committee established after this committee disbands—is really going to ever be sure that they hear about things going on that are illegal—such as mail abuse, to take an obvious example.

I don't know how a committee, unless there are whistle blowers, is going to know about abuses. The intelligence community doesn't seem to produce whistle blowers in the quantity we would like. It is difficult to know about abuse unless there is some kind of encouragement for people who know about abuses to come forward.

I think an independent Inspector General would be one way to do it. You would have a person independently appointed. He has a mandate to check out abuses. We have two laws in there. One says, "you shall not violate the charter." Anybody in the intelligence community who violates the charters of the intelligence community is subject to criminal punishment, and anybody who hears about it, and doesn't report it, is subject to criminal sanctions.

So if I am sitting next to Ron Dellums and I know he is opening mail and I know it is illegal, I can say, "Ron, you are a good fellow but it is my neck on the line as well as yours, and I am going to have to report it." I think we need to have some kind of system where people who know where things are going wrong have a place to go to. And it is unlikely they would want to go public. They could report to the Inspector General, and he would have several options. He could make the necessary corrections internally; he could go to the appropriate committee of Congress.

Chairman PIKE. The time of the gentleman has expired. I ask that I be recognized, and I will yield to you some of my time.

Mr. ASPIN. I have nearly finished, but I think the important thing we have to deal with, and the one we haven't adequately dealt with, is how we prevent abuses in the system.

All the things that came out in the Rockefeller report, that came out in the family jewels—how do you prevent those abuses? It seems to me we might achieve this with an independent Inspector General for the Intelligence Agency, who is separate from the DCI, who is not an assistant to the President, who is appointed for 10 years. He won't be reappointed—he will be, like Elmer Staats or Arthur Burns, appointed for a fixed term. It would be his job to maintain the integrity of the system and to make sure it isn't doing illegal things, that it is not violating the charter or the Executive order. I think it is an important point.

Chairman PIKE. I am going to use a little bit of my time and say I always have difficulty with the concept that a person can be made a criminal by a failure to inform. The whole business of making persons criminal by failure to inform on one of their coworkers troubles me.

Would the staff care to give us their own views on this proposal, as compared with what we have already adopted?

Mr. DONNER. Well, Mr. Chairman, it is the creation of a new and independent entity who would be specifically tasked to an IG function—if I understand Mr. Aspin correctly—so that, apart from what the staff had suggested, the DCI would not have an IG function.

I will not comment on that. It is the committee's function to decide whether or not they want to create a new and independent entity specifically for this.

I want to interrupt myself there and say that if we have a position for that purpose, why not have it for every other agency of Government? As to the penalties involved, I would say I share the chairman's concern—

Chairman PIKE. These are judgments.

Mr. Aspin, let me ask you this: What power would this man have that the Attorney General doesn't have right now?

Mr. ASPIN. This man would have a couple of authorities. I am not sure it is a question of power. It is a question of what his function would be. His functions would be very different from the Attorney General. He would be somebody who is still a part of the intelligence community in the sense that his operation is part of the intelligence community, but he is somebody to whom the intelligence community can go if they find out that something is wrong. Not everybody wants to go to the Attorney General; not everybody wants to go to a committee of Congress.

Chairman PIKE. Not everybody is going to want to go to this guy, either.

Mr. ASPIN. All right; but I think you are going to have more people going to him than if he is the DCI. The point of separating him from the DCI is that if there are dirty things going on—under our system, who would have reported the mail cover? Since the DCI and the Inspector General are now the same person, he has already ordered the activities that go on and presumably knows about them. So, who is

going to say to him, "Take off your hat as DCI and put on your hat as Inspector General, because I have something to tell you"? It has to be somebody different from the head of the intelligence organization.

Chairman PIKE. Frankly, I am not at all sure it is going to happen either way. I see what you are trying to get at. My feeling is that, given some good faith effort within the CIA and with decent oversight by Congress, we don't need to establish another bureaucracy for this purpose. I couldn't vote for that portion of it which creates a crime of silence.

Mr. ASPIN. That is not the most important part of the recommendation.

Chairman PIKE. My time has now expired.

Mr. Giaimo?

Mr. GIAIMO. I yield my time to Mr. Aspin.

Mr. ASPIN. I would like to say that is certainly not the most important part of the recommendation, and if that is the offensive part, we can take that part out.

The important part, as far as I am concerned, is that the Inspector General be somebody different from the DCI. I think it is very important the DCI is the President's man, and we have made him the President's man—we almost made him a Cabinet officer, but we changed that. In any case, he is very close to the President. He is either going to be a Cabinet officer or special assistant, or somebody close to the President.

If the DCI is the President's man, the Inspector General should not be the DCI. I think that is the main point. He will not need a big bureaucracy. In fact, he may not have much to do. I would anticipate that the very fact he exists would be a big deterrent.

Mr. MILFORD. Would the gentleman yield?

Mr. ASPIN. I would be glad to.

Mr. MILFORD. How does your proposal differ with the Inspector General in existence now?

Mr. ASPIN. Because the Inspector General who is now in the CIA is appointed by the head of the CIA. What we are trying to do is establish an Office of Inspector General which is separate from the system. He is appointed separately. He is appointed by the President with the concurrence of the Senate. He doesn't rely on the head of the CIA for his job. If somebody comes to him with a complaint, his mandate to pursue that comes from the President and the Senate. If he is appointed by the head of the CIA and somebody comes to him with a complaint—we have had inspectors general in the CIA for a long time and, apparently, they couldn't stop abuses because they worked for the head of the CIA and the head of the CIA was involved in the abuses.

Mr. FIELD. Mr. Chairman, could I offer an observation?

Chairman PIKE. I welcome almost unlimited conversation at this point, because we have lost our quorum and can't vote on it, anyway.

Mr. FIELD. Mr. Chairman, we also investigated the FBI and people who are in charge of law enforcement, and this business of investigating and prosecuting people is very touchy. It requires a lot of controls, and checks and balances. This would almost be unique in two respects.

First, it would set up an investigative and prosecutorial function outside the Justice Department which, I believe, would be unique in our structure of executive Government.

Second, even within the Justice Department, there traditionally has been a separation between investigation and prosecution. That was breached in the early 1970's with the Internal Security Division and Mr. Mardian, and was heavily criticized during Watergate—with some merit, I think—because the investigator oftentimes becomes very wrapped up in what he has been investigating and consequently becomes a very rabid advocate of prosecution.

In the Justice Department now, he has to take it to the Criminal Division to be prosecuted, and they are going to look at it differently. They may say, "Look, you are all hyped up about this case, but it really isn't there." It is a useful separation, I think, between prosecution and investigation, so I definitely would not want to see prosecutorial authority here.

I also think it may well be in violation of the laws, which allow only the Department of Justice to prosecute in this country. So there is a problem there.

But I think what is more important is that I am not sure we want to set up little units all over the Government that have investigative and prosecutorial powers. They get awfully close—they are not like the plumbers operation, but they get close to that problem. In the Justice Department, you have a lot of policies and checks and controls, and they have been doing it for years. By and large, they are pretty careful about it.

If you get offices scattered throughout the Government that have these kinds of powers, you are apt to lose those controls, and that would concern me.

Mr. ASPIN. OK. If the prosecutorial function has to be in the Justice Department, that is fine. Talk to the point about keeping the IGI separate from the head of the DCI, which is the main point I am trying to make.

Mr. FIELD. My first concern was the biggest concern, but that is a good point. I think we may be also ducking another issue here. Let's face it head-on: The Justice Department didn't do its job for 25 years. In fact, in the early 1960's as you know from our investigation, they had an agreement with the CIA that they wouldn't prosecute. We have this huge agency that is supposed to enforce the laws, and we would be kind of ignoring them by going this way.

We would be saying, "Well, I guess they can't do it, so we will establish this IGI." Let's get hold of the Justice Department and shake it by the lapels and say, "The CIA is no different than anybody else, and if they break the law, they must be prosecuted and investigated."

Justice, frankly, has done a lousy job for 25 years, and it is time they did the job. We should not have to set up another agency.

Chairman PIKE. The time of the gentleman has again expired. Mr. Dellums?

Mr. DELLUMS. Thank you, Mr. Chairman.

I will yield to you in a moment, but in support of the assertion of my colleague, there is a parallel situation.

On an ad hoc basis, when we were looking at the issue of treatment of blacks and other Third World people and women in the military, I took a great deal of ad hoc testimony from young people challenging the process of justice in the military. One very important point they

continued to raise was that within the military, for example, there is the Office of the Inspector General—an IG—but the IG is within the command structure of a given base. So many young military persons said that they did not feel that they received adequate justice because the IG never wanted to challenge the integrity of the base commander on the ground that the base commander writes their efficiency report.

One recommendation was that the IG be outside the chain of command in order to guarantee greater accountability, greater independence, and a greater atmosphere of justice.

The gentleman from Wisconsin is simply making the same assertion within the context of the intelligence community. That is, if the Inspector General's office is within the chain of command, the Inspector General will, more often than not, act independently on the ground that professional careers and advancement potential are locked into how they are perceived by the person at the top.

Mr. MILFORD. Will the gentleman yield?

Mr. DELLUMS. One second. A comparable situation here is a base commander with ultimate authority and the Director of Central Intelligence with ultimate authority over their respective Inspectors General. What the gentleman simply wants to do is to take the IG outside the chain of command to guarantee greater independence.

I would agree that there may be some other legal questions with respect to one or two of the assertions that the gentleman makes, but I think that that is the central question, and I think it is a key issue, and I think it is the issue around which there should be debate.

I yield to my colleague from Texas.

Mr. MILFORD. I thank the gentleman for yielding. One of the problems this gives me is that you have in effect set up two commanding officers in the sense that you couldn't have a central boss who could run it because there is always somebody there to second-guess him, and, as such, might create some rather serious problems as far as running an agency.

Mr. DELLUMS. Just for a brief second, and I will yield to the gentleman from Wisconsin: We are not suggesting here that everyday administration and management of the agency be within the province of the IG. What we are saying is that the issue of justice is so important that it should be protected and defended and kept independent of any other kind of consideration except the pursuit of truth, and justice, and mercy.

I would think on that basis that would answer your question. We are not in any way trying to develop a dual administration or management, but justice, where it conflicts with management, should be separate and independent and the greater issue is the pursuit of justice.

I think that is what the gentleman from Wisconsin is saying. If he isn't, I yield time to allow him to make a statement.

Mr. ASPIN. That is it. And the point about the intelligence community is that it is so secret. Other agencies of government operate with a relative degree of openness, where they report on what they are doing, and it is reported in the press. The problem is that in the intelligence community there is a lot that goes on that is legitimately secret and when things are going on that are legitimately secret, we have an

obligation to make sure those legitimately secret things don't turn out to be illegal—that things that go on under the cloak of secrecy are not illegal. And I think this system is one where you have a check.

The IGI's job is to stay there and blow the whistle if he thinks you are going over the line and doing something illegal.

Chairman PIKE. The question is on the motion of the gentleman from Wisconsin.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Yes.

Mr. ASPIN. If people are interested in the idea, I would like to have the opportunity to change the language of the recommendation to address your concern and the staff's.

Chairman PIKE. The gentleman will not be foreclosed from offering substitute language at a later date, but I have got to advise the committee that we are never going to get done if every time we have a question we just refer it to the staff to rewrite. The gentleman will have an opportunity to substitute alternative language at a later date. Does the gentleman wish to withdraw his amendment now?

Mr. ASPIN. Yes, I will withdraw it.

[The discussion of the establishment of an "Inspector General for Intelligence" is continued on pp. 2307-2309.]

Chairman PIKE. The committee now moves to something more controversial—the subject of "Release of Information by the Committee," which is found under roman numeral III.

I will suggest that this is a terribly fundamental issue which we are just plain going to have to vote on. We have all thought about it a great deal. We have very different views on it, perhaps, but I kind of like the language as it is drafted.

[The staff draft of recommendation III follows:]

III. RELEASE OF INFORMATION BY THE COMMITTEE

The committee shall have the right to release any information or documents in its possession or control by a vote of a majority of the members of the committee under such terms and conditions as the committee shall deem advisable. The committee, in making the decision whether or not to release such information, shall have the right, but not the duty, to consult with other agencies of the Government within the intelligence community or executive branch with regard to any decision relating to the release of such heretofore secret information.

Chairman PIKE. Mr. Giaimo?

Mr. GIAIMO. I agree with you. What we are discussing now is probably the most controversial part of this committee's recommendations, because it addresses itself to what I consider to be one of the major breakdowns in adequate oversight over the secret intelligence agencies of the Government—and that is, the failure of Congress for 20 years or more to exercise adequate oversight.

Congress has closed its eyes and said, in effect, don't tell me what you are doing in secret; I don't want to know. We also have a situation where some Members of Congress have been told the secrets, and therefore you will get the intelligence agencies telling the rest of us that they do inform Congress.

So, therefore, I think we have to address ourselves, No. 1, to release of information by the new intelligence oversight committee, which this language tends to do, and I think we have to address ourselves

to the question of the rights of Members of Congress. What rights do they have to look and learn about the information which exists in the committees? And after they know, what can they do about it, with whom can they discuss it, if anyone, and how can they have a meaningful colloquy with their colleagues on the floor of the House?

For example, last month the Senate had a secret colloquy on Angola, and I think we have to address ourselves to these rules.

Chairman PIKE. Would the gentleman yield?

Mr. GIAIMO. Yes.

Chairman PIKE. I think that there is a middle ground that has not yet been addressed. As I read the language here, we are talking about releasing information to the public. We could consider, instead of release to the public, release to the other Members of Congress. There is a middle ground that we could address ourselves to.

Mr. GIAIMO. You are right. As I understand it, the first recommendation here deals with release of information by the committee to the public. In other words, it addresses itself to the question of declassification, if you will, by the legislative branch. I am not hopeful that the appropriate committee—which in this case I assume will be the Rules Committee—is going to take all of the recommendations of this committee. But I think we have an obligation to suggest it to them, and I am hopeful—I am confident, in fact—that the Rules Committee and other committees will address themselves to this problem and come up either with these or their own alternative recommendations. I think there is an awareness of the problem, and I think we should make these recommendations.

Mr. MILFORD. Mr. Chairman, parliamentary inquiry.

Chairman PIKE. Mr. Milford, you may state your parliamentary inquiry.

Mr. MILFORD. We are now discussing section 3 under "B;" is that correct?

Chairman PIKE. No; we are discussing the beginning of III.

Mr. MILFORD. What subparagraph number?

Chairman PIKE. None. It is just entitled "Release of Information by the Committee."

Mr. McClory?

Mr. McCLORY. Mr. Chairman, I think that the committee recommendations are deficient at present in not spelling out that the responsibilities for classification and declassification should be greatly improved in the executive branch. It seems to me that that is where the primary responsibility has to be.

I think a great many of the problems which the Congress has experienced here recently—including the work of our committee—have arisen because we were overwhelmed with a great deal of classified information, much of which, in the course of our hearings, was declassified for our purposes. I think we should encourage the executive to declassify information so that we don't have to be burdened with this problem of always having the Congress clothed with this responsibility.

I think the congressional responsibility for declassification and secret information should be extremely limited, extremely restricted.

In the first place, I don't think you are going to find in the Congress the kind of expertise which can determine whether or

not release of such and such information will or will not be harmful to an intelligence activity, and I would certainly think it would be basic to any congressional action that the Congress be mandatorily required to find out if a question of national security is involved, and that nothing was involved which would be detrimental to our foreign relations. Otherwise, the Congress could just disregard those actions.

Mr. GIAIMO. Would the gentleman yield?

Mr. McCLORY. I wouldn't expect them to do that.

Mr. GIAIMO. Would you yield?

Mr. McCLORY. I had a little more I wanted to say first, if you don't mind.

Maybe the same kind of question would be involved here as is involved in the Federal Election Commission laws; that is, you can't have the authority on both sides. Either this business of classifying and declassifying is an executive function or it is a congressional function, but I question whether or not it can generally be both at the same time.

If the Congress and this select committee are going to receive secret information, which I feel they should—and I feel we should have received all that we received, perhaps a little more than we received—but if we are going to have this oversight committee receive that kind of information, it seems to me that we should follow the same kind of mechanism which, in my opinion, enabled this committee to get this large volume of information.

In other words, we should, first of all, be required to get the comments and the views of the intelligence agency involved; and if there is a question of national security or adversity insofar as our foreign relations are involved, the President—who is the foreign affairs policy-maker anyway—should have the opportunity to certify that those things are involved. Then, if the conflict arises between the executive branch and the legislative branch, I think we should have it resolved in a judicial forum.

That seems to me to be the approach we should take. I think it is a responsible one. I think it is going to restore credibility—which has been impaired recently—to the Congress, and unless we include that, I don't think that we are going to get approval of this.

So my present position is that I will have to be against this kind of recommendation unless it reflects the views which I have expressed.

Mr. GIAIMO. Would you yield?

Mr. McCLORY. I would be happy to yield; yes.

Mr. GIAIMO. I think we may be talking about two different things. In listening to the gentleman, I get the impression you are talking about the release of classified information—such as someone's name, or something of that type—which could be injurious. That isn't what I am talking about.

Wouldn't you concede that if Congress learns about Angola, or about a secret war in Cambodia, or about a secret paramilitary operation in Laos, it should and does have the right under the Constitution to declassify that fact and make that action known to the American people?

Mr. McCLORY. We are not talking about that subject now at all. With respect to the subject of covert activity, I think there should be prior approval on the part of the Congress. Any covert actions involving

military activity should first of all be approved by the new committee, which I would assume will be created. And with respect to nonmilitary activities, the oversight committee should be promptly informed of them. That would be covered in another subject. This relates to information wholly apart from that.

Mr. GIAIMO. If you will join with me in the proposition that you just said, that there should be prior approval by the Congress of covert actions—and I don't think you intended to say that—

Mr. McCLORY. Prior approval of the oversight committee is my recommendation.

Chairman PIKE. The time of the gentleman has expired.

Mr. Dellums?

Mr. DELLUMS. Thank you, Mr. Chairman. I would like to make a few comments.

First of all, I am in strong support of the language prepared by the staff in roman numeral III, entitled "Release of Information by the Committee." There is a joke that went on during the hearings that the executive branch, when it releases information, is simply declassifying. When Congress declassifies information, it is referred to as a leak, because Congress has never clearly and totally and unequivocally addressed itself to the issue it being a coequal branch of Government. And I believe in this triumvirate form of Government, we are, in fact, a coequal branch of Government and should maintain unto ourselves the clear right to declassify information.

As the distinguished chairman pointed out in the floor debate the other day—and in my estimation, it ended in a catastrophe—15,000 people in the administrative bureaucracy have the ability to classify information by simply putting a stamp on something. And if 15,000 people can classify information, it defies logic and rationality that the Congress—as the ostensible representative of the people—does not keep unto itself the clear right to declassify information.

My next point is that it is obvious by virtue of the statements made by many Members of Congress that we are going to act upon a paragraph entitled "Disciplinary Action for Unauthorized Release." That is certainly something this committee is going to address. It was raised, for example, by the Michael Harrington situation, where—on the basis of his sense of morality and ethics—he released information.

Now this House wants very much to develop a mechanism by which people are disciplined. I believe that there is no justification for disciplining a Member of Congress if the Congress, itself, does not maintain the right to declassify information. If Congress learns about Angola and there is no clearly identifiable process by which I or any other Member can say this is wrong, insane, illegal and immoral, how can you discipline me for releasing that information on the basis of my integrity that we are doing something wrong?

If this committee or Congress is going to address the issue of disciplining Members for unauthorized release, the Congress should have a clearly identifiable, authorized process by which information can, in fact, be released and can, in fact, be declassified.

So I concur with the Chair. I think the language here that allows us to declassify information and make it public should be a right that this committee should not intrude upon, should not compromise in

anyway. If you are going to discipline Members for unauthorized release, there should be a compelling process that allows Members—on the basis of their evaluation, assessment and analysis of an issue—to say, “I think this should be in the public domain” and have a vehicle that allowed that person to do it. For those reasons, Mr. Chairman, I urge this committee to support roman numeral III, entitled “Release of Information by the Committee.”

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman.

Let me make sure that this is right. We are just talking about subsection “b” at this point; is that correct?

Chairman PIKE. I would say to the gentleman, just as a matter of orderly procedure, that I think that roman numeral III should be read sort of in conjunction with the Parliamentarian’s proposal on the prior page which covers those situations where the committee did not vote to release information and where a member of the committee still felt a compelling moral obligation of some sort to get it public.

I think they do sort of work together. But all we are discussing at the moment is roman numeral III.

Mr. GIAIMO. Would you yield, Mr. Chairman?

Chairman PIKE. Mr. Aspin has the time.

Mr. GIAIMO. Would you yield for a question, Mr. Aspin?

Mr. ASPIN. Yes.

Mr. GIAIMO. Mr. Chairman, just so we know where we are, this paragraph deals with release of information by committee action; right?

Chairman PIKE. That is correct.

Mr. GIAIMO. What you referred to on the prior page is the Parliamentarian’s proposal of methods by which an unhappy member of a committee that does not release information can bring that information to the attention of the House floor.

Chairman PIKE. Get it to all of the Members of the House in secret session. It still does not make it public.

Mr. GIAIMO. Right. I am talking about getting it to the Members and to the House and not to the public. And along those lines, at the appropriate time, I have a couple of amendments to rules which provide—and which I think need clarification—for rights of Members of the House to go to the intelligence committee or the secret committees and observe and see what exists in those committees. The rules at the present time are inadequate in that regard, and I would like to discuss that at the appropriate time. Maybe they should be taken together. I don’t know.

Chairman PIKE. I don’t think we can take it altogether. I think we are just plain going to have to do it a step at a time. It does seem to me that an orderly first step would be to vote on this paragraph. We have debated it and debated it and argued it and argued it, and everybody knows where they stand.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Mr. Giaimo, are you going to offer that now?

Mr. GIAIMO. No.

Mr. ASPIN. If we adopt this, that the committee has the right to release information to the public. What do we say to the alterna-

tive point of view which I think has got some merit, which is that Congress is coequal with the executive branch as far as releasing information, but a committee of Congress is not coequal with the executive branch and in order to release information you really must get the whole Congress to agree with it also—

Chairman PIKE. If the gentleman would yield, I would like to take a shot at responding to that. It would be my thought that immediately after we consider this paragraph, we consider the Parliamentarian's proposal, which I believe must be read and considered in conjunction with the paragraph.

The answer to the question, then, would be that this committee could always say to itself, "This information is too touchy, we don't want to release it. But if any of you members feel that it ought to be released, here is the route you can go," which is to the whole House, at which time the whole House could vote.

Mr. ASPIN. So under the proposal we consider, the whole House would hear it if an individual wanted to bring it up?

Chairman PIKE. And if the committee did not want to release it.

Mr. ASPIN. And if he brings it up and the committee approves, then that is it. The committee can then go ahead. But if he blocks it, there is still another move?

Chairman PIKE. That is correct.

Mr. ASPIN. What do either the chairman or the staff say to the point that if the two branches are equal, it really has to be the whole House that has to vote to declassify things rather than the committee?

I tend to think there is something to that argument, but I would like to know—

Chairman PIKE. If the gentleman would yield further, I would say that there is that middle ground—that we are talking about releasing information to the public. An amendment would be in order, I would think. Right in the first line, where we have "shall have the right to release," insert "to all the Members of the House" and go on from there, but I like it the way it is.

Mr. MILFORD. Mr. Chairman.

Mr. ASPIN. Who has the time?

Chairman PIKE. You had the time, but it has expired.

The gentleman is recognized to offer a substitute.

Mr. McCLORY. Mr. Chairman, I am sorry, I don't have my substitute ready to circulate, but my substitute would add at line 6, after the word "information" the words "shall be required." In other words, it would read: "The committee shall be required to find that no question of national security or anything detrimental to the Nation's foreign relations are involved. In this connection, the committee shall have the duty"—strike out "right"—"the duty to consult with other agencies" and then add at the end of the paragraph: "In the event of disagreement the President could bar the release by certifying in writing that the proposed release would be detrimental to national security and in the event the committee disagrees with that, the matter could be adjudicated in the court."

I move the adoption of the substitute.

Chairman PIKE. Once again, I think there is no question of what the substitute means. The question is on the substitute offered by Mr. McClory.

All those in favor of the substitute, signify by saying aye. Contrary, no. The noes appear to have it, and the substitute is not agreed to.

Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman. I had hoped, Mr. Chairman, that we would take up the recommendations concerning the permanent intelligence committee before addressing this particular problem, because the selection and makeup of the permanent committee could have a great deal of bearing on how we could handle this particular situation.

For example, when we get to that section, I have some proposals, as a means of handling this particular problem, which don't address it exactly as this paragraph would.

Chairman PIKE. I would say to the gentleman that I think we have a chicken and egg situation. The Chair is perfectly willing to abide by the wishes of the majority as to which we do first, but I think when we get to the other section, the same arguments can appropriately be made—that we don't know how this committee ought to be constituted unless we know what powers it is going to have.

Mr. MILFORD. For example, I agree with you and the rest of the committee that the Congress can and should be able to declassify information. However, in my own mind, there is a clear difference between the Congress and a committee unilaterally declassifying information, and it appears to me that the House spoke rather clearly this past Thursday concerning its feelings about this particular matter. But yet we do need to find a reasonable mechanism whereby not only can a committee resolve a problem of this nature, but also an individual member within the House. I had hoped to propose such a mechanism when we got into the makeup of the permanent committee.

Mr. GIAIMO. Would you yield?

Mr. MILFORD. I would be glad to yield.

Mr. GIAIMO. I think you are right in that the recommendation for the release of classified information by the Congress is going to be decided somewhere other than in this room. I think that is understated, to say the least. But I also feel that the Rules Committee, which will have original jurisdiction in this area, is very much concerned about this question and does want to address it.

Mr. MILFORD. I want to address it.

Mr. GIAIMO. I think what we have to do is give them a vehicle with which they can begin their deliberative process. I also believe that it is the feeling of a majority of this committee that the committee should have the right to declassify.

Now I admit and concede that the majority view is not agreed with in other places, but what I am saying is that we are not going to get agreement here on this issue.

Let's give them this vehicle, which is our point of view, and let them work their will on it. And I am certain it is not going to come out in this fashion or in the fashion which the opponents of this proposition last week felt. It is going to be resolved on some middle ground. I know they are already thinking about it—about a serious, careful manner in which Congress, as the legislative branch, can declassify and publicize information.

I don't think we can go beyond a recommendation from this committee, and that is what we are doing here.

Mr. ASPIN. Mr. Chairman, what is the program?

Chairman PIKE. The program is that we are going to vote on the language included in paragraph III now, after which we are going to recess until 2 o'clock this afternoon.

Mr. GIAIMO. I move section III.

Chairman PIKE. Mr. Giaimo moves the adoption of the language in paragraph III.

Mr. ASPIN. I would like to offer an amendment. I have an alternative, and I would like to see it considered. My alternative is that the whole House should decide whether the information is going to be declassified.

Chairman PIKE. I can only say to the gentleman, we are at that point where if you have an amendment, offer it. If you haven't let's move.

Mr. ASPIN. Can I offer my amendment in spite of the fact that Mr. Giaimo has moved that the matter be voted on?

Chairman PIKE. Have you got an amendment?

Mr. ASPIN. I have an amendment.

Chairman PIKE. The gentleman will state it.

Mr. ASPIN. The amendment is that after the words "the right to release" we put in "to the full House." In other words, the House shall be in the position of deciding whether the information would be declassified or not, on the grounds that the executive branch and the legislative branch are equal branches of the Government. A committee is not the whole House, and the only way to release classified information, if there is a conflict, is by vote of the full House.

Chairman PIKE. We understand the gentleman's amendment. All those in favor of the amendment of the gentleman from Wisconsin, signify by saying aye. Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

The question is on the language contained in paragraph roman numeral III. All those in favor of adopting that language, signify by saying aye. Contrary, no. The ayes appear to have it.

Mr. ASPIN. We should have a record vote on that, Mr. Chairman.

Chairman PIKE. The clerk will call the roll, fast.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Mr. MILFORD. No.

The CLERK. Mr. Hayes.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. McCLORY. No, by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike.

Chairman PIKE. Aye.

By a vote of 8 ayes, 5 nays, the section is agreed to.

[The approved recommendation, retitled, "B. Release of Information," follows:]

B. RELEASE OF INFORMATION

1. The Select Committee recommends that Rule XI.2 (e) (2) of the House Rules is amended to read as follows:

"Each committee shall keep a complete record of all committee action which shall include a copy of all reports, statements, and testimony of witnesses whether received in open or in executive session."

2. The Committee shall have the right to release any information or documents in its possession or control by a vote of a majority of the Members of the Committee under such terms and conditions as the Committee shall deem advisable. The Committee, in making the decision whether or not to release such information, shall have the right, but not the duty, to consult with other agencies of the government within the intelligence community or executive branch with regard to any decision relating to the release of such heretofore secret information.

3. The Select Committee recommends that the Rules of the House be revised to provide that any Member who reveals any classified information which jeopardizes the national security of the United States may be censured or expelled by a two-thirds vote of the House.

Chairman PIKE. The committee will stand in recess until 2 o'clock this afternoon.

[Whereupon, at 12:08 p.m., the committee recessed until 2 p.m. this afternoon.]

AFTERNOON SESSION

Chairman PIKE. The committee will come to order.

Mr. MILFORD. Mr. Chairman?

Chairman PIKE. Mr. Milford.

Mr. MILFORD. I move to strike the last word.

Chairman PIKE. The gentleman is recognized.

Mr. MILFORD. At the time of the markup of this committee's recommendations, paragraphs or sections of the staff draft have been and will be approved in accordance with the unanimous-consent request.

I would like the record to reflect that my failure to object to the unanimous-consent requests for approval of these paragraphs and sections does not necessarily mean that I approve of their content.

I would note that often the majority of the committee is obviously in favor of a certain section and that my own views do not coincide. However, should I object to each of these unanimous-consent requests, the committee would be delayed while needless votes would be taken.

My differing views and recommendations will be forthcoming when the final report on the recommendations is submitted by the committee.

Chairman PIKE. I want to thank the gentleman for his remarks, and I think, very frankly, that we are now in the home stretch.

I have been discussing with Mr. McClory the issues remaining before us. While many of them are controversial, they are all, also, issues which we have discussed a great deal in the past. I do not think any new intellectual breakthroughs are going to occur as a result of discussing them too much further.

It would be my hope that we can finish these recommendations tomorrow. I do not know whether we can or not, but it would be my hope that we can.

I would like to encourage other members to follow in the footsteps of Mr. Milford at least procedurally—rarely substantively but at least procedurally. If they find it possible not to make speeches on subjects so that we can just proceed to vote on these recommendations—which we have had for a long, long time now—or make amendments to the recommendations, we may well be able to get our job done in very timely fashion.

In furtherance of this era of sweetness and light, I would like to make a unanimous-consent request, and I want you to listen to this one carefully, Mr. McClory: I am going to have to leave at about 3 o'clock for a while, and I ask unanimous consent that the proxies which have been given to me as chairman may be exercised by whoever is sitting in my seat as chairman during that brief period of time that I am absent.

Without objection, it is so ordered. Mr. Giaimo?

Mr. GIAIMO. Mr. Chairman, we have completed release of information by the committee, No. III, have we not?

Chairman PIKE. We have. Unless you have an amendment that comes in right now, we are going to discuss the Parliamentarian's recommendation.

Mr. GIAIMO. I think mine should be acted on before we discuss the Parliamentarian recommendations, since it deals with the release of committee information. My amendment deals with the rights of Members of the House to have access to the information of congressional committees.

Could I address myself to that at this time?

Chairman PIKE. Absolutely.

Mr. ASPIN. Which is yours?

Mr. GIAIMO. They are being handed out to you right now, I hope. Have they been given out?

Chairman PIKE. They are being distributed.

Mr. ASPIN. Which is it?

Mr. GIAIMO. No. 1 and No. 2—not the long one; it does not have my name on it. Rule XI.

Chairman PIKE. Right; we have it.

Mr. GIAIMO. He does not. It is this one.

Have you given them to all members?

Mr. MILFORD. You have it right here.

Mr. GIAIMO. Mr. Chairman, may I be recognized?

Chairman PIKE. The gentleman is recognized for 5 minutes in support of his first amendment.

Mr. GLAIMO. The first one would be an amendment to rule XI(e) (1), which presently reads: "Each committee shall keep a complete record of all committee action which shall include a record of the votes on any question on which rollcall vote is demanded."

Part of the problem with this, from my experience, is one of the oversight committees—namely, Appropriations—has been its vagueness as to what is meant by the committee keeping a complete record. And it used to be that in many instances where there was testimony of this type, the committee would go off the record, and there would be no record.

I understand, and I have observed, that they have now changed this practice, so that most of the time there is a record of committee activities. However, I feel it should be spelled out because of the vagueness of the rule as to what is meant by a committee keeping a complete record.

That rule, in paragraph 2, states that:

All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the member serving as chairman of the committee, and such records shall be the property of the House and all Members of the House shall have access thereto.

That is the present rule of the House—that Members of the House shall have access to the committee hearings, records, data, charts and files.

According to the Parliamentarian, however, that rule is denigrated by another rule of the House—namely, rule XI, subparagraph (k) (7)—which says, "No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee."

Now the Parliamentarian indicates that the language, "no evidence or testimony taken in executive session may be released," means it cannot be released to a Member. Therefore, you have one rule which says all committee data shall be the property of the House and all House Members shall have access thereto, and then you have rule (k) (7), which the Parliamentarian says narrows that and a Member shall not have access to the information.

Bear in mind that this rule change would not allow a Member to publicize anything; it would only affect his right to go to the committee and get information.

As a practical matter, as of this year, you will recall that when we had a debate on the CIA budget, the Appropriations Subcommittee changed its rule, and the chairman of the committee allowed Members to go to the Appropriations Committee to see the committee data, if they would sign a statement similar to the statement they have to sign in the Armed Services Committee which also has done this. So the two committees involved are at the present time allowing Members to see the data. My recommendation would clarify this rule because there is a great uncertainty, even in the minds of the committee chairmen, as to what their rights are, what the rights of the committees are, and what the rights of the Members are.

This would do two things: The first amendment would clarify the first section of 2(e) (1) of rule XI, which says, "Each committee shall keep a complete record of all committee action which shall include a record of the votes on any question."

It would say what committee records should consist of. It would say, if you will read the amendment:

Each committee shall keep a complete record of all committee action which shall include a copy of all reports, statements, and testimony of witnesses, whether received in open or in executive session.

And then the records of votes.

The other amendment would say:

All committee hearings, data, charts and files shall be the property of the House and all Members of the House shall have access thereto, and that access shall not be limited by the provisions of clause 2(k) (7) of this rule.

In other words, the clause in 2(k) (7) which says, "No evidence taken in executive session may be released or used in public sessions without the consent of the committee," would not be construed to mean that the evidence could not be given to a Member of Congress.

Now, the Member of Congress still cannot release or publicize it, but he would be entitled to receive it from the committee—something which they are in fact doing, as I say, but with this uncertainty and cloud hanging over it.

If we do that, then we will at least have come to this position: We will have assured that all Members of Congress will have access to the data before the committees. Then we will be left with the question of what can the Member of Congress do with that data? We will get into this question of the Parliamentarian's suggestion as to what a Member does when the committee votes not to do anything, and then how the Member can consult with his colleagues or ask for a secret session of the House, and so forth.

But I think we have to assure at this time that the House rules be clarified, because of that conflict of long standing in the rules, so that a Member would have access to the committee rules and they could be given to him. But again, he could not release them publicly.

Chairman PIKE. The time of the gentleman has expired.

Mr. Giaimo, I have no difficulty with your amendment No. 1, but I am going to oppose your amendment No. 2 because I really do not believe that an intelligence committee—dealing with the kind of secrecy which it is going to have to deal with—will ever be able to function in secret or will ever get reasonable access to information if all of the Members of the House are going to be allowed to look at all of its records.

I know that that is the current rule of the House. I concede that, as chairman of this committee, I instructed the staff that we were not going to adhere to that particular rule of the House. We have not made our files available to all of the Members. It might have been easier if we had, because it would have diffused the responsibility for any leaks which may have occurred.

I believe that the rules of the House must be changed, but I believe they must be changed in the opposite direction—so as not to give all the Members of the House access to everything which is in the possession of all of the committees.

I think that the other provisions we have pending will make it possible to get the information to all of the Members of the House; but to just say, as a matter of course, that all of the Members of the House are to have access to all of the information, in all of the com-

mittees of the House, just plain means an end to all secrecy. I think that some secrecy must be preserved.

Mr. Dellums?

Mr. DELLUMS. Thank you.

Mr. Chairman, I agree with you on Mr. Giaimo's first amendment, and I disagree with you in your assesment of the second and concur with my colleague, Mr. Giaimo.

First of all, the amendment says that "all committee hearings, records, data, charts and files shall be the property of the House, and all Members of the House shall have access thereto, and that access shall not be limited by the provisions of clause 2(k) (7) of this rule."

Now, it would seem to me that that is totally consistent with the action that has already been taken by this committee.

For example, if this committee in its deliberations has articulated, one, the stance that a committee of the House shall have the power to declassify, on a regular basis, and where there is a situation that gives rise to the committee not voting to declassify, we probably will vote upon some amendment that will provide for the entire House to do it.

I am saying that if you set up a procedure that allows the committee and/or the House to declassify on the one hand, and you enact recommendations that address the issue of individual Members of Congress, in an unauthorized fashion, giving out informtion, then there is no rhyme or reason for excluding the entire House.

The House is involved, given the last action that we took, and that was to say that we shall have the right to declassify. I think that the House should have access to all information. Any time we make the assertion that the entire House shall not have access to all information, it seems to me you are building in a discriminatory factor that says some Members of the House are more capable of keeping secrets than other Members of the House—when this is ostensibly a dynamic body; that is, that it changes.

I think the personalities do not change rapidly enough, but at least it does change. I would like to see a much more rapid turnover of Members of Congress; but at any rate, I do not think that that kind of discrimination ought to be built into any recommendations or any rules that the House promulgates.

All Members of Congress raise their hand and swear to uphold the Constitution. And I think that is the same for everybody. If we say that the Congress shall have the right to declassify, that Congress shall have the right to investigate these matters, then I think all Members of Congress ought to have access to the information.

Now, if a situation occurs where an individual goes beyond the rules or around the rules, given implementation of the recommendations, there is a remedy to handle that situation. But I think we—

Chairman PIKE. Would the gentleman yield?

Mr. DELLUMS. I yield.

Chairman PIKE. What is the remedy if you do not know who the man is who went around the rules?

Mr. DELLUMS. As a practical matter, you have that case now.

Chairman PIKE. There is no remedy?

Mr. DELLUMS. There is no remedy. For example—

Mr. GIAIMO. Will you yield?

Mr. DELLUMS. Yes.

Mr. GIAIMO. Along those lines, I would like to ask the chairman a question:

Supposing the committee votes out something that it decides should be discussed in the House in secret session. You would not have any objection, in that case, to all Members of the House being present in the secret session?

Chairman PIKE. No; I would not.

Mr. GIAIMO. To hear secret testimony.

Chairman PIKE. I would not.

Mr. GIAIMO. I do not think there is any difference.

Chairman PIKE. I think there is a difference, in that a process has been undertaken whereby a decision has been made to bring it into secret session. The amendment and the present rules of the House say that before any process is undertaken, every Member may have the information.

Mr. DELLUMS. Mr. Chairman, if I still have any time—

Chairman PIKE. The gentleman—

Mr. DELLUMS. The distinction I am trying to make is that the genesis of the secret session would be to discuss the issues in order for the House to determine whether it is then willing to declassify the information, and that to me is a difference.

What Mr. Giaimo is saying is that everybody ought to have access to the information.

One of the reasons the issue of access to information for all the Members is now a controversial matter is because we do not have appropriate procedures to handle the question. Once we put appropriate procedures to handle the question in place, I do not think that it should be a question of whether all Members should have the information.

What is the problem now? The problem that Michael Harrington ran into, or Members of Congress ran into in dealing with Michael Harrington, is that it had no procedures to deal with the question. But our job here, as members of this committee, is to recommend a set of procedures. Once those procedures are laid out, I do not see any reasonable justification for saying that all Members of Congress—who are duly sworn in, duly elected by the people—should not have equal access to the information.

I just think that that flies in the face of the—

Chairman PIKE. The time of the gentleman has expired.

Mr. DELLUMS. Thank you, Mr. Chairman.

Chairman PIKE. The question is—Mr. Aspin?

Mr. ASPIN. Under the guidelines that the chairman is proposing, we would not have run into the Michael Harrington problem because Michael Harrington would not have been allowed to look at the stuff; is that correct?

Chairman PIKE. I think that is probably correct.

Mr. ASPIN. So when we establish these elaborate procedures for individuals to take it to the floor, you are really restricting it to any individual on the committee who has been out-voted by a majority of his colleagues; is that right?

Chairman PIKE. That is correct.

Mr. ASPIN. You would not have any Michael Harrington at all.

Mr. GIAIMO. He would be completely muffled.

Mr. DELLUMS. Will you yield?

To that point, Mr. Chairman, given your particular posture at this moment, we do not deal with the critical issue that was raised in this House by the Michael Harrington situation. One thing I think is incumbent upon us is to address that question as clearly and as precisely as we possibly can.

The gentleman from Wisconsin makes the case that I was trying to make; that is, that you do not deal with the Michael Harrington situation by denying all Members of Congress access to information. If Michael Harrington had access to the information now and we put all these other procedures in place, Michael Harrington could one, go to the committee and ask to get someone on the committee to vote to declassify it, if he is not a member of the committee; if that is not the case, then a procedure that allowed him to ask for an extraordinary session of Congress in order to get all the Members involved. But if that person, Michael Harrington, never had access to the information in the first place, you do not solve that problem. He would have to get it surreptitiously from some other place.

Mr. ASPIN. Let me ask the chairman again: I think what the chairman is saying has a further difficulty, in that what we are doing—if we do what the chairman says and not what the gentleman from Connecticut says—is differentiating different people in the House. We are making a distinction between various Members.

What happens if somebody who is not on the committee now, under your guidelines, hears about something through another source? Is he then bound by the rules of the House to follow the procedure?

Chairman PIKE. If he hears about something from an unclassified source, I do not think he is bound by anything.

Mr. ASPIN. You see, if you have him under the gentleman from Connecticut's procedure, all Members of the House are treated the same. So if he hears something from an unclassified source or whatever source, he has an opportunity to come and check it out for himself; but then he is bound to follow the procedures of the House to get it declassified.

Chairman PIKE. Would the gentleman yield?

Mr. ASPIN. Let me finish; just a moment.

Suppose the person is not a committee member and he hears about it from a source who is? For example, the gentleman from California brought a case to the attention of the Armed Services Committee—which we went into in this committee—and he had no way to verify it independently. I do not see how he could be bound by the disclosure procedures.

I think you are distinguishing between people, and therefore a Member of the House who hears it from any other source—and he is bound to hear it from another source——

Chairman PIKE. Would the gentleman yield?

Mr. ASPIN [continuing]. He is going to be free to do what he wants.

Chairman PIKE. Would you yield to me for a question?

Mr. ASPIN. Yes, I yield.

Chairman PIKE. Do you really believe that if 435 Members of the House have access to all of the material in the files of the intelligence committee, assuming we establish one, it will be possible to keep any of that material secret?

Mr. ASPIN. Well, I would only point out to the gentleman that the rules of the House are such that anybody could go and look at the information now.

Chairman PIKE. I am aware of that, I am aware of that.

Mr. ASPIN. And lots of information has been given. We are operating under a system whereby we cannot get it. We are having trouble getting the information.

Under the old system, everybody could go in and see what Lucien Nedzi's subcommittee and Eddie Hébert's committee had. They got everything they asked for.

Our committee is having trouble getting it.

Mr. GIAIMO. Will you yield?

In answer to the chairman's question as to whether 435 Members of the House can keep a secret to the same extent that 100 Members of the Senate can presently keep that secret: They had secret sessions in the Senate. The Senators are privy to this information.

I do not see how you properly can differentiate between that and elected Members of the House.

Mr. ASPIN. Just to go back again, the fact of the matter is that not very many people come around and look for it. The point about the Michael Harrington and Chile thing was the only name on the list was Michael Harrington. Four hundred and thirty-five Members of the House and the only one who bothered to go over and read about it was Michael Harrington.

I do not know how many people we have had request to come and look at our files and be turned down, but I will bet there have been none.

Chairman PIKE. We have had a few.

The time of the gentleman has expired. Anybody else wish to be heard on this?

Mr. JOHNSON. Will we vote on them separately?

Chairman PIKE. Yes, we will vote on them separately.

The question is on Mr. Giaimo's amendment No. 1; all in favor of the amendment signify by saying "aye"; those opposed "no."

The ayes appear to have it. The amendment is agreed to.

The question is on Mr. Giaimo's amendment No. 2.

All those in favor of the amendment signify by saying aye; contrary, no.

The Chair is in doubt.

Mr. ASPIN. How about a hand? We do not want a rolcall, just a show of hands.

Mr. GIAIMO. How about hands?

Chairman PIKE. You do not want a rolcall?

Mr. ASPIN. I do not want a rolcall.

Chairman PIKE. You are afraid I will vote the proxies, is that it?

Mr. ASPIN. Aye. All right.

Chairman PIKE. All right, all those in favor of Mr. Giaimo's amendment No. 2 raise their hands; five.

Those opposed raise their hands.

Mr. MILFORD. Mr. Chairman, I ask for a rollcall vote.

Chairman PIKE. Those opposed raise their hands.

Four opposed. The amendment is agreed to.

Mr. MILFORD. I asked for a rollcall.

Chairman PIKE. You asked for a rollcall vote.

All those in favor of a rollcall vote will raise their hands. The clerk will call the roll.

I am going to try very hard to be fair on this, I really am.

Mr. DELLUMS. You take two and give us two.

Chairman PIKE. I do not know Mr. Stanton would vote and therefore I will not cast his proxy.

Mr. ASPIN. I think he would vote with us.

Chairman PIKE. Mr. Murphy, I believe, would vote no. Mr. Murphy votes no by proxy.

Mr. DELLUMS. Except he could become radicalized.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton?

[No response.]

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Aspin?

Mr. ASPIN. Aye.

The CLERK. Mr. Milford?

Mr. MILFORD. No.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. McCLORY. No.

The CLERK. Mr. Treen?

Mr. TREEN. No.

The CLERK. Mr. Kasten?

Mr. McCLORY. No by proxy.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. No.

By a vote of 6 yeas and 6 nays, the amendment is not agreed to.

Let me just suggest that the proper parliamentary move at this time would be for one of you who voted aye to change his vote to no, whereupon he could subsequently ask for a reconsideration when you think you have the votes.

Anybody say off aye, on no?

Mr. DELLUMS. Off aye, on no, strictly for the purposes of maintaining parliamentary prerogative.

Chairman PIKE. All right; by a vote of 5 yeas and 7 nays, the motion is not agreed to.

Let us then——

Mr. DELLUMS. Mr. Chairman, we will withhold the vote until we get Mr. Stanton back.

Mr. GIAIMO. We should consider it now or put it off.

Chairman PIKE. Yes.

Mr. DELLUMS. I move reconsideration of the matter just voted upon.

Chairman PIKE. All right. We will withhold the vote on that until a subsequent time.

I hope you understand I am trying to be fair. I really do not know how to vote these proxies on this very controversial issue.

The question then becomes the recommendations of the Parliamentarian—the suggestions of the Parliamentarian—on how a member of the committee who was dissatisfied by a vote of the committee to make matters public could proceed in order to get them made public.

Mr. JOHNSON. Mr. Chairman?

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I would like to point out the problem with this section IV(A) is that it refers to a member of any committee who is in possession of secret information.

Chairman PIKE. We are not looking at that at the moment.

Mr. JOHNSON. I am sorry.

Chairman PIKE. We are looking at the one prior to it called Parliamentarian's proposal.

[The Parliamentarian's proposal follows:]

PARLIAMENTARIAN'S PROPOSAL

In the event of a negative vote by the Committee on the release of certain classified information, a member of the committee may apprise the other Members of the House that the Committee possesses information which he believes ought to be made public. Other Members of the House would then be authorized to have access to that information, provided they sign an agreement not to divulge the information. If these other Members agree that this information ought to be made public, they will sign a petition attesting to that. Upon obtaining the signatures of one-fifth of the House, the House shall convene in secret session for the purpose of advising the entire membership of the House on that information. The House may then vote to release the information to the public.

Mr. McCLORY. Mr. Chairman, I am not sure how I feel about this subject, but I would like to point out that I think the Parliamentarian's proposal should work both ways; that is, in the event of an affirmative vote by the committee to release certain information, and if one or more members of the committee want to bring the subject to the House, they should have the right to serve notice and then bring the subject to the floor of the House in a secret session. Then the House could act on that disagreement.

Chairman PIKE. Well, in the event of an affirmative vote, Mr. McClory, if the gentleman would yield, the matter would already have been made public.

Mr. McCLORY. But this Parliamentarian's proposal, in a sense, provides for an appeal from a negative vote in the committee on the part of a member.

What I am saying is that if the vote in the committee is in the affirmative—for the release of the material—a member should still have the right to go to the House and have the House review that matter

on appeal. We ought to let this work both ways—both in regard to a negative vote and in regard to an affirmative vote.

Chairman PIKE. I understand what your concept is, but if you want to offer a motion, it would seem to me that he ought to be limited to a very short period of time within which to do that.

Mr. McCLORY. Right. Mr. Chairman, I would like to be recognized in support of my amendment to the Parliamentarian's proposal.

Mr. MILFORD. Will the gentleman withhold for just a moment to hear an alternate plan?

Mr. McCLORY. Very well.

Mr. MILFORD. Before the motion is made?

Mr. McCLORY. I withhold my motion.

Chairman PIKE. Mr. Milford is recognized.

Mr. MILFORD. I move to strike the requisite number of words.

Here is the thing that bothers me: In effect, 20 Members of the House are going to be able to unilaterally declassify anything they want by bringing the issue itself to the full House membership.

Now, in really extenuating circumstances, I could see that that would be a necessary mechanism. What worries me is that there is no check in between—simply 20 Members petitioning and gaining a full House hearing on classified matters. In effect, you declassify the material when you do that, because, as the chairman very appropriately stated, once a matter is released to 435 Members it is, for all practical purposes, released publicly.

I would, when we get into the section on the permanent committee, have a proposal which would establish a leadership committee where these people first would have to go; and then, only after a certain number on the leadership committee approved a secret session, could it go to the House.

I think this would be vital because otherwise, in effect, 20 Members at any given time can declassify anything that is in the possession of the Congress.

Chairman PIKE. I hear what you are saying, but you have not presented an amendment.

Now, Mr. McClory, do you wish to pursue your amendment?

Mr. McCLORY. I have an amendment; I have it written out in long-hand. It would follow the paragraph with respect to the Parliamentarian's proposal. It would say:

In the event of an affirmative vote by the committee on the release of certain classified information, a member of the committee may serve notice on the chairman of the committee within 24 hours that he intends to bring this matter to the attention of the House in secret session. Having received such notice, the committee shall not release such information until the matter is brought to the floor of the House in a secret session and the House itself votes to release such information.

I move the adoption of the amendment.

Mr. KASTEN. Where would your amendment come? Can you tell me what we are amending?

Mr. McCLORY. We are considering the Parliamentarian's proposal. This would add a new paragraph at the end of the paragraph before you.

It seems to me this should work both ways, Mr. Chairman, with respect to the handling of classified information and the publicizing

of the information before the committee. The rights of the members should be protected with respect to a negative vote on the part of the committee concerning the release of information, where a member wants to release it; and also where the committee decides it wants to release it and the member feels that it should not be released.

We should permit members to protect their rights with respect to this kind of appeal both ways.

Chairman PIKE. Mr. McClory, I have difficulty with your amendment. While you say the Member has to give notice to the chairman within 24 hours, that does not insure that it is going to be brought to the floor expeditiously and there is no time requirement for it to be brought to the floor. Therefore, just by parliamentary obstruction, it could be blocked indefinitely—unless there was a requirement that it be brought to the floor within a short period of time.

Mr. McCLORY. That might be.

It is my understanding that it would be a privileged resolution and it could come to the floor immediately without—

Chairman PIKE. Yes, but you are not requiring anybody to bring it to the floor.

Mr. DELLUMS. Mr. Chairman?

Chairman PIKE. Mr. Giaimo is recognized.

Mr. GIAIMO. Could I ask some questions?

Chairman PIKE. You are recognized.

Mr. GIAIMO. Under the original Parliamentarian's proposal, do I understand now that this is also the staff's proposal?

Chairman PIKE. I do not know. I am told it is not the staff's proposal.

Mr. DONNER. What happened is that, as a result of this problem that the committee is discussing, we received a number of different recommendations.

Mr. GIAIMO. Right.

You are on my time, Aaron.

Mr. DONNER. We have stapled together a number of them here.

Mr. GIAIMO. OK. I want to make sure I clearly understand this now.

I gather that there is a triggering mechanism here. In other words, a member of the committee gets a vote on the matter of release of certain classified information, and you get a negative vote in the committee. That triggers a situation then, where all Members of the House can come in and have access to that committee date. Is that right? I tried to get that idea included in my amendment.

Mr. DONNER. That would seem to be the substance of the Parliamentarian's proposal.

Mr. GIAIMO. Then, in other words, we are back to what I was suggesting, except that we have put in a built-in mechanism of a triggering device in the committee; is that right?

Mr. DONNER. But the difference is that the Members who sought to get other Members to come in and look at it obviously could not tell them what they were going to look at—just say, "come in; I want to show you something."

Mr. GIAIMO. No, no.

The point I make is this: At the point where I, as a member of the committee, get a negative vote on a proposal to make some classified

information public, or to release it, the committee has to allow Members of the House to come in and see the data. It says:

Other Members of the House would then be authorized to have access to that information, provided they sign an agreement * * * not to divulge * * *.

Mr. DOÑNER. That is correct, sir.

Mr. GIAIMO. I will yield.

Mr. ASPIN. I think it is perfectly clear that the Parliamentarian wrote this with the rules of the House in operation as they are now—not as the chairman would like to write them, but as the gentleman from Connecticut would like to write them.

Mr. GIAIMO. I know.

Mr. ASPIN. We are going to have another vote on the position we have approved tentatively, but unless we adopt the stance of the gentleman from Connecticut, this does not make any sense at all.

Mr. GIAIMO. All right. Let me ask a question. If you do not have the language that was in my amendment, how can I, as a Member who wants to get a secret session of the House, ever get 50 Members to sign with me when I cannot talk to them and tell them about it and they cannot go to the committee and find out about it? We will have to wait for it to be leaked in the newspaper.

I just want to make sure: Is this what we are contemplating here—that a negative vote of the committee will then put in order what I tried to get through before? Mr. Chairman, I would like your thoughts on this.

Chairman PIKE. My thoughts are, very frankly, that I am confused, and I make no bones about it.

Mr. Giaimo has the time.

Mr. GIAIMO. Yes, I yield.

Mr. JOHNSON. It seems to me very clear that other Members of the House would then be authorized to have access to that information, provided they sign an agreement not to divulge it. What does that mean if it does not mean any Member who goes up there and asks for it and signs the agreement has the right to see it?

Mr. GIAIMO. I am not disagreeing. But the problem is, there was a substantial vote against what I tried to do just a few minutes ago, which was to have Members go look at the committee records. Now we are putting a hooker in—that there has to be a negative vote of the committee, and that means that anybody on the proposed committee is going to have to put proposals in the form of a resolution, even if you lose.

Mr. ASPIN. To have a triggering mechanism is just kind of absurd—to say Members of Congress cannot go and look at what is in the committee files except if some Member forces an issue to a vote and they vote negatively. Then they can go look at it. That does not make any sense.

Why are those issues anybody can look at—

Mr. GIAIMO. To further augment the argument, the House presently allows these Members to go to the committee and look at the material. It seems to me we have to get back to the basic question; that is, the Members have the right to look.

Chairman PIKE. In other words, Mr. Giaimo, you are not moving the adoption of the Parliamentarian's proposal?

Mr. GIAIMO. No; I am not saying that; in fact, it is not bad. I just want you to understand that what you are doing here is what some of us were proposing before—except that, whereas under my amendment any Member could initiate it, here the action would have to be initiated by a committee member.

Chairman PIKE. I think that is an accurate statement. I think it starts in the committee and it is not simply available, before any committee action, to every Member of the House.

Mr. GIAIMO. That may not be bad.

Chairman PIKE. Mr. Dellums?

Mr. DELLUMS. I would like to further complicate it by speaking to Mr. McClory's amendment, for all practical purposes, it comes at the wrong point. This is the gist of my argument: That prior to the noon break, this committee, by a majority vote, adopted the recommendation on release of information by the Congress, which sets forth in rather clear terms the principle that a committee of the House shall have the right to declassify information. In my estimation, if we put the issue of declassification in its proper perspective, that is not awesome.

As we said earlier, there are 15,000 people in the executive branch who can take a stamp and classify information, from an envelope to a document, with no one raising a serious question—15,000 people. So it would seem to me not Earth-shattering and not very revolutionary for a committee of the Congress to have the right to routinely declassify information that it, in its wisdom, decides should be declassified.

Now, what Mr. McClory's amendment would in fact do is to undo the thrust of recommendation III, and to that extent I think his amendment comes at the wrong place at the wrong time.

If this committee adopts Mr. McClory's amendment to the Parliamentarian's proposal, you have a situation where a positive or a negative vote can precipitate an extraordinary session of the Congress in order to vote on whether it shall or shall not declassify information.

If you adopt Mr. McClory's proposal, you negate the principle clearly established in III, which is that the committees routinely shall have the right to declassify information.

I think it is important for this committee to understand clearly what the thrust of the gentleman from Illinois' proposal is; that is, to undo, in another paragraph, what the committee already did in paragraph III.

Mr. Chairman, I would like to understand this. Given the fact that we have already passed a provision embodying the principle that the committee of the Congress shall have the right to declassify information, it is clear to me—and hopefully it should be clear to all of the Members—that if you adopt Mr. McClory's proposal on a negative or a positive vote, you are, in effect, saying that a committee is only the first step in a process of declassifying.

That is very different from the action that we took this morning, where we clearly said that a committee shall have that right.

Now, just one last comment, and I would like to address this to my colleague, Mr. Milford of Texas: In my estimation, the issue of declassification, as we tend to discuss it here, is way out of proportion.

I would say to the gentleman from Illinois and the gentleman from Texas that, if 15,000 people have the right to pick up a stamp and declassify anything, as a duly elected representative of the people—with integrity and high principles and extraordinary intellect and all those other kind of things—do you not think you, as a member of a committee, should have the right to at least discuss and, on routine matters, be able to declassify?

I would think there were extraordinary situations of high sensitivity where a committee of the Congress would give and take on this question and discuss it and maybe decide that they should not take a vote on this matter—that it is a matter of such great magnitude and sensitivity that it should be by act of the entire committee, and maybe move to get the entire House in extraordinary session to discuss it.

But on routine day-to-day kind of issues, where 15,000 bureaucrats can declassify or classify information, it would seem to me the height of absurdity if a committee of the Congress of the United States should not have the opportunity to be able to say, "We want to declassify this information." We have to have some trust in the process.

Yes, I yield to my colleague, but those are my two major objections.

Mr. MILFORD. I don't disagree with the gentleman from California on the principles that we are talking about. I have said many times that I do feel that the Congress should declassify information. Where we perhaps differ has to do with the method. I want it to be done responsibly by the Congress; and I want those 15,000 bureaucrats to classify in accordance with a law and at the same time set up some mechanism, even within the bureaucracy, for declassification.

What worries me here is allowing a few people to bring about an irreversible action. It is kind of like the woman who wanted to change her mind after she got pregnant. It is hard to do once the act has been done; and what worries me about the proposals here is that 20 men in the Congress could unilaterally, in effect, declassify. That I don't think I can see.

Mr. DELLUMS. I ask unanimous consent to proceed for 30 additional seconds.

Mr. GIAIMO [presiding]. Is there objection?

The Chair hears none.

Mr. DELLUMS. Thank you.

Let me respond by saying it is a legitimate position that you take; and that is that you are opposed to the principle that a committee of the House shall have the right to declassify, and that in matters of declassification ultimately it should be the entire House. That is a legitimate position. I dissent from that position.

I believe that a committee should have the right to do so. By a majority vote this morning we voted to assume that posture. What I am trying to say to the committee is that Mr. McClory's amendment in effect will undo—

Mr. GIAIMO. The time of the gentleman has expired. The Chair would like to suggest that while we have everyone here, if the gentleman from California would make his motion to reconsider the Giaimo amendment No. 2, we might get a vote and help resolve this matter.

Mr. DELLUMS. I move reconsideration of the last vote taken by the committee.

Mr. GIAIMO. Is there objection?

Mr. JOHNSON. Since Mr. Murphy and Mr. Stanton weren't here and the chairman hasn't expressed how he would vote, wouldn't it be more appropriate to wait?

Mr. GIAIMO. Mr. Murphy is voting negatively, and Mr. Stanton we have talked to on the telephone and he has indicated how he wants his proxy voted.

Mr. JOHNSON. I withdraw my objection.

Mr. GIAIMO. Is there objection to the motion of the gentleman from California?

The chairman hears none and the motion to reconsider is in order. The reconsideration is the adoption of the Giaimo amendment No. 2.

Did someone ask for a record vote?

Mr. DELLUMS. Mr. Chairman, I ask for a record vote on the issue.

Mr. GIAIMO. All in favor will signify by saying aye.

This is sufficient number and the clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton?

Mr. GIAIMO. Aye, by proxy.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Mr. GIAIMO. No, by proxy.

The CLERK. Mr. Aspin?

Mr. ASPIN. Aye.

The CLERK. Mr. Milford?

Mr. MILFORD. No.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. McCLORY. No.

The CLERK. Mr. Treen?

Mr. TREEN. No.

The CLERK. Mr. Kasten?

Mr. McCLORY. No, by proxy.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Mr. GIAIMO. No, by proxy.

On this vote taken on reconsideration, the motion is 7 to 6 in favor of the amendment. The amendment is adopted.

[The text of Mr. Giaimo's amendment follows:]

AMENDMENT TO HOUSE RULES (SUBMITTED BY MR. GIAIMO AND
APPROVED BY THE COMMITTEE)

All committee hearings, data, charts and files shall be the property of the House and all Members of the House shall have access thereto, and that access shall not be limited by the provisions of clause 2(k)(7) of this rule.

Mr. GIAIMO. We will go back to the Parliamentary proposal.

Mr. MILFORD. Wasn't there a change of a vote?

Mr. GIAIMO. Mr. Stanton was not voted on the first vote. It was 6 to 6.

Mr. TREEN. Doesn't the gentleman who changed his vote for reconsideration have to stick to the same vote?

Mr. MILFORD. It cannot be done in a reconsideration.

Mr. GIAIMO. What change in what vote?

Mr. MILFORD. Mr. Dellums changed his vote.

Mr. DELLUMS. The purpose for being able to reconsider is that one can change one's mind. I did that rapidly.

Mr. MILFORD. I do not question the gentleman's change of mind. I am stating a rule of the House which says that under reconsideration one cannot change his vote.

Mr. DELLUMS. There is no rule like that.

Mr. GIAIMO. The Chair is going to have to rule that that is not the rule of the House. I may be wrong, but that is the ruling. The amendment is agreed to.

Let me remind everyone that what we are doing here is in the nature of recommendations to legislative committees and everyone's rights will be protected; but at least the recommendations give some idea of how some of us feel, and I can assure you that we discussed this with Mr. Stanton and he was in favor of it.

Mr. JOHNSON. Mr. Chairman?

Mr. GIAIMO. We are back on the Parliamentarian's proposal.

Mr. JOHNSON. It seems to me that it probably rendered moot by the recommendation we just made, but I would suggest we include the Parliamentarian's recommendation in the report: this is the way we voted, but the Parliamentarian recommends this as an alternative and we all recognize, has some merit to it. I don't see why we can't include both in the record.

Mr. McCLORY. Will the gentleman yield?

Mr. JOHNSON. Yes.

Mr. McCLORY. I thank the gentleman for yielding.

I would concur that there are a great many people in the executive who do the classifying and declassifying, and I think that the role of the Congress should be very limited in this area. But I think where the oversight committee undertakes to declassify and a member of the committee disagrees with the decision—whether it is negative to not declassify or affirmative to declassify—the members of the committee should have equal rights. They should have a right to appeal that ruling to the full House and have the House act on that declassification.

Mr. JOHNSON. Mr. McClory, I agree with that 100 percent. It seems to me it should work both ways. Perhaps we ought to vote on your amendment to the Parliamentarian's recommendation and see if we couldn't include it in the report.

Mr. GIAIMO. That would be the proper way—to vote on the McClory amendment first. At this point we are discussing both the Parliamentarian's proposal and the McClory amendment and we are open for discussion.

The gentleman from Wisconsin is recognized for 5 minutes.

Mr. ASPIN. Let me say a word in defense of the McClory proposal because I think he is right. We did affirm, as the gentleman from

California said, when we passed section III there, that the committee has the right to release information.

Under the Parliamentarian's proposal, we are discussing the right of a person, who has been overruled by the committee, to appeal. And if he wants to release it and the committee does not want to release it, the Parliamentarian's proposal provides for an appeal.

I think it is both right and germane that a person who has been overruled the other way should also have the right of appeal. Let me put my bias on the line: I happen to be one of the group who does believe that the House ought to make these decisions and not just a committee.

But I do think the amendment of the gentleman from Illinois does make some sense and does offer some symmetry.

If you are going to have an appeal procedure where the committee overrode a minority and said, "OK, we are not going to release it" and that person feels aggrieved and wants to carry the issue to the House, it should also work the reverse.

If the majority of the committee feels it should be released and somebody in the minority feels aggrieved, they also ought to have an opportunity to appeal to the House.

Mr. DELLUMS. Will the gentleman yield?

Mr. ASPIN. Yes.

Mr. DELLUMS. I hear what the gentleman is saying. I am simply suggesting that if you add—to use your term—Mr. McClory's "symmetry" to the situation, the effect will be that every decision on release will come to the floor of the Congress as a practical everyday matter. If you say on a negative or positive vote, then you have denied and totally crushed the principle of a committee of the Congress being able to release information.

So we are not talking about symmetry here. We are saying that, as a practical matter, if anybody can come from either side of the issue to the floor, every request for declassification will come to the floor.

I add one other comment: If you put it in this perspective—that one bureaucrat out of 15,000 can pick up a stamp and classify a document—it would take the entire House to declassify it. And I think that is out of proportion.

I suggest to you to take Mr. McClory's amendment, in effect, would allow every single issue of declassification to come to the floor as an everyday, practical consideration.

Mr. ASPIN. If I could get the attention of the rest of the members—

Mr. GIAIMO. Let me interrupt the gentleman for a moment. We have about 12 minutes left on the rollcall and I suggest that we recess now, go over and vote, and then come back.

[A brief recess was taken.]

Chairman PIKE. The committee will come to order.

Mr. Giaimo, we are almost ready for the vote on which issue?

Mr. GIAIMO. The McClory amendment to the Parliamentarian's proposal.

Chairman PIKE. Mr. McClory, are you ready for the vote?

Mr. MCCLORY. Yes.

Chairman PIKE. The question is on the amendment. All in favor of the amendment, signify by saying aye. Contrary, no.

Mr. ASPIN. Can you have a show of hands?

Chairman PIKE. Yes.

All those in favor of the McClory amendment, raise their right hand. Three. Those opposed, raise their right hand. Four.

The amendment is not agreed to.

All those in favor of the Parliamentarian's proposal as submitted, signify by saying aye. Contrary, no.

The ayes appear to have it, and the proposal is agreed to.

[The text of the Parliamentarian's proposal is printed on p. 2205.]

Chairman PIKE. Mr. Aspin?

Mr. ASPIN. Mr. Chairman, we never did decide what number of signatures you ought to have. Shouldn't we say something about that?

Mr. GIAIMO. Yes; we really should.

Chairman PIKE. It says one-fifth of the House.

Mr. ASPIN. "Or some lesser number." We should think about what is the proper number, because that is kind of important.

Chairman PIKE. The copy I have says "one-fifth of the House."

Mr. GIAIMO. We have different copies.

Mr. DONNER. We prepared summaries which I though were at every desk.

Chairman PIKE. The answer is one-fifth of the House.

Mr. ASPIN. Will somebody talk to that for a second?

Chairman PIKE. It has already been passed.

Mr. ASPIN. I am just asking about it, because I think it is important that we know what we are doing here.

Chairman PIKE. That is the magic number we use to get record votes in the House. I don't know why it is not a proper number, and I don't know why it is a proper number.

Mr. ASPIN. Mr. Chairman, I think it is an important issue, because it would be important in the case that the gentleman from California was citing—which is that if it is a very low number, every issue that is overridden will go to the House. The higher the number, the fewer cases will be appealed, because it is more difficult to get the number of signatures. I don't know whether any thought went into that one-fifth—whether it was pulled out of the air, or whether it is the right number or not.

Chairman PIKE. There are three essential numbers that we use in the House of Representatives. One is one-fifth; one is a majority, and the other is two-thirds. It could have been set anywhere. This number was decided on so as to make it relatively easy to get a secret session of the House.

Mr. ASPIN. And we also have arbitrary numbers like 50 signatures to get a caucus.

I just raised the issue.

Chairman PIKE. Yes, you did.

Mr. ASPIN. I yield to the gentleman from Connecticut.

Mr. GIAIMO. I have given some thought to this. I would say to the gentleman from Wisconsin that I think the one-fifth is a good number for one reason: It certainly is less than a majority. It is unfair to insist on a majority even to discuss something. On the other hand, if you have a smaller number than one-fifth—and one-fifth is roughly

87—it should not be a ridiculously small number, because in that event, you would have any 5 or 10 people bothering the House on matters that would most likely be unimportant and could never get a majority in the House.

In other words, you want to have a secret session only when there is substantial concern or support for it.

If it is a matter of great concern, such as the Angola situation, and if the Members could go to the committee and get the information on it, then you should have no difficulty in getting 87 people to ask for a secret session. If you can't get 87 Members in that instance, then you should forget it; you would be wasting your time going to the House, anyway. You might even be wasting it if 87 signed to have a secret session.

But it will provide for a secret session only where there is substantial interest rather than the whims of a few individuals. And so I think the support of one-fifth of the House is a healthy number to have to require a secret session.

I yield back the balance of my time.

Chairman PIKE. Mr. McClory, did you wish to be recognized at this point?

Mr. McCLORY. Mr. Chairman, in connection with our debate on the last recommendation that was agreed upon, we discussed the excessive classification and the extensive authority for declassification in the executive branch, which is frequently not exercised or not exercised adequately. I would suggest, Mr. Chairman, that the staff present to us a recommendation that we have appropriate legislation to reduce the amount of classification in the executive branch and legislation to develop a method for more ready declassification of information.

It is a general recommendation in the Rockefeller Commission report, but I don't like the language they use, and I think we could come up with better language and a better recommendation than they have.

Mr. DONNER. Mr. McClory, we will be happy to draft something, but it will be based on our experience rather than a study of the subject as such. The committee has not studied the subject of classification of documents, and the recommendation would be based on the staff's experience.

Mr. McCLORY. The staff experience and the Rockefeller Commission recommendation and the general observations that we have made here about the excessive classification and the reluctance to declassify or the lethargy or apathy with regard to declassification.

Thank you, Mr. Chairman.

Chairman PIKE. Mr. Giaimo, I don't know what you did in my absence.

Mr. GIAIMO. In your absence we reconsidered my second amendment. That was done. And we discussed the Parliamentarian's proposal and you have disposed of that; so I guess we go to "Release of Information to the House by a Member of the Committee."

Chairman PIKE. Hasn't this now been superseded by what we have done already?

Mr. GIAIMO. I move to strike that recommendation.

Mr. DONNER. These were presented as alternatives,

Chairman PIKE. I understand; so without objection, the recommendation on "Release of Information to the House by a Member of the Committee" will be dropped as having been superseded.

Mr. GIAIMO. And you take up the recommendation on "Disciplinary Action for Unauthorized Release."

Chairman PIKE. OK; IV(B).

[The staff draft of recommendation IV(B) follows:]

IV(B). DISCIPLINARY ACTION FOR UNAUTHORIZED RELEASE

The committee recommends that the rules of the House be amended to provide that if any Member releases any information received in executive session or designated as secret by the committee, to any unauthorized person, including a Member of the House who does not serve on that committee and/or who has received access to the information under circumstance restricting its dissemination, such action shall be grounds for disciplinary action by the House. In the event an official or employee of the House releases such information, he shall be liable to dismissal.

Mr. JOHNSON. I move to strike IV(B) and go on to something else.

Chairman PIKE. The gentleman is recognized for 5 minutes in support of his motion.

Mr. JOHNSON. Mr. Chairman, I feel like the Constitution provides for Members of the House or Senate to take to the floor and, within certain limits, do as they please on the floor. If they have courage enough not to be intimidated by 434 others, and they want to take to the floor and express themselves on any subject, it is not up to a committee, such as this, to recommend that they be disciplined for any action that they choose to take. The House can always subsequently take action.

But it seems to me that in talking about disciplinary action, we are just contributing once more to this intimidation process that all of us have yielded to and which we all must recognize is a part of this process.

I don't want to contribute one iota to the sanctification of any classification system. It seems to me that when we talk about disciplining Members, that is what we are doing. It is not up to us to make those kinds of recommendations. The whole House can deal with it, bring up the legislation any way it wants to; but I don't think this committee should be a part of that.

Mr. DELLUMS. Would the gentleman yield?

Mr. JOHNSON. Yes; I yield to the gentleman from California.

Mr. DELLUMS. I tend to agree with the gentleman and would point out that it seems to me that we handle the issue by coming at it from the constructive side, and that is to establish an identifiable procedure. It puts us in a position of saying there has been a gap in how this whole issue has been dealt with. And the Congress, hopefully—if it embraces our recommendations—will establish that clear vehicle which, in my estimation, will minimize this problem. But it also seems to me that this is a very, very difficult area, and I am inclined at this point to support the motion of the gentleman from Colorado.

Mr. JOHNSON. This recommendation says, "If any Member releases any information received in executive session * * * to any authorized person, including a Member of the House * * *." So a member of that committee can't talk to a Member of the House about what he has

found out and you are restricting this information. You are going through this whole process once again—this secretive process which we cannot resist, and which we tend to accelerate and exacerbate all the time, always in the name of national security. And it just seems to me to be the most damaging thing we can contribute to—to try to continue this intimidation process of the membership of the House by recommending disciplinary action if you don't do what the majority thinks you should do.

Chairman PIKE. Are you through?

Mr. JOHNSON. Yes, sir.

Chairman PIKE. As the gentleman from Colorado knows, there is no member of the committee whom I hold in higher regard for his failure to become intimidated when perhaps people were seeking to intimidate him.

I think, however, that I am going to disagree with him on this section. Earlier, Mr. Dellums said that we can't discuss what we do to a Member who releases classified information unless we have procedures for getting out classified information. We have adopted procedures for getting out classified information. We are in the process of making those procedures available.

I am going to vote against your motion, and after that, I am going to offer an amendment which will simply be a new paragraph under "B," which will say that "The foregoing provisions shall not apply to any disclosure made by a Member of the House on the floor of the House or in any committee pursuant to the conduct of its official business."

I think that the Constitution does require that. I think that such disclosure is protected by the Constitution. But to say that no Member of the House can be disciplined under any circumstances for revealing any secrets is just plain further than I want to go.

Mr. JOHNSON. Will the chairman yield?

Chairman PIKE. Certainly I yield.

Mr. JOHNSON. That was your point. This language would prevent somebody from taking to the floor of the House and doing what Mr. Giaimo did when he was talking about the CIA budget. That would be considered a disclosure under this procedure, and he would be subject to disciplinary action.

What Senator Clark did would be subject, under this, to disciplinary action.

Chairman PIKE. I agree with the gentleman, and I think the language would prevent that, but I think the amendment I am going to offer will preserve our constitutional right to speak out as we wish.

Mr. Giaimo?

Mr. GIAIMO. I would like to offer an amendment saying—

Chairman PIKE. Well, at the moment, we have a motion to strike, so I think we have to vote that up or down first.

Mr. GIAIMO. Right.

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. I would like to ask a question. At the end of line 4 through line 5, it says, "including a Member of the House who does not serve on that committee," et cetera. Doesn't that contradict the

recommendation that this committee adopted earlier which says all Members of Congress shall have access to the information? Now one interpretation of "all Members of the House shall have access to information of all committees" would allow a Member of Congress to walk over to another Member of Congress and say, "There are some seriously questionable activities going on in Angola, one, two, three, four, five, and I would like very much if you went over to the committee, along with other Members, and read the entire text."

Given this language, just my mentioning that to a Member would be grounds for dismissal if one Member went back and said, "I was told by Ron Dellums on the floor enough information to lead me to want to go read it."

So the reason I am in support of the motion by the gentleman from Colorado is that I think this language is ambiguous; and my 5 years' experience in the House is that if you leave it up to interpretation, the most conservative interpretation will reign and prevail. In that regard I think that this could be very repressive, and I think it contradicts the original position we took that all Members of the House shall have access to information.

Chairman PIKE. Does anybody else wish to be heard?

The question is on the motion of the gentleman from Colorado to strike the paragraph. All those in favor of the motion, signify by saying aye. Contrary, no.

In the opinion of the Chair, the noes have it, and I would like to offer the following amendment to be added at the end of the paragraph:

The foregoing provisions shall not apply to any disclosure made by a Member of the House on the floor of the House or in any committee pursuant to the conduct of its official business.

Mr. McCLORY. Mr. Chairman?

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I do not think I favor the amendment. I think that if there is a constitutional right that is being protected, it is protected. We do not have to say so, in that kind of a clause.

The Constitution would protect the individual under the speech and debate clause.

It seems to me what we want to do in this paragraph is encourage entrusting to this proposed committee of the House, which will have oversight of intelligence activities, as free a flow of secret and classified information as possible.

I am afraid that if we water the clause down, as I am afraid your amendment would, it might discourage the—

Chairman PIKE. Would the gentleman yield?

Mr. McCLORY. Yes.

Chairman PIKE. It is my feeling that without some similar limitation on it, the paragraph itself might be found to be unconstitutional. Therefore, I think that what I am seeking to do is the same thing that you are seeking to do—to write a constitutional paragraph.

Mr. McCLORY. Well, anyway, that is my position but I have not researched the point. I sort of like the paragraph the way it is. I think it would be—I yield back.

Mr. GIAIMO. I would like to ask a question.

Mr. McCLORY. I yield to the gentleman for a question.

Mr. GIAIMO. I would like to ask a question of the chairman or of the gentleman or the staff:

When we say that the committee recommends that the rules of the House be amended regarding the release of any information received in executive session or designated as secret by the committee, are we limiting ourselves to information which is classified or which could jeopardize the national interest, or are we talking about any information that a committee may have in secret session?

Mr. DONNER. This was an alternative.

Chairman PIKE. My judgment, frankly, would be that it would apply only to classified information.

Mr. GIAIMO. OK. Because you recall they changed the rules of the House a year or so ago so we would have open meetings of committees unless the committee votes to close it for national security reasons.

In other words, I do not want to be muzzled by the executive committee vote in the committee to discuss whether to go ahead with the construction of the Washington Metro.

Chairman PIKE. I agree with the gentleman.

Mr. McCLORY. I am thinking about classified information which the oversight committee would receive.

Chairman PIKE. I ask unanimous consent that in my amendment, I can add the word "classified" before the word "information."

Mr. GIAIMO. All right.

Chairman PIKE. Mr. Milford?

Mr. MILFORD. Mr. Chairman, I am a little bit bothered by your amendment, in the sense that it ties into the discussion we had earlier when I cited that some 20 men could unilaterally declassify information. It would appear now that one Member would have the power to unilaterally declassify.

Chairman PIKE. Mr. Milford, I think under the Constitution that is correct. I think there is no way, and I think Mr. Colby has stated that there is no way—there is no sanction, let's put it that way, against a Member who goes to the floor of the House and makes any speech he wants to make.

Mr. MILFORD. Mr. Chairman, I am going to be the first to admit that they did not teach a lot of law in weather forecasting school, but I did learn to read a little bit. When I read the Constitution, if I am not incorrect, it states that no Member shall be questioned elsewhere for what he might say on the floor of the House.

And furthermore, in that same Constitution, it states that each House shall be able to govern or control its own Members. I read that as a clear inference that while the Member could not be questioned elsewhere, he could be questioned within the House, even about what he says on the floor of the House. So I am not so sure that it has that ironclad constitutional guarantee.

Furthermore, as I understand the Constitution, the House itself interprets the Constitution insofar as House business is concerned. And for that reason, I really feel this would be a lot better without the amendment, and I would vote against it.

Mr. McCLORY. Do I still have the floor?

Chairman PIKE. No; you do not.

Mr. McCLORY. Would somebody yield to me?

Mr. MILFORD. Yes.

Mr. McCLORY. I think the gentleman from Texas has a very good point. I think that the Constitution is limited to the right of judicial review or judicial sanction, and I think that was pointed out in the *Gravel* case.

But as far as the right of the House to discipline its own Members for violating this oath of secrecy—which is implicit in this paragraph—I do not think there is any question about the right of the House.

Mr. MILFORD. It would appear to me that a case could even be made here where a Member could commit outright treason, because at times the information revealed could be extremely damaging to the country; but yet he could not be tried.

Mr. McCLORY. In time of war he could be.

Chairman PIKE. Your position is that although the *Gravel* case held that no sanction could be applied outside of the House—

Mr. MILFORD. Yes. The House itself could not vote.

Chairman PIKE. The House could not vote to discipline a man who does not—

Mr. MILFORD. Even for something he might say, if, in saying it, he is violating a House rule.

Chairman PIKE. All right, I think we understand the issue.

The question is on the amendment offered by the gentleman from New York.

All those in favor of the amendment signify by saying aye; contrary, no.

The noes appear to have it. The amendment is not agreed to.

Mr. JOHNSON. I ask for a vote by hands.

Mr. MILFORD. Mr. Chairman?

Chairman PIKE. A show of hands has been requested.

Those in favor of the amendment will signify by raising their hands.

There appear to be five ayes.

Those opposed.

Three noes.

Let the record show that my ears are attuned to the slightest disagreement with the chairman. The amendment is agreed to.

Mr. JOHNSON. Mr. Chairman, I have an amendment.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I move that we strike all of the section of the paragraph following "to any authorized person," which would be the following words, "including a Member of the House who does not serve on that committee and/or who has received access to the information under circumstances restricting its dissemination."

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. JOHNSON. It seems to me that the language of that clause would do just what Mr. Dellums said: "If somebody on the committee told another Member of the House to go read this material that is available to him, because it contains material he thinks should be read and analyzed, he could be subject to disciplinary action."

The language seems to me quite clear, that any member on that committee cannot disclose this information to another Member of the House. That is what it says.

Chairman PIKE. Would the gentleman yield?

Mr. JOHNSON. Yes, sir.

Chairman PIKE. It seems to me that we have to draw a distinction between what Mr. Dellums said earlier and what you have just said.

I would agree with Mr. Dellums that it would prohibit one Member from telling another Member to go read the classified stuff about Angola, if everything about Angola were classified; if the word "Angola" were classified. But if the Member said, "There is material in the possession of the Intelligence Committee which you ought to read and it is filed under book 3 at page 9," he has not told him anything and I do not think that that would constitute giving away any secrets.

Mr. JOHNSON. I suppose that is correct, if you qualify it to that extent. But once again, you are placing a person in the position of practically having to put in writing what he told somebody to go read.

It says "if any Member releases any information to any unauthorized person," and then it defines unauthorized persons as including a Member of the House who does not serve on the committee, and that is a restriction, it seems to me, that will just vitiate any possibility of any Member outside of the committee having any opportunity to find out what is going on.

Mr. DELLUMS. Would the gentleman yield?

Mr. JOHNSON. Yes.

Mr. DELLUMS. Mr. Chairman, may I just briefly comment that this is subject to interpretation.

If the Chair recalls, he and I had a colloquy back several months ago. The gentleman had one interpretation of what I said, I had one interpretation of what I said. We both clung tenaciously to our interpretation. I hope you do not cling as tenaciously as you did. But there was a legitimate difference. And I am saying that I felt clear about what I said and you felt clear about what you thought I said.

This raises that kind of point and I think that it is in this murky area that difficulties can arise and can in fact be exploited. That is all I am saying.

Somebody can say, "Well, he told me this." Another Member can say, "I did not say that, I said the other thing." Whose word do you take?

I think you get involved in that very funny area there that provides too much subjectivity on the part of various Members of the House. I think the gentleman is correct in striking this language. It leaves intact, for the most part, what the committee wants to do.

Chairman PIKE. The question is on the amendment of the gentleman from Colorado.

All those in favor signify by saying aye; contrary, no.

The Chair is in doubt.

Mr. JOHNSON. I have one more amendment.

Chairman PIKE. The Chair is in doubt.

All those in favor of the amendment signify by raising your hands.
Three ayes.

Opposed will raise their hands.

Five noes.

The amendment is not agreed to.

Mr. Johnson?

Mr. JOHNSON. I move that we strike the language in the paragraph that says "or designated as secret by the committee," for the reason that I do not think the committee has any authority to designate secrets and I do not want to give them that authority.

Chairman PIKE. Do we all understand the amendment?

Those in favor of the amendment signify by saying aye; contrary, no.

Those in favor of the amendment raise their hands.

Four ayes.

Opposed.

Three noes.

The amendment is agreed to.

Mr. GIAIMO. I move the adoption of the section as amended.

Chairman PIKE. All those in favor of the motion signify by saying aye; contrary, no.

Mr. GIAIMO. I ask for a show of hands.

Chairman PIKE. All right. Those in favor of the section as amended raise their hands.

Those opposed raise their hands.

Four-to-four. The section is not agreed to. So that section, I guess, gets wiped out.

The question is on V, "Rule XI—Access." We have already handled that, also. The access question has been covered by that 7-to-6 vote. So we are done with that.

[The staff draft of recommendation "V"—superseded by Mr. Giaimo's proposed amendment to the rules—follows:]

V. RULE XI—ACCESS

It is recommended that rule XI be amended to permit this committee to receive such secret information unto itself and restrict dissemination of this information, except as provided by the rules of such committee.

Chairman PIKE. We now turn to the whole question of whether there should be an oversight committee, and unless somebody wants to take up some other thing first—

Mr. ASPIN. Do you want to start this tonight?

Chairman PIKE. No; we do not. The gentleman is absolutely right. I had lost track of what time it was. What we will start with tomorrow is right up at the beginning—"A," entitled "A House Committee on Intelligence."

Mr. MILFORD. Mr. Chairman?

Chairman PIKE. Mr. Milford.

Mr. MILFORD. There is an attachment that I passed out to each member. Please hold on to those because the machine for reproduction is broken and I would like to offer those tomorrow when I come back.

Chairman PIKE. As a package?

Mr. MILFORD. Yes.

Chairman PIKE. OK. The committee will stand in recess until 10 tomorrow morning.

[Whereupon, at 4:13 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, February 5, 1976.]

DISCUSSION OF COMMITTEE RECOMMENDATIONS RELATING TO A HOUSE COMMITTEE ON INTELLIGENCE AND COVERT ACTION

THURSDAY, FEBRUARY 5, 1976

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:20 a.m., in room 2212, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Aspin, Milford, Lehman, McClory, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, deputy general counsel.

Chairman PIKE. The committee will come to order. We do not yet have a quorum, and therefore we cannot vote on any proposals of the staff or amendments thereto, but there is no reason we should not start discussing them.

The committee is going to proceed at the moment with recommendation "A," which covers the basic question of establishing a House Committee on Intelligence.

[The staff draft of recommendation "A" follows:]

A. A HOUSE COMMITTEE ON INTELLIGENCE

1. The select committee recommends that there be formed a standing Committee on Intelligence of the House of Representatives. The committee membership shall reflect a broad representation of political and philosophical views.

(a) No Member may serve more than three consecutive terms on the committee.

(b) The staff director and chief counsel may not serve more than six years, may not be reappointed to the staff, and may not be selected from a present or former member of the staff.

(c) Notwithstanding rule XI(e) of the Rules of the House of Representatives, the committee shall determine access to its records and files by other Members of the House.

(d) The committee shall have the right to release any information and documents in its possession or control, and may consult with the executive branch with regard to the release of classified material or information.

(e) Any committee member who shall release, without authorization of the committee, materials or information obtained by the committee shall be subject to a recommendation by the committee to the Democratic Caucus or the Republican Conference that such Member be removed from the committee, or a recommendation to the House that such Member be censured.

(f) Any Committee Member desiring to release classified materials or information notwithstanding the disapproval of the Committee shall, upon petition of one-fifth of the Membership of the House, be entitled to inform the House in a secret session.

(g) Any past or current member of the Committee staff who shall release, without authorization of the Committee, materials or information obtained by the Committee shall be immediately terminated from employment and shall be fully subject to criminal and civil action, notwithstanding legislative immunity.

(h) The Committee shall be vested with subpoena power and shall have the right to enforce its subpoenas in the U.S. District Court for the District of Columbia or any other court of competent jurisdiction, without authorization from the House. The Committee staff shall be given statutory standing to represent the Committee in any proceeding arising from the issuance of a subpoena.

(i) The Committee's jurisdiction shall include all legislative and oversight functions relating to all U.S. agencies and departments engaged in foreign or domestic intelligence. The Committee shall have exclusive jurisdiction for budget authorization for all intelligence activities and for all covert action operations. All remaining oversight functions may be concurrent with other Committees of the House.

Chairman PIKE. Mr. Milford has a very long amendment which I have looked at and which was distributed to all of the members yesterday. I wish he were here to discuss it, but in his absence, I would like to say the following about the staff recommendation:

While I applaud the concept that no member may serve more than three consecutive terms on the committee, this is very obviously a staff recommendation—because I see that, with only two exceptions, any member of the staff can serve indefinitely on the committee. And it has always seemed to me that staff turnover is perhaps even more important than member turnover, because staffs tend to run committees to a very large extent. My personal view would be that paragraphs small letter "a" and small letter "b" should be combined and should simply say:

No member may serve more than three consecutive terms on the committee, and no member of the staff may serve more than 6 years on the committee.

Mr. LEHMAN. Would you yield?

Chairman PIKE. Certainly.

Mr. LEHMAN. I think I may have originated some of the language, but I certainly agree with the chairman. The reason I was thinking along these lines is that back when I was in business, first with a nationwide finance company—when I worked for Universal C.I.T.—they found out that they could not, in any particular office or any particular district, leave a manager or district representative or regional representative there too long without letting him get so friendly with the dealers in that district that he could not really be objective after 5 or 10 years in the area.

So this finance company had a mandatory way of circulating people from the Miami office to the Dallas office to the Chicago office to prevent this kind of personal relationship that removed objectivity.

I have been a General Motors dealer, and one thing they do not do is leave any division people or any regional people more than 5 or 6 years in any place, because these are the same people who allocate automobiles to the dealers—they supposedly provide objective types of information to the dealers. But if you play golf and get too friendly with the dealer, it comes to the point where there is a question of your objectivity—of the oversight from the people of General Motors and their relation to their dealers.

Corporate management found out many years ago that you don't put people in charge of people on an objective basis and leave them there to become bosom friends and expect the same objectivity to be carried out in the long run.

Chairman PIKE. Maybe in fairness to our staff, we should let them

explain why they believed that the members of the committee would get coopted, but the members of the staff would not get coopted.

Mr. LEHMAN. Mr. Chairman, I was just trying to relate some previous experiences I had.

Chairman PIKE. Mr. Boos, you are the one who, under the present setup, would not be required to leave. Would you tell us why you think that the members of the staff should not have any turnover?

Mr. Boos. I would like to defer to Mr. Donner on that.

Mr. DONNER. The chairman's question was a question I always meant to ask Mr. Boos, but I never had the opportunity.

Mr. FIELD. Mr. Chairman, if we could change the subject.

Mr. DONNER. Mr. Chairman, I think the point is well taken and the staff accepts the suggestion.

Mr. FIELD. Just start out with "No member of the staff may serve more than 6 years."

Chairman PIKE. I really think it is terribly fundamental that there be turnover in the membership of any committee or committee staff.

Mr. MILFORD. Will the chairman yield?

Chairman PIKE. Certainly.

Mr. MILFORD. If we follow the chairman's reasoning, why wouldn't it also be appropriate to say that no Member should serve more than two terms in Congress; because if indeed a person on a committee is to be corrupted, why wouldn't that also apply in general to a Member of Congress?

Chairman PIKE. I would simply say to the gentleman that (a) I am not sure this might not be a good idea, and (b) I think it is a matter—unfortunately or fortunately—which the Constitution reserves to the electorate to determine.

Mr. MILFORD. I have some difficulty in building in an assumption that, simply because a Member serves on a committee, this automatically means he is going to be prostituted or corrupted in such a way that he could not continue to serve as well for additional terms. And I realize we are talking more about a philosophical thing here than anything else.

Chairman PIKE. It comes as no surprise to me that our philosophies tend to diverge from time to time.

Mr. MILFORD. Mr. Chairman, our philosophies may stray, but I say my respect for the chairman does not. I have great respect for him.

Chairman PIKE. I heard a lot of that conversation as 246 people walked over me the other night.

Mr. ASPIN. He is leading up to say he is going to vote against you.

Mr. MILFORD. I would submit to the Chair that 246 Members did not walk over him but perhaps honestly had a difference of opinion.

Chairman PIKE. I hope that is the case.

I don't know of any better way to do it, but just as a matter of procedure, let's go down the staff recommendations, item by item, and make such amendments as anybody wants to offer from time to time.

I have offered mine, which combines "a" and "b." It simply says:

No Member may serve more than three consecutive terms on the committee and no member of the staff may serve more than 6 years on the committee.

The question is on the amendment. All those in favor, signify by saying aye.

Contrary, no.

The ayes appear to have it, and the amendment is agreed to.

Mr. McClory?

Mr. McCLODY. Mr. Chairman, I have an amendment with respect to "A," as to the composition of the committee. It is under small "a." The amendments are being passed out.

[Mr. McClory's proposed amendment follows:]

RECOMMENDATION OFFERED BY MR. McCLODY

Under heading "A. A House Committee on Intelligence," strike subparagraph "a." and insert in lieu thereof the following:

a. The Committee shall consist of 5 Members composed of one Member from each of the following committees: (a) Appropriations, (b) Armed Services, (c) International Relations, (d) Judiciary, and (e) Government Operations, no more than 3 of whom shall be Members of the same political party. No committee member shall serve more than 6 consecutive years.

Mr. McCLODY. The amendment would suggest that there be a House oversight committee of five members and that there would be no more than three members of any political party. It also specifies that there would be one member from each of the following committees: Armed Services, Appropriations, International Relations, Government Operations, and Judiciary.

Judiciary would have normal oversight jurisdiction with respect to the FBI and Department of Justice, you see, and the other committees would have some oversight with regard to some aspect of the intelligence community.

I think it is important that we recommend a small committee numerically. I think the opportunities for retention of secret information is much greater if you have a smaller number.

Mr. STANTON. I would agree from past history.

Mr. McCLODY. I think if we want to make this a truly partisan effort—which I think it should be—we should see that it has relatively even balance as between the parties. And I think, if we are going to get the support from the House generally, we are going to have to give assurances that each of the disciplines represented in the congressional committees will have some representation.

I also include in there the 6-year limitation with regard to committee membership.

That is about all I have to say. As I said earlier, Mr. Chairman, I think we can consider these amendments without extensive debate. I think we can understand them easily, and I will try to hold down my discussion this morning.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Mr. Chairman, may I be recognized for 5 minutes?

Chairman PIKE. You may indeed. I take it in opposition?

Mr. GIAIMO. In opposition to the suggestion.

You know, Mr. Chairman, I don't mind being defeated overwhelmingly in the House, as we were last week. I think we were right, and I think the House sometimes needs a little time to catch up with what it should do. I get a little unhappy, however, when my intelligence is assaulted. There has been a deliberate attempt to discredit efforts by some of us to get some real congressional oversight—and these have been very real efforts—to say nothing of the latest column in this

morning's paper which assaults the very integrity and honor of some of the members of this committee. I resent this, as any honest person must.

Let us not forget that we are dealing with the intelligence community, a secret community, which is accustomed to dirty tricks, deception, lying and what-have-you. There is no end to which they will not go to prevent congressional oversight—I say this with all the seriousness that I can muster—and this is another attempt.

My objections to the latest proposed amendments are twofold. First, this magic word “bipartisanship” is just another word, in my opinion, for continuing the coverup of actions that these secret actions resulted in in the past.

We have got to cut it out. And when the American people know about it, they will insist that we cut it out.

Second, there is a responsibility in this Congress with the majority party to carry forward its legislative mandate because it is the majority party. Therefore, the ratio should not be any equal ratio or any 3-to-2 ratio. And, certainly, the confidence which should be vested in the Appropriations Committee and in the Armed Services Committee in the field of congressional oversight—and I can speak from experience—has been absolutely and shockingly disgraceful. Not just this year, but for many years.

What is the Armed Services Oversight Committee on Intelligence doing right now? I submit they are probably doing nothing, as they have done for years. And I can tell you what the makeup of the subcommittee in Appropriations is, insofar as oversight is concerned.

Either we want effective oversight, or we want to continue this charade. I can be outvoted in the House, but I know we are in the right position in trying to get proper oversight. The only way we are going to get adequate congressional oversight is to have a real oversight committee, not one subservient to the existing committees which have a tradition of not conducting oversight operations.

The makeup of that committee, as far as I am concerned, has got to be the same percentage ratio as other committees—and I hope the Democratic caucus will insist on this—and the Members should be picked at large from the floor and from the various party caucuses and shall not be reflective of the Armed Services Committee or the Appropriations Committee.

Otherwise, it is a charade, and I won't buy it.

Mr. McCLORY. Will the gentleman yield to me?

Mr. GIAIMO. I yield. You can have the rest of my time.

Mr. McCLORY. I want to indicate there is no deliberate effort of any kind here—

Mr. GIAIMO. I am aware of the efforts that have been made.

Mr. McCLORY. You may be, but this is my own creation; it seemed to me to be a logical recommendation. I feel strongly with regard to this. It is not proposed as any kind of charade. I noticed in the other body, where they are considering the same subject, they are considering 5, 4, or 6, 5 ratio, notwithstanding that they have a different political balance.

We are talking about something that is going to affect the executive branch and the executive branch may be—

Mr. GIAIMO. I want you to understand my feelings and the feelings of quite a few people in the Congress.

Mr. McCLORY. The only thing I would say is that I think they are irrelevant to the proposal I am making; but if the minority member, in making any kind of proposal, is going to be subjected to that kind of criticism, which is completely uncalled for and unfair—

Mr. GIAIMO. You are.

Mr. McCLORY. What you are going to do is try to discourage and hamper the offering of amendments.

Mr. GIAIMO. Do I still have the time, Mr. Chairman?

Chairman PIKE. Mr. Giaimo has the time.

Mr. GIAIMO. If it is my time, I say that as far as this Member of the Congress is concerned, the minority has been trying to hamper and block effective oversight over these agencies since day 1.

And I yield back the balance of my time.

Mr. MILFORD. Mr. Chairman.

Chairman PIKE. Do you wish to be heard on the amendment?

Mr. MILFORD. Mr. Chairman, I would like to offer a substitute. I would direct the committee's attention to—

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. MILFORD [continuing]. A handout. This will be the page 1 of the handout that each member has before him.

Mr. Chairman, the amendment is as follows:

The period, at the end of paragraph III(A)(1) be struck and the following wording be added:

"and shall consist of Members that hold the respect and confidence of the general membership of the House."

a. The membership of the standing committee on intelligence shall be selected from sitting Members of the following House committees: 2 members from Armed Services; 2 members from Internal Relations; 2 members from Science and Technology; 2 members from Appropriations; 2 members from Budget; 1 member from Banking and Currency; 1 member from Judiciary; 1 member from Public Works and Transportation; 1 member from Merchant Marine and Fisheries; 1 member from Interstate and Foreign Commerce; 1 member from Agriculture; a chairman to be nominated by the Speaker.

b. The candidates for membership on the permanent intelligence committee shall be nominated by resolution from the above listed committees, supplying the number of members designated above. Nominees shall then be confirmed by the Democratic caucus or the Republican Conference by means of a secret ballot. Vacancies shall be filled by like action.

c. Candidate selection for service on the permanent intelligence committee shall be based on individual qualifications and technical expertise, rather than party affiliation, except that, the total membership of the permanent intelligence committee must always have no less than one-third of its total members from each of the major parties. Should the occasion arise when a major party does not have one-third of its members represented on the committee, the Speaker shall designate to the nominating committee or committees the necessary number of partisan candidates to be selected.

I would first like to say to the ranking minority member that I agree in principle with what he is trying to do, and I agree the committee should remain as small as possible; but perhaps the group proposed by the gentleman from Illinois is a little too small.

The one thing that was never brought out clearly in these hearings—but yet is a fact of life in the intelligence community—is that more people are employed in CIA for the purposes of studying foreign crop reports, economic conditions and others than all of the so-called cloak-and-dagger type spies that this country has ever employed.

One of the key functions of our intelligence community is obtaining intelligence other than covert and clandestine types.

As such, the permanent committee on intelligence should be made up of Members with expertise. Therefore, I am suggesting that the membership be drawn from sitting members, not only on Armed Services and International Relations, but also on Science and Technology; Appropriations; Committee on the Budget; Banking, Currency, and Housing; Judiciary; Public Works and Transportation; Merchant Marine and Fisheries; Interstate and Foreign Commerce, and a member from Agriculture.

Second, Mr. Chairman, the proposal herein is that these committees, themselves, would nominate these members, and the Speaker would nominate the chairman. The nominees, then, would go before the Democratic Caucus or the Republican Conference and be voted on as any other committee member is selected. This would also allow something else: It would allow a cross-pollination of information that would be vital in the operations of these other committees. It would also give us a much better chance of seeing to it that the permanent committee on intelligence had legislative jurisdiction over these matters; because, as I think everyone is aware, the big fight in establishing a permanent committee on intelligence is being sure that the committee does gain legislative jurisdiction, and it is vital that the Armed Services Committee have a close liaison with the permanent committee on intelligence.

The same is true for Foreign Relations; and by establishing the committee in this form, you, No. 1, establish the expertise for the committee to do its work. No. 2, you have a built-in mechanism for necessary liaison with these other committees; and, No. 3, you have a much better chance of the House approving legislative jurisdiction for the committee.

That basically is the gist of the substitute amendment.

Mr. LEHMAN. Mr. Chairman.

Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. To try to paraphrase a statement or quotation that came out of the Civil War. "War is much too important to be left in the hands of the generals." I think in a way that we are trying to make a kind of elite out of this committee, obviously loaded with people who seem to be more security oriented, more military oriented, less humanity oriented.

The two committees I serve on are not included. I think, if anything, you should have someone from the Education and Labor Committee. That has a different point of view from those of these other people. I think we need that kind of input in this kind of committee.

I would strongly object to leaving off such committees as Ways and Means or Education and Labor, because those are committees made up of the kinds of people we should look for to put on an oversight committee.

Chairman PIKE. The Chair will take a little time of his own at the moment and simply state that I note with some interest that neither of the proposals presented by Mr. McClory, nor Mr. Milford provides for any membership from that committee which has jurisdiction over the Internal Revenue Bureau, and I think that the Internal Revenue

Bureau is one of the agencies which, very frankly, we have not looked at enough. Their own secret operations have concerned quite a few people in the United States.

Mr. MILFORD. Would the chairman yield?

Chairman PIKE. Yes.

Mr. MILFORD. I would certainly have no objection to that inclusion. I am trying to come across with a concept here.

Chairman PIKE. I am delighted to hear the gentleman. I frankly was feeling sort of unbathed there for a while. In fact, the Ways and Means Committee was specifically exempt from membership on this new oversight committee.

Mr. McCLODY. If you would yield to me, I might say that on my earlier draft I had Ways and Means, and then when I thought about trying to keep the number down—

Chairman PIKE. Mr. McCloody, I understand perfectly where you would cut the numbers.

Mr. McCLODY. It was between Armed Services and Ways and Means.

Chairman PIKE. I think we can vote on these proposals.

Mr. Aspin?

Mr. ASPIN. Let me ask, in order to get the votes in the proper sequence—I don't know that I like either Mr. Milford's idea or Mr. McCloody's idea—but could we vote on the principle somewhere along the line of whether there should be some members designated? I don't mean all the members, but some members be designated from some other committee, on the grounds that what we are doing by designating members is not putting on experts. We are trying to buy a little support in the House of Representatives.

If you are going to take jurisdiction away from Armed Services and International Relations, the customary way of doing that is to grandfather in a few members from that committee so you can kind of ease the pain a little bit.

I would be willing to accept a couple of members from the committees that now have jurisdiction in order to ease the pain, but I don't want to lock in a specific list of all the members. Could we maybe have a vote just on the principle of whether we should designate any members or not?

Chairman PIKE. I think what we have to do is vote on specifics. I really do. I think we are running out of time again.

Mr. ASPIN. But this is why I am trying to speed it up.

Chairman PIKE. I don't think you are going to speed it up. If you have an amendment to offer, offer it, and we can vote on it.

I am going to offer an amendment right after this, very frankly, because I think the first thing we have to do is vote on the size of the committee. I think the size concept is an important concept.

Mr. ASPIN. Could we perhaps go about it in the rational manner of deciding size and then composition, and, third, how members get on there? If we could do it in that kind of order.

Chairman PIKE. There is no reason we can't, if members have specific amendments; but what we spend our time doing is just talking. The specific amendment which I am going to offer does not have representation from any committee.

Mr. ASPIN. OK. Let me ask, if I could get a vote on the issue of whether we would like to designate any at all, because if a majority of members are against designating any at all, I am not going to sit here and figure out a way of doing it.

Chairman PIKE. If you will phrase what you want to vote on, I will rule whether or not you can have a vote on it. —

Mr. McClory. May I be heard on the substitute?

Chairman PIKE. You may be heard on the substitute.

Mr. McClory. Mr. Chairman, I have no objection to the substitute. I have no objection to the enlargement of the composition of the proposed oversight committee to reflect additional disciplines which the committee might feel should be represented here.

I agree with the gentleman from Texas that, by indicating the different committees whose interest should be represented, I think we are going to expand the support for it; but I want to say this: I have a series of amendments. Some of them I have composed myself, some I have taken from the Murphy Commission report, and some from the Rockefeller Commission report. The staff has assisted me in this. I haven't had any help from the White House or the CIA, or any of the agencies; but I certainly don't feel, Mr. Chairman, that, in offering these amendments, I have to be subjected to some kind of an attack as to my motives or that I have in mind some kind of deliberate effort to undermine.

My sole effort in supporting the substitute is to try to be constructive, and it seems to me that a member's motives should not be impugned because he offers amendments.

I certainly don't want to feel that every time I offer an amendment here, I am going to be castigated or maligned or charged, and I just want to make that statement with respect to this vote that we are having and with respect to what I hope would be the concluding session here.

I am going to be guided by the chairman's position on this.

Chairman PIKE. The chairman will simply state that as far as the Chair is concerned, he never questions anybody's motives—ever. As far as the right of an individual member to say what the member individually thinks, the Chair has very little ability to inhibit those freedoms of speech which are protected by the Constitution.

Mr. STANTON. Mr. Chairman.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. In order to spare the sensitivities of the ranking minority member, I would like to move the previous question.

Chairman PIKE. The question is on the previous question. Without objection, it is so ordered. The question is on the substitute offered by the gentleman from Texas, Mr. Milford. All those in favor of the substitute, signify by saying aye. Contrary, no.

The noes appear to have it, and the substitute is not agreed to.

The question is on the amendment offered by the gentleman from Illinois, Mr. McClory. All those in favor of the amendment signify by saying aye. Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

I would like to offer the following, and Mr. Aspin, this goes to part of the question you raise: I think we should establish in this recom-

mendation some guidelines about the size of the committee. It is my personal judgment that we should not try to establish guidelines about who shall be on the committee.

I think there has to be some flexibility as to the size of the committee to take care of changes in the political ratios in the House during a 6-year period, and accordingly I would like to suggest the following language:

The committee shall consist of not more than 12 nor less than 9 members, to be designated by the Speaker after consultation with the minority leader and to have approximately the same political ratio as does the House.

Mr. JOHNSON. Will the chairman yield for a question?

Chairman PIKE. Yes.

Mr. JOHNSON. Mr. Chairman, when you propose a committee of from 9 to 12 people, are you also supporting the staff recommendation that the oversight functions for covert operations be removed from the other committees that now have that responsibility? There are six other committees. Are you going to go along with the staff recommendation that these 12 people have sole jurisdiction and you take it away from the other committees?

If you are, I am going to be opposed to the amendment.

Chairman PIKE. My feeling is that yes, as to authorizing legislation; no, as to appropriations. That would be my feeling. I don't think there is any way that this new committee can handle the jurisdiction, or should get the jurisdiction, over appropriations.

Mr. JOHNSON. I am not as concerned about that as I am the reporting requirements that we presently have. The Director of Central Intelligence has to come up and report to the six different committees.

Chairman PIKE. You are talking about three in the House and three in the Senate, so you are only talking about three as far as these recommendations are concerned.

Mr. JOHNSON. Yes; except if you are going to recommend in the amendment that the reporting requirement apply only to the new oversight committee, it seems to me you are limiting to only 12 individuals the knowledge of the covert operations; and prior to that amendment there was required reporting to six different committees who were entitled to this knowledge. It seems to me that there were about 9 or 10, both in the House and the Senate.

Chairman PIKE. I am only suggesting that at this point I am giving you my thinking as to the size of the intelligence committee. You have properly asked me what I am going to do later on, and I have told you what I am going to do later on.

Mr. JOHNSON. If you told me, I didn't understand it.

Mr. GIAIMO. Would you yield?

Mr. JOHNSON. It is his time.

Chairman PIKE. I am through. I recognize the gentleman from Colorado.

Mr. JOHNSON. I yield to the gentleman from Connecticut, but it seems to me that these things have to be taken in conjunction with each other.

Mr. GIAIMO. I agree with what Mr. Johnson says, Mr. Chairman. Until we decide whether the new committee is going to have absolute jurisdiction or not, I am not sure we ought to establish size. Let's look

at what has happened. We have six committees of the Congress looking at the intelligence community; and, from my point of view and the point of view of a lot of people, it has been healthy because so many people have looked at it. For one thing, if it were not for the fact that six congressional committees have been looking at things the last couple of years, we would never have found out about Angola, for example. If they still had the "Old Boy" network in operation—which some want to go back to—you are not going to find out about these things.

So if you are going to remove oversight and jurisdiction from the other committees—International Relations, Appropriations, Armed Services—you are diminishing the number of Congressmen who are going to be aware of what is going on with intelligence.

Therefore, Mr. Chairman, when will we determine the question of jurisdiction in our recommendation—whether it be exclusive or shared, or what?

Chairman PIKE. When we get to subsection "i."

Mr. GIAMMO. Couldn't we defer this until then?

Chairman PIKE. We could indeed. If you want to handle "i" first, and that is the unanimous opinion of the committee, there is no reason we shouldn't.

Without objection, we will go to item "i," and discuss the jurisdiction of the proposed oversight committee before we discuss the composition of it.

Mr. JOHNSON. Mr. Chairman.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I have an amendment.

Chairman PIKE. The gentleman will present his amendment.

Mr. JOHNSON. I move that we strike the last portion of the first sentence that appears on the second page after "all intelligence activities," and insert a period, and strike "and for all covert action operations."

Mr. MILFORD. Would the gentleman repeat that?

Mr. JOHNSON. Yes. The sentence says, "The committee shall have exclusive jurisdiction for budget authorization for all intelligence activities and all covert action operations," and I would strike "for all covert action operations" which would leave, in effect, the reporting requirements of the present law to the other committees.

Mr. MILFORD. You are striking "and for all covert action operations."

Mr. JOHNSON. Yes. That gives this committee exclusive jurisdiction for oversight.

Chairman PIKE. Would the gentleman yield?

Mr. JOHNSON. Yes.

Chairman PIKE. I think you are going to have to make it more precise than that, simply because they have called their covert action operations—whenever they wanted to—"intelligence activities." They use that phrase. That is the language of the statute, and they use the phrase "intelligence activities" to justify their covert operations.

Mr. JOHNSON. My amendment says, "The committee shall have exclusive jurisdiction for budget authorization for all intelligence activities." It doesn't say exclusive jurisdiction over all intelligence, it just refers to the budget. I think that properly resides in this com-

mittee and beyond that I don't think it should have exclusive and sole jurisdiction. And that is my motion.

Mr. McCLORY. Would the gentleman yield?

Mr. JOHNSON. Yes.

Mr. McCLORY. In another amendment with respect to the subject of covert operations, I am proposing that covert operations which involve military or paramilitary action should be authorized in advance by the proposed intelligence oversight committee.

Chairman PIKE. That is not going to come until "c."

Mr. McCLORY. I would want to keep that language in "i," in order that the committee would have jurisdiction over the subject that I want it to have jurisdiction of.

Mr. JOHNSON. I have problems with your recommendation, Mr. McClory, because what you are granting is, in effect, a warmaking power to a supercommittee of the Congress, and I know that you sincerely believe that; but I personally believe that when you are talking about military and paramilitary covert action, that is warmaking. You can use a euphemism and say it is not war, as we did during the Korean war. It was not the Korean war; it was a police action. We know that.

Mr. McCLORY. I am thinking about economic aid to a country which might permit it to buy military weapons. That would be one thing.

Mr. JOHNSON. You said in your amendment, "military and paramilitary covert action."

Mr. ASPIN. Is Mr. McClory's amendment on the floor?

Chairman PIKE. What is pending is Mr. Johnson's amendment striking the words "and for all covert action operations."

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. May I ask the Chair if he can advise the committee on appropriate language? I would like to think I understand exactly what the gentleman from Colorado wants to do. Can the Chair propose language that would make certain that it will be consistent with the present law that requires the intelligence community to report to six committees of the Congress?

Chairman PIKE. Yes, I can provide such language. Strike the word "may" in the next sentence and make it "shall."

Mr. JOHNSON. If you have exclusive jurisdiction, how can you have concurrent jurisdiction? "All remaining oversight functions shall"——

Chairman PIKE. "Shall" instead of "may."

Mr. JOHNSON. But that is the remaining functions.

Mr. STANTON. Other than the budget.

Mr. JOHNSON. If you accept my amendment, yes.

I will add that to my motion.

Mr. ASPIN. The effect of Mr. Johnson's motion is to cut this committee out of hearing about any covert action.

Chairman PIKE. Oh, I don't think so.

Mr. ASPIN. Where does it say that the CIA has to report covert action to this committee?

Chairman PIKE. Because they have to get the authorization for their budget from it.

Mr. ASPIN. You had better make it explicit, if that is what you want to do.

Mr. JOHNSON. I'll read the whole first sentence:

The committee's jurisdiction shall include all legislative and oversight functions relating to all U.S. agencies and departments engaged in foreign or domestic intelligence.

Then it says, "The committee shall have exclusive"—

Mr. ASPIN. Oversight means you call a hearing and look into something, and they have to come and testify. You have got to say, "If you guys are going to conduct a covert operation, you have to come and say it."

Chairman PIKE. That is in a different section. It is subsection "c."

Mr. JOHNSON. This refers to the exclusive jurisdiction that is set out in subsection "i." It says that exclusive jurisdiction, as presently proposed, would be for all covert operations. That would remove the reporting requirements to the other committees.

Chairman PIKE. Mr. Donner.

Mr. DONNER. I just would like to call the committee's attention to the fact that the second sentence reads: "The committee shall have exclusive jurisdiction for budget authorization * * *." Possibly the wording would be better at the end of the last sentence, but the intention was really to provide exclusive budget authorization.

Mr. JOHNSON. But that is not what it says. It says "shall have exclusive jurisdiction for budget * * * and for all covert action."

Mr. DONNER. The intent—which might not be well expressed—was addressed to the question of the manipulation of budgets that we have witnessed and with the idea of removing an ambiguity. That is, whether or not it came from another budget of another agency that might not be specifically listed as an intelligence agency, that budget would also come under the jurisdiction of this proposed committee.

Mr. McCLORY. Mr. Chairman, what if we substitute the word "including" for the words "and for all"?

Mr. BOOS. Mr. Chairman.

Chairman PIKE. Mr. Boos.

Mr. BOOS. In concert with what Mr. Donner said, I think the staff's intent was to say that the exclusive jurisdiction should be both for the intelligence budget and for all aspects of covert action. In other words, "budget" should not modify "covert action" in this case.

Chairman PIKE. That is the real issue with which we are confronted. Mr. Johnson wants to strike that, leaving to the three existing committees the exercise of oversight jurisdiction in this area.

Mr. JOHNSON. Only as to the reporting requirements.

Chairman PIKE. Frankly, I am torn on this. I probably am going to vote for the amendment. But if we are just going to add one more layer of congressional oversight to the oversight that is now in existence, I don't think it is going to go anywhere in the House of Representatives. It may be more politically feasible immediately if you are not taking jurisdiction away from anybody. But my guess is that the administration will fight it tooth and nail simply because their complaint already is the number of committees in Congress they have to report to now. You like the number of committees of Congress they have to report to.

Mr. JOHNSON. Yes, I do. I don't think your argument, Mr. Chairman, is persuasive in light of the way in which the reporting requirements are presently carried out. There is simply a matter of reporting. That has limited oversight functions.

Chairman PIKE. The Chair has frequently found his arguments not to be persuasive.

Mr. JOHNSON. In this case we provide elsewhere for the functions of this committee.

Chairman PIKE. The question is on the amendment of the gentleman from Colorado.

Mr. MILFORD. I have an amendment to the amendment.

Chairman PIKE. An amendment to the amendment. The gentleman will state it.

Mr. MILFORD. But I am not real sure what the amendment is because of the discussion here. Could I ask the author to please reread his amendment?

Mr. JOHNSON. The amendment would simply strike that language at the top of the second page which says "and for all covert action operations" and substitute the word "shall" for the word "may" in the last sentence.

Mr. MILFORD. I have an amendment to the amendment.

Chairman PIKE. The gentleman will state it.

Mr. MILFORD. I move that the last sentence in subparagraph "i" be struck from the staff draft.

Chairman PIKE. OK. Do you want to be recognized?

Mr. MILFORD. I won't take the time.

Chairman PIKE. The issue is clear; that is right. The question is on the amendment to the amendment of the gentleman from Texas, Mr. Milford. All those in favor, signify by saying aye.

Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

The question is on the amendment of the gentleman from Colorado. All those in favor of the amendment, signify by saying aye. Contrary, no.

The Chair is in doubt. All those in favor of the amendment, signify by raising their right hands.

Opposed?

The Chair withdraws his hand and votes present.

By a vote of three ayes and four nays, the amendment is not agreed to.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. On this matter, just to clear it up—and maybe we don't need an amendment, but maybe we do—it seems to me what we are talking about is all intelligence operations and exclusive jurisdiction for budget authorization for all intelligence activities. I see problems with domestic intelligence if you count the FBI. How are we defining this? Does this committee now take over authorizing funds for the FBI?

Chairman PIKE. Under the language, yes.

Mr. ASPIN. I wonder whether that is what we really want to do?

Mr. FIELD. Just the intelligence portion, which is about one-fifth of it.

Mr. ASPIN. OK; so that is the \$80 million we discovered in that hearing they were spending?

Mr. FIELD. Yes.

Mr. ASPIN. What else would it include? It would include all foreign intelligence, obviously. Are there any other factors—IRS or others? Could somebody on the staff, under this language, say just what is it that this committee would be authorizing—what budgets they would be authorizing?

Mr. FIELD. The primary budgets I am aware of would be the Drug Enforcement Administration, which has intelligence; Immigration and Naturalization, which has a small budget for intelligence; IRS—

Chairman PIKE. Even ERDA has a tiny amount.

Mr. McCLODY. Would the gentleman yield?

The Judiciary Committee, although it has legislative jurisdiction, does not exercise authorization jurisdiction with regard to the FBI.

Mr. ASPIN. I understand that, but what about these others, like Drug Enforcement? Does any committee authorize that now, or is that just appropriated? Does anybody know? Under the language, we are going to be authorizing money for budgets for a lot of domestic agencies. My question is: Does that mean we are taking budget authorization away from other committees, or are those moneys presently just appropriated?

Mr. Boos. In most cases there is no authorization process.

Mr. ASPIN. Do we know how many cases? What is most?

I am worried about what kind of flak we are going to run into from committees saying "you are taking something away from us."

Mr. FIELD. That goes straight to Appropriations.

Mr. ASPIN. I guess most of them do.

Chairman PIKE. We are not taking it away. We are exercising some where none has been exercised in the past.

Mr. Boos. Mr. Chairman, there are many agencies having some intelligence functions—ERDA, Alcohol, Tobacco and Firearms; and others. It is fair to say that one or two of them do have some sort of authorization right now. Most, clearly, do not.

Chairman PIKE. All right. Would someone move that the staff draft as written be approved? We have rejected motions to amend it.

Mr. MILFORD. Just that paragraph?

Chairman PIKE. Yes; small "i."

Mr. FIELD. Mr. Chairman, could we recommend that two words be inserted to clear up that one sentence where it says "and for all covert action operations"? Could we have is read, "and for exclusive jurisdiction of all covert action operations"? Just add the words "exclusive jurisdiction."

Chairman PIKE. Without objection.

Mr. McCLODY. I move section "i."

Chairman PIKE. Mr. McCloidy moves that the staff draft be approved as to small letter "i." All in favor of the motion, signify by saying aye.

Contrary, no.

In the opinion of the Chair, the ayes have it.

Mr. JOHNSON. I ask for a record vote.

Chairman PIKE. All right. All those in favor of a record vote, raise their right hands. The clerk will call the roll.

The CLERK. Mr. Giaimo?

Chairman PIKE. Mr. Giaimo votes aye by proxy.

The CLERK. Mr. Stanton?

Mr. STANTON. No.

The CLERK. Mr. Dellums?

Mr. DELLUMS. No.

The CLERK. Mr. Murphy?

Chairman PIKE. Mr. Murphy votes aye by proxy.

The CLERK. Mr. Aspin?

Mr. ASPIN. Aye.

The CLERK. Mr. Milford?

Mr. MILFORD. No.

The CLERK. Mr. Hayes?

Chairman PIKE. Mr. Hayes votes aye by proxy.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. McCLORY. Aye.

The CLERK. Mr. Treen?

Mr. McCLORY. Aye, by proxy.

The CLERK. Mr. Kasten?

Mr. McCLORY. Aye, by proxy.

The CLERK. Mr. Johnson?

Mr. JOHNSON. No.

The CLERK. Chairman Pike?

Chairman PIKE. Aye.

By a vote of 9 ayes and 4 nays, the draft of small letter "i" is approved.

Now, we return to the amendment which I offered earlier and which I will restate:

The committee shall consist of not more than 12 nor less than 9 members to be designated by the Speaker after consultation with the minority leader and to have approximately the same political ratio as does the House.

I will reserve my time. I think you all understand what I am saying, but this would be an appropriate time, Mr. Aspin, or anybody else—if you want to change the numbers or designate committees from which these members should be taken, or add other restrictions, this would be the appropriate time to do it.

Mr. Dellums?

Mr. DELLUMS. Thank you, Mr. Chairman. I would like to ask you a rather mundane question, and that is: We have functioned with each other for several months on a 13 person committee. We have had reasonable success in being able to maintain our hearings, maintain quorums, take action. What is wrong with the number on the committee we have already had some experience with—13 people? You seem to be able to get a quorum most of the time. I think there has only been once or twice we didn't get a quorum. What is wrong with our experience?

Chairman PIKE. What is wrong with it, in the opinion of the Chair, is that it has been too difficult to keep secrets.

Mr. DELLUMS. What is the difference in one or two people? I don't see anything magic about that.

Chairman PIKE. There is nothing magic about anything. You asked my opinion, and I gave it to you.

Mr. MILFORD. Would the Chair yield for a question?

Chairman PIKE. I don't have the time. I will recognize anybody who wants to be recognized.

Mr. McCLORY. Will you recognize me?

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I have no objection to the amendment offered by the chairman except with respect to the ratio. I feel very strongly that the ratio should be about equal. It should have a majority of one, or a plurality of one, with respect to the majority party. Otherwise, I have no objection to it.

I think I have stated many times that I don't want to reflect on this committee, but I feel it might have been better if our composition had been more evenly balanced.

Mr. DELLUMS. Would the gentleman yield to me?

Mr. McCLORY. Sure.

Mr. DELLUMS. Just as a practical matter, I voted against the gentleman's amendment but I don't personally challenge the gentleman's integrity. As a practical matter, I don't think it is realistic at all. I have been in three different Congresses. Every time we organized, the majority party has maintained the prerogative of being able to determine the committee ratio; and given that reality, I don't see in the near future—or even in the distant future—that that in any way is going to change.

Mr. McCLORY. I think there is a tendency in this area to give political emphasis to certain actions, and I think that the oversight committee may be tempted, if it has the political imbalance—which it would have under this ratio—to exercise it in a partisan way. I think that would be most unfortunate.

Chairman PIKE. Would the gentleman yield to me?

Mr. McCLORY. Yes.

Chairman PIKE. I call your attention to the fact that I have purposely used the word "approximately." I am leaving a little flexibility with the Speaker and the minority leader, and I have enough faith in both of them that I think it would be used wisely.

The fundamental reason that there has to be some flexibility is because ratios change as Congress changes.

Mr. JOHNSON. Mr. Chairman, I have an amendment to your motion.

Chairman PIKE. The gentleman will state it.

Mr. JOHNSON. I move that the numbers be a minimum of 21 and a maximum of 25—since you are making a supercommittee out of this.

I am very discouraged by this notion that we are going to have a small, select, group of people. I don't think they could reflect the feelings of the majority. I think these things naturally become dominated by certain individuals, and they don't reflect the feelings of the majority of the Members of the House or of the public at large.

I have no magic numbers. I recognize the problem with secrecy that you are concerned with. But to turn this responsibility for covert op-

erations back to 12 men to me is a disaster. So I offer my amendment.

Chairman PIKE. Mr. Aspin, do you seek recognition?

Mr. ASPIN. Yes. I think in these numbers the important thing is not how many people there are on the committee, but what kind of people you have. We could have 25 people on it. We all know how to pick those 25 and who they would be, and there would be no difference; or we could have six on the committee and the committee would really do something—make the people in charge of covert operations come in and justify what they wanted to do.

I don't think the numbers are as important as who the Members are. Under the chairman's proposal, it is the Speaker that chooses.

Chairman PIKE. The Speaker and minority leader.

Mr. ASPIN. Yes; and the minority leader. I don't know of any other way to do it, but I think that is the more critical question—"who" rather than "how many." And I think the chairman is right to have a smaller number. It is just very critical who is on it, to speak to the concerns of the gentleman from Colorado.

Chairman PIKE. I would like to use some of the time that I reserved. When I started this operation, I would have agreed with Mr. Johnson. As I conclude it, I can't agree with the gentleman. Very frankly, I would have no objections if somebody wanted to make the number 13 or 15. I am not wedded to any particular number. But I agree wholly with Mr. Aspin. It is the human beings who are going to make the difference—not where the jurisdiction lies or who appoints them, or anything else. It is the will of the human beings involved to do the oversight job which is going to make all the difference in the world.

I will reserve the rest of my time.

Mr. Milford?

Mr. MILFORD. I would ask the chairman perhaps to change his committee size to an odd number—11 or 13—because there is a practical problem of a tie vote arising.

Chairman PIKE. The practical problem of that tie vote has arisen many times on this 13-man committee.

As I say, this is my idea of a reasonable number. If anybody wants to offer an amendment to it, let them. I am going to stick with the numbers.

Mr. McClory. You mentioned two others?

Chairman PIKE. That is right. In the ratio I have you have two evens and two odds, and the Speaker and minority leader can work it out any way they want in each Congress.

Mr. Lehman?

Mr. LEHMAN. Mr. Chairman, would this be a standing committee, not really different from any other standing committee in the House?

Chairman PIKE. That is right.

Mr. LEHMAN. The only difference is the way it is going to be appointed. Democrats on other committees are appointed in conjunction with the Democratic Steering Committee. The Democratic Steering Committee would have no input on this committee?

Chairman PIKE. That is a good point, but as a practical matter I don't think it would work out that way. I think that as a practical matter they probably would have an input.

Mr. ASPIN. Would the gentleman yield?

Mr. LEHMAN. I would——

Mr. ASPIN. Under section 1—which I guess we haven't approved—the last sentence says:

The committee membership shall reflect a broad representation of political and philosophical views.

Under the chairman's proposal, that would be an instruction to the Speaker to select a pretty broad——

Mr. LEHMAN. I yield back the rest of my time.

Mr. ASPIN. If you had the caucus vote on it, whichever faction dominates the caucus would get 100 percent of the people on the committee.

Mr. LEHMAN. I wanted clarification.

Chairman PIKE. Mr. Dellums?

Mr. DELLUMS. Just to understand the procedure, in order to bring this committee into existence, the House has to vote on it. Is that correct?

Chairman PIKE. Yes.

Mr. DELLUMS. It would then leave maximum flexibility to the Speaker, in terms of appointments.

Chairman PIKE. That is correct.

Mr. DELLUMS. Let me raise this with you and get your thought: Since the Speaker would be appointed, it seems to me that perhaps a better course of action would be a simple statement to the Speaker, giving the Speaker the experience that we have had with this particular number of people and simply indicating that we are really not wedded to the numbers.

The important thing is that the Speaker, in his wisdom, appoint a committee of people who are willing to work hard and who are committed to doing the job.

I guess the point I am making is that we could talk about this for hours, but ultimately the Speaker is going to decide—11, 13, 15, 17, whatever he wants anyway. I would think maybe if we recounted what our experience has been with the committee he created—the pros and cons—and perhaps indicate the concerns of the gentleman from Colorado for a larger committee, that the committee, since it is a super-committee, be large enough that all of the business can be taken care of and that it be generally reflective.

I think if we get caught in the numbers, we are wasting time. Ultimately the Speaker is going to do it. I think the statement in No. 1 adequately takes care of the issue, and we can say there have been recommendations, ranging from a dozen to 20-some-odd people—anywhere in that range. Given the Speaker's concern with No. 1 the job can be done.

Chairman PIKE. Mr. Johnson has offered an amendment. The question is on the previous question, and without objection, the previous question is in order. The question is on the amendment of the gentleman from Colorado. All those in favor of the amendment, signify by saying aye.

Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

Mr. DELLUMS. I have an amendment.

Chairman PIKE. The gentleman will state it.

Mr. DELLUMS. I move that the number be between 13 and 17.

Chairman PIKE. We all understand the issue. Do you want to be recognized for 5 minutes?

Mr. DELLUMS. No problem.

Chairman PIKE. The question is on the amendment of the gentleman from California. All those in favor of the amendment, signify by saying aye.

Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

Mr. STANTON. I have an amendment.

Chairman PIKE. The gentleman will state it.

Mr. STANTON. I move the numbers be 9 and 13.

Chairman PIKE. The Chair will simply state he is going to vote for this one.

The question is on the amendment of the gentleman from Ohio. All in favor of the amendment, signify by saying aye.

Contrary, no.

The amendment is unanimously agreed to.

May we now vote on the Pike amendment, as amended? I will move that it be adopted.

All those in favor signify by saying aye.

Contrary, no.

The ayes appear to have it, and the amendment is agreed to.

Mr. Milford?

Mr. MILFORD. Mr. Chairman, I have an amendment.

Chairman PIKE. The gentleman will state it.

Mr. MILFORD. Mr. Chairman, this appears as motion No. 3 in the handout. I will not take a lot of time because I have no illusions about where it is going to go, but I would appreciate it being placed in the record.

I would ask unanimous consent to make some wording adjustment in the copy the reporter has in hand. It does not in any way change it, but conforms to the amendment already adopted by the committee.

Chairman PIKE. Without objection.

Mr. MILFORD. Let me read it. First of all, the motion itself reads that subparagraphs III(A)(1) (d), (e) and (f), in the staff draft, be struck and the following language be substituted:

d. The Permanent Intelligence Committee, or any member of the committee, shall not directly or indirectly release any information, documents or data that bears a security classification unless and until the following sequential procedures have been completed:

(1) The committee passes a resolution expressing the need and reason for declassification.

(2) The appropriate administrative agency has been allowed reasonable time to agree with the declassification or to present reasons for opposition.

(3) A House leadership committee, consisting of the Speaker, the majority leader, the minority leader, the majority and minority whips and the chairmen of the committees which have intelligence jurisdiction (a majority of the total being present), shall approve of the declassification and release.

e. Any Permanent Committee member who shall release any materials, documents or data that bears a security classification, without complying with the provisions of this section, shall be subject to expulsion from the House of Representatives and shall be subject to appropriate criminal or civil action, notwithstanding legislative immunity.

Chairman PIKE. The question is on the amendment of the gentleman from Texas. All those in favor of the amendment, signify by saying aye.

Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. To go back to the recommendations here on "A" on the select committee, what has been changed in the staff draft, and how is this different from what we did yesterday?

Mr. DONNER. I am sorry.

Mr. ASPIN. What is our next step?

Mr. DONNER. The next step, the staff would say, is that "c," "d," "e," and "f" have been previously disposed of by other actions of the committee.

Mr. ASPIN. OK. So our next point, after having disposed of the size of the committee and its membership—and we have approved "i"—is to do "g" and "h."

Mr. DONNER. Yes, sir.

Mr. McCLORY. Mr. Chairman.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I don't know if this is the appropriate time, but I wanted to offer an amendment with regard to disciplinary action which might be taken against a member who releases classified information in violation of—

Chairman PIKE. The gentleman will state his amendment.

Mr. ASPIN. Which one is it?

Mr. McCLORY. It is the long one:

The select committee recommends that any committee of the House which has access to classified information in pursuit of its legislative and oversight responsibilities be given the authority to discipline any member who it reasonably believes has disclosed or publicized such information in violation of the rules of confidentiality duly adopted by such committee. These committees ought to be delegated authority by the full House to take appropriate disciplinary action against such a member—ranging from prohibiting the member from attending executive sessions and from inspecting committee files containing classified or executive session materials, to expulsion of the member from the committee. Such disciplinary action to be effective only by a vote of a majority of the majority members and a majority of the minority members of the committee; and any member against whom such disciplinary action is taken shall have a right of appeal to the full House.

I move adoption of the amendment.

Mr. STANTON. Mr. Chairman.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. Counsel, is there conflict between the amendment offered by the ranking minority member and the rules of the House?

Mr. DONNER. Yes.

Mr. STANTON. Would you state the conflict?

Mr. DONNER. Yes. First of all, disciplinary action against a Member of the House can only be taken by the full House. It cannot be taken by the committee—at least under the present rules—and there is no provision otherwise.

Chairman PIKE. Would the gentleman yield?

Mr. STANTON. I would be glad to yield.

Chairman PIKE. Mr. McClory's amendment says the committee shall be delegated this power by the House. Is there anything under the rules of the House or the Constitution which would prevent the House from delegating this authority to the committee?

Mr. DONNER. I am not quite certain, but I would suggest, if I had to guess at it, that disciplinary action against a Member of the House would be the exclusive jurisdiction of the House. There may be judicial authority for that.

Chairman PIKE. Mr. Stanton has the time.

Mr. STANTON. I am quite sure, if one were to research the legal opinions as to the judgment and qualifications of a Member of the House, they would find the legal conclusion that the House cannot delegate that jurisdiction to a committee of the House, and that that responsibility rests in every other Member of the body. Any legal precedent I know of contains that stipulation.

Mr. MCCLORY. Would the gentleman yield to me for amendments on that?

Mr. STANTON. Yes.

Mr. MCCLORY. There has been widespread authority delegated by rules of the House.

Mr. STANTON. But it does not have to do with disciplining of the Members.

Chairman PIKE. The Ethics Committee can recommend, but that is all they can do. I think the gentleman is correct.

Mr. STANTON. There is no delegation of power for disciplining a Member. That power is reserved to and resides in the membership, itself, and therefore I think that the amendment offered by the gentleman from—

Mr. JOHNSON. Would the gentleman yield?

Mr. STANTON. Yes.

Mr. JOHNSON. I would like to point out that I agree with the gentleman. And another weakness of the proposed amendment is it says "recommend that any committee of the House which has access to classified information." It is not talking just about the select committee; it refers to any committee with access to classified information.

On the Agriculture Committee, we can have access to information which can be classified by the Agriculture Department. There isn't anything that would prevent that kind of occurrence from happening, and you are adding to the censorship powers of the executive branch. All they have to do is stamp something classified and you can't talk about it in the committee.

That sounds absurd, I know, but no more so than what we have found out in the past. I think that is a dangerous amendment.

Mr. MCCLORY. Would the gentleman yield for this comment? I think this proposed oversight committee is going to have broad authority, and if there is one member of the committee, for instance, who is violating the rules the committee adopted—and the committee, itself, is frustrated in this area—I think it is going to be very impractical to say, "Well, you have to blow it up into a House case." I think the committee ought to be able, within some limits and pursuant to some general House rule, to take care of its own business.

Mr. JOHNSON. Will the gentleman yield? You are not restricting it to one committee. You say "any committee."

Mr. McCLORY. I am saying that it should be limited as far as access to classified material. You can keep them from coming to meetings and things like that.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. One other problem with the proposal, as I understand where we left it yesterday, is that we now have a situation where any Member of Congress has access to information, but we did not settle this, and I think we should before we finish this discussion—some kind of procedure for deciding what we do if people give out the information in an unauthorized fashion.

The recommendation means that the only people you can discipline are the people on the committees. It doesn't say anything about the people who aren't on the committee. We have now passed the Giaimo provision to get access. It restricts itself to the people on the relevant committees.

Chairman PIKE. Would the gentleman yield?

Mr. ASPIN. Yes.

Chairman PIKE. First, I agree with the gentleman completely. I think we put ourselves in the position yesterday where those who thought we had gone too far combined with those who thought we had not gone far enough to stymie those in the middle. We wound up doing nothing, and Mr. Johnson was very happy with the outcome. I think maybe some of the other people who voted against the final proposal were not so happy with the outcome. But that is where we are. You are absolutely correct.

Mr. ASPIN. I hope before we are finished we will have another run at that, because I voted in favor of the Giaimo proposal; but had I known we were not going to pass something like this, I would never have voted for the Giaimo proposal. That was a close vote, if the chairman will recall.

Chairman PIKE. I recall it very well. I voted against it.

The question is on the amendment of the gentleman from Illinois. All those in favor of the amendment will signify by saying aye. Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

Mr. McCLORY, do you have any other amendments you want to offer at this point?

Mr. McCLORY. Yes, Mr. Chairman; I have the following amendment:

The select committee recommends that the rules of the House be revised to provide that any member who violates the confidentiality of any executive session of any House committee may be censured or expelled by a two-thirds vote of the House.

I move the adoption of that amendment.

Chairman PIKE. This is a very important amendment.

Mr. McCLORY. This corresponds, Mr. Chairman, to the rule the Senate has, and I think that under the action we took yesterday—

Mr. GIAIMO. May I ask a question?

Mr. McCLORY. Yes.

Mr. GIAIMO. You don't really suggest that kind of punishment for violating any kind of confidentiality of an executive session. You are really talking about classified information bearing on national security, aren't you?

Mr. McCLORY. I am making it broad as to the question of whether it involves national security, whether it involves endangering the life of an individual, whether it involves our foreign affairs generally. I have taken this from the Senate rule, and it is permissive. It is not mandatory. It says "may be censured or expelled." That action could be taken, if the House wanted to take it. And it is a two-thirds vote of the House, which would require a very large majority.

Mr. GIAIMO. If you will yield further, I feel strongly—and I know the gentleman from Wisconsin indicated concern here—that before we finish these recommendations we should have a recommendation providing for censure, punishment, or what-have-you of Members of Congress—in accordance with their constitutional safeguards—who improperly breach security.

Mr. McCLORY. I am not suggesting what the rule of the House should be. It is just a general, broad recommendation.

Mr. GIAIMO. But my point, if you will yield further, is that it should apply to the matters affecting the national security.

Mr. STANTON. Would the gentleman yield?

Mr. McCLORY. I will yield.

Mr. STANTON. I don't want to go through the legal proposition again, but the simple fact of the matter is that we cannot act in this committee because legally the House is the judge of its own membership. If you made it three-quarters of the House, it wouldn't satisfy the requirements as far as the Constitution is concerned, and I think the gentleman—

Mr. McCLORY. This is one of our charges in the resolution we adopted. It said we should inquire into the procedure for and means of the protection of sensitive intelligence information. That is broadly what I have in mind.

Mr. STANTON. It didn't allow you, under the mandate of House Resolution 138, which is the House resolution that you are reading from—

Mr. McCLORY. 591.

Mr. STANTON. It used to be 138 before we got reincarnated.

Mr. McCLORY. The Constitution already provides that you can punish a Member by two-thirds majority of the vote of the House. So what I am doing is setting forth a recommendation that we should adopt a rule in accordance with the Constitution, and we should say something about censuring or expelling a Member who violates the confidentiality. If you don't want to say anything, that is all right.

Mr. STANTON. Are you saying that the Constitution of the United States provides for it?

Mr. McCLORY. Yes, I am.

Mr. STANTON. Fine; then why do you have to supplant the Constitution with legislation?

Mr. McCLORY. It doesn't say anything about sensitive information, or executive sessions, and things like that.

Mr. STANTON. Would you read the section of the Constitution and what it covers?

Mr. McCLORY. Sure. It is section 5. It says:

Each House may * * * punish its Members for disorderly behavior and, with the concurrence of two-thirds, expel a Member.

Mr. STANTON. Why do you need amplification of that process?

Chairman PIKE. The time of the gentlemen has expired.

The Chair recognizes the gentleman from Ohio, if you want to continue.

Mr. STANTON. I just think, with all due deference to the gentleman from Illinois, that there is a process by which we judge our Members. He seems to want to carry it to further lengths.

Mr. McCLORY. If the gentleman will yield, there is a Senate rule identical to this, and I think we should have a House rule. If you don't want it, fine. I am going to include it as one of my recommendations in the supplemental report, and we will see what happens. I really don't want to get into an extensive debate of every one of these proposals; but I want to have the opportunity to present this to the House and maybe the House will like it. I don't know. You don't, I guess.

Mr. STANTON. I am just raising some legal questions. You are a member of the Judiciary Committee. I don't think your last recommendation stands on very solid legal ground, and I think you should recognize that.

Mr. MILFORD. Will the gentleman yield?

Mr. STANTON. I yield to the gentleman from Texas.

Mr. MILFORD. Only one point here: What this particular amendment would do is provide a specification under which the House could consider it. That is pure and simple. It has to do with the violation of confidence of executive session matters, a specification under which the Constitution's provisions could be carried out.

Mr. McCLORY. Right.

Chairman PIKE. The question is on the amendment offered by the gentleman from Illinois. All those in favor of the amendment, signify by saying aye.

Contrary, no.

Mr. McCLORY. May we have a record vote, Mr. Chairman.

Chairman PIKE. Those in favor of a record vote will signify by raising their hand.

A record vote is in order. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Mr. STANTON. No.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

[No response.]

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

[No response.]

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. McCLORY. Aye, by proxy.

The CLERK. Mr. Kasten.

Mr. McCLORY. Aye, by proxy.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Chairman Pike.

Chairman PIKE. No.

By a vote of 5 ayes and 6 nays, the motion is not agreed to.

The Chair is going to offer an amendment which, perhaps in a parliamentary sense, should have been offered as an amendment to Mr. McClory's amendment; but in all candor he didn't have it ready that fast.

The amendment is as follows:

The select committee recommends that the rules of the House be revised to provide that any Member who reveals any classified information which jeopardizes the national security of the United States may be censured or expelled by a two-thirds vote of the House.

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you.

First of all, Mr. Chairman, we all know that the term "national security" can be used to justify a myriad of actions. If you say in your amendment "may be expelled," I would suggest that anytime someone can tag the label national security on an action, there will be action to expel a Member of Congress, which I think would be a sham.

I have been in the Congress for a little over 5 years. The Michael Harrington case was paraded up and down the halls of Congress as an extraordinary thing.

In my 5 and some-odd years in this Congress, I have not seen one piece of action taken by any Member of this Congress that endangered the national security of the United States. We are not under attack. No Americans have been bombed or invaded or anything. What Mr. Harrington did was to tell the truth when the intelligence community and the executive branch was lying. It did not endanger the national security. We are not being invaded by Chile. Whatever things have come out as a result of this committee have not endangered national security.

Chairman PIKE. Would the gentleman yield?

Mr. DELLUMS. Yes.

Chairman PIKE. I agree with everything the gentleman has said.

Mr. DELLUMS. I understand the politics of what is going on. We are all adult people here, and I realize that the recommendations, politically, have to include some statement with respect to disciplining

Members of Congress, simply because—given the composition of the House—that is the political situation.

But looking at it in very practical and real terms, if you set up a procedure to discipline Members, using the terms “national security,” and “may be expelled,” we are setting up a vehicle that will force the Congress to take action on various Members of Congress.

For example, if Michael Harrington’s case had come up and your amendment had been in force, I guarantee you Michael Harrington would have been expelled from Congress on national security grounds and there would be no justification for it.

Chairman PIKE. I disagree completely.

Mr. JOHNSON. Would the gentleman yield?

Mr. DELLUMS. Yes.

Mr. JOHNSON. I would like to point out that the danger of expulsion is not as great as the danger of somebody making an accusation for the political hatchet job that can be done on an individual accused of this. I can visualize this going on all the time.

Mr. DELLUMS. If I still have the time, I am willing to stipulate that the Chair may be correct and maybe the gentleman from Massachusetts would not have been expelled; but we certainly know that a hatchet job was done and that it would have been done with even greater vigor and greater venom had there been any kind of statutory statement involved.

If you want to establish a situation where hatchet jobs can be done on Members of Congress, and implement a vehicle that gives clear justification for individuals to come at Members of Congress—and I think the Chair recalls the statement I made yesterday that you cannot establish a procedure, it seems to me, to even talk about disciplining until there is a clear vehicle. But I have thought about that even further.

If there is going to be a disciplinary requirement—and I haven’t quite figured that out at all, and I have given it serious thought once the Chair brought it up last week in a previous discussion—the political situation apparently required that we have something in our report that makes this statement.

I am really very seriously frightened by what we might put in the statement, because we all know the political expediency of this body. The Congress of the United States is probably one of the most finely tuned bodies to all of the subtleties and nuances of politics. The disposition of Michael Harrington went beyond the situation of the moment. People were campaigning at home in their districts. They saw a “pinko” and said, “If I have a conservative district, let them know I am not soft on ‘pinkos’.” This is insanity. This man raised his hand to be sworn into the U.S. Congress like anybody else—including the gentleman from Texas, the gentleman from California, and the gentleman from Illinois. But the members of the committee saw this as a political vehicle to challenge a person. They had press conferences, put statements in the Congressional Record, mailed them out to their constituents. It was a campaign against Michael Harrington and a campaign for themselves. I do not want to see us put into the rules of this House a vehicle that would allow expedient political challenges to—

Chairman PIKE. The time of the gentleman has expired.

The question is on the amendment.

Mr. ASPIN. Could you read it again?

Chairman PIKE. It reads:

The select committee recommends that the rules of the House be revised to provide that any Member who reveals any classified information which jeopardizes the national security of the United States may be censured or expelled by a two-thirds vote of the House.

Mr. DELLUMS. Would we define "national security" in non-Nixon terms?

Mr. GIAIMO. Would you yield, Mr. Chairman?

Chairman PIKE. I don't have the time. I would recognize the gentleman but ask him to yield to me after he is through.

Mr. GIAIMO. Let me say to the gentleman from California that the term "national security" is used in our rules which provide for the closing of committee meetings. The provision states that there must be a vote on closing them, and reason for the closed meetings must be because the committee is going to take up a matter involving the national security of the United States. There is ample precedent in the rules for the use of that term.

Chairman PIKE. Would the gentleman yield to me?

Mr. GIAIMO. Yes.

Chairman PIKE. What I like about this concept, Mr. Dellums, is that it will be the House of Representatives exercising its judgment as to what constitutes national security, rather than somebody else exercising their judgment of what constitutes the national security.

I happen to agree with you completely that nothing that Michael Harrington did endangered or jeopardized the national security of the United States of America. I think that if that allegation had been made in an effort to censure him or expel him, it would have been laughed out of the House of Representatives, and I think that Michael Harrington would have wound up looking a great deal better than he did. It is in that sense and in that spirit that I offer this amendment.

The question is on the amendment. All those in favor of the amendment, signify by saying aye.

Contrary, no.

Mr. JOHNSON. I would like a record vote on that.

Chairman PIKE. A record vote is requested. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. McCLORY. Aye, by proxy.

The CLERK. Mr. Kasten.

Mr. McCLORY. Aye, by proxy.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Chairman Pike.

Chairman PIKE. Aye.

By a vote of 11 ayes and 2 noes, the amendment is agreed to.

Mr. McClory?

Mr. McCLORY. Would this be an appropriate time, Mr. Chairman, to bring up another amendment?

We voted yesterday on the declassification by the committee with respect to information. At that time, I spoke about our recommending legislation which would require or compel the executive branch to do a better job of classifying and declassifying information. I now have a simple one-paragraph recommendation along that line.

Chairman PIKE. Has this been distributed, Mr. McClory?

Mr. McCLORY. Yes.

Chairman PIKE. It is very short. Will you read the amendment?

Mr. McCLORY. It reads:

The select committee recommends that the Congress enact appropriate legislation providing for a comprehensive system for classification of sensitive information, including, in particular, the systematic declassification of classified information on a regular basis.

I move the adoption of the recommendation.

Chairman PIKE. The question is on the amendment. All those in favor of the amendment, signify by saying aye.

Contrary, no.

The ayes have it, and the amendment is agreed to.

The question then occurs on small letter "g," as amended. Would someone move the adoption of that section?

Mr. STANTON. I move the adoption of section "g."

Chairman PIKE. Is there objection?

Mr. JOHNSON. Mr. Chairman, is that with your amendment?

Chairman PIKE. That is correct.

Mr. ASPIN. Your amendment is incorporated in that as another paragraph. Is that where it appears?

Chairman PIKE. No; it should be a separate paragraph, because here we are talking about staff, and there we are talking about Members.

I ask unanimous consent that my amendment be relettered as "h" and inserted right after "g."

Is there any objection to "g" in the staff draft?

Without objection, "g" is approved.

We have already voted on "h," without objection, and now we go to old "h," which will now become "i." It has to do with the subpoena power of the committee.

Mr. MILFORD. Mr. Chairman.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. I have an amendment. I move that the period at the end of the first sentence in paragraph III(A) (1) (h) be changed to a comma and that the following wording be added: "provided the committee has so designated by resolution."

It wouldn't change the purpose, except that it would give—

Chairman PIKE. Is there objection? I see nothing wrong with it. Without objection, the amendment of the gentleman from Texas is agreed to.

You know, if the press could really see the amount of bitterness we have on this committee, God, what a terrible time they would have.

The question then goes to the entire paragraph as amended. Without objection, the paragraph, as amended, will be approved.

Mr. JOHNSON. I would like to register my opposition to it. I don't know whether we want to have a record vote.

Chairman PIKE. All those in favor of the section "A," as amended, signify by saying aye.

Contrary, no.

The ayes appear to have it and the section on "A House Committee on Intelligence" is agreed to.

[Recommendation "A," as amended, follows:]

A. A HOUSE COMMITTEE ON INTELLIGENCE

1. The select committee recommends that there be formed a standing Committee on Intelligence of the House of Representatives.

a. The committee membership should reflect a broad representation of political and philosophical views.

b. The committee should consist of not more than 13 or less than 9 members, designated by the Speaker in consultation with the minority leader, representing approximately the same political ratio as the House of Representatives.

c. No member of the committee may serve more than three consecutive terms on the committee, and no member of the staff may serve more than 6 years.

d. Any past or current member of the committee staff who shall release, without authorization of the committee, materials or information obtained by the committee shall be immediately terminated from employment and shall be fully subject to criminal and civil action, notwithstanding legislative immunity.

e. The committee shall be vested with subpoena power and shall have the right to enforce by a proceeding for civil contempt its subpoenas in the U.S. District Court for the District of Columbia or any other court of competent jurisdiction, without authorization from the House, provided the committee has so designated by resolution. The committee staff shall be given statutory standing to represent the committee in any proceeding arising from the issuance of a subpoena.

f. The committee's jurisdiction shall include all legislative and oversight functions relating to all U.S. agencies and departments engaged in foreign or domestic intelligence. The committee shall have exclusive jurisdiction for budget authorization for all intelligence activities and exclusive jurisdiction for all covert action operations. All remaining oversight functions may be concurrent with other committees of the House.

Chairman PIKE. Is there anything in "B" that we have not already covered in one way or another, Mr. Boos?

Mr. Boos. Mr. Chairman, the covert action papers that you have do not reflect the staff's current thinking.

Chairman PIKE. I am talking about "B," the control and release of information.

Mr. Boos. That has been superseded what has been done.

Mr. MILFORD. Mr. Chairman, I move that the following new paragraph be added to the staff draft as paragraph III(B) (4). In the hand-out in front of you, it will be motion No. 8. The added paragraph, Mr. Chairman, would read as follows:

4. The select committee recommends that the United States Code be amended to provide criminal sanctions against any person who shall disclose or reveal properly classified information, documents, data or plans concerning the national security of the United States, such sanctions to apply regardless of intent to harm the United States or to aid a foreign nation.

Chairman PIKE. Do you wish to be recognized for 5 minutes in support of your motion?

Mr. MILFORD. I think the motion speaks for itself. I won't take the committee's time.

Chairman PIKE. The question is on the amendment offered by the gentleman from Texas. All those in favor of the amendment, signify by saying aye.

Contrary, no.

Mr. GIAIMO. Rollcall, Mr. Chairman.

Chairman PIKE. All those in favor of a rollcall, signify by raising their hands.

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

[No response.]

The CLERK. Mr. Kasten.

[No response.]

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Chairman Pike.

Chairman PIKE. No.

By a vote of 2 ayes and 9 noes, the amendment is not agreed to.

Mr. McCLORY. Mr. Chairman, may I inquire whether we acted with respect to paragraph (F)?

Chairman PIKE. It has been superseded, according to the staff, by the other actions we have taken. Mr. Milford's amendment, on which we just voted, addresses itself to that issue. It was defeated.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. If somebody wanted to move to reconsider our problem of yesterday, would this be the point?

Chairman PIKE. This would be a wonderful point to do it. Could the staff recapitulate for us the situation yesterday where we got so boxed in that Mr. Johnson was laughing, and Mr. Dellums was laughing, and Mr. Milford and Mr. McClory were feeling a little uneasy?

On a 4-to-4 vote, the committee failed to adopt that staff proposal, and I don't even know where it is.

Mr. ASPIN. It is No. IV.

Mr. GIAIMO. What is the subject?

Mr. ASPIN. If you look at the back, it is No. IV in the committee recommendations. We passed No. III and went on to IV(B), not IV(A). That is the one.

Mr. GIAIMO. What does it deal with?

Mr. ASPIN. We have an amendment by Mr. Pike which applies to the members of the committee; but by passing the Giaimo amendment yesterday, we have allowed all Members of Congress access to all information in any committee, which I think is the right thing to do. At the same time, we voted down anyway of sanctioning—or any kind of position on unauthorized release by Members who receive access to information when they are not members of that committee.

Mr. JOHNSON. Mr. Chairman, point of order.

Chairman PIKE. The gentleman will state his point of order.

Mr. JOHNSON. If the Chair or the membership insists on pursuing this matter, I am going to raise the point of order that there is pending business before the House—the 5-minute rule—and the committee will not be allowed to continue if I make that objection. And I will make that objection if we insist on this.

So I would ask you to go someplace else procedurally. You can't continue on this subject. If you want to meet tomorrow or Monday, or any other time, you can, but I am going to make this point of order.

Mr. MILFORD. Parliamentary inquiry: Doesn't our resolution allow us to sit while the House is in session?

Chairman PIKE. No. The point of order would have to be sustained.

Mr. JOHNSON. So I suggest we go on to covert action.

Mr. GIAIMO. Parliamentary inquiry, Mr. Chairman.

Chairman PIKE. We can get back to this some other time.

Mr. ASPIN. Why don't we meet at 2?

Chairman PIKE. If we try to do it at 2, the same point of order would apply.

Mr. ASPIN. I mean then we could go on to a big subject like covert action.

Mr. DELLUMS. Parliamentary inquiry.

Chairman PIKE. Yes.

Mr. DELLUMS. Did not action taken by this committee in support of your amendment handle disciplinary action for unauthorized release?

Mr. ASPIN. Only for the people on the committee.

Chairman PIKE. No; the amendment which I offered covers Members of the House.

Mr. ASPIN. But it comes under section A, "A House Committee on Intelligence," and No. 1, "The select committee recommends that there be formed a standing committee on intelligence of the House of Representatives." It is subnumbered under that. I don't think it applies to anything other than the committee.

Chairman PIKE. I will simply state that you may be correct that it is in the wrong section. It was fully intended to apply to any Member of the House. The Mr. McClory's amendment says "any Member." I didn't read it to mean any member of the committee, but maybe that was your intention.

It is nothing we can't handle by putting it somewhere else in the report.

[Mr. Pike's amendment is printed as "4" under "B. Release of Information" in H. Rept. 94-833.]

Mr. McCLORY. Mr. Chairman, before we recess, may I offer my substitute just so it may be before the committee when we reconvene at 2 o'clock—the substitute with respect to paragraph 2 of the section on covert action?

Chairman PIKE. The gentleman is recognized for the purpose of offering the substitute and now that the substitute is offered, the committee will be in recess until 2 o'clock this afternoon.

[Whereupon, at 12:04 p.m., the committee recessed until 2 p.m. this afternoon.]

AFTERNOON SESSION

Chairman PIKE. The committee will come to order.

When the committee recessed, we had determined that we would go to the subject of covert action this afternoon. We have a new set of papers prepared by the staff, entitled "Covert Action Options To Be Taken Up Thursday, February 5, 1976 at 2 p.m." Having thus structured our approach, we have first a staff covert action item following the original recommendations of the staff and then we have a recommendation offered by Mr. Johnson, and then we have a recommendation offered by Mr. McClory.

[The staff draft of recommendation, "C. Covert Action," follows:]

C. COVERT ACTION

1. The select committee recommends that activities involving direct or indirect attempts to assassinate any individual shall be proscribed except in time of war.

2. The select committee recommends that as to other covert action by any U.S. intelligence component, the following shall be required within 48 hours of initial implementation:

a. The Director of Central Intelligence shall notify the committee in writing, stating in detail the nature, extent, purpose, and costs of the operation.

b. The President shall certify in writing to the committee that such covert action operation is required to protect the national security of the United States.

c. The committee shall be provided with duplicate originals of the written recommendations of each member of the 40 Committee or its successor.

Chairman PIKE. I would assume that the members are all familiar with the covert action draft prepared by the staff. I suggest that we take 15 minutes out to go vote, during which time we look at Mr. Johnson's amendment and Mr. McClory's amendment, and then we will come back and vote on them.

Mr. Boos. Mr. Chairman, could I just point out one thing: In the staff recommendation paragraph 1, strike "proscribed" and insert "prohibited," if you would.

Mr. FIELD. On behalf of all Texans everywhere.

Mr. Chairman, also we have retyped sections "A" and "B"—"A" being the committee, and "B" being the release of information. They will be up here this afternoon, and I hope the members will look through them in case we have misinterpreted any of the amendments.

Chairman PIKE. OK.

[Brief recess.]

Chairman PIKE. Our procedure will be the staff's draft recommendations as to covert action, and I recognize Mr. Dellums for the purpose of offering an amendment.

Mr. DELLUMS. Thank you, Mr. Chairman. I have a rather non-controversial amendment.

First, let me state it:

The select committee recommends that all covert actions shall be prohibited except in time of war.

What I am attempting to do is outlaw covert operations.

May I be recognized to speak in favor of my motion?

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. DELLUMS. We have obviously gone around on this. People have their minds made up on this question. I happen to believe that we should outlaw covert operations. One of the arguments for covert operations is that we desperately need some vehicle between all-out war and diplomatic action.

It seems to me, Mr. Chairman, and members of the committee, that we live in a world that is becoming increasingly smaller and increasingly interdependent—where secrecy and cloak and dagger methods, in my estimation, are anachronisms of the past and have no place in the world that we presently live in or the world we will continue to live in.

It seems to me that whatever action this country takes in a world that is becoming this small and this interdependent ought to be overt action. It seems to me that the United States ought to begin to play an aggressive role—as advocates of peace in the world, as advocates of humanitarian concerns in the world—and I frankly believe that the level of secrecy that we have been exposed to as members of this committee flies in the face of democratic principle.

There are many people who, interestingly enough, wrap themselves quite fully in the flag, but when you really press them to the wall on whether or not they are seriously willing to support democratic principles, then I find they are willing to sidestep them.

Democracy is based on a notion of the development of a consensus. Covert action, in my estimation, does not provide for that consensus. It does not provide for that debate. It is activity, recommended and approved by a small select group of people, which at some point can be extremely expensive; at some point, extraordinarily risky; and at some point, flying in the face of open debate on a given question. And I think that is detrimental to the democratic process.

I am willing to try democracy for real. My concern has been that our democracy has been, for the most part, a charade—a symbolic

democracy—and I am not sure that we all truly believe in the concept of majority rule in the concept of establishment of a consensus. Providing arms and aid to other countries, Presidents being able to sit down with other Presidents and making deals—all these kinds of things are issues that we have become aware of and are part of this country's covert actions.

I think our world is much too complicated to continue to function this way. The more we get involved in covert action, the more we are accused of covert action even in places where we may not be involved in covert action.

So the question is: Does it really aid this country's role in the world to continue this kind of activity? My answer to that is clearly, "No." I think we do much more harm continuing to function covertly.

Many of these operations are well known by people other than the people of the United States and/or their representatives. So where does the covert come in? It comes in in terms of keeping people who are part of this society out of the decisionmaking, and it comes at a level which keeps representatives of the people out of that decision-making.

So, clearly realizing this is very, very controversial, I really see no justification for continuing covert operations. If we want to assist, then why not do it in the open and let the debate occur around the question of what our role ought to be somewhere in the world; and on the basis of that consensus that is publicly taken, we can assist. But why do we have to play games? Why do we have to get involved?

One other question one can ask about covert operations is: Where has it taken us? Are the nations that we have been involved in free democratic societies where the masses of people have the benefits of democracy? Or are those nations that we have involved ourselves in, for the most part, military dictators, right-wing governments, or governments with extraordinary wealth and power in the hands of a few elitists?

If the latter is the case, that totally contradicts the stated principles of this country. If we have been involved in covert actions around the world—generating democracy and freedom and justice around the world—maybe we could arrive at a different conclusion. But I don't think anyone can justify continued covert action on the grounds that we are fostering and developing democracy around the world.

Chairman PIKE. The time of the gentleman has expired.

Does anyone wish to be heard in opposition or support of the amendment?

Mr. Johnson?

Mr. JOHNSON. I would like to speak in support of the amendment.

I know what the outcome of this is going to be; and even if it were approved by this committee, I wouldn't have any illusions about what the full Congress would do with it. But it seems to me that we are ignoring the fact that there is an inevitable judgment attached to conduct; there is inevitable consequence for all the conduct that we engage in—whether it is individuals or nations that engage in murder, secret warfare, violence, turning power over to small groups of people where it will inevitably be abused, which is going to lead us to some kind of disastrous consequence.

You can't say what it is going to be. But there has to be some kind of disastrous consequence for engaging in this kind of activity or continuing to condone it or pretend it isn't there—to pretend that because we are doing it, it is good. It simply doesn't make it good, and that is all we are doing when we are closing our eyes to it.

And when we turn over to a President—no matter of which party or who he is—the power and the authority to engage in this kind of conduct, without the American public making that decision through their representatives, we are, in effect, giving a warmaking power to the President which has been abused in the past and will continue to be abused as long as it is left immune and intact as it has been.

I don't want to get involved in making that kind of argument too much, but during the Vietnamese war people asked me why I was so opposed to the war, I said that one of the reasons was that turning over to a President this decisionmaking and warmaking power just inevitably means nothing but warfare from now on out. That has been the history of mankind.

I said, "Do you want to give to future Presidents the power to decide whether we are going to go to war in Africa and South America?" You are already beginning to see that kind of incursion developing. That is nothing that can't be predicted, that can't be seen. That is exactly where we are going to go.

You are leaving with the President and a small handful of people around him an absolute authority, an absolute discretion which is inconsistent with the whole principle on which, I believe, our Republic was founded. And to continue with secret operations that we are ashamed of seems to me to be an inconsistency that I can't accept.

If it is so important for us to engage in these kinds of operations, why can't we say it is important to the national security and that whatever we do in the name of national security we do publicly and openly.

If we have to go down and kill Castro, why don't we say we want to kill Castro and declare war against him? Why send somebody from the Mafia down there? That is the kind of abuse that you inevitably get involved in. There is no way you can avoid it. Name me one instance where you concentrate power and it isn't ultimately abused.

We must stop this concentration of power, and I think Mr. Dellums' amendment is the only way it can be done. I don't see any benefit coming from anything else in this whole package of recommendations. We are going to go right back where we were if we don't set some limits and prevent these kinds of activities from being conducted again.

Mr. DELLUMS. Would the gentleman yield to me?

Mr. JOHNSON. Yes.

Mr. DELLUMS. I would like to make the comment—and I am sorry Mr. Milford isn't here because the gentleman has often used the term "loyal Americans." I am not in any way suggesting that persons who are commissioned to carry out these covert operations are not in fact loyal Americans.

But what we have done is to force people into a level of evil that is in itself corrupt. When you talk about contracting with the Mafia and justifying it, when you talk about spending millions of dollars in drug traffic in order to be involved in the underworld, there has

to be a massive corrupting capability. These persons are carrying out the orders of the United States, as "loyal Americans."

What I want to do is change the marching orders so that they are not out there in a secret jungle—in a life and death struggle that I think reasonable people should not be involved in, in a world of this level of technical capability, in a world where our survival is so thoroughly interdependent. I think this is a total anachronism.

I think the marching orders for the people out there as representatives of the country should be different; and I think there is no justification for this level of secrecy that cloaks evil, that cloaks corruption.

Chairman PIKE. The time of the gentleman from Colorado has expired.

Mr. Kasten?

Mr. KASTEN. Mr. Chairman, I would like to speak in opposition to the motion.

I know I—and I think a number of other members of the committee—are also concerned, as the gentleman from Colorado stated, about the concentration of power. It is my hope that we can establish needed congressional oversight and we can reestablish the checks and balances which ought to be working in the executive branch but which we have seen have not worked in the executive branch. And with both the reestablishing of the checks and balances in the executive branch and additional oversight or stronger oversight from Congress, we can start to deal with the problem of concentration of power.

But we don't live in an ideal world. We don't live in a perfect world. We live in a real world. I think there is a need to protect our national security through both open and covert operations, and it is my hope that the motion will be defeated.

Mr. LEHMAN. Mr. Chairman?

Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. I am being redundant, because I made the statement before, but what this world needs more than anything else is a sense of moral order. And I think this country is strong enough to take the kinds of leadership on a basis of morality and to do without the kinds of activities that are involved in such covert action.

Evil done in the name of patriotism is still evil, and it will beget more evil. So I would be supportive of the amendment to do away with such covert activities.

Mr. DELLUMS. Mr. Chairman, just one last comment in response to Mr. Kasten.

Chairman PIKE. If you can get the gentleman from Florida to yield.

Mr. LEHMAN. I yield.

Mr. DELLUMS. In response to my colleague from Wisconsin—and if I am out of order I would appreciate it if the Chair would so indicate—if I recall correctly, the chart that was not classified information pointed out that—

Chairman PIKE. You are out of order. I regret to say you are out of order.

Mr. DELLUMS. The one where you said, "Why did the staff classify the chart?"

Chairman PIKE. You are referring to the contents of our report and I am going to have to object.

Mr. DELLUMS. Suppose I just responded to a meeting, not the report? Can't do it?

Chairman PIKE. Try.

Mr. DELLUMS. If the gentleman from Wisconsin recalls a meeting where we discussed that the places the largest number of covert operations in the world were being carried out were not against the Soviet Union—which is what most American people would assume.

You mentioned the national security of the United States. If the gentleman recalls, four regions in the world were described. I obviously cannot go into them; but nowhere in those four regions in the world can anyone justify a threat to the national security of the United States.

There is certainly some concern that if that information were out there it could be "misconstrued"—I think that is the comment from the intelligence community—because it would make the case that Mr. Johnson and I are making, and that is that covert operations are not directed at the issue of national security.

In too many instances we are knee jerking. In too many instances we are on the wrong side of the issues. In too many instances there is no way you can justify drawing a line of justification back to any kind of threat to the national security of this country. And that is precisely the point I am trying to make.

It is not an issue of danger to this country. Most of our covert operations are not being conducted against the superpowers that we tend to justify spending a hundred-billion-dollar military budget on, but in other places around the world that pose no clear and imminent danger to this country. And I think on that basis alone there is no serious justification for our continued involvement in covert activity around the world, as we continue to wage an ideological struggle with the Soviet Union all over the globe. I don't think it is appropriate.

Chairman PIKE. Mr. Aspin?

Mr. ASPIN. Point of inquiry. I see a close vote coming up. What is the intent of the Chair as far as the proxies on this vote are concerned?

Chairman PIKE. The intent of the Chair would be to vote the proxies as he believes the members would have the proxies voted.

Mr. ASPIN. It is a very important vote and I am not sure how some of these people would have voted on it. This is one that is likely to be difficult to predict. I don't know. I am just asking. I think it is a very tough vote to vote somebody's proxy on this one, Mr. Chairman.

Chairman PIKE. Aren't you blessed that you don't have to do it?

Mr. ASPIN. I am overwhelmed with joy that I don't have to do it.

Mr. McCLORY. Mr. Chairman?

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I would like to be heard briefly on this, because I think it is a very sensitive and very controversial subject.

I have no doubt but that the hostility toward covert operations results largely from the fact that some covert operations have been undesirable, have been the kinds which the Congress would not have authorized or approved. As the members know, I offered an amendment or substitute with respect to paragraph 2, which would limit the authority for carrying on covert operations so that the paramilitary operations would first have to be approved by the oversight committee.

And then, with respect to nonmilitary types of covert activities, they would have to be reported promptly to the oversight committee.

I think this is important, but I think one reason we have found abuses is because the Congress hasn't exercised the kind of oversight in the past that it should have. Otherwise, we wouldn't have had these abuses. But to suggest that we can counteract a foreign force which is carrying on extensive covert activities without reacting in a similar way seems to me to be quite unreal.

It seems to me, too—and Mr. Colby has stated this many times—that covert activities really are a substitute for military action; and if a covert action can avoid the loss of American lives and avoid involvement in military action, it seems to me it is highly desirable.

I believe a great many of the activities should be overt, and I would prefer to have overt actions—especially those in sort of nonaligned countries where we want to provide assistance and perhaps counteract Soviet or other communistic influence. We could do that for the main part overtly, it seems to me.

But if the Soviet Union is operating covertly in some parts of the world, and we feel that the interests of free people, of independence, of our own security, our own foreign relations are involved, I certainly wouldn't want to say no covert action could take place there.

So I am going to vote against the gentleman's amendment, and then I will hope that my substitute amendment for paragraph 2 will be favorably acted on.

Thank you.

Chairman PIKE. The question is on the amendment of the gentleman from California.

Mr. ASPIN. Could I ask for a show of hands on the vote?

Chairman PIKE. Sure.

The question is on the amendment offered by the gentleman from California, Mr. Dellums.

All those in favor of the amendment will raise their hands.

Those opposed to the amendment will raise their hands.

Mr. JOHNSON. I ask for a record vote.

Chairman PIKE. The ayes are three, the noes are four. The amendment is not agreed to.

A record vote is requested.

All those in favor of a record vote raise their hands.

There is a sufficient number.

The clerk will call the roll.

The CLERK. Mr. Giaino?

Chairman PIKE. No, by proxy.

The CLERK. Mr. Stanton?

Chairman PIKE. No, by proxy.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Chairman PIKE. No, by proxy.

The CLERK. Mr. Aspin?

Mr. ASPIN. No.

The CLERK. Mr. Milford?

Chairman PIKE. No, by proxy.

The CLERK. Mr. Hayes?

Chairman PIKE. No, by proxy.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. McCLORY. No.

The CLERK. Mr. Treen?

Mr. McCLORY. Mr. Treen votes no by proxy.

The CLERK. Mr. Kasten?

Mr. KASTEN. No.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike?

Chairman PIKE. No.

By a vote of 10 to 3 the amendment is not agreed to.

The Chair recognizes the gentleman from Colorado for an amendment.

Mr. JOHNSON. Mr. Chairman, I think all the members have my proposed amendment. It simply says:

The select committee recommends that activities involving direct or indirect attempts to assassinate any individual; military and paramilitary covert actions; secretly providing arms or financing to individuals or groups in attempts to sustain or overthrow any government, shall be prohibited except in time of war.

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. JOHNSON. I don't see any need to continue the debate.

Chairman PIKE. The Chair will now state that the problem which Mr. Aspin judiciously anticipated for me on the other vote I find much more real on this vote.

The discussion which I have had with the other members has indicated to me that they were not in favor of prohibiting all covert operations. I think they may well be in favor of prohibiting some covert operations, and, very frankly, where Mr. Giaimo and Mr. Stanton would draw the line I simply do not know.

Accordingly, I am not going to vote the proxies of Mr. Giaimo and Mr. Stanton and Mr. Hayes, because I just don't know how they would vote. I am going to vote the proxies of Mr. Murphy and Mr. Milford, because I feel rather strongly about how they would vote—if we get to a record vote on the amendment.

Does anyone wish to speak further?

Mr. Giaimo, I have just announced I was not going to vote your proxy because I do not know how you feel on this. The question is on the motion of the gentleman from Colorado, Mr. Johnson.

Did you want a rolleall vote on this?

Mr. JOHNSON. Yes, sir, please.

Chairman PIKE. All those in favor of a record vote, raise their hands.

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

[No response.]

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. Mr. Murphy, no, by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Chairman PIKE. Mr. Milford, no, by proxy.

The CLERK. Mr. Hayes?

[No response.]

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treén.

Mr. McCLORY. No; by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike.

Chairman PIKE. Aye.

By a vote of 5 ayes and 6 noes, the motion is not agreed to.

Mr. DELLUMS. Mr. Chairman, I have an amendment.

Mr. GIAIMO. May I ask a question?

Chairman PIKE. Yes.

Mr. GIAIMO. I am sorry I wasn't here in time, but there is something that bothers me about this proposal that has just been passed.

Chairman PIKE. We didn't pass it.

Mr. GIAIMO. Then I won't ask the question.

Mr. McCLORY. Is my substitute in order now?

Chairman PIKE. Mr. McClory is recognized.

[Mr. McClory's substitute language follows:]

Under heading "C. Covert Action," strike Number 2 and insert in lieu thereof the following:

2. The select committee recommends that appropriate legislation be enacted to require prior approval by the House Committee on Intelligence for all military and paramilitary covert actions proposed by the U.S. Government, including those actions in which arms or funds for arms would be provided; and further, that as to all other covert actions of a significant size or involving significant risk, the Director of Central Intelligence be required, within 48 hours of initial implementation, to notify the committee in writing and in detail of the nature, extent, purpose, and costs of the operation.

Mr. McCLORY. Mr. Chairman, I would substitute for paragraph 2 the provisions of the substitute amendment that I circulated which, in effect, requires that the House intelligence committee which will be established would have to give its approval with respect to any military or paramilitary covert operation before it was carried out; and that with respect to any and all other covert activities there would have to be a prompt reporting to the intelligence committee—within 48 hours, as a matter of fact.

I don't know whether I need to explain it any further. If we have any wider margin that is involved in approving any paramilitary operation—for instance, if you require the whole House of Repre-

sentatives to approve a covert operation involving a grant of funds enabling the purchase of arms or something like that, I don't think it would be covert from then on.

As I said before, I would hope that most activities would be overt and not covert, so this would only apply to those actions which are covert. But if the oversight committee deals with this subject, that would give the kind of congressional oversight and require the kind of congressional authority which, I think, we should require with regard to any kind of military involvement in a foreign intelligence activity.

Then beyond that, all we are doing with regard to nonmilitary types of operations is just requiring that there be prompt, almost immediate, reporting to the intelligence committee.

Mr. JOHNSON. Will the gentleman yield?

Mr. McCLORY. Yes; happy to.

Mr. JOHNSON. What does the gentleman mean by "initial implementation"? Does that mean it has been originally approved by the committee, or after it has started?

Mr. McCLORY. I suppose after it was started; but it would necessarily—under the recommendation we have already approved—have to follow the mechanism which we set up, which would be the approval by the 40 Committee or the approval of this group that we have designated.

Mr. JOHNSON. You are saying that that would be after the 40 Committee or whatever group would be involved?

Mr. McCLORY. I can conceive of the 40 Committee giving contingency approval for, in a sense, something that may or may not be implemented; and I don't think that it needs to be reported before it is implemented, before they start to carry it out. But if they are carrying out a nonmilitary type of covert activity, I think that activity should be reported promptly.

Mr. JOHNSON. If the gentleman will yield for a further question—

Mr. McCLORY. Yes.

Mr. JOHNSON [continuing]. I would think this is better than nothing, but not a whole lot, because it seems to me that we are giving power to—what did we decide—13 people, this morning?

Mr. McCLORY. Yes.

Mr. JOHNSON. In the Congress. We are delegating to 13 people the constitutional power of engaging in war. Since Congress has the war-making power in the Constitution and this is, in effect, warmaking, and you are allowing a few people—

Mr. McCLORY. No; we are not involved in war; we are not using any manpower. We are not shooting any guns. We may not even be having any advisers there.

I would think this would apply even in cases where we would loan or grant money to a country for the purpose of purchasing arms, because that would be a military or paramilitary-related action, or where we provided funds for paying some other military force.

Mr. JOHNSON. You contemplate then, when you say, "For all military and paramilitary covert actions," providing arms would be—

Mr. McCLORY. Providing arms for, I suppose, a revolutionary group or a group trying to get their liberation or fighting against a national liberation movement.

Mr. JOHNSON. Would the gentleman think, then, that we ought to add an arms provision in there? I don't read that language would do that.

It says, "Military and paramilitary."

Mr. McCLODY. "Action in which arms or funds for arms would be provided."

Mr. DELLUMS. Mr. Chairman, parliamentary inquiry.

Chairman PIKE. Mr. Giaimo's time is up.

Mr. McCLODY. No; it was my time.

Chairman PIKE. The gentleman will state his parliamentary inquiry.

Mr. DELLUMS. Thank you, Mr. Chairman.

The gentleman from Illinois' amendment occurs in paragraph No. 2. Does that preclude any additional amendments to paragraph No. 1? If so, I have an amendment.

Chairman PIKE. The answer is "No."

Mr. Aspin?

Mr. ASPIN. Mr. Chairman, I think I understand what the gentleman from Illinois is trying to get at, but I really do think it is the wrong thing to do.

Basically, we have the problem between covert operations and this committee that we are establishing as the committee on intelligence.

What is the relationship that that ought to have? The staff draft suggests that we be informed within 48 hours, and in fact that means that we have no input on it; because, according to the staff draft, they are informed within 48 hours. The President certifies that it has to happen but he has already made up his mind and they are merely informed. It is just an informational thing.

The gentleman from Illinois' suggestion is that we take certain types of covert operations and make them subject to this committee's approval. That is going to the other end of the spectrum.

Let me address two parts of that.

The first part is, I think, that is a very, very, tough decision for any member of that committee to make. It is one thing for a Member of Congress to vote his own vote on the floor of the House—one of 435 Members of Congress voting on his own conscience and for his own district in the open on a matter of policy.

It is quite another thing for him to be 1 of 15, 16—it doesn't make any difference how many, but 1 of some subset of that 435 voting in secrecy and voting for the whole Congress.

In other words, his vote is not just his vote for his district. He is voting for Congress when he makes that vote, and that is a tough position to put any Member of Congress in. If this amendment were to pass, I don't know whether I would rather be on the committee or not on the committee.

In some sense, I would like to be on the committee because I sure wouldn't want anybody else making that vote for me. But, on the other hand, I wouldn't want to be on the committee because I wouldn't want the responsibility of voting for the other 400 Members who aren't on the committee.

I think it is putting that committee in a very, very tough position to have them vote. When they vote, they have spoken for Congress and

the President can then go on television and say, "Look, Congress approved," or he can go on television and say, "Look, we would have succeeded in whatever country this is but Congress turned us down." And they are talking about 15 guys.

It is the same position we are in now.

Mr. McCLODY. Would the gentleman yield to me? The thing seems to me to be this: If, under the staff recommendation, some paramilitary operation is begun and you get that report within 48 hours——

Mr. ASPIN. You can't do anything about it.

Mr. McCLODY. It is going to be terribly difficult to reverse that. I just don't think we should get involved in that unless—I doubt that the oversight committee would want to give its OK if they thought the rest of the Members were against it.

Mr. ASPIN. How do you know about the rest of the Members? You are asking the committee to sort of psyche out the rest of the Members. You are not voting your own conscience or own views. You are asking: "How is the rest of Congress going to vote?"

Mr. McCLODY. You can't gain authority and then relieve them of responsibility. It is going to be a heavy responsibility.

Mr. ASPIN. I want to offer my amendment if the gentleman from Illinois' amendment is not approved. I just handed it out. If you look at No. 2, let me suggest another approach to this, and this is approach No. 2.

It involves neither prior approval nor notification after the action has started. What I would recommend is No. 2 under "Covert Action:"

Notification of any proposed covert actions or major clandestine collection activity will be sent to the standing intelligence committees of the Congress at the same time they are brought before the Foreign Intelligence Subcommittee of the NSC.

In other words, the proposal goes to Congress at the same time it goes to the Foreign Intelligence Committee.

While the standing committees will not have authority to approve or disapprove such operations, they will be given adequate time to be fully briefed on the planned operation in question and the members may, as a body or as individuals, submit their views in writing to be added to the analyses of the Foreign Intelligence Subcommittee members going to the President.

In other words, they have some input to the thing before the President makes up his mind and if they can write a piece of paper or do it ahead of time——

Chairman PIKE. The time of the gentleman has expired.

Mr. JOHNSON. Mr. Chairman.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I don't want to belabor this, but it seems to me that when you go back and examine the release-of-information question, if the members of this committee sign on for a covert, paramilitary, or military operation, you might very well be placing them in a position where they don't want to expose this to the rest of the Members of the House pursuant to this release of information. And you are placing them in this position of those supercommittees once again. It seems to me this is contrary to the spirit of trying to exercise oversight.

They are, in effect, becoming coconspirators with the administration. Once they sign on to that, they are not in the position of exer-

cising oversight—critical oversight. They become parties to the action, and I think that is fraught with danger.

Chairman PIKE. The question is on the amendment of the gentleman from Illinois.

All those in favor of the amendment will signify by saying aye; contrary, no.

The noes appear to have it and the amendment is not agreed to.

Mr. DELLUMS. Mr. Chairman, I have an amendment.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Mr. Chairman, I offer the following amendment:

The select committee recommends that all activities involving direct or indirect attempts to assassinate any individual and all paramilitary activities shall be prohibited except in time of war.

Chairman PIKE. How does that differ from the earlier one? Oh, you have left out the arms.

Mr. DELLUMS. Mr. Johnson's amendment, in effect, said: "secretly providing arms or attempting in any way to overthrow any government or support revolution within any country." We voted on that and I voted in support of it but it failed.

I would now like to offer what I consider a third-degree amendment.

Mr. ASPIN. Read it again.

Mr. DELLUMS. The amendment reads as follows:

The select committee recommends that all activities involving direct or indirect attempts to assassinate any individual and all paramilitary activities shall be prohibited except in time of war.

In a very straightforward fashion what I am doing is outlawing assassinations and paramilitary activities.

Chairman PIKE. The question is on the amendment.

All those in favor of the amendment will signify by saying aye; contrary, no.

The Chair is in doubt.

All those in favor of the amendment, signify by raising their hands. Opposed.

By a vote of 4 yeas and 3 nays the amendment is agreed to.

Mr. ASPIN. May we have a record vote, Mr. Chairman.

Chairman PIKE. Sure, if one other person will raise his hand.

Mr. McCLORY. Parliamentary inquiry, Mr. Chairman.

Is the word "covert" in there?

Mr. DELLUMS. No.

I say "assassinations and paramilitary activities." I specified two approaches to covert action and I outlawed those two types of covert action—paramilitary and assassinations.

Mr. McCLORY. But my inquiry is, is the word "covert" in there, and the answer is "No," it is not?

Mr. DELLUMS. No, sir.

Mr. KASTEN. Mr. Chairman, parliamentary inquiry.

Chairman PIKE. Mr. Kasten will state his inquiry.

Mr. KASTEN. If this amendment were passed, would we be outlawing paramilitary actions whether they be covert or overt?

Chairman PIKE. The gentleman has not stated a parliamentary inquiry. The gentleman has asked for an interpretation of the language by the Chair.

The Chair will say to the gentleman he can read the language as well as the chairman can and will have to interpret it for himself.

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Yes.

Mr. DELLUMS. First of all, my amendment occurs in the section entitled, "Covert Operations." Any intelligent person reading whatever is written under the title "Covert Operations" would assume that it is covert operations.

What my amendment says again, in very clear and simple language is, "The select committee"—that is us—"recommends" which is a verb—"that all activities"—meaning covert activities—"involving direct or indirect attempts to assassinate"—a form of covert operation—"any individual and all paramilitary activities"—which is also a covert operation—"shall be prohibited except in time of war."

Mr. KASTEN. Would the gentleman yield for a question.

Mr. DELLUMS. Yes.

Mr. KASTEN. Why did the gentleman feel it was necessary to take the word "covert" out of his motion? The thing that is confusing members of the committee is that the wording you are reading from said, "paramilitary covert actions."

You have changed that to "paramilitary activities." I was asking why you did that.

Mr. DELLUMS. OK.

I understand the gentleman's point. If the gentleman looks at paragraph No. 1, under the heading, "Covert Action," there is no statement—even in the staff recommendation—that says "covert operations." I assume that one understands in general use of the language that the heading would define what will follow.

Now, if there is a need to put in "covert operations" maybe we can say "involving the following types of covert actions concerning direct attempts to assassinate any individual and all paramilitary activities."

Mr. KASTEN. Would the gentleman yield further?

Mr. DELLUMS. Yes.

Mr. KASTEN. It is the gentleman's intent to outlaw all paramilitary activity, whether it be covert or overt; is that correct?

Mr. GIAIMO. Would you yield?

Mr. DELLUMS. Yes, sir.

Mr. GIAIMO. What do you mean by an "overt paramilitary operation"?

Mr. KASTEN. One that is not undercover.

Mr. GIAIMO. If it is not undercover, then what is it? How does the President send troops some place openly? Under the emergency provisions of the War Powers Act it is done openly.

Am I correct?

Mr. KASTEN. Right.

Mr. GIAIMO. I don't think the gentleman has any objection to that. I think your objection is to the covert type of paramilitary operation, and I think that is taken care of by the fact that the "C" is titled "Covert Action."

Mr. McCLORY. Point of order, Mr. Chairman.

Chairman PIKE. The gentleman will state it.

Mr. McCLORY. The point of order is that with the explanation it is clear that we have already voted against this prohibition.

Chairman PIKE. I think the gentleman's point of order is not well taken.

The gentleman from California has stated the distinction between this amendment and the prior amendment, and there is, in fact, a distinction.

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

[No response.]

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Hayes.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. McCLORY. No, by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike.

Chairman PIKE. Aye.

By a vote of 7 yeas and 5 nays, the amendment is agreed to.

Mr. Aspin.

Mr. ASPIN. I worry about the way we are voting the proxies on that one.

Chairman PIKE. We are not voting proxies, Mr. Aspin. I am. I worry about it, too.

Mr. ASPIN. You voted Mr. Stanton aye. You voted Mr. Murphy not at all.

Chairman PIKE. That is right.

Mr. ASPIN. Mr. Milford as voting no.

Chairman PIKE. Yes, and Mr. Hayes as voting aye.

Mr. ASPIN. The only one I am sure you voted right is Mr. Milford.

Mr. GIAIMO. Point of order, Mr. Chairman.

I don't know how you can make that judgment. The Chair has the proxies.

Chairman PIKE. If the gentlemen had wished to give the proxies to you, I think they would have given the proxies to you; but having given them to me, I think they want them exercised.

Mr. ASPIN. Mr. Chairman, the point I am making is that this is not one that is so easily divided, and—I don't know. You can do what you want.

Chairman PIKE. I thank the gentleman.

Mr. JOHNSON. Mr. Chairman.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. Mr. Chairman, I am wondering what the rest of the members would feel about adding some kind of definitional language relating to paramilitary operations. We, on this committee, have a notion of what paramilitary operations have been. I don't know that the rest of the Members of Congress will have the same notion that we do, and I think we ought to have some kind of definition or at least some explanation.

Chairman PIKE. We have, under the heading of "Covert Action," eliminated paramilitary operations. I think we have established by the record that we are talking about covert actions.

The committee has substituted the language of Mr. Dellums' amendment for item C(1).

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. I offer an amendment—the one that I was reading before—under covert action. I think you all have it. It is amendment No. 6 on this list. I will read it. It says:

Notification of any proposed covert actions or major clandestine collection activity will be sent to the standing intelligence committees of the Congress at the same time they are brought before the Foreign Intelligence Committee of the NSC. While the standing committees will not have authority to approve or disapprove such operations, they will be given adequate time to be fully briefed on the planned operation in question and the members may, as a body or as individuals, submit their views in writing to be added to the analyses of the Foreign Intelligence Subcommittee members going to the President.

Mr. Chairman, I am offering this substitution for the language under No. 2 in the staff draft which is before us. The staff proposal says:

The select committee recommends that as to other covert action by any U.S. intelligence component, the following shall be required within 48 hours of initial approval: * * *.

In other words, what has happened is that they have already decided and then they come and tell this select committee that, "We have decided to go ahead," that the President decided, and that committee is just told.

It is a way of informing Congress, but without Congress having any chance to have any kind of input into it at all. I would say that while there should not be prior approval by Congress, Congress ought to be informed of the proposed operations before they take place and before the President has officially made up his mind—so that they can at least have a chance to make their views known to the President before he makes up his mind.

I don't think you can get Congress involved as an institution where they are speaking for Congress, but I think you can ask individual Members their opinion. Let us suppose we were the new committee, we would hear about the covert action, we would be told about it before they approved it, and we, as a committee, could write a com-

mittee report; or as individuals, we could write to the President expressing our views about it.

We are not being asked to sign off or sign on as a signing off for Congress; but as individuals, with a little different perspective on the thing, we are presenting our views to the President before he makes up his mind.

I think what we are trying to do, or what we ought to be involved in, is at least to be informed of the thing before it is decided on and have a chance for Congress to at least have an input as far as the members of that committee are concerned.

Mr. McCLORY. Will the gentleman yield?

Mr. ASPIN. Yes.

Mr. McCLORY. Under the rule we adopted yesterday in the motion of Mr. Giaimo, all this information that came to the intelligence committee would be available to all the Members of the House; so you would have a potential review by 435 Members before they even started a covert operation.

Mr. ASPIN. That would be assuming that the word got out—that 435 Members knew about it. The fact of the matter is if they came up and told this committee, how would anybody other than the committee know how to go and look in the committee files? The gentleman knows they have been coming up and talking about covert operations for years before the select committees and the Giaimo amendment is nothing new.

We have been living under the Giaimo amendment for years.

Mr. GIAIMO. It is new because the oversight committees have not kept records of the covert information that they were given, No. 1; and No. 2, up until this year no Member of Congress had any rights to go to those oversight committees and ask for anything.

Mr. ASPIN. All right, but at least each committee was operating under different proposals and the House Armed Services Committee had a provision where you could go in and get some of the information if you signed; but you had to know.

The point was, of course, that if a Member is not on the committee he is not likely to know even enough to know what to go in and ask for. That is a major problem of trying to hear about these operations: 435 people are not going to line up at the door unless somebody is going around telling them to line up.

I think that it has to come before. Otherwise, the committee members are not going to have any impact on this thing. Why tell them afterward? The only way that anybody is going to have any impact on the thing is if they are told enough beforehand so that they can at least write their recommendations.

Chairman PIKE. The time of the gentleman has expired.

Does the staff have anything they want to say?

Mr. DONNER. There was one point.

Mr. Chairman, first of all, it involved the question we had with the subpoena. One of the subpoenas we issued was for State Department recommendations to the NSC for covert actions. The question of executive privilege was raised, and if I understand the question of notification here, the same problem would seem to be involved.

When the staff came up with its recommendation—I don't mean to be arguing one against the other—we did address the question of when

a committee should be notified. And the question that Mr. Aspin raised previously, as to being almost a coconspirator and being involved with a notification simultaneously, put the committee in the same position that I think was addressed on the previous motion.

This was the staff's viewpoint—that they then have knowledge that this is pending. There is a substantial question as to the adequacy of the knowledge of this committee—as with other standing committees of the House—concerning what they have been briefed on or whether they have known the full details of the operation, and they are left in the position of an adviser to the executive branch.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I would like to ask a question of the gentleman from Wisconsin.

Is it your intention to have the congressional oversight committee become part of the decisionmaking process in the executive?

Mr. ASPIN. You can't tell what the President is going to listen to and what he isn't going to listen to, but right now, under the procedures set up, the only voices he hears when he is thinking about a covert operation are voices within his administration. And because of the secrecy the decision isn't being kicked around in the press.

On nonsecret issues, the idea is being kicked around in the press and you hear from different groups and from a lot of sources other than within your administration.

On these issues they are very closely held. They are secret. The operation is being talked about only among very few people. I am trying to broaden the scope a little so that if somebody outside of Congress—I mean when you look over the past history when Kennedy brought Fulbright in on the Bay of Pigs, he was there for one meeting and said, "This is crazy. You guys are out of your mind to be thinking about this."

But he wasn't in on many of the meetings, and he left and they went ahead with it.

I just think that when these decisions are all made in-house, they are being made in a way in which the discussions consist of in-house people all talking to each other. I think if Members of Congress—a selected group of Members of Congress and we have selected them already by this committee—could be asked: "Just give me your personal opinion on this; you are not speaking for Congress; you are not voting for or against it; you are not signing on it or signing off as a committee; but here is the proposal and we are just thinking about it. If you feel strongly about it one way or the other—for it or against it—go back and write the President and let him know your views in a memo and we will put it in the pile that is going over to him on the decision."

Mr. KASTEN. It seems to me what we are trying to establish is the oversight of one branch of government—the legislative branch—on the executive branch. It also seems to me that we don't necessarily want to be part of the decisionmaking.

For example, why is it necessary to know what happens, or what might be happening, before there is an action to say this is going to happen? Is it important for the oversight committee to know that the executive branch is considering these four options?

I am not sure that it is. I am not sure that that is the role of legislative oversight—that only after the decision has been made to go ahead, at that point the legislative branch in terms of economics and balances should exercise its input. I am not sure that it is meant that we want to commingle the two branches of government in the decision-making process.

Mr. ASPIN. Under the normal legislative process, if we were passing a law proposed by the President, the legislative would go ahead and vote either the money for it or vote the law that the President has proposed.

In other words, there is an action to which the legislative can respond. Under this, what is our response? We hear about it 48 hours after the thing has been decided.

The President's ego is already involved, because he has already certified in writing to the committee that such covert action is required to protect the national security of the United States. Once he said that, it is going to be awfully hard to get him to back off.

I don't know how this committee is ever going to have any effect over covert actions under the proposal the way it is now worded.

Mr. DELLUMS. Would the gentleman yield briefly.

Mr. ASPIN. I haven't got the time.

Mr. KASTEN. I appreciate what the gentleman from Wisconsin is trying to do, but I don't agree with him. It seems to me that we are involving the legislative branch in the decisionmaking which is to take place in the executive branch and I would tend to oppose this motion.

I yield to the gentleman from California.

Mr. DELLUMS. Thank you.

I would like to ask the gentleman from Wisconsin a question:

In looking at your amendment No. 2, rather than its being a substitute for the staff recommendation No. 2 in toto, it seems to me that your amendment does two things.

One, it changes the time from 48 hours to the same time; and then the sentence beginning, "While the standing committees," and ending with "going to the President" is in addition to the other recommendations made by the staff. So rather than your No. 2 being a substitute for the entire No. 2—

Chairman PIKE. The time of the gentleman has expired. Mr. Dellums, Do you want to be recognized on your own time?

Mr. DELLUMS. Yes. Thank you, Mr. Chairman.

It seems to me that rather than your offering No. 2 as a substitute for the entire No. 2 of the staff, maybe the amendment should be to change the time and add the last sentence as a new paragraph "d."

I don't see that it is inconsistent with anything else that is in the recommendation except that you make one major change and one major addition.

Mr. ASPIN. If the gentleman would make that amendment, I would have no objection.

Mr. DELLUMS. Maybe we can do it by unanimous consent, Mr. Chairman, if the gentleman wishes to change his original substitute amendment.

Chairman PIKE. I don't know whether we can do it or not until somebody makes a motion.

Mr. ASPIN. You move. You have the time.

Mr. DELLUMS. I yield to you.

Mr. ASPIN. All right. I ask unanimous consent not to substitute this motion for the No. 2, but to amend the No. 2 to say in the first part: "The select committee recommends that as to other covert action by any U.S. intelligence component," and then we go to "Notification of any proposed covert actions or major clandestine collection activity will be sent to the standing intelligence committees of Congress at the same time they are brought before the Foreign Intelligence Subcommittee of the NSC." The second sentence of No. 2, saying, "While the standing committees will not have authority" et cetera, would then become "d."

Mr. JOHNSON. Mr. Chairman, I have just been trying to ask a question of the staff about what they mean by "48 hours of initial implementation."

Mr. DONNER. Initial implementation? We say "initial approval." We do not say "initial implementation."

Mr. JOHNSON. It is not on my copy.

Chairman PIKE. It is not on mine either.

Mr. BOOS. Check the package.

Mr. JOHNSON. OK.

Chairman PIKE. Did you get your answer?

Mr. JOHNSON. Yes, sir. They say "initial approval" on this copy. It is in there.

Chairman PIKE. All right. The question is on the motion of the gentleman from Wisconsin. All those in favor of the motion signify by saying aye; contrary no.

The noes appear to have it and the motion is not agreed to.

Mr. ASPIN. Could I have a showing of hands, Mr. Chairman?

Chairman PIKE. All those in favor of the motion signify by raising their hands. Opposed.

By a vote of 2-to-5 the motion is not agreed to.

The question is then on the staff recommendations, as amended. Does someone care to move their adoption?

Mr. JOHNSON. I will move their adoption.

Chairman PIKE. All those in favor of the motion signify by saying aye; contrary no.

The Chair requests a record vote.

Would somebody raise his hand for me to get a record vote?

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Chairman PIKE. No by proxy.

The CLERK. Mr. Hayes.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. McCLORY. No by proxy.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike.

Chairman PIKE. Aye.

By a vote of 8 ayes, 5 noes, the covert action section is agreed to.

That is 2 (a), (b), and (c). We also discussed the transfer of funds yesterday.

[Recommendation "C," as amended, follows:]

C. COVERT ACTION

1. The select committee recommends that all activities involving direct or indirect attempts to assassinate any individual and all paramilitary activities shall be prohibited except in time of war.

2. The select committee recommends that as to other covert action by any U.S. intelligence component, the following shall be required within 48 hours of initial approval.

a. The Director of Central Intelligence shall notify the committee in writing, stating in detail the nature, extent, purpose, risks, likelihood of success, and costs of the operation.

b. The President shall certify in writing to the committee that such covert operation is required to protect the national security of the United States.

c. The committee shall be provided with duplicate originals of the written recommendations of each member of the 40 Committee or its successor.

3. All covert action operations shall be terminated no later than 12 months from the date of affirmative recommendation by the 40 Committee or its successor.

Mr. FIELD. We still have two more sections.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I have a question on the part that we just voted on. We changed "proscribed" to "prohibited" in Mr. Johnson's motion, but we did not discuss changing "proscribed" to "prohibited" in the initial motion, and I assume that change ought to be made.

Mr. FIELD. There is a substitute. The Johnson amendment becomes part No. 1. It is Mr. Dellums' amendment.

Mr. Chairman, there are two more left. One is on the media and one is on the restrictions on military intelligence.

Chairman PIKE. Yes; media. We are back to the question of media.

Mr. FIELD. Mr. Chairman, can we take up the restrictions on military intelligence first? I think it is a little easier.

Chairman PIKE. All right.

Mr. DELLUMS. Mr. Chairman, parliamentary inquiry.

Chairman PIKE. Yes.

Mr. DELLUMS. Mr. Chairman, would it be appropriate to consider at this point, rather than moving to another area, the issue of splitting off covert from intelligence analysis?

Chairman PIKE. Yes. In fact, Mr. Aspin had an amendment on that subject, but it has not yet been offered.

Mr. ASPIN. Is this the appropriate time to offer it?

Chairman PIKE. We are leaving covert action, if you have it under covert action.

Mr. ASPIN. Let me offer the amendment, Mr. Chairman. It is No. 1 on the sheet there:

The committee recommends that the Central Intelligence Agency be split into two agencies—one an intelligence analysis agency and a second smaller agency to conduct covert functions. It is recommended that the intelligence analysis agency operate (as the CIA does now) as an independent agency under the DCI. The covert operations agency would operate under the Secretary of State and would be subject to the other controls recommended in this report.

The arguments in favor of the split, Mr. Chairman, I think, are three: First is the matter of control—that if you have covert operations in one place and that is where you know you can get control—if that is the only agency able to conduct covert operations, and you know what their budget is, you have some idea or some way of making sure that they are not spending any more than the amount that we appropriated for it.

Second is the argument that analysis, when it gets involved in operations, becomes distorted; that good intelligence analysis requires that the analyzers be separated from the operations, that they be independent from the operations, that they not be wrapped up in the operations because that tends to distort their views of the intelligence. They have to be totally dispassionate, and an argument to split them is an argument in favor of making the intelligence a little bit more dispassionate.

The third point, I think, is the point that we have had some testimony on and received some information on—that the intelligence people are having trouble recruiting good analysts because of the problem of their being tarred with the dirty tricks brush. And I think it would help the intelligence analysts: (a) To recruit good people, and (b) to also conduct some kind of liaison with intelligence and research studies going on in a university if it not be tarred with the dirty tricks. Because once it is tarred with dirty tricks, it is very difficult to have any liaison with a university faculty.

I think it hurts our intelligence capability when they do not have the liaison with the university faculty. For those reasons, Mr. Chairman, I think it is important that they be separate operations.

Mr. DELLUMS. Would the gentleman yield?

Mr. ASPIN. Yes.

Mr. DELLUMS. In your amendment, you propose two independent agencies—one under the Director of Central Intelligence and then a covert operations agency under the Secretary of State. Does the gentleman believe that the Secretary of State, who ostensibly engages in diplomatic activity—and I am not now thinking of the present Secretary of State, but the Secretary of State as a symbol—would be incapable of functioning the way we would like to see a Secretary of State function if the Secretary of State had the bag of dirty tricks directly under him?

Mr. ASPIN. I don't know. I think the gentleman raises a good question, and I don't know. I don't know whether that is the proper place to put it. I do think, though, that one of the things is that the covert operations ought to be done in conjunction with U.S. foreign policy, and what happens is that right now, when Mr. Colby comes up to talk

about covert operations before the six committees that he has to report to, he comes up and people say, "What is our policy in this country or this part of the world, and how does this fit into our policy?" And he is not the person to be asked about our policy. I mean, he is not a foreign policymaker. He is an intelligence analyst. So I am trying to put this covert operation into the hands of somebody who is responsible for foreign policy, and the object of it is to try and make it so that the person coming up to talk about it—or who has to come up and justify it—is somebody who can talk about covert operations in terms of our overall policy in Africa or wherever they happen to be talking about.

If you have a better idea, I am open to suggestions.

Mr. DELLUMS. If they are going to be separate, what about having both independent agencies, rather than being under the Secretary of State, be under the DCI?

Chairman PIKE. The time of the gentleman has expired. Mr. McClory?

Mr. McCLORY. I believe these functions are separated at the present time in the CIA. And the thing that occurs to me is that the agency that does the analyzing and has all the information should be the one making recommendations with regard to the advisability or inadvisability of action. I think to divorce these two and let the Secretary of State be the decisionmaker, when all the information—good or bad—is in other hands, would be exactly what we don't want.

Mr. ASPIN. If the gentleman would yield.

Mr. McCLORY. Yes.

Mr. ASPIN. I do think the analysis of whether a covert action is a good idea or not a good idea ought to come from the intelligence community. You get a much better chance to do this if they are in separate agencies. If at the 40 Committee level or at this new committee's level—where we are talking about making the decision and various people sending their recommendations to the President—you want the intelligence division to make its recommendations and to be one of those who is asked for their opinion. I see nothing wrong with that.

Mr. McCLORY. I just don't like to have the Secretary of State's Office make a—

Chairman PIKE. The Chair is going to take 5 minutes at this point to speak in opposition to the amendment.

The Chair is not going to take 5 minutes at this point. The committee will stand in recess—

Mr. McCLORY. Let us vote.

Chairman PIKE. Let's dispose of it. I will stifle my remarks.

The question is on the amendment offered by the gentleman from Wisconsin. All those in favor of the amendment signify by saying aye; contrary no.

The noes appear to have it, and the amendment is not agreed to.

Do you want to come back? It is now 3:50. I rather doubt that we would get a quorum.

The committee will stand in recess until 10 a.m. Tuesday morning. I want to remind the members of the committee that our recommendations—committee recommendations and individual recommendations—must be filed by Wednesday.

[Whereupon, at 3:50 p.m., the committee adjourned, to reconvene at 10 a.m., Tuesday, February 10, 1976.]

**DISCUSSION OF COMMITTEE RECOMMENDATIONS ON
DOMESTIC INTELLIGENCE, MEDIA (CONTINUED),
RESTRICTIONS ON MILITARY INTELLIGENCE (CON-
TINUED), CLASSIFICATION, AND INSPECTOR GEN-
ERAL FOR INTELLIGENCE**

TUESDAY, FEBRUARY 10, 1976

**HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.**

The committee met, pursuant to notice, at 10:20 a.m. in room 2212, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Giaimo, Dellums, Murphy, Aspin, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, deputy general counsel; and James B. F. Oliphant and John Atkisson, counsel.

Chairman PIKE. The committee will come to order. We cannot vote on the remaining items until we get a quorum. We can, however, discuss what we have got left and where we are. The members all have before them two separate documents, one is passed and amended recommendations; the other, beginning with the word "media," lists the remaining items to be discussed and voted upon.

I understand that there is one staff correction you want to make, Mr. Donner.

Mr. DONNER. Yes, Mr. Chairman. The problem is the first part of the recommendations, where we discuss A(1)(e)—the right of the committee to go to court to enforce subpoenas. Through an oversight, there was omitted from the final set of recommendations that you have before you the provision that the enforcement of such proceedings be by civil contempt instead of criminal contempt.

It is proposed by the staff that item "e" be amended as follows:

The committee shall be vested with subpoena power and have the right to enforce by a proceeding for civil contempt * * *.

Chairman PIKE. This was discussed and agreed upon in the committee, and it is just an oversight in the drafting. Is that correct?

Mr. DONNER. That is correct, sir.

Chairman PIKE. Without objection.

As to what we can do now, I think frankly that the most controversial item would probably be the one on the media, and I would suggest that we delay that until we have a quorum here, and go on to the last item, which is the domestic section.

This is the longest remaining item, at least as far as language is concerned, but I think it should probably be the least controversial.

Mr. Field, do you want to go down those item by item?

Mr. FIELD. Are you on the restrictions of military intelligence?

Chairman PIKE. Let's go to the domestic section, because I think it is going to be relatively noncontroversial. I hope it is going to be relatively noncontroversial.

[The domestic recommendations as approved are printed on p. 2295. The staff draft of domestic intelligence recommendation No. I follows:]

I. The House Select Committee on Intelligence recommends that judicial warrant must issue, on probable cause, before an informant or any other agent of the FBI may infiltrate any domestic group or association, when investigation of such group or association or its members is based on title 18 U.S.C. sections 2383, 2384, 2385.

Mr. FIELD. The first recommendation here is designed to try to duplicate the need for a search warrant, or a process similar to a search warrant procedure, when an informant is used and penetrates or infiltrates a group or association.

It is an attempt to try to provide the same kind of procedural safeguards—the independent magistrate's view, and so forth—in the case of infiltrators. It results from our hearings on the use of agent provocateurs and informers. We felt that the abuses we saw there were similar to the abuses that had caused the Supreme Court to set down restrictions on searches and seizures. In other words, in these cases the infiltrators were kept on a job long after the reason for their being there initially may have expired. There was no reporting back on this, no probable cause submitted to independent authority ahead of time to justify the use of informants. We saw in one case——

Chairman PIKE. Would you please refresh the recollection at least of the chairman, if not all the members, as to what title 18, sections 2383, 2384, et cetera, are?

Mr. ATKISSON. Mr. Chairman, those are the provisions of the Smith Act, which are now largely unprosecutable because of certain Supreme Court action.

Chairman PIKE. Is the act, itself, still on the books? I thought it had been declared unconstitutional.

Mr. ATKISSON. No; the FBI maintains the statutes are still on the books and even though they are unprosecutable for all practical purposes, they nevertheless provide justification for conducting internal security investigations. It is possibly true that one way to get around this would be to repeal the Smith Act; but that would be, I believe, more controversial and a tougher thing to accomplish, because one of those sections—2383—involves actual insurrection.

Chairman PIKE. So the only application of this provision would be in the infiltration of domestic groups, and you are recommending that a court order or warrant be obtained in order to do that?

Mr. ATKISSON. That is correct.

Chairman PIKE. Any questions from any members?

Mr. Treen?

Mr. TREEN. A couple of questions. Do I interpret this to mean that the recommendation is to limit infiltration by informants or agents only when the purpose of the FBI would be to obtain information or prosecution under the Smith Act?

Mr. ATKISSON. Well, Mr. Treen, the FBI maintains that it only conducts such investigations when it is pursuing violation of a statute. In hearings before this committee, we saw that they have been doing that for some 34 years, with respect to one group.

This is anticipatory intelligence-gathering only. We believe that the Bureau's use of the Smith Act to justify the investigation may or may not be specious. The point is that the abuse occurs because the infiltration takes place without any sort of judicial or other scrutiny.

Mr. TREEN. Are we suggesting here that the FBI has to get a warrant for any kind of infiltration? For example, a story appeared in the Washington Post this morning—a rather detailed story about the increase in bombing incidents and threats in San Francisco. It said there was something like a 300 percent increase from 1974 to 1975. Apparently a new organization called the "World Liberation Front," as I recall, is suspected of being a clearinghouse for a lot of these activities.

They may profess to overthrow the U.S. Government as one of the things they want to do, but the allegation is that one of the things they are also apparently involved in is bombing incidents against officials, against buildings, et cetera.

Would this recommendation, if carried out, mean that the FBI would have to get a warrant before it got an informant to infiltrate this kind of organization?

Mr. ATKISSON. Yes; and I might say the FBI should have no trouble getting such a warrant in that case.

There is another point to be made. For some reason, wiretapping enjoys a special kind of sex appeal. Why, I don't know. And wiretapping in its way is not really as insidious as running informants, because at least a wiretap doesn't lie. I don't see a rational distinction between the requirements that we impose on obtaining a wiretap and obtaining a human intelligence gatherer to go into the group.

Mr. TREEN. Why do we have the last clause? If our intention is to be broad, why do we have the clause "when investigating a group or association or members based on title 18 * * *?"

I am not necessarily arguing for it. I am wondering why that clause is in there, because the FBI could go in and it is not asking for this warrant because of the Smith Act provision.

Mr. ATKISSON. That is perfectly agreeable to the staff, I am sure. It is narrower here possibly because we thought it would have a better chance of being passed.

Mr. TREEN. OK.

Mr. Chairman, I don't know how I feel about this, but I am informed Mr. McClory might have some objections, so I would ask that we not vote on it until we have a quorum.

Chairman PIKE. We have a quorum.

Mr. TREEN. I am sorry.

Mr. JOHNSON. Will the gentleman yield?

Mr. TREEN. Yes.

Mr. JOHNSON. It is my understanding there is a division on the staff on this subject, and I think we should hear from both sides of it. I am not well informed about the Smith Act, and these various sections. Mr. Oliphant has discussed this, and I think we should hear from him because he is the minority on the staff.

Mr. TREEN. I would like to join in asking that we get the argument on the other side.

Chairman PIKE. Fine.

Mr. OLIPHANT. Yes, Mr. Chairman. Several of us on the staff are very much opposed to this one provision of the domestic recommendations. The reason is, as I think any of the gentlemen of the committee who have had experience with the judicial system—especially with the criminal system—realize, first, to get a warrant is not easy. It is not like Kojak. You don't say, "get a warrant." You have to make an argument to a judge and lay out probable cause. Under a recent number of cases you have got to qualify your informant. So for the prosecutor, or for the police agent, making a request for a warrant, there is always a balancing test. It is a balancing test between revealing the informant and not putting forth probable cause to get a warrant.

In these cases—the Smith Act—you do have statutes which refer to violence, refer to the assassination of political leaders, refer to terrorists' activities, and they aren't unprosecutorial.

The problem, from what we learned from the FBI, is that the groups that engage in these activities—violence, like the SLA, a number of groups who have done the bombings—are small, usually splinter groups of other groups; and what this means is that there are going to be very few people who are going to know what the activities of these groups are.

So if these people get wind that there has been a plan to maybe have a bombing or to do some other sort of criminal act, they then go to the agent; the agent needs a warrant before he can really get them to zero in to a certain theme within the group to find out what happens. Under our law, because someone says there may be violence, you can't go out and arrest people; you have to gather proof. So this guy is going to say: "If these people are crazy enough to blow up something, they are crazy enough to kill me. Don't reveal me." If there are only a few people who know what is going on, it is going to be difficult to write a warrant which is sufficient for probable cause and does not blow the informant.

Now, that means that in many cases there will be no warrants. That happens all the time in criminal cases. In many criminal cases, some dope dealers or people who are fences for stolen property are too small to have a warrant levied against them because too few people know, and it would be too obvious who was providing the information.

Therefore, you are going to put a tremendous burden initially upon the FBI to get a warrant.

No. 2, you are going to be putting a terrific burden on any judge, because a judge is going to be looking at the sufficiency of the warrant under the probable cause standards, and if he turns down this warrant—and God forbid, we have another LaGuardia-type bombing—you know what is going to happen. There is going to be a great furor, and when they find out that both the FBI and the judge had prior warning that somebody said there was going to be a bombing and no further investigation was done, I think society would be badly served.

Chairman PIKE. I would agree with you that society would be badly served, but you are proposing a hypothetical in which the FBI and the judge have been warned in advance that there is going to be a bombing

and the judge refuses to issue a warrant. Don't you find that a little hard, hypothetically, to accept?

Mr. OLIPHANT. No; because I think the judge would say, "How do you know?"—not how do you know about the bombing, but can you get a warrant for this informant to have the informant follow up on the group. What I am saying is that if the FBI is informed that this group is planning to carry out a terrorist act, they probably don't have all the particulars. Now, if they needed a warrant to keep the informant—to make the informant go with the group, stay with the group and report back—then you see, you would have to write up a warrant that would be sufficient enough to let the judge say there was probable cause this act was going to take place.

Under our laws, with liberalized discovery, most affidavits for warrants usually become public knowledge. Now the person who is informing on the group probably does not want his name to be known. Therefore, it would be very difficult to draft an adequate affidavit for a warrant which would not reveal the informant, and if you could not get an adequate affidavit for that reason, you would probably not be able to get the warrant to have the informant stay with the group.

I would also submit that under our law it would be very difficult to restrict a warrant requirement for only one or two small groups or only for several statutes, and this would spread throughout the entire criminal justice system and I think—

Chairman PIKE. Obviously, our recommendation is limited specifically to these particular statutes. It is based on our own investigation of what we saw of infiltration going on for years and years and years without any prosecution and without any probable cause. Would you do nothing about that, or do you have a different recommendation?

Mr. OLIPHANT. Yes; I do, Chairman Pike. We submitted a recommendation which I think the entire staff is in agreement on, which would get rid of the Internal Security Branch of the Intelligence Division of the FBI and would therefore only have investigations of these groups which were built on specific criminal charges. And, of course, we would anticipate that there would be rigorous oversight—not only by the oversight committees in Congress but also by an assessment unit within the Department of Justice which would keep track of these investigations so that the abuses that we saw would not take place in the future.

I would also remind—

Mr. MURPHY. Mr. Chairman.

Chairman PIKE. Yes.

Mr. MURPHY. How would the gentleman answer the question regarding the infiltration and the FBI surveillance of Dr. Martin Luther King?

Mr. OLIPHANT. I think that infiltration was wrong, but I think the cure for that is adequate oversight and also if you read—

Mr. MURPHY. Adequate oversight. This is the very thing we are here for—trying to develop some method of oversight.

Mr. OLIPHANT. That is true, Mr. Murphy. I don't know if you read our other recommendations regarding the Internal Security Branch; but this would basically mean that investigations of this type would only take place with regard to specific criminal violations which were

alleged, that they would not be investigated by people within the intelligence division, but that would be investigated by regular criminal investigators. Like any other investigation, if they found nothing they would terminate it; but there would be an assessment unit in the Department of Justice to monitor and cut off the investigations at the appropriate time. The long-term infiltration is wrong.

Mr. MURPHY. You are asking the FBI to monitor itself.

Mr. OLIPHANT. We are asking the Department of Justice to monitor the FBI in this narrow regard.

Mr. MURPHY. Isn't that the situation that we had that gave birth to all this? We had the Justice Department supposedly overseeing the activity of the FBI.

Mr. OLIPHANT. But it was not done in that respect, and, in fact, the FBI started these investigations themselves. The key thing in the abuse pattern before was that the FBI were the initiators of the investigations. They did not emanate from the Department of Justice. Under our recommendations, any investigation of this type would emanate from the Department of Justice. Sure, the FBI said "we kept Justice informed," and they sent over hundreds of thousands of files which were probably read by no one. This completely turns the thing around.

The Department of Justice, under our recommendations, would not merely be monitoring these investigations; they would be initiating them, and they would have specific responsibility for turning them off.

Mr. GIAIMO. Would you yield?

Mr. MURPHY. Yes.

Mr. GIAIMO. The comment was made earlier that we are building into our law protections against wiretapping insofar as they would infringe on the rights of American citizens, and I am sure you agree with those protections in the law.

Mr. OLIPHANT. Yes, I do.

Mr. GIAIMO. A comparison was made that the planting of an informant or other agent could even be considered to be more insidious than wiretapping because of the argument made that "at least wiretapping can't lie," I believe the expression was.

Now, what you are suggesting, then, is that although we have a legal prohibition against wiretapping and the argument that it is necessary for such things as detecting bombers and the like, we should have wiretapping prohibitions but that we should not have them for human beings and agents. What is the difference?

Mr. OLIPHANT. Well, the difference is probably in degree. Any law enforcement tool can be an abuse. Now, with a wiretap we say that you must have probable cause. Your probable cause is usually determined by an informant. That is basically how you get the probable cause. So I would then submit to you, how are you going to get the probable cause to put the informant in if you can't get the informant in in the first place?

Mr. GIAIMO. I don't approach criminal justice from that standpoint. I am more concerned about the rights of the Martin Luther Kings and the citizens. It is the law enforcer's job to get the evidence, and I don't want him to take any shortcut to get the evidence and infringe on people's rights in doing it. That is what bothers me.

Mr. OLIPHANT. I would only say in law enforcement the use of informants is probably the most valuable tool they have.

Mr. GAIAMO. I know. Will you yield further?

Mr. MURPHY. I would like to make a comment, if I may. Under the Safe Streets and Crime Control Act, when Attorney General Mitchell came up lobbying for that act, Chairman Celler, of the Judiciary Committee, was worried about the same thing we are today. He got a promise from the Justice Department and it involved title 12 of that Act. Title 12 calls for the President to appoint members and a chairman to a national commission on individual rights. The Speaker of the House is to appoint Members from the House and the President of the Senate is likewise to appoint Members from the Senate. The Speaker has done it; the President of the Senate has done it. Nixon never did it and never intended to do it. President Ford still has not done it. I have written him two letters. They are not implementing the law.

If we fall into the same trap, we are never going to have safeguards from the Justice Department and the FBI to prevent the abuse of human rights. We have the so-called safeguards in the omnibus act, because we gave the law enforcement officials immunity, special grand juries, et cetera, and all have been abused. But still, to this day, the Commission has not sat once. It hasn't been constituted. We are falling back into the same old routine.

Chairman PIKE. The time of the gentleman has expired. I recognize the gentleman from Florida.

Mr. LEHMAN. Thank you, Mr. Chairman. We are talking about the domestic section. I would like to ask the staff: Is there any differential between American citizens and aliens in surveillance and the ability to obtain warrants? What concerns me is the possible surveillance of alien groups within this country, because most of the terrorists' groups that I am knowledgeable of are basically worldwide terrorist groups.

Mr. ATKISSON. Mr. Lehman, the wiretap laws that exist under the Omnibus Safe Street Act, as you probably know, by judicial decision now make that distinction between domestic groups and foreign control groups. With infiltration by informants, there are no controls whatever presently existing. This would be left to any new law. Right now there is no law to make that distinction.

Mr. LEHMAN. Well, I would like to put the safeguards in this report that would make a separate category on the ability of the FBI to infiltrate or to wiretap or to do whatever was necessary in the alien groups in this country in regard to subversive activity, differing from their capacity to do the same kind of activity on domestic groups.

I think we have two different problems and concerns, and I think we should have the ability to deal with it. I think that is a more severe problem at this time. I don't know how to write the language, but I would like to see the report contain such language.

Mr. JOHNSON. Will you yield?

Mr. LEHMAN. Yes.

Mr. JOHNSON. I would like to ask a question of the members of the staff. Is there a difference between the way we should treat informants and agents who have infiltrated? In other words, if you have an informant who voluntarily comes forth, isn't that a different situation

than when the FBI decides they want to infiltrate an organization with one of their agents?

Mr. ATKISSON. Mr. Johnson, the Bureau, itself, makes the distinction between the word of art "informant"—an individual paid to obtain information. In other words, it is a purposeful, overt act, and an established source. There is a distinction, albeit a fine line, between source and informants. There would be nothing wrong under this recommendation with checking with an established source—someone who is a member of a group. I do not think there should be any distinction between an FBI agent acting undercover and a paid informant.

Chairman PIKE. Gentlemen, I would suggest to you that if we understand the issue, the time has come to vote on it. We have a lot of ground to cover and very little time to cover it in. I think if we are ready to vote—Mr. Treen.

Mr. TREEN. I would like to offer an amendment.

Chairman PIKE. The gentleman will state it.

Mr. TREEN. The amendment would be to insert before the words "on title 18," the word "solely," so it would read, "when investigation of such group or association or its members is based solely on title 18". May I be heard on the amendment?

Chairman PIKE. The gentleman is recognized.

Mr. TREEN. I am assuming that the sections that are cited here relate to the Smith Act and that they describe organizations, the purpose of which is the overthrow of the U.S. Government.

I am not certain my amendment will do what I want it to do. I appreciate your candor in saying you put this clause in here thinking it might be able to get by the committee easier. I am in favor of requiring a warrant in advance for the infiltration of political groups that are concerned with changing our form of Government, that have political purposes; but with respect to groups that are intent on bombings, terrorist activities, I think this is a very unfortunate time for us to be suggesting that we should hamper the efforts of the police to place informants in these groups, many of which have publicly declared that they intend to use terrorist activities and criminal activities.

I can imagine a situation where possibly an informant can be put into a group; he is willing to go; he is willing to infiltrate that group now; it needs to be done now, and if the police are shackled with the need to find a judge in the middle of the night or weekend, or some other time—to find a judge and have a hearing and get this warrant—the time in which valuable information could be gathered may very well be lost. I don't intend to vote for any recommendation which would hamper the police in that type of legitimate activity.

If it is limited to investigations or putting people into purely political organizations, then, of course, I go along with that 100 percent, and I think that offers protection to such groups as Mr. King and the Socialist Workers Party and other groups.

Mr. GLAIMO. Will you yield?

Mr. TREEN. Yes.

Mr. GLAIMO. How do you know the difference when you plant someone in a group? How do you know whether it is a bombing group or whether it is a civil rights group or any other kind of group?

Mr. TREEN. Well, if the group, be it political or otherwise, is advocating criminal activity—which the Socialist Workers Party perhaps never has—under this, if this were law and you had infiltrated the Socialist Workers Party without getting a warrant, then, of course, any indictments could have been quashed because they wouldn't have been able to prove that group was engaged in any way in criminal activity. So it would be up to the police to decide the question: Are we going to take a chance and put an infiltrator in here and maybe have all our criminal prosecution quashed because this is strictly a political group.

Chairman PIKE. The question is on the amendment of the gentleman from Louisiana. All in favor of the amendment, signify by saying aye. Contrary, no.

The ayes appear to have it, and the amendment is agreed to.

Mr. LEHMAN. Mr. Chairman.

Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. I have an amendment I would like to make on recommendation I. In place of the word "domestic," I would like to substitute the word "nonalien," which would cover the problem that I spoke of just briefly a few minutes ago.

Chairman PIKE. Frankly, I don't understand the difference between domestic and nonalien.

Mr. LEHMAN. Well, in my mind, anyone who is a resident of the United States could be domestic. A noncitizen resident could be an alien.

Chairman PIKE. Suppose you have a domestic group composed of 50 percent of citizens and 50 percent of noncitizens; what would you do?

Mr. LEHMAN. I think in that case we would have to think of the protection of our society and use the kind of investigation that would not be limited by recommendation I. I know in my own district the people have brought to my attention that they are concerned about the inability for surveillance of possible foreign-based terrorist groups—not so much about domestic terrorists, although that, of course, is a concern. But I think the real problem is those terrorist groups—those that originate in West Germany, the Red Army of Japan, and other terrorist groups that I think carry a greater level of threat than the kind of incidents that we have been going through in this country over the last few years, mostly caused by domestic groups.

I don't think that the FBI intelligence branch should be restricted in its investigation of these aliens, and I don't know whether this is nonalien or domestic or whether we should put an amendment in there that this should not apply to alien groups or not—whether you can write the kind of thing in there that I want—but I would like to consider nonaliens as those people who happen to be living in the United States who are not American citizens. I mean aliens would be the ones living in the United States who are not American citizens.

Chairman PIKE. I see what the gentleman is driving at. I am going to vote against the gentleman's amendment, frankly, because I simply don't know where you are going to draw the line. If you have one alien in a group, you are still going to limit the investigation of that group. I just don't think it is workable. That is my problem.

MR. LEHMAN. I don't know. But I have a problem, and I would rather be on the safe side than I would on the—

Chairman PIKE. Mr. Giaimo.

MR. GIAIMO. I wonder if we should refine this recommendation to that degree without knowing a lot more about it. We make these recommendations, and they are going to go to various committees. I suppose this one would go to the Judiciary Committee and they could really look into the problem that concerns the gentleman from Florida. I wonder if we shouldn't leave it at that—leave it general and broad.

Our basic thrust here on these recommendations, as I understand it, is to protect citizens of the United States and what we do with others—what the FBI may do with some of these terrorist groups from abroad and how they would fit in and mesh into their prohibitions and what they do concerning American citizens—I think should wait until the committee that would ultimately act on this recommendation really looks into it.

MR. LEHMAN. Perhaps I will withdraw my amendment, and I hope to be able to submit language at the time of the hearings on this recommendation.

Chairman PIKE. Without objection, the amendment is withdrawn.

MR. DELLUMS. I have an amendment.

Chairman PIKE. The gentleman will state it.

MR. DELLUMS. Mr. Chairman, on line 4, after the word "association," my amendment would place a period after the word "association" and strike the remaining language beginning with "when investigation of such a group," et cetera.

The reason for my amendment is that it would make the previous condition in the first sentence operative in all cases and would make it simply probable cause—period.

Chairman PIKE. In other words, you want to make the language so broad that the committee probably won't accept it?

Does the gentleman wish to be heard further on it?

MR. DELLUMS. No; I think I have been pretty clear.

Chairman PIKE. The question is on the amendment offered by the gentleman from California. All in favor of the amendment, signify by saying aye. Contrary, no. In the opinion of the Chair, the noes have it, and the amendment is not agreed to.

The question is on the committee draft as amended. All in favor, signify by saying aye. Contrary, no. The ayes appear to have it, and the draft is agreed to.

Roman numeral II.

[The staff draft of domestic intelligence recommendation No. II follows:]

II. The House Select Committee on Intelligence recommends that for prevailing plaintiffs in actions against the United States based on infringement of rights under the first and fourth amendments to the Constitution, there be statutory civil remedies, with punitive damages and adequate court ordered attorneys fees. That such acts of infringements were committed *ultra vires* shall not be a defense to such actions against the United States or its agencies.

MR. ATKISSON. Mr. Chairman, if I may, just briefly, this recommendation which provides for statutory damages, including punitive damages, is posited on the discovery by this committee that the ex-

clusion of evidence under the exclusionary rule is simply not enough of an incentive for law enforcement officers not to break the law themselves under the first and fourth amendments of the Constitution.

A very important part of the recommendation is the last sentence, which states simply that the United States should respond, regardless of any claim that the officer involved was acting without his proper authority. This would in no way prejudice the right of the United States to turn around and sue the officer for indemnity.

Chairman PIKE. Do you not envision a plethora of lawsuits against the United States?

Mr. ATKISSON. Very likely, Mr. Chairman.

Chairman PIKE. The question is on the recommendation. All those in favor of the recommendation, say aye.

Contrary, no.

The noes appear to have it, and the recommendation is not agreed to.

The next item is roman numeral III, on the tenure of the Director of the FBI.

[The staff draft of domestic intelligence recommendation No. III follows:]

III. The Select Committee on Intelligence recommends that the Director of the FBI (1) have a term of office no longer than two Presidential terms; (2) be accountable to the President only through the Attorney General.

Mr. TREEN. Mr. Chairman, can we hear an explanation on that one?

Chairman PIKE. Who would like to address that?

Mr. FIELD. It is self-explanatory.

Mr. TREEN. No. 2 is not to me, I am sorry. The second "be accountable to the President only through the Attorney General." How is that different from the situation now?

Mr. ATKISSON. It is suggested that this is more than a cosmetic change, but if it were just a cosmetic change, it would be important because appearances are important. We mean by that that the President shall not give orders to the Director of the FBI directly—period. In other words, it does have the effect in some measure of politicizing the directorship, but the accountability goes strictly through the Attorney General. If the President wants—

Chairman PIKE. Doesn't it work in both directions—that the Director of the FBI shall not be running up and whispering tidbits in the President's ear without the Attorney General's being aware of it?

Mr. ATKISSON. Exactly.

Mr. TREEN. It seems to me you are coming out for channelization, then.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. I have no objection to the idea, but how do you enforce something like that? If a President wants to talk to somebody down in the bureaucracy and establish a bilateral relationship, how do you prevent it? I don't see that you can. Unless you think of some procedural way which is much stronger than this, I think it is useless.

Chairman PIKE. If the gentleman will yield, I tend to agree with him that it can't be prevented, but we can go on record as saying that it is the wrong thing to do.

Mr. ASPIN. Yes.

Mr. TREEN. Mr. Chairman, I have a motion.

Chairman PIKE. The gentleman is recognized.

Mr. TREEN. I move to strike the second part. I think we have two different propositions. I, for one, favor strongly the limitation of term on the Director of the FBI, but I am a little concerned about the second clause. Maybe the President will throw up his hands and say "ye gods, I am not responsible for what the Director of the FBI did. Under law he is accountable to the Attorney General, and he didn't tell me." I think this thing can work both ways, and I think it is unrealistic to say that an official on that high a level is only accountable to the President through someone else. I think the President should be accountable for what the Director of the FBI does. I assume he is going to continue to nominate him. We haven't said anything about who is going to nominate the Director of the FBI. I would like to see us come out strong with regard to the terms, but I couldn't support the second clause, so I move to take the second clause out.

Chairman PIKE. The question is on the motion of the gentleman from Louisiana. All those in favor, signify by saying aye.

Contrary, no.

The Chair is in doubt. All those in favor of the motion, raise their right hands.

Those opposed?

The noes have it.

Mr. TREEN. I wonder if I can ask for a record vote?

Chairman PIKE. Certainly you can ask for a record vote. All those in favor of a record vote, raise their hands.

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

[No response.]

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Chairman PIKE. Mr. Milford votes aye by proxy.

The CLERK. Mr. Hayes.

[No response.]

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. TREEN. Aye, by proxy.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Chairman Pike.

Chairman PIKE. No.

By a vote of 6 ayes and 5 nays, the amendment is agreed to.

The question is on recommendation III, as amended. All those in favor, signify by saying aye.

Contrary, no.

The ayes have it, and the draft is approved.

Item IV, that the GAO have complete access to FBI files.

[The staff draft of domestic intelligence recommendation No. IV follows:]

IV. The House Select Committee on Intelligence recommends that GAO have open access to all FBI files, including those of ongoing cases.

Mr. FIELD. Mr. Chairman, that provision has probably been covered under item (h) that we passed earlier on full GAO audit authority.

Chairman PIKE. That one has been superseded, so we will move to item V. Haven't we also covered item V?

Mr. FIELD. Yes, sir.

V. The House Select Committee on Intelligence recommends that the FBI be required to annually submit to the Congress a budgetary line item specifically for domestic security functions.

Chairman PIKE. That one has been superseded.

Now we get to the major item which I believe is what you were addressing earlier, Mr. Oliphant, as to the organization of the Intelligence Division of the FBI, and you say that the staff is unanimous on this proposal?

Mr. OLIPHANT. I think so.

[The staff draft of domestic intelligence recommendation No. VI follows:]

VI. That the Internal Security Branch of the Intelligence Division be abolished and that the Counterintelligence Branch be reorganized to constitute a full division named the Counterintelligence Division; that the mission of this Division be limited to investigating and countering the efforts of foreign directed groups and individuals against the United States.

Chairman PIKE. Do you want to explain this, Mr. Atkisson?

Mr. ATKISSON. I think Mr. Oliphant should; he fashioned it.

Mr. OLIPHANT. The Intelligence Division of the FBI, as we stated, has been divided into two branches: A Counterintelligence Branch, which deals basically with infiltration where acts have been committed against the United States by foreign-directed entities, and the Internal Security Branch which has been investigating groups like the SWP, the IPS, that the committee took a look at. It has been this branch which has as its philosophy anticipatory intelligence. In other words, you have to have the group fully infiltrated so you know when something is going to happen—so when the group gets ripe for action, you will be there ready to strike—and it has been that kind of philosophy which has led to the abuses which we have studied.

So, therefore, we would say that this branch should be abolished, but that wherever there are specific criminal charges these would be investigated by the criminal investigators in the General Investigative Division of the FBI; and that furthermore an assessment unit in the Justice Department would determine when groups should be denominated as terrorist groups or groups which would pose a threat to the

United States; and that the intelligence they use to keep track of these be initially not information brought in from informants which have been in the group, but brought in from the commission of local crimes, published statements of the groups, and the sort of intelligence information which generally comes to the attention long before any Federal crime is ever committed.

Chairman PIKE. It is my understanding that the members on my left in general agree to these provisions.

Mr. TREEN. I prefer that you exclude me from that general description, but Mr. McClory does, as I understand.

Chairman PIKE. Mr. McClory does. Oh.

Are there any questions?

Let's do it item by item even though I am told in general there is no objection to any of these recommendations.

Mr. TREEN. May I make an inquiry? Is the "rationale" part of the recommendation?

Chairman PIKE. No.

Mr. GIAIMO. Could I be recognized?

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. GIAIMO. Mr. Oliphant, do you have any idea how the Judiciary Committee, which has been studying this, feels about this?

Mr. OLIPHANT. No, sir, I don't.

Mr. GIAIMO. I am a little nervous about the fact that Mr. McClory and some of the others are all in favor of it, to be perfectly frank.

Mr. JOHNSON. Will the gentleman yield?

Mr. GIAIMO. Yes.

Mr. JOHNSON. I really feel a little bit "iffy" about this particular recommendation, too, because I don't know that much about the divisions within the FBI, and when we make those kinds of recommendations, I think it presumes a knowledge on our part that I don't have.

Mr. GIAIMO. My concern is that I understand the Edwards Subcommittee of Judiciary has been conducting an extensive study in this area and, quite frankly, before I vote it either way, I would want to be guided or at least have a little more information as to what is going on in the subcommittee. Mr. McClory is a member of the Judiciary Committee. He could probably inform us, but he is not here. So I am going to vote present.

Chairman PIKE. The question is on item VI of the draft. All those in favor, signify by saying aye.

Contrary, no.

The ayes appear to have it, and item VI is agreed to.

The question is on item VII of the draft. All those in favor, signify by saying aye.

Contrary, no.

We will indicate "present," too.

[The staff draft of domestic intelligence recommendation No. VII follows:]

VII. Transfer all investigations of alleged criminal activity by domestic groups or individual members thereof to the General Investigative Division.

Mr. GIAIMO. Mr. Chairman.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. It is interesting that the reason I have this hangup is because in this area there has been a congressional committee doing

its work and looking into this matter. That is quite different, in my opinion, from the lack of congressional oversight in the area of CIA, because here there has been oversight.

Chairman PIKE. Will the gentleman yield?

Mr. GIAIMO. Yes.

Chairman PIKE. I would simply say, as the gentleman said earlier, that would be the very committee to which this recommendation would be transported, and if they did not agree with our recommendations, I have no fear that it is about to become the law of the land.

Mr. GIAIMO. All right.

Chairman PIKE. The question is on item VIII of the draft. What it means is that when an allegation of terrorists' activity is made, it has to be a specific allegation of terrorist activity.

[The staff draft of domestic intelligence recommendation No. VIII follows:]

VIII. That regulations be promulgated that tie the investigation of activities of terrorist groups closely to specific violations of criminal law within the investigative jurisdiction of the FBI and that charge the Department of Justice with determining when a domestic political group may be appropriately targeted for investigation of terrorist activities.

Chairman PIKE. Mr. Atkisson?

Mr. ATKISSON. Mr. Chairman, I might say that in connection with the recommendation just passed by the committee, that is recommendation No. VI on the warrant procedure, this now really is moot. The recommendation as written here is not necessary after a warrant procedure is installed.

Chairman PIKE. What you are saying is that in order to get a warrant, the allegations for the warrant would have to be sufficiently precise—

Mr. ATKISSON. Probable cause.

Chairman PIKE. You are not going to get a blunderbuss approach.

Mr. OLIPHANT. If I may, I would disagree with that, in that there are manners of investigation other than the insertion of informants. As a matter of fact, most of the abuses which we studied were not informant abuses. The panel, if you will remember, complained of FBI investigative techniques—people coming to their offices and talking to their employees, or employers, or talking to their landlords. This had nothing to do with informants.

Chairman PIKE. There was also the garbage cover.

Mr. OLIPHANT. That is correct. So there are many other ways. In fact, the committee only heard from one informant. There are many other ways of investigation that can be heavyhanded and can cause an abuse.

Mr. ATKISSON. The point is well taken.

Chairman PIKE. All right; the question is on item VIII. All those in favor of the draft, signify by saying aye.

Contrary, no.

The ayes appear to have it, and the draft is agreed to.

The question is on item IX.

[The staff draft of domestic intelligence recommendation No. IX follows:]

IX. That an assessment unit to determine the dangers to the national security from civil disturbances and terrorist groups be established within the Department of Justice.

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. May I ask the staff if they would tell me how you could safeguard against the same dangers of the Internal Security Branch of the Intelligence Division—how would that be any different from the assessment unit, because apparently as the assessment unit has been established in my estimation, it is possible that the same potential damages could be done by this unit as in the unit that we just abandoned three actions ago.

Mr. OLIPHANT. Congressman, the difference is that the assessment unit would be in the Department of Justice, where presumably the attorneys there would have a different motivation than the investigators at the Federal Bureau of Investigation. There would be a separation of function there. There would, in effect, be not only oversight, which there would be, but you would have it looked at in a different perspective.

A lot of the argument against the Internal Security Branch is that people who are investigating things—who are charged with the investigation of it—have a built-in self-interest to keep the investigation rolling, to keep the thing going. Hopefully, someone who was not doing the investigation themselves, but was merely objectively assessing the evidence required, would have a different motivation. So it would be different. Also, instead of having the groups filled with informants or filled with people providing them with anticipatory intelligence, you would have this group looking at basically public acts. In other words, the commission of crimes which had become local crimes which were a matter of record, published documents, that sort of information. So, hopefully, you would not have the same types of investigations or the same types of investigators. This would not be an investigative unit, but an assessment unit.

Mr. DELLUMS. You know, for example, there was ostensibly literature developed with respect to May Day. We now find out that the FBI printed much of that material that was used as rationale to arrest 1,200 people on the steps of Capitol Hill when three of my colleagues and myself were addressing a group receiving the peace pledge.

My concern is, who defines civil disobedience or civil disturbance?

The gathering on the Capitol Hill steps was defined by the authorities as civil disturbance. We took that to court and beat them in the court in a \$12 million lawsuit, and the charges against all of those arrested were thrown out of the court. I recall I was a witness for the defense in an appropriate case.

My concern is: In creating civil disturbances, who defines what civil disturbances are? If a group is assembled that is opposed to a policy of the administration, it is easy for the administration to say this is an unpatriotic, potentially hostile group and should be harassed, intimidated, whatever. My concern is that even with this assessment group and your ostensible factor built in, there are still factors here that can create extreme difficulties to me.

Mr. OLIPHANT. Everything you say is correct; but hopefully that depends on people and hopefully—because of Watergate and all the investigations which have emanated from this committee and other committees investigating this, the public disclosure and light that has been brought on Cointel-type activity—this has changed. Wherever you have human beings in power, you have potential for abuse of power; and I believe, and I think the staff believes, that someone should be

assessing some of the information which comes up as long as it is gathered in a nonabusive way—that we would not be responsible to do otherwise, and that hopefully people will not abuse this power and there will be congressional oversight and it will be exercised vigorously.

Mr. DELLUMS. Mr. Chairman, I am appreciative of the explanation of staff, and with all due respect to the intellectual capability, I am going to move to strike this section.

Chairman PIKE. Is there any discussion in opposition to the motion?

The question is on the motion. All in favor, signify by saying aye.

Contrary, no.

The ayes appear to have it, and that section is stricken from the draft.

Mr. TREEN. Mr. Chairman.

Chairman PIKE. Mr. Treen.

Mr. TREEN. I notice the language of each of these doesn't say, "The House Select Committee on Intelligence recommends." I assume that language will be provided.

Chairman PIKE. Without objection, the phrase "House Select Committee on Intelligence" will be inserted in all of those sections.

[The domestic intelligence recommendations, as amended, as printed as item "T" in H. Rept. 94-833, follow:]

T. DOMESTIC

1. The select committee recommends that judicial warrant must issue, on probable cause, before an informant or any other agent of the FBI may infiltrate any domestic group or association, when investigation of such group or association or its members is based solely on title 18 U.S.C. sections 2383, 2384, 2385.

2. The select committee recommends that the Director of the FBI have a term of office no longer than two presidential terms.

3. The select committee recommends that the Internal Security Branch of the Intelligence Division be abolished and that the counterintelligence branch be reorganized to constitute a full division named the Counterintelligence Division; that the mission of this Division be limited to investigating and countering the efforts of foreign directed groups and individuals against the United States.

4. The select committee recommends the transfer of all investigations of alleged criminal activity by domestic groups or individual members thereof to the General Investigative Division.

5. The select committee recommends that regulations be promulgated that tie the investigation of activities of terrorist groups closely to specific violations of criminal law within the investigative jurisdiction of the FBI and that charge the Department of Justice with determining when a domestic political action group may be appropriately targeted for investigation of terrorist activities.

Chairman PIKE. Let us then go back to the item on the media.

[See pp. 2162-2165; 2171-2178 for the committee's initial discussion of the media.]

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

As you recall, I initiated the discussion with respect to trying to develop an amendment which would preclude the intelligence community from utilizing members of the press, members of the clergy, and members of our educational community in this country. The staff came up with the language that is before you:

P. Media. The select committee recommends that U.S. intelligence agencies not provide money or other valuable consideration to persons associated with religious or educational institutions, or to employees or representatives of, or plant or suppress stories in any journals or electronic media with general circulation in, the United States.

I appreciate the efforts of the staff to come up with some language that would meet the constitutional test and would meet some of the concerns and objections raised by various members of the committee when I brought this issue before you.

I would like to now offer a little different language that would do two things: No. 1, I think make it read a little easier, and, No. 2, it would include the issue of publishing books.

Mr. Chairman, perhaps most of you read the article appearing in the Washington Star yesterday entitled "CIA Subsidizes Dozens of Books on Policy." I think that is an appropriate matter to cover in the amendment, and I have circulated for you substitute language which would read as follows:

The select committee recommends that the U.S. intelligence agencies do not provide money or other valuable consideration to persons associated with religious or educational institutions or to employees of representatives of any journal or electronic media with general circulation in the United States. The select committee further recommends that the U.S. intelligence agencies not covertly publish books or plant or suppress stories in any journals or electronic media with general circulation within the United States.

My two changes, as I said earlier, Mr. Chairman, relate to the issue of the publishing of books and I think that it reads a little easier.

Some members of the committee were very concerned about voluntary giving of information on the part of "American citizens" in either one of these categories. My amendment would not preclude people voluntarily giving information. What we are essentially saying here is that you cannot receive money or other valuables for this, which means in effect that the intelligence community could not contract with a person in the media, a member of the clergy, or a member of educational institutions in the country.

I do not choose to go into a long diatribe on the matter. I have talked about it several times. As I said earlier, what I think is at stake here is a very important value conflict. On the one hand, we have in this country institutions that are ostensibly protected and defended by the Constitution—the right of freedom of speech, and a free press—and in what is ostensibly a democratic society that is extremely important. And finally we live in a society that takes the position of a separation of church and state.

On the one hand, you have the need to gather information. On the other hand, it seems to me you have the overriding need to protect and defend very important delicate institutional rights, and I think in that conflict we should opt for the latter rather than the former.

When I asked a question of the intelligence community on how you handle this value conflict, in general the response was, "We in the intelligence community have been left alone too often to make this determination ourselves."

If you believe, as I do, that the intelligence community should not be a fourth branch of Government, I think we should take some action that meets constitutional tests that would protect the free press, would continue to keep a separation of church and state, and finally would not allow the prostitution or corruption of our educational institutions.

My substitute amendment goes in that direction, and I hope that the Chair and members of the committee would see fit to support the amendment.

Chairman PIKE. The time of the gentleman has expired.

I would like to take my 5 minutes right now. I frankly like your language better than the draft language which has a phrase left out of it about two-thirds of the way through it.

Would the gentleman accept an amendment to his language, and in the second line, before the words "provide money or other valuable consideration," add the word "covertly"?

You have it in the bottom half of your amendment, and it seems to me that both drafts have gone too far. I think it ought to be legitimate, for example, for the National Security Agency to contract overtly with MIT, for example, on technological code-breaking mechanisms, or something like that.

I don't have any objection to the intelligence agencies overtly having contracts with educational institutions. I think that what we are after is the undermining of these institutions by covert operations.

Would you agree with that approach?

Mr. DELLUMS. I would be inclined to agree. I would simply like to ask the Chair one question.

If you recall, President Johnson developed a commission to look into the issue of the relationship between the intelligence community and educational institutions. Was that recommendation directed exclusively or primarily at covert operations?

Chairman PIKE. I think it was, but I am not sure. My feeling is you can't say to these intelligence operations which are important to us that you can't go out and buy the best brains you can find in America, if you do it overtly. What you can't do is subvert them, and therefore I am going to offer just that amendment.

Mr. DELLUMS. I would accept that language.

Chairman PIKE. Is there objection? Without objection, the amendment is agreed to.

Mr. JOHNSON. I have an amendment. At the end of the first paragraph, after the words "United States comma," I would like to add "or use such institutions or individuals for purposes of cover."

Mr. DELLUMS. I would accept that amendment.

Chairman PIKE. The question is on the amendment offered by Mr. Johnson. All in favor of the amendment, signify by saying "aye." Contrary, "no."

The amendment is agreed to.

Mr. Treen?

Mr. TREEN. Mr. Chairman, if the gentleman from California will yield for a couple of questions, I basically like the thrust of this. I am concerned about two things. One is the denial of covert money or consideration to persons associated with religious or educational institutions. It is not qualified as to whether they would be U.S. institutions or oriented to the United States.

Is it your intention to cover educational institutions throughout the world?

Mr. DELLUMS. No; the United States.

Mr. TREEN. United States only. Because I can envision the possible opportunity of an educational institution in a foreign country that we might want to deal with, and if the gentleman would accept the change there.

Mr. DELLUMS. I am only attempting to cover what the Constitution covers.

Mr. TREEN. If the gentleman would accept an amendment associated with U.S. religious or educational institutions, I realize that opens up a quarrel as to whether what is a U.S. institution, but this is a general recommendation, and I think the sense of it, as shown by the record, would be that we are only attempting to prohibit involvement with U.S. groups.

Chairman PIKE. Would the gentleman yield?

Mr. TREEN. I would be pleased to yield.

Chairman PIKE. So our legislative history is clear on this issue, is the Catholic Church a U.S. institution?

Mr. TREEN. It has a pretty sizable branch here.

Chairman PIKE. No: I think you have a real problem no matter how you slice it.

Mr. TREEN. I realize it opens up the question—

Chairman PIKE. Very frankly, I think in America it is a corporation sole, organized under the laws. That is the way it is in the State of New York. The Bishop, I believe, is a corporation sole, and so I think we are pretty clear on what we are talking about.

Mr. DELLUMS. Mr. Treen.

Mr. TREEN. Yes.

Mr. DELLUMS. If the gentleman would allow me to respond, I understand the thrust of what the gentleman is saying, but I am not sure we can work out the language. Given the generic nature of the recommendation, I am wondering—and I certainly would be supportive of this—if the legislative history would characterize our discussion with respect to this matter so that we didn't have to try to get involved in whether we specify the United States or not, but it would show that our major thrust here is that we are talking about American citizens. That could be covered in the legislative history.

Eventually, the legislation is going to be written in specific terms so I don't think we have to bog down the recommendation at this point, although if the gentleman wants to try to figure—

Mr. TREEN. Ordinarily I would think that might be well, but we are going with naked recommendations here in our final report, so there is not going to be an explanation. Are all of these proceedings going to be part of the hearings, Mr. Chairman?

Chairman PIKE. That is a very good question. The answer is I do not know.

Mr. TREEN. So it is unclear as to whether this is going to be part of it. I would like to try to develop some kind of language.

Mr. GIAIMO. Would you yield?

Mr. TREEN. I would be pleased to yield.

Mr. GIAIMO. Would it be OK if after the end of the first paragraph which says, "or use such institutions or individuals for purposes of cover," you then put another sentence and said, "The foregoing prohibitions are designed to apply to American citizens and institutions?"

Mr. TREEN. I appreciate that suggestion. Of course, it is Mr. Dellums' recommendation.

Mr. DELLUMS. Mr. Giaimo's language is acceptable.

Chairman PIKE. Without objection, the amendment is agreed to.

Mr. TREEN. I am a little concerned as to whether the language in paragraph 1 is so broad that it would include what are commonly referred to as stringers; I think probably the majority of this committee wants to include stringers, that is, people who occasionally provide reports to news organizations. I frankly feel that this would deny to the intelligence community a pretty valuable category of people.

The point is that the reason that a person associated with the news media is particularly valuable, as I understand it, is because he gets access as a result of his occupation, and I think that there is a distinction to be made between the full-time employee or the person who works solely for one segment of the news media. But to deny the intelligence community the right from time to time to use someone who occasionally files a story, or files a report, I think would be unduly hampering our intelligence capacity in other countries, so I am concerned about that.

I very much like the overall thrust, but I would like to exempt from the ban the occasional person, who, for a fee, occasionally files something with a news media.

Mr. GIAIMO. In the United States.

Mr. TREEN. No.

Mr. GIAIMO. Doesn't the paragraph prevent covert publication of books or the planting or suppressing of stories in journals or media with circulation in the United States. You are talking, aren't you, about planting stories in other countries?

Mr. TREEN. I apologize. I guess I am confused because we are working off of the staff media recommendation. I guess we aren't dealing with media at all here, Mr. Chairman.

Chairman PIKE. We are dealing with Mr. Dellums' substitute.

Mr. TREEN. And it doesn't deal with the media at all apparently at this point.

Chairman PIKE. It does. It is all about the media.

Mr. GIAIMO. You were talking about stringers, and I assume you were talking about their ability to plant—

Mr. TREEN. Employees or representatives of any journal or electronic media would include a stringer at this point.

Mr. GIAIMO. Yes; in the United States.

Mr. DELLUMS. If the gentleman would allow me to respond briefly, if people want to volunteer that information as a practical matter, that is very difficult to preclude. What I am suggesting here is that one in the press should not serve two masters; you are either a professional committed to the concept of objective and free press or you are working for the intelligence community. To try to do both in my estimation is a serious corruption of that profession, and I would not like to see both of them confused in anyway. I would not like to see both happening in anyway.

I think you should be on one side or the other. Operating as an objective member of the press and at the same time taking in an occasional bit of money or other valuables for service means that you are serving two masters, and I don't think that is appropriate, and that is exactly what I am trying to challenge.

Mr. TREEN. I appreciate the gentleman's concern. I think it is possible to work with the news media and intelligence agencies occa-

sionally and not be corrupted, but I don't have a specific amendment, Mr. Chairman.

Chairman PIKE. The question, then, is on Mr. Dellums' substitute as amended. All those in favor of the substitute, as amended, signify by saying aye.

Contrary, no.

The ayes appear to have it, and the substitute which we will label "media" is agreed to.

Mr. JOHNSON. Mr. Chairman.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. While we are still on this particular paragraph on the media, the staff has indicated that they felt the DCI should make a study of the issue of the use of cover and report back to the Congress within a time certain, and I thought it should be brought up at this point so they can expound upon their theory if they wanted to.

Chairman PIKE. It seems to me that the DCI has pretty well told the committee what he thinks about the use of the media. Would you care to expound further on it?

Mr. FIELD. Mr. Chairman, I felt as we were putting this together, that whereas these were probably the most compelling categories, to some degree it is a piecemeal approach. The issue of cover is a very important and very difficult one, and we felt that it would not hurt for the DCI, in consultation with the Congress, to develop an overall plan of cover, which they do not now have. It is kind of an ad hoc thing, and there are some categories that are sensitive; some that are not. We felt that after a period of time of 6 months or a year there should be a definite plan as to where cover shall be in our society, who shall be used, how they shall be used, how they shall be paid, and that this be done with Congress so that there is some kind of awareness of this outside the intelligence community.

Chairman PIKE. Mr. Field, I can only suggest that if we do not have language at this late date to accomplish this purpose, there is no way we can write it in.

Mr. FIELD. I believe Mr. Johnson has some language. I don't know whether he is inclined to offer it as an amendment. It is up to him at this time.

Mr. JOHNSON. I think we could add a paragraph saying we also recommend that the DCI study the issue of cover and report its recommendations to the oversight committee within 6 months after the establishment of the committee.

Mr. DELLUMS. Would the gentleman yield briefly to me?

Mr. JOHNSON. Yes.

Mr. DELLUMS. Would the gentleman mind not cluttering up this particular recommendation? I understand the thrust, and I would be willing to support it. I would just not like to create any more ambiguities in this statement.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I have a parliamentary inquiry. It seems we have adopted the substitute and now the next vote in order is the vote on recommendation "P." We have only had one vote.

Chairman PIKE. Technically the gentleman is correct.

Mr. KASTEN. I would like to be recognized in opposition to the section.

Chairman PIKE. Certainly.

Mr. KASTEN. Mr. Chairman, I think that the committee is in basic agreement with Mr. Colby and others in the CIA that the media should not be used as a cover and that we should not put the members of the media on intelligence missions, on intelligence assignments, or whatever; but we have expanded the section having to do with the media not only within the media, itself, but also to religious and educational institutions, and I think that is a mistake.

I don't think we do want to put the members of the media on intelligence assignments or intelligence missions, but I don't think we want to limit the intelligence-gathering effectiveness of our country, and I think this section, as it is written now, should be defeated, and I intend to vote against it.

Mr. DELLUMS. Would the gentleman yield briefly to me?

Mr. KASTEN. Yes.

Mr. DELLUMS. I understand what the gentleman is saying, and I am in fundamental disagreement with it. No. 1, if you agree that a free press is a very important institution in a democratic society, then we are in basic agreement. I have simply added two additional elements.

We do operate on the notion of separation of church and State. When the Government is able to cross that line for the purposes of corrupting or compromising members of the clergy, then I think you very, very clearly threaten to violate that very important fundamental principle that is one of the cornerstones of our evolving Government.

No. 2, the President's commission, which was certainly no radical group, investigated the matter and studied the matter of the intelligence community's covert relationship with educational institutions and came out with a rather clear-cut recommendation; and that was to recommend to the President that it end by Executive order all involvement of the intelligence community covertly with educational institutions, including students, professors, and other employees of educational institutions.

So my point simply is, how do you handle the conflict? On the one hand, you and I, as representatives of the people, have a responsibility to protect and defend delicate institutions. On the other hand, where we have defined a legitimate area of intelligence activity, how do we have institutions and organizations developed and organized in such fashion that they do that without abusing or harming or harassing other individuals or threatening institutions? In that value conflict, it seems to me that our overriding responsibility is to protect and defend the institutions, and I would suggest to the gentleman that a vote against the amendment is in effect saying that Government can transcend the issue of church and state; the Government can transcend the issue of free education; and Government can transcend the notion of freedom of speech which includes a free press.

It seems to me that wouldn't be a very difficult vote. I think our responsibility is to defend those institutions. I don't think that in any way compromises the intelligence community from functioning. If you say you can't function and you have unlimited ability to corrupt, where do we put the lid on; where do we make the restrictions; where do we take the principal stand I think we need to take in these three areas?

Mr. KASTEN. I think we have honest disagreement. I think it is important to protect and defend these institutions, whether religious, edu-

cational, or the media, but I think it is also important to protect and defend our national security, and I believe the national security and the intelligence-gathering problems are overriding, so we simply disagree.

Mr. GIAIMO. Would you yield for a question?

Mr. KASTEN. Sure.

Mr. GIAIMO. Do you believe the U.S. Government should covertly infiltrate religious or educational institutions?

Mr. KASTEN. No.

Mr. GIAIMO. That is what you are advocating.

Mr. KASTEN. I don't intend to advocate—

Mr. GIAIMO. Covertly.

Mr. KASTEN [continuing]. Covertly or overtly.

Mr. GIAIMO. I don't care what we do overtly. It is covertly that bothers me.

Mr. KASTEN. I believe this is going to unnecessarily limit our intelligence-gathering capability. All I ask is the vote.

Chairman PIKE. The question is on the adoption of the section as amended by the Dellums substitute. All those in favor, signify by saying aye.

Contrary, no.

The ayes appear to have it, and the section is adopted.

Mr. Treen?

Mr. TREEN. Mr. Chairman, I just wanted to put in the record that my opposition to the section was based upon the interpretation that it is broad enough to include the stringer or occasional media consultant, and for that reason only.

[Recommendation "P," as amended follows:]

P. MEDIA, RELIGION, AND EDUCATION.

1. The select committee recommends that U.S. intelligence agencies not covertly provide money or other valuable consideration to persons associated with religious or educational institutions, or to employees or representatives of any journal or electronic media with general circulation in the United States or use such institutions or individuals for purposes of cover. The foregoing prohibitions are intended to apply to American citizens and institutions.

2. The select committee further recommends that U.S. intelligence agencies not covertly publish books, or plant or suppress stories in any journals or electronic media with general circulation in the United States.

Chairman PIKE. The consideration of the committee comes to item "Q," "Restrictions on Military Intelligence." I think the language is relatively simple and speaks for itself.

[See pp. 2180-2182 for the committee's initial discussion of recommendation "Q." The staff redraft follows:]

Q. RESTRICTIONS ON MILITARY INTELLIGENCE

1. The select committee recommends that the intelligence components of the Armed Services of the United States be prohibited from engaging in covert action within the United States. It is further recommended that clandestine activities against nonmilitary U.S. citizens abroad be proscribed.

Mr. GIAIMO. Yes, Mr. Chairman.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. The second sentence is not clear to me. Would the staff explain it?

Mr. Boos. Yes.

Mr. GIAIMO. In the first sentence you are talking about covert action and we know what that means.

Chairman PIKE. Within the United States.

Mr. GIAIMO. And then you go to clandestine activity against nonmilitary citizens abroad. What are we saying? What are you trying to accomplish there?

Mr. Boos. Covert action is a word of art. We are also addressing ourselves to the fact that the military has been known to conduct certain clandestine intelligence-gathering activities against American citizens such as surveillance abroad.

Mr. GIAIMO. You mean like the *Heidelberg* case several years ago.

Mr. Boos. The Berlin Military Democratic Club. We are not prohibiting legitimate counterintelligence functions as they apply to the military abroad. All we are saying is that the military is not to surveil American citizens who are not connected with the military.

Mr. GIAIMO. What you are saying is that an American citizen abroad, military or otherwise, carries his constitutional rights with him.

Mr. Boos. That is right.

Mr. GIAIMO. OK.

Mr. TREEN. May I ask a question?

Chairman PIKE. Mr. Treen.

Mr. TREEN. In the last sentence where you say, "clandestine activities against nonmilitary U.S. citizens abroad be proscribed." By "nonmilitary" we would include civilian employees in the military—abroad or not. What is the intent?

Mr. Boos. The intent is that the prohibition applies to persons not connected with the military establishment.

Mr. TREEN. At all.

Mr. Boos. That is right.

Mr. ASPIN. Will the gentleman yield?

Mr. TREEN. Yes.

Mr. ASPIN. Why do you make that distinction?

Mr. Boos. It was the staff's judgment that there is appropriate purpose in safeguarding legitimate military activities and bases abroad. So Mr. Treen is quite right; the intention is to embrace civilians who do work—

Chairman PIKE. Civilian employees of the military.

Mr. Boos. Yes, sir.

Mr. TREEN. Well, embrace it meaning—

Chairman PIKE. Meaning not to proscribe surveillance on the civilian employees of the military.

Mr. Boos. That is correct.

Mr. ASPIN. Why military? There are plenty of people who are not in any way associated with the Defense Department who have all kinds of access to secrets. What about State Department people or CIA people or other people?

Mr. Boos. Our point is that the military should not be performing this kind of function.

Mr. ASPIN. I see.

Mr. TREEN. If I still have the time, Mr. Chairman, one further question: Is it intended that the first paragraph would apply in time of war and peace?

Mr. Boos. Yes, sir.

Mr. TREEN. At all times.

Mr. JOHNSON. Would the gentleman yield?

Mr. TREEN. I will be glad to yield.

Mr. JOHNSON. I have a little problem with the last sentence. It seems to me if you have an American citizen abroad who is definitely engaged in some kind of subversive military intelligence unit, he might be justifiably involved. I don't know why you have to refer everything to the CIA if the proper circumstances arise. The first portion I agree with 100 percent, but I could see where military intelligence officers could be legitimately involved in investigating some people.

Mr. Boos. Our point that as the Code of Military Justice applies only to military and that military intelligence activity should be limited accordingly. The FBI operates abroad; the CIA operates abroad. Those functions should be adequate to deal with American citizens having no military connections.

Mr. JOHNSON. Aren't you going to perhaps require an enlargement of CIA and FBI operations abroad?

Mr. Boos. No; there is no indication of that.

Mr. GIAIMO. Will you yield?

Chairman PIKE. I think Mr. Treen's time has expired. I will recognize the gentleman from Connecticut.

Mr. GIAIMO. I want to ask Mr. Boos: What you are really saying here is that you want to pull the military operation back in so that the military is conducting its clandestine activities abroad solely in military matters and operations, and if there are other people who should be investigated, that should be done by the civilian intelligence agencies rather than the military.

Mr. Boos. Exactly.

Chairman PIKE. Will the gentleman yield?

Mr. GIAIMO. Yes.

Chairman PIKE. It seems to me that there isn't anything much more fundamental that we can do here than to say that the awesome power of the Army, Navy, and Air Force should not be used to spy on American citizens either at home or abroad, excepting only those who are in the employ of the Defense Department abroad.

Mr. KASTEN. Mr. Chairman:

Chairman PIKE. Yes.

Mr. KASTEN. What is the abuse that you are seeking to remedy? In other words, it seems to me that if there is an American citizen who has been identified as a spy and he goes to Southeast Asia—

Chairman PIKE. Mr. Giaimo does have the time.

Mr. KASTEN. I thought you recognized me.

Mr. GIAIMO. I yield to him.

Chairman PIKE. He yielded to me. You will get time.

Mr. GIAIMO. I think the abuse, Mr. Kasten—and let's get this clear—I think the abuse is that we don't want two things to happen. First of all, we do not want the military to be investigating American citizens in building up dossiers as they were several years ago here in the United States.

Is that right, Mr. Boos? Isn't that one of the things we are directing our prohibition to?

Mr. Boos. Yes.

Mr. GIAIMO. And the other is we don't want the military overseas to be investigating peace groups which include American citizens.

Mr. Boos. That is right.

Mr. GIAIMO. There has been evidence that American citizens in other countries, particularly in Europe, were being investigated by military intelligence units because of their positions on the war or on other political issues because they may have been radical groups of some kind or another. So I think the prohibition is directed against the military getting into this type of activity, either here or abroad, and to leave that to nonmilitary intelligence units—the reason being, as the chairman indicated, the awesome power of the military should be of concern to the citizens of the Nation.

Mr. KASTEN. Would you yield on that point?

Mr. GIAIMO. Yes.

Mr. KASTEN. You are saying, then, a dossier on that particular person or group is all right, if it is in the files of the CIA, but not all right if it is in the files of the Air Force or Army intelligence.

Mr. GIAIMO. Let's split it and say that I certainly don't want it in the hands of the Army intelligence or military intelligence in general, and I would like to leave open the question of the rights of CIA to look at American citizens overseas. I am not so sure I am for that either. But I know for sure I don't want the military doing it. That is the point. They have too darn much power.

I yield my time back.

Chairman PIKE. The gentleman is recognized.

Mr. KASTEN. I think the intent of this could be construed as beginning to limit the ability of our intelligence-gathering agencies to surveil or conduct clandestine activities against American citizens abroad—this would be one way of starting to stop that activity.

Chairman PIKE. Would you yield for a question?

Mr. KASTEN. Yes.

Chairman PIKE. I think you have stated it correctly, and my question is simple: Are you in favor of our military conducting surveillance on American citizens abroad when they have no connection with the military?

Mr. KASTEN. I am if it is the most effective way of conducting intelligence gathering.

Chairman PIKE. Then that is the issue.

Mr. TREEN. Would the gentleman yield for a question?

Mr. KASTEN. I yield to the gentleman from Louisiana.

Mr. TREEN. Is it intended in the first sentence that covert action would mean any type of undercover investigative activity? If it is that broad, then it would prohibit the intelligence component of the armed services from investigations of the military.

Mr. Boos. No.

Mr. TREEN. Covert action. We are not intending to tell the armed services that they can't conduct clandestine investigations of military personnel, are we?

Mr. Boos. There are obvious legitimate functions of the military in conducting background investigations of employees or applicants for jobs.

Mr. TREEN. What about crimes in the military?

Mr. FIELD. That is not covert. Covert action is not conducted internally in the military to the best of our knowledge; that is, where they have a program to disrupt something.

Mr. TREEN. Well, with that understanding of what covert action means, I yield back the balance of my time.

Chairman PIKE. The question is on recommendation "Q." All in favor, signify by saying aye.

Contrary, no.

The ayes appear to have it, and the section is agreed to.

The question is on the item entitled "Classification" as to which I will simply say the Chair has no problem down to the first word "legislation." But after that, I have a lot of problems because it seems to me when you start talking about a method of declassification with standards to provide for access to such information by the Congress, you are limiting the right of the Congress to access to information until it has been declassified. I am not in favor of any language which is going to appear to limit the right of Congress to access to information.

[The staff draft of recommendation "R" follows:]

R. CLASSIFICATION

The select committee recommends that the classification of information be the subject of the enactment of specific legislation; and further, as an adjunct to such legislation there be provided a method of declassification with definite standards to provide for access to such information by the Congress.

Mr. DONNER. Mr. Chairman.

Chairman PIKE. Mr. Donner.

Mr. DONNER. This was a recommendation proposed by Mr. McClory, and it was drafted at his suggestion. I am not trying to disclaim it, but I am saying to you that the drafting was carried out by the staff for Mr. McClory.

Chairman PIKE. I move that the proposal be amended as follows: On the third from the last line before the word "declassification," insert the word "regular"; put a period after the word "declassification," and strike out the rest of the paragraph so that it would read as follows:

The select committee recommends that the classification of information be the subject of the enactment of specific legislation; and further, as an adjunct to such legislation there be provided a method of regular declassification.

The question is on the amendment. All in favor, signify by saying aye.

Contrary, no.

The ayes appear to have it, and the amendment is agreed to.

The question is on the paragraph as amended. All in favor signify by saying aye.

Contrary, no.

The ayes have it, and the paragraph, as amended, is agreed to.

We have now completed everything in our draft, so Mr. Aspin, you have—

Mr. ASPIN. I have one more that I would like to ask the committee to consider. It is an amendment here that I have passed out. Let me read it for you:

The Select Committee on Intelligence recommends there shall be established an independent office of the Inspector General for Intelligence, who shall have full authority to investigate any possible or potential misconduct on the part of the various intelligence agencies or the personnel therein. The IGI shall be appointed by the President, with the approval of the Senate, for a term of 10 years and shall not be permitted to succeed himself. The IGI shall have full access on demand to all records and personnel of the intelligence agencies for the purpose of pursuing his investigations. He shall make an annual report to the Congress of his activities and make such additional reports to the intelligence committees or other appropriate oversight committees as he may choose or the committees may direct.

Mr. Chairman, this is something I think is very important, which is to establish a separate Inspector General for Intelligence in the intelligence community. I don't think that up to now we have adequately dealt with the problem of abuses within the intelligence system, abuses meaning such things as opening mail and other things that are illegal or against the charter of the various intelligence organizations. How do you deal with that? What mechanism can Congress or the committee here recommend for dealing with the problem of potential abuses, either abuses of the charter, abuses of the Executive order, which establishes and sets up the agencies, or abuses of the law or the Constitution, itself? What I am trying to do here is to set up a procedure for getting at that problem.

One thing, of course, is a vigorous oversight committee, and we all hope that Congress will establish an oversight committee; but I am worried that the committee will not hear about abuses. We in the Congress have had difficulties getting this kind of information from the intelligence community in the past. The intelligence community is not the place that promotes whistleblowers.

I think you can have a system established within the intelligence community, itself, whose job it is to listen to reports, somebody that people can go to if they have a feeling that something is going on that is illegal, without making it public, without blowing the cover. This person would be independent, appointed by the President with approval of the Congress for a fixed term—somebody whose job it is to solely look out for the integrity of the system and protect the system against exceeding its mandate.

We have a very, very powerful system here. This whole secrecy that surrounds it makes it more powerful. The potential for abusing its power is enormous. Now just the revelations that have come out over the past year, I think, are going to be a big deterrent, but how long can that last?

What I am trying to get here is some system in the long run—5 years, 10 years from now, when the dust has settled, and it is no longer in the public interest—to prevent the system from going over the bounds of what is legal, what is right, what is proper as we discover what it has done in the past couple of years.

I think it is a very, very important point. I think it is something that we really do need, and I hope the committee will accept the recommendation.

Mr. LEHMAN. Will the gentleman yield?

Mr. ASPIN. Yes.

Mr. LEHMAN. I have just one problem with this. That title bothers me. It sounds like something out of Gilbert and Sullivan. Could we call it something else?

Mr. ASPIN. Call it anything you like. Yes, "Inspector General for Intelligence" does have kind of a ring of that. The point is that our recommendations are going to go to other committees of Congress, and they will hold hearings on them. My concern is unless we get this idea into our draft of the recommendations, it isn't going to appear anywhere, and I really think this is the appropriate kind of approach. If the gentleman wants to call it something else, I don't mind. In the long run they will find a better title. I picked it up because there is someone now called the Inspector General in the CIA, but I wanted to make him not subject to the CIA chain of command.

Mr. TREEN. Will you yield for a question?

Mr. ASPIN. Yes.

Mr. TREEN. We have adopted in recommendation G(1)(d) that the DCI, himself, will constitute an Office of Inspector General for all the Government branches and military which have foreign intelligence functions. Is this intended—

Mr. ASPIN. This is in substitute for that.

Mr. TREEN. This would be a change in our recommendation, and what you have now put before us wouldn't be limited to foreign intelligence?

Mr. ASPIN. No.

Chairman PIKE. This is a substitute for what we have already adopted?

Mr. ASPIN. You see, in our consideration of the DCI we gave the power of being an Inspector General to the DCI.

Mr. TREEN. I am not necessarily opposed, but it conflicts with what we have recommended.

Mr. ASPIN. I raised the issue at that point, and we talked about it briefly. I asked whether that was the right time to offer it, because I do want to offer it, and it is a separate thing. I am raising it now.

Chairman PIKE. The time of the gentleman has expired. I am going to oppose this amendment, not because I don't share the gentleman's concern, for it is important, but because I don't think that we ought to move this far until we have demonstrated that the other system doesn't work.

We are saying that the Department of Justice can't properly police illegalities. We are saying that by setting up a new agency—and I don't know what would happen to the Inspector General Office that is already within the Department, whether this would be added to that or whether that one would be abolished—a new agency will get people to talk to it that don't talk to the present Inspector General, and it is going to enforce the law better than the Department of Justice will enforce it.

One of the things that concerns me about it is the possibility that crimes will get shortcut in the Office of an Inspector General and will never be reported to the Department of Justice. I don't know what would happen.

I would just like to give it a try the way we have it now, trying to set up an oversight committee, and I think we are all agreed that what is most important is who is on the oversight committee, and their motivation to do the job. That that oversight committee should be able to forthwith report things to the Department of Justice if they are found to be illegal, and operate on the assumption that the Department of Justice will, in fact, prosecute illegalities without setting up another intermediate bureaucracy. If it doesn't work 2 years from now, I would agree with the gentleman that we should try something else.

But, I frankly, would like to try what we have here right now, first.

Anybody else want to be heard on the amendment? The question is on the amendment offered by the gentleman from Wisconsin. All those in favor signify by saying aye.

Contrary, no.

Mr. JOHNSON. Can we have a show of hands?

Chairman PIKE. Yes. All in favor of the amendment, raise their right hand.

Those opposed?

The amendment is agreed to.

We now have a quorum call going on in the House. The committee will stand in recess until 2 p.m. this afternoon.

[See pp. 2182-2188 for the committee's initial discussion of this recommendation. The recommendation, as amended is printed as "S" in H. Rept. 94-833, follows:]

S. INSPECTOR GENERAL FOR INTELLIGENCE

1. The select committee recommends the establishment of an Independent Office of the Inspector General for Intelligence, who shall have full authority to investigate any possible or potential misconduct on the part of the various intelligence agencies or the personnel therein. The IGI shall be appointed by the President, with the approval of the Senate, for a term of 10 years and shall not be permitted to succeed himself. The IGI shall have full access on demand to all records and personnel of the intelligence agencies for the purpose of pursuing his investigations. He shall make an annual report to the Congress of his activities and make such additional reports to the intelligence committees or other appropriate oversight committees as he may choose or the committees may direct.

[Whereupon, at 12:05 p.m., the committee recessed until 2 p.m. this afternoon.]

AFTERNOON SESSION

Chairman PIKE. The committee will come to order.

Mr. Dellums is recognized.

Mr. DELLUMS. Thank you, Mr. Chairman. I have one additional amendment.

The select committee recommends that the Central Intelligence Agency be split into two agencies: one, the Intelligence Research and Analysis Agency and the second agency to conduct espionage and covert action functions.

It is further recommended that both the Intelligence Research and Analysis Agency and the Espionage and Covert Action Agency be independent agencies, subject to all controls recommended by this committee.

Chairman PIKE. The gentleman is recognized for 5 minutes in support of the amendment.

Mr. DELLUMS. Thank you.

As you recall, I offered an amendment that would have made a recommendation to the Congress that all covert action be outlawed. That amendment lost overwhelmingly, and as I understand the sentiment of the House, I would assume such a recommendation would not be supported in the House.

Therefore, if we are to have covert action, I think it should be split into two agencies for the following reasons: The nature of covert actions and espionage detract from the main responsibility of the CIA, which is to serve as an independent, central research and analysis facility. Since active involvement in clandestine operation can force analysis to be silenced by policy needs, such present functions of the CIA should be divided into a separate espionage—that is, a human intelligence clandestine operation agency be formed.

In his testimony, Dr. Ray Cline called for a central research and analysis facility to provide objective assessments of the national security data to Congress and the National Security Council. I agree. I believe this ought to be a separate organization not linked to any policymaker other than the President, and as free from other institutional bias as possible.

Actually, research and analysis are the original functions of the CIA and are functions that the Central Intelligence Agency apparently—by virtue of our assessment here in this committee—does that better than any other agency in the intelligence community; and its research and analysis function, it seems to me, should be facilitated.

For those reasons, Mr. Chairman, I offer this amendment to make them two agencies so we get around the issue of policy bias that affects the research and analysis capability of the Central Intelligence Agency, and I think they should be two separate, independent organizations, subject to the constraints and recommendations we made earlier.

I yield to my distinguished colleague from Wisconsin.

Mr. ASPIN. I think the amendment the gentleman is offering is a very, very good amendment, and I think it is terribly, terribly important. Let me give one other reason than the gentleman gave for doing it.

We have had problems, and it has come out in the hearings that we have had, and there have been problems of the CIA in recruiting good people from the academic community to do analysis, analysts who would rather not be associated with any organization which is involved with dirty tricks. And if we separate the dirty tricks or the covert operations from the analysis, I think we would have a much better chance of attracting, first, good, capable people to the analysis branch, and, second, allowing the analysis branch to engage in contracts and dialog with the academic community throughout the country—which is so important—because they would not then be involved on the covert side.

I think it is a very important amendment.

Chairman PIKE. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, I would agree that we should try to build up the analysis branch, and I think that our committee hearings will represent the need for greater emphasis on analysis and that we

do have a very widespread and comprehensive intelligence gathering capability, but the objection I find is that it is impossible, in my opinion, to separate intelligence gathering from other types of so-called covert action activities.

As a matter of fact, a lot of the intelligence gathering is, itself, covert, and the literature I have read indicates that covert intelligence activities are commonplace, and they have to be continued. I just don't think you can separate these two. I think the line is too fine.

I think that they overlap and, you know, when you talk about dirty tricks, we are all, I guess, against dirty tricks, and we are all against offensive kinds of covert actions, and we are all against assassinations in peacetime, and that sort of thing, but I think to characterize covert activities in those terms is completely unjustified. I think it is inconsistent with the nature of covert activities generally, and I think overall to make a judgment on the basis of that kind of charge would not be warranted and would be extremely undesirable. So I think we should not adopt the gentleman's recommendation.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Let me respond to the gentleman's comment because I think it is important. It is constantly thrown up by people who oppose the division of the CIA into the covert operation and the analysis operation, that you cannot separate covert operations from covert intelligence collection, and that is true.

But what the gentleman's amendment is doing is putting covert intelligence collection and covert operations together in one department. You cannot separate them, that is right, but that is not an argument against the gentleman's amendment because the amendment puts covert operations and covert intelligence collection together in the one department.

Chairman PIKE. The question is on the amendment of the gentleman from California. All those in favor of the amendment, signify by saying aye.

Contrary, no.

The noes appear to have it, and the amendment is not agreed to.

The question is on all of the draft recommendations, as amended. I would hope that somebody would move their adoption.

Mr. McCLORY. Mr. Chairman, I didn't want to move their adoption, but I wanted to make a statement before the motion is made.

Chairman PIKE. I was sure you were going to move their adoption.

The gentleman is recognized for 5 minutes.

Mr. McCLORY. As the chairman knows, a number of the recommendations are recommendations that I have proposed, and I have supported. On the other hand, there are a number of recommendations which I have opposed and I have offered alternative recommendations.

In approaching this subject, I want to indicate that in voting against the committee recommendations I don't want the vote to be interpreted as being against all of the recommendations. I am not going to delineate the ones I am not supporting.

I will, however, have included in this second report the alternate recommendations that I think should be adopted as sound reforms in the intelligence community as a result of our hearings.

Mr. TREEN. Would the gentleman yield?

Mr. McCLORY. I would be happy to.

Mr. TREEN. I appreciate the gentleman yielding.

I wanted to state for the record that I will be casting a vote against the recommendations and not because I am opposed to all of them. Indeed, I think that many of them are excellent, but because I do oppose some, it is the only vote I can make to register my dissent to those I oppose. I will file recommendations to reflect my different views.

I thank the gentleman for yielding.

Chairman PIKE. The Chair is going to make a small statement of his own. We are down to the point at which either we will have recommendations or we will not have recommendations. Mr. McClory would vote for the recommendations if they included all of Mr. McClory's recommendations. Mr. Treen would vote for the recommendations if they included all of Mr. Treen's recommendations.

I think all of us have some recommendations which we do not wholly like. There are some things in here which I do not wholly like. There are some things not in here which I would like to have seen.

I would simply say to the members of the committee, now is the moment at which we either have recommendations or do not have recommendations. I would hope that this committee might wind up with some recommendations.

Mr. MURPHY. Mr. Chairman.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Mr. Chairman, I move that we adopt all the recommendations voted favorably by the majority of this committee.

Chairman PIKE. The question is on the motion of Mr. Murphy and I would suggest on this we have a rollcall vote.

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you. Briefly, Mr. Chairman, I intend to support the final report with respect to recommendations. I have misgivings with respect to several matters. One includes the treatment of Members of Congress on the whole issue of unauthorized disclosure of information, and the exclusive nature of the authority of the committee we established on covert operations which may very well conflict with the reporting procedure to the six committees. There are some recommendations that in my estimation are not as aggressive or clearly stated as I think they should be.

I would also agree with you that there are areas that perhaps we could have covered, but on balance I think the committee has tried very desperately and I think it important that the Congress of the United States know that we have worked hard. While this report does not reflect the magnitude of my own feelings across-the-board with respect to the investigation, I do think it is important for the House to come to grips with the recommendations we have made.

This is the only way the House is going to entertain them, address themselves to the issues, so that passing the resolution that brought this committee into existence was not just a stage production, but an important concern with respect to alleviating the abuses and atrocities that we certainly have uncovered as a result of our investigation. There is no other way to do it except to see to it that Congress does move on the recommendations.

I think in many areas the recommendations are fine and strong. In some areas they are not. I don't in any way wish my vote to communicate the notion that on each single recommendation that I am in total agreement; but I think our responsibility here is to deliver a set of recommendations, and then let the House of Representatives reflect to the American people whether they are serious or not with respect to addressing themselves to the abuses. So I am prepared, Mr. Chairman, to vote in favor of the final recommendations.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Stanton.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Chairman PIKE. No, by proxy.

The CLERK. Mr. Hayes.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. Lehman.

Chairman PIKE. Aye, by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. TREEN. No.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike.

Chairman PIKE. Aye.

By a vote of 9 ayes to 4 nays the recommendations are approved. They will be filed with the Clerk of the House tomorrow. Any member wishing to have additional recommendations will get them to the office of the Select Committee on Intelligence by the close of business tomorrow.

These proceedings are closed.

Mr. TREEN. Will you withhold the closing of the proceedings? You didn't pause for a period there.

When you say "close of business," Mr. Chairman, I understand that the schedule for tomorrow on the floor has been eliminated down to virtually nothing, and we probably will be recessing or adjourning at about 12:15. Since we have under the rules until midnight to file, I wonder if the Chair would entertain the thought of giving us until midafternoon—say, 3 o'clock.

Chairman PIKE. Without objection.

Mr. TREEN. I thank the Chair.

Mr. DELLUMS. Mr. Chairman, I would like to make a few comments.

First of all, as one person of the committee who initially didn't vote in favor of hiring Mr. Searle Field, I would like very much to reconsider that vote. I admire him; I think he has courage; I think he is an extremely bright person, and beyond that, I think he is a young man of extraordinary competence and integrity, and I admire people who respond in that fashion.

All of the other staff people have been bright and, for the most part, very young people—one or two not quite so young—but I think they have been very diligent and hardworking, and I think they have gone through the frustration and pain and agony we have all gone through; and I think over all, they have been an extraordinarily good group of people.

And I would say to you, Mr. Chairman, you have been characterized as opinionated and cantankerous——

Chairman PIKE. Testy.

Mr. TREEN. Feisty.

Mr. DELLUMS. I would agree.

But I think over the several months we have worked together, you and I have been able to understand each other, and I have admired your leadership. I haven't always agreed on some of the tactical and strategic moves the committee has made, but I think under your leadership we have been able to do a job. It hasn't been the most Earth-shattering job in the world, but given the circumstances, problems, and lack of support, I think we did our best, and I think you did your best in a very difficult situation.

With respect to all of my colleagues, including the minority person, we haven't always agreed. I thought Mr. Kasten and I and Mr. Johnson were going to be what they call the "Bongos" of the committee, and we started off together. We didn't end up together, but I think our exchanges and our challenges have been real, and they have been honest, and they have been aboveboard. There has been, for the most part, no pettiness on this committee.

For me personally, it has been both the most exciting and most frightening experiences in my entire adult life. It has been a very intense experience.

It has been exciting because it is the first time I felt I was able to grab hold of something in this large institution known as Congress, where it is very easy to lose one's identity, and see that we could function on this committee.

It has been frightening because many of the things we have learned are very, very unsettling to me, and I am still at this moment not sure whether the Congress is willing to come to grips with the issues. But I think the 13 of us have tried very hard, and we have come from a variety of different political views, different values, and I walk away from this assignment very pleased that I was able to function here, and this may be my greatest moment in Congress.

I am very proud to have served on this committee. People now look at me strangely because I have thoughts and ideas and information that very few people have. I am not sure how valuable all of it is except that I hope what we have done will have some impact on the course of history in this country. And I hope that our report and our recommendations will not be used as a petty effort to divide us, but

as an important effort to challenge the great necessity that has to be in us if we are going to overcome the kind of problems we have seen.

I hope that our report challenges us to the great debate and not a debacle, because I think the issues we tried to confront are real.

I thank all of you for the opportunity of having served with you. I don't know if any of us will end up on the other committee. That may be good or not so good.

Chairman PIKE. What other committee?

Mr. DELLUMS. If it ever comes through. But I thank you, Mr. Chairman, Mr. McClory, Mr. Treen, Mr. Kasten, Mr. Johnson, and all my colleagues on this side. For me it has been a very rewarding experience, and I thank you very much.

Mr. McCLORY. Mr. Chairman, would you yield to me for a brief comment?

I certainly don't want to make a statement that would not be entirely sincere, and at the same time I do want to pay tribute to the committee members and the committee staff for demonstrating hard work, and I want to be sure that I attribute the right motives—the highest motives—to each of the individuals who have engaged in this extremely difficult work.

I think we have made a substantial contribution toward understanding the intelligence community, toward understanding the need for responsible action on the part of the House of Representatives of the Congress, toward improvement of the intelligence community, and I feel that the contributions made on both sides are going to be very useful.

I have the feeling that while the work we have done has been important, the job ahead is going to be the most important, and I think the challenge now is to the Congress, itself, to measure up to appropriate action with respect to re-establishing or restructuring the strongest and best intelligence community in the world. I hope that the intelligence community, the executive branch, and the Congress, itself, shall measure up to a full responsibility with respect to intelligence activities, and I do commend each of the members and the staff for the contributions that each has made.

Mr. TREEN. Would you yield?

Mr. McCLORY. Yes.

Mr. TREEN. I would like to associate myself with the remarks of Mr. McClory and with the spirit of the remarks of the gentleman from California, Mr. Dellums. It has been a distinct privilege for me to serve on this committee. I hope I have learned something; and I would like to particularly compliment the chairman of this committee, with whom I have differed considerably, on the fairness with which he has run this committee.

We disagreed on some basic ideas and procedures, but he was always fair in recognizing the members and in handling this committee in a very fair manner, and I appreciate that singularly.

Chairman PIKE. I have a very low threshold for this kind of stuff. Let's adjourn to another room where we can perhaps celebrate in a more fitting manner.

[Whereupon, at 2:55 p.m., the committee was adjourned.]