

WHETHER DISCLOSURE OF FUNDS FOR
THE INTELLIGENCE ACTIVITIES OF
THE UNITED STATES IS IN
THE PUBLIC INTEREST

A REPORT

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS

OF THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

(Made pursuant to S. Res. 400, 94th Congress, 2d session)



JUNE 16 (Legislative Day, MAY 18), 1977

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(Established by S. Res. 400, 94th Cong., 2d sess.)

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(II)

WHETHER DISCLOSURE OF FUNDS FOR THE INTELLIGENCE ACTIVITIES OF THE UNITED STATES IS IN THE PUBLIC INTEREST

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Mr. INOUE, from the Select Committee on Intelligence,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[Made pursuant to S. Res. 400, 94th Congress, 2d session]

I. INTRODUCTION

Pursuant to section 13(a) (8) of S. Res. 400 of the 94th Congress, 2d session, the Senate Select Committee has studied "the authorization of funds for the intelligence activities of the Government and whether disclosure of any of the amounts of such funds is in the public interest," and is hereby reporting to the Senate. On May 25, 1977, the Senate Select Committee on Intelligence voted 9-8 to recommend to the Senate that the Senate disclose the aggregate amount of funds appropriated for national foreign intelligence activities for fiscal year 1978. This report traces the history of that decision and the reasons for the committee's decision.

II. BACKGROUND

In the late 1960's William Richardson sued the United States to obtain an account of funds made available to the Central Intelligence Agency. He based his claim on article I, section 9, clause 7 of the Constitution which reads, "No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

Mr. Richardson's suit was dismissed. A later suit by Mr. Richardson seeking similar information was dismissed on the grounds that Mr. Richardson lacked standing to sue. The United States Court of Ap-

peals for the Third Circuit, however, upheld his standing to sue; this decision was reversed by the United States Supreme Court in *U.S. v. Richardson*, 418 U.S. 166, (1974).

The *Richardson* case marked the first attempt to obtain by judicial means information on funds made available to, or expended by, U.S. intelligence agencies. The decision meant, in the absence of a congressional grant of standing to individuals to sue the government on this issue, that the federal courts would not reach the substantive issue of what disclosure, if any, might be required by article I, section 9, clause 7 of the Constitution.

The controversy over public disclosure of funds authorized, appropriated or expended by the Intelligence Community did not end with the *Richardson* decision. The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities¹ began, shortly after its creation, an analysis of the question based upon interviews and depositions of present and former Directors of Central Intelligence and other present and former high officials of the Executive Branch.² On the basis of its investigation the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities concluded that:

The budget procedures which presently govern the Central Intelligence Agency and other agencies of the Intelligence Community prevent most Members of Congress as well as the public from knowing how much money is spent by any of these agencies or even how much is spent on intelligence as a whole. In addition, most Members of Congress and the public are deceived about the appropriations and expenditures of other government agencies whose budgets are inflated to conceal funds for the intelligence community. The failure to provide this information to the public and to the Congress prevents either from effectively ordering priorities and violates Article I, Section 9, Clause 7. . . . *The Committee finds that publication of the aggregate figure for national intelligence would begin to satisfy the Constitutional requirement and would not damage the national security.* While substantial questions remain about the relationship between the Constitutional requirement and the national security, the Committee recommends the annual publication of the aggregate figure. The Committee also recommends that any successor Committee study the effects of publishing more detailed information on the budgets of the intelligence agencies.³ (italic added)

The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities also voted, 8 to 3, to disclose the aggregate figure expended by agencies of the intelligence community. After an appeal by George Bush, then Director of Central

¹ Established pursuant to Senate Resolution 21 of the 94th Congress, first session.

² Among those interviewed or deposed were: James Schlesinger, William Colby, Richard Helms, and John McCone, former Directors of Central Intelligence; and John Clarke, former Comptroller of the CIA.

³ Book I, Foreign and Military Intelligence, Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, April 26, 1976, p. 384.

Intelligence, and a letter from then President Ford citing his belief that the net effect of such disclosure could adversely affect our foreign intelligence efforts and therefore would not be in the public interest", Senator Charles McC. Mathias, who had voted with the majority for disclosure, moved to refer the issue to the full Senate on the grounds that the issue was of such importance that the full Senate should vote on the question. Several members of the Committee who had voted with the majority suggested that disclosure by the committee, without participation by the full Senate, might hinder the establishment of new oversight procedures for the Intelligence Community. Senator Mathias' motion to refer the issue to the Senate carried by a vote of 6 to 5.

After this vote, but before the Senate acted on this issue, the Senate passed Senate Resolution 400, 94th Congress, second session, establishing a new oversight committee with legislative jurisdiction over intelligence activities. This new committee, the Senate Select Committee on Intelligence, also was given jurisdiction over authorizations of funds for intelligence activities.

Among the new committee's responsibilities was to conduct a number of studies and then report back to the Senate. One study mandated by Senate Resolution 400 was a study "with respect to . . . the authorization of funds for the intelligence activities of the Government and whether disclosure of any of the amounts of such funds is in the public interest."

Given the charge to the newly established Senate Select Committee on Intelligence to study disclosure issue, Senator Mike Mansfield, then majority leader, and Senator Hugh Scott, then minority leader, decided, with the concurrence of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, that the disclosure issue would not be brought to the floor of the Senate during the 94th Congress. Instead the Senate would await the results of the study by the new select committee.

III. SCOPE OF THE REVIEW OF THE ISSUE BY THE SENATE SELECT COMMITTEE ON INTELLIGENCE

Pursuant to its mandate under Senate Resolution 400, the Select Committee on Intelligence conducted a thorough review of whether disclosure of funds authorized for intelligence activities would be in the public interest. In addition to staff interviews and testimony in executive session, the Committee held two days of public hearings, on April 27 and 28, 1977, to examine the various issues related to the question of public disclosure. Witnesses at these hearings included the present and former Directors of Central Intelligence, Members of Congress, former high officials of the Intelligence Community, constitutional scholars and representatives of public interest groups.⁴

⁴ Those who testified included: Admiral Stansfield Turner, Director of Central Intelligence; William Colby and Richard Helms, former Directors of Central Intelligence; Senator William Proxmire; Congressman Michael J. Harrington; Professor Gerhard Casper, University of Chicago; Professor Ralph S. Spitzer, University of Pennsylvania Law School; Professor Thomas I. Emerson, Yale Law School; Gen. Daniel Graham, former Director of the Defense Intelligence Agency; Robin Berman Schwartzman, Freed, Frank, Harris, Shriver and Jacobson; Ray Cline, Executive Director, Georgetown Center for Strategic and International Studies; David Phillips, Association of Former Intelligence Officers; John Shattuck, American Civil Liberties Union; Morton Halperin, Director, Project on National Securities and Civil Liberties; John Warner, Association of Former Intelligence Officers.

The select committee's examination focused primarily on the issue of disclosure of one number—an aggregate figure. In the absence of any previous disclosure, the select committee believed that the appropriate starting point for its study would be the recommendation of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, which called for the publication of an aggregate figure.

The select committee met in executive session on May 25, 1977 to discuss the issue of disclosure. After a lengthy debate, the committee voted in favor of a resolution by Senator Inouye, Chairman of the committee, which recommended that the Senate disclose the aggregate amount appropriated for national foreign intelligence activities for fiscal year 1978. Senators Inouye, Bayh, Stevenson, Huddleston, Biden, Morgan, Hart, Case, and Mathias voted in favor of the resolution. Senators Hathaway, Moynihan, Goldwater, Garn, Pearson, Lugar, Chafee and Wallop voted in opposition.

IV. THE ISSUES INVOLVED IN CONSIDERATION OF BUDGET DISCLOSURE

As a result of its investigation the committee determined that the question of whether disclosure would be in the public interest involved four principal issues:

(a) *Whether Article I, Section 9, Clause 7 of the Constitution, which requires that a "regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time," requires governmental disclosure of an aggregate figure for intelligence activities.*

The federal courts have not determined what disclosure is required by article I, section 9, clause 7. No such determination can take place in the absence of a congressional grant of standing to litigate the issue, witnesses before the select committee testified that such a grant would be undesirable.⁵ But even in the absence of a judicial determination, there has been a considerable amount of legal commentary on the disclosure issue.

The legal commentators outside the government who have studied this clause and publicly commented have concluded that it requires disclosure of at least an aggregate figure for intelligence activities.⁶ At the select committee's hearings, two constitutional scholars⁷ testified that the Constitution requires disclosure of at least an aggregate figure. A third constitutional scholar⁸ stated that while the Constitution does not require disclosure of an aggregate amount, the clause requires an accounting which is both meaningful and accurate. An accounting so broad that it fails to convey useful information to the public, or so inaccurate as to be misleading because it contains funds for unconnected activities, would not meet the constitutional requirements.

⁵ Witnesses before the select committee noted that the legislative branch may well be better situated to make a decision about disclosure than the judicial branch.

⁶ "The CIA's Secret Funding and the Constitution", 84 *Yale Law Journal*, 608 (1975), "Fiscal Oversight of the Central Intelligence Agency: Can Accountability and Confidentiality Co-exist?", 7 *New York University Journal of International Law and Politics* 493 (1974) and "Cloak and Ledger: Is CIA Funding Constitutional?", 2 *Hastings Constitutional Law Quarterly* 717 (1975).

⁷ Thomas I. Emerson, Professor of Law, Yale Law School and Ralph Spritzer, Professor of Law, University of Pennsylvania.

⁸ Prof. Gerhard Casper, Professor of Law, University of Chicago.

The current and former General Counsels of the Central Intelligence Agency as well as former Director of Central Intelligence William Colby testified that the Constitution does not require public disclosure of even an aggregate figure. They argued that Congress has plenary power in interpreting the requirements of this constitutional provision and therefore can constitutionally withhold this figure from the public.⁹ Even opponents of disclosure recognized, however, that this congressional power was subject to limits. Congress could not appropriate, for example, all funds for the operations of the U.S. government to the Office of Management and Budget, and report, in a manner consistent with the Constitution, that all expenditures were made by that office.

Another argument raised in opposition to disclosure and in support of the constitutionality of the present practice was that Congress and the executive branch, through their actions since the republic's earliest days, have established the principle of secrecy in funding certain activities. For example, the Secretary of State has, for almost 200 years, been appropriated "confidential" funds for the conduct of foreign negotiations.¹⁰ Yet such secrecy has not been extended to broad categories of activities such as "intelligence activities" for long periods of time. Moreover these confidential funds have been specifically appropriated and their amounts have been disclosed to the public; they have consisted of only a small percentage of the funds appropriated to the concerned departments and agencies. These practices contrast sharply with the budgetary practices applied to intelligence activities. Funds for those activities are concealed in other appropriations and their amounts have never been officially disclosed.

Those who interpret the Constitution as requiring disclosure point to the language of the clause which requires a "regular" statement and account—not one which conceals or misleads—of "all public Money", which would necessarily include funds for intelligence activities. They note that the Constitution provides explicitly for secrecy in the congressional journals, but no such exception is included in the publication requirement of article I, section 9, clause 7. Proponents of disclosure therefore have concluded that, in the absence of clear evidence of damage to the national security resulting from disclosure, disclosure of at least an aggregate figure is required.

Subsequent to the public hearings, the select committee discussed the issue of public disclosure with the President, the Vice President, and the Attorney General. At the committee's request, the President asked the Attorney General to examine the constitutional issue and provide a legal opinion as to whether the Constitution requires public disclosure of funds authorized, appropriated, or expended for intelli-

⁹ Conversely they acknowledged, as did all the witnesses who appeared before the select committee, that the Congress was empowered to disclose the figure.

¹⁰ By the Act of February 9, 1793, Congress provided "that in all cases, where any sum or sums of money have issued, or shall hereafter issue, from the treasury, for the purposes of intercourse or treaty, the President shall be, and he hereby is authorized to cause the same to be duly settled annually with the accounting officers of the Treasury in the manner following, that is to say; by causing the same to be accounted for, specifically in all instances wherein the expenditures thereof may, in his judgment be made public; and by making a certificate or certificates, or causing the Secretary of State to make a certificate or certificates of the amount of such expenditures as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended." Act of Feb. 9, 1793, ch. 4, § 2, 1 Stat. 300, codified as 31 U.S.C. § 107 (1970).

gence activities. By letter dated May 23, 1977 the President advised the committee as follows:

The Attorney General advises that the Constitution does not require public disclosure of the aggregate authorization or appropriation figure, nor does it require publication of an account of the expenditures of the intelligence agencies, individually or as a whole. However, Congress in its discretion can decide as a matter of policy to make public any of these figures.

Regrettably, the committee was not provided with any further basis for this conclusion.

While there is disagreement about whether article I, section 9, clause 7, requires disclosure of any particular figure opponents of disclosure would appear to have a heavy burden to justify failure to disclose in light of the presumption for disclosure which the clause creates. As Senator Bayh noted.

Where the Constitution is silent we have greater leeway to choose a proper course of action. But where the Constitution imposes a specific duty, then we must make every possible effort to perform it.

In other words, if there are to be secret expenditures, the secrecy must be justified on the grounds of compelling necessity and not just convenience or utility. The constitutionality of our action may depend on whether we seriously consider alternatives which would, without endangering national security, fully satisfy one of the fundamental principles of free government—the peoples' right to know.

(b) Whether or not public disclosure is required by the Constitution, would disclosure benefit the public?

A number of witnesses who appeared before the Committee, including Admiral Turner, the Director of Central Intelligence, testified that disclosure would be in the public interest. While acknowledging that the amount of information made available by disclosure of an aggregate figure would be limited, Admiral Turner noted that disclosure would help the public "put into perspective the intelligence activity of their country." It would allow the American public to make rough judgments about the relative priorities of their government as seen in governmental expenditures, eliminate harmful speculation about amount of money used for intelligence activities, and help to restore public confidence in the legitimacy of such activities. Such disclosure would also eliminate misconceptions about the uses of funds appropriated to the Department of Defense. Finally, as Senator Proxmire told the select committee, disclosure would increase the likelihood of a more efficient government. Public criticism leading to improvements can not take place in a vacuum; such constructive criticism requires access to information.

Opponents of disclosure of an aggregate figure have argued that such disclosure would provide little benefit to the public. Without detailed knowledge of expenditures the public would not be in any better position than at present to make informed judgments on governmental spending for intelligence.

This argument fails for several reasons. On a practical basis it ignores the fact that the public will know much more than they do now. Now they know nothing. If there were to be disclosure, the public would, for example, be able to weigh spending for intelligence against expenditures for health, education, or a particular weapon system.

But more importantly, in placing the burden of proof on proponents of disclosure, the argument reverses a cardinal assumption of a democratic society—that the public has a right to all information on the activities of its government except information the disclosure of which would be damaging to individuals or to the society. In a society based on the consent of the governed, the burden of proof must be on those who oppose disclosure. They must prove, not that disclosure of the information would lack utility, but rather that disclosure of the information would clearly be damaging. The Director of Central Intelligence has weighed those arguments and found that the gains resulting from disclosure outweigh the risks.

Opponents of disclosure also argued that no other country in the world discloses its intelligence budget. Yet the United States informs its electorate, in great detail, of expenditures for sensitive activities such as defense; publishing an aggregate figure for intelligence activities on the basis of constitutional and policy arguments would be a reflection of the qualities that distinguish our democracy from all other nations.

Opponents of disclosure also argued that any public interest in disclosure is satisfied by congressional oversight of intelligence expenditures. While budgetary oversight has increased dramatically, congressional oversight is not a complete substitute for public participation. Congress and the Executive may secretly agree on intelligence expenditures, but the public has a right to know as much as possible about such decisions consistent with national security interests. Only if the public has such knowledge can it judge how the executive branch and the Congress utilize funds and oversee intelligence activities.

(c) *Even if disclosure would assist the public, would it be so damaging to the national security as to require continued secrecy in this area?*

If disclosure of an aggregate figure would clearly damage the national security, the select committee would not favor it. Because of the possibility of such damage, the Senate select committee conducted a detailed review of the possible effects on the national security of such disclosure.

No witness before either the Senate select committee or its predecessor testified that the disclosure of an aggregate figure being recommended by the select committee would damage the national security. Those who argued against disclosure argued that damage to the national security might result from information gleaned from year-to-year comparisons or if aggregate disclosure led to more detailed disclosure.

Opponents of disclosure based their concern on several arguments. One argument was that changes in the aggregate figure, over time, would allow other countries to gain important insights into the intelligence operations of the United States. Most of the witnesses appearing before the committee rejected this theory. According to these

witnesses changes in the aggregate figure over time would not reveal trends as there are simply too many variables involved to be able to determine the cause of any changes.

A variation of this argument against disclosure is based on what might be called the "conspicuous bump" theory. This argument assumes that careful analysis of changes in the aggregate figure would reveal "bumps" caused by the introduction of new and significant programs. Former DCI Colby, for example, argued that the introduction of the U-2 caused such a bump in the CIA's budget. This bump, if the CIA budget had been public, might have alerted the Soviet Union, enabling it to prepare countermeasures.

This "conspicuous bump" argument runs counter to testimony by former Director of Central Intelligence James Schlesinger, who described heavy governmental pressure to control spending which reduces the likelihood of significant increases. Moreover, the committee's examination has been centered on disclosure of the much larger Intelligence Community budget which is less susceptible to "bumps" than the smaller budget of the CIA. Admiral Turner testified, in fact, that there have been no bumps in the aggregate figure for the Intelligence Community during the last decade. Finally the "conspicuous bump" argument assumes that a potential adversary could determine the precise cause of a bump when confronted with any possible explanations.¹²

While admitting that one-time disclosure of an aggregate figure would not be damaging, opponents of disclosure expressed concern that disclosure would result in irresistible demands for more detailed information, disclosure of which *would* be damaging. An example of such pressure cited by former DCI Colby was the ever increasing amount of information which has been made public about the work of the Atomic Energy Commission.

There was no evidence, however, that such disclosure has proved harmful to the national security. Moreover, pressure for information is the mark of a healthy democracy.

Director of Central Intelligence Turner told the select committee, in response to questions about this "slippery slope" argument, "I think we can hold the line at one figure almost as well as we can hold it at zero figures." Indeed if there is pressure which is to be resisted, such resistance may be easier if the disclosure practices do not appear to fly in the face of the Constitution. And Congress and the executive branch can reevaluate the impact of disclosure and draw an appropriate line based on experience with the disclosure recommended by the select committee.

The select committee's view on the impact of disclosure was based, in part, on the views of the President. The President raised no objection to disclosure on national security grounds and had authorized Director of Central Intelligence Turner to disclose the aggregate figure. It was decided, however, that the select committee should carefully study the possible consequences, as it has done, before such disclosure took place.

(d) If disclosure is in the public interest and would have little or no impact on the national security, what figure should be disclosed?

¹² Even if there were bumps in the future, Admiral Turner told the Committee. "If it really were a world crisis of some sort, I think the public might be reassured to see that we were responding and would feel the Congress was in fact responding appropriately" by increasing appropriations, causing such bumps.

If an aggregate figure were to be disclosed it could be the aggregate amount authorized for, appropriated to, or expended by the Intelligence Community. Article 1, section 9, clause 7 of the Constitution refers to appropriations, receipts and expenditures; the language of Senate Resolution 400 mandating the study by the Senate select committee focuses on funds authorized for intelligence activities.

Pursuant to sec. 3(a) (4) of Senate Resolution 400, the select committee conducted an intensive review of funds authorized for all intelligence activities. If the Senate chose to disclose the aggregate amount authorized for the intelligence community it would be disclosing a figure which would most closely reflect the investigation and deliberations of the Senate committee charged with substantive responsibility for overseeing intelligence activities. But the authorization figure does not represent the funds finally made available to the intelligence community. The sum appropriated reflects final action by the Congress. A decision by the Senate to disclose the aggregate amount appropriated would prevent the unintentional disclosure of budget details which might result if an authorization figure were disclosed and information were later to surface during the appropriations process.

V. CONCLUSION

The committee's decision to recommend to the Senate the disclosure of the aggregate amount appropriated in fiscal 1978 for national foreign intelligence activities was reached after extensive deliberation. The committee carefully examined the arguments in favor of disclosure and thoroughly investigated the claim that disclosure of this figure would be damaging to the national security. The committee based its decision on the following conclusions:

1. While the courts have not defined the constitutional requirements, the intent underlying article I, section 9, clause 7 of the Constitution—that as much information about appropriations and expenditures should be made available to the public as is possible consistent with interests such as the protection of the national security—must be observed. Therefore, even if the Constitution does not specifically require such disclosure, such disclosure should take place in the absence of convincing evidence that it would damage the national security.

2. Disclosure of the aggregate amount appropriated for national foreign intelligence activities would serve a number of public interests. The public would be able to weigh the Government's priorities as seen in its spending, and should have increased confidence in the operations, and the legitimacy of the intelligence community. Moreover, if such a figure were disclosed, the public would be able to serve as a check on both the executive branch and the Congress, and should therefore have increased confidence in the mechanisms for oversight of intelligence activities.

3. The committee has concluded that there is little or no risk to the national security posed by such disclosure. The committee was influenced in this by the President's decision not to object to disclosure on national security grounds and by his willingness to disclose the figure. No witness suggested that this one-time disclosure of funds appropriated for intelligence activities would be damaging to the na-

tional security. Those who had the burden of demonstrating a damage to national security from such disclosure failed.

4. If the Senate votes to disclose the aggregate figure this year, the Senate will be able, in the coming year, to determine the effect of such disclosures. The Senate would thus be in a better position to weigh the need for and consequences of annual disclosure of an aggregate figure or other, more detailed, figures.

5. The committee agrees that there will be pressure for more detailed revelations, but the committee views such pressure as a sign of a healthy democracy. In analyzing whether or not to resist this pressure the committee believes that the experience gained from the recommended disclosure will be invaluable. If a decision is made not to disclose further information, disclosure can be resisted as successfully in the future as disclosure has been resisted in the past. Resistance to disclosure would also be easier if the disclosure practices more closely approximated the democratic model of providing information in the absence of clear evidence that disclosure would be damaging.

6. The figure to be disclosed should be the aggregate amount appropriated for fiscal year 1978 for national foreign intelligence activities. This figure should be chosen as it reflects final congressional action embodied in legislation.

ADDITIONAL VIEWS OF SENATOR
ADLAI E. STEVENSON

The Select Committee's report states that "many proponents of disclosure have concluded that, in the absence of clear evidence of damage to the national security resulting from disclosure, disclosure of at least an aggregate figure is required by the Constitution".

I have made no such conclusion and am a proponent of disclosure. If forced to an opinion which only the Supreme Court can in the last analysis make, I would think the Constitution did not require the Congress to wait for clear evidence of damage to the national security to justify non-disclosure.

I support disclosure of an aggregate, because I believe the national security is on balance served by such disclosure. It provides the public with little real information and no sound basis for comparing the validity of undescribed expenditures with other federal expenditures, as the report suggests. It will, however, end some of the uninformed speculation about intelligence outlays and satisfy a legitimate public demand for information about the uses to which tax dollars are put. Furthermore, disclosure of the aggregate figure will reassure large parts of the world now doubting U.S. resolve. It is evidence of a continuing U.S. commitment to national and collective security.

I believe it will be possible to hold the line at this point and that disclosure is not, as the report implies, a step toward disclosure of detailed budget figures. The committee decided to make this limited disclosure by a margin of one vote.

ADDITIONAL VIEWS OF SENATOR WALTER D. HUDDLESTON

I have voted to recommend that the Senate disclose on a one-time basis an aggregate figure representing congressional appropriations for fiscal 1978 for national foreign intelligence activities. That is the sum total of what I have done and it should not be interpreted as anything more than that.

Whether or not the Constitution requires the disclosure of such information, it is clear that the Constitution does not forbid disclosure. The decision, then, on whether to disclose becomes one of judgment. In reaching the judgment to disclose, I have relied not only upon my own analysis, based on 21½ years of study, but also upon the conclusions of individuals who are intimately involved in our nation's intelligence activities.

As the report points out, for example, Adm. Stansfield Turner, the Director of Central Intelligence, testified that disclosure would help the American people "put into perspective the intelligence activity of their country." There has been a great deal of speculation, some of it harmful, about the amount our government spends for intelligence activities. Rather than continue to seek to disguise such spending, I believe it should be acknowledged and the American people provided with some indication of the extent of our commitment to needed intelligence. The time is past when we deny such activities.

This is true for two significant reasons. First, this disclosure would *not* damage national security. The Senate Select Committee on Intelligence and its predecessor committee examined this issue; both committees recommended disclosure of an aggregate figure. During the course of these two reviews, I have heard no witness testify that disclosure such as this aggregate figure would damage the national security. Neither the President nor the Director of Central Intelligence has objected to this disclosure.

Second, disclosure could lead to a new understanding by the American people of the importance of the activities represented by the aggregate figure. These activities are vital to the security of each and every U.S. citizen. There is, of course, no doubt that questionable intelligence activities have been undertaken in the past. There is no doubt that intelligence activities can be improved and made more efficient. But, there is also no doubt that intelligence activities are essential to this nation and will grow even more important in an increasingly interdependent yet dangerous world.

Finally, I would emphasize that the figure to be released is an aggregate one. For some, this may be a starting point; for some it may be an experiment in determining how much information can be divulged. For me, it is the beginning and the end. I reject the idea that we can discuss openly the details of the intelligence budget. At some level of detail, disclosure would allow countries hostile to the United States—and hostile to the idea that their citizens should know about their government's activities—to frustrate our intelligence activities.

In an ideal world, full disclosure might be preferable. Unfortunately, we do not live in an ideal world. To operate as if we did would be to operate at our peril.

MINORITY VIEWS OF SENATORS CHAFEE, GARN, GOLD- WATER HATHAWAY, LUGAR, MOYNIHAN, PEARSON, AND WALLOP

The committee has recommended, by a 9-8 margin, that the Senate vote to publish the total amount of money appropriated for this country's intelligence operations. We urge the Senate to reject that advice as constituting an unnecessary risk to the security of our Nation.

Such a step would reverse two centuries of sound congressional practice. It would overturn a decision made by the Senate by a vote of 55-33 on this same subject just three years ago. And it could well constitute the first in a series of disclosures which would wholly undermine the effectiveness of our entire intelligence apparatus.

Neither this Nation nor any other country in the world has ever embarked upon this dangerous path. It is a course which is neither required under our Constitution nor consistent with sound common-sense. It would serve no useful public purpose and would undermine the confidence of our own people and that of our allies in our ability to function effectively in our own national defense.

Born in an area of revelations of abuse, this step is now offered in expiation of past sins. No restoration of credibility will be gained by the type of token atonement which the committee recommends. Confidence in our intelligence system requires that we act with prudence and with care, and accordingly we recommend that the Senate again vote against the type of disclosure which the committee has urged.

I. The risk

A. *Annual disclosure of the overall amount appropriated for national intelligence would benefit hostile intelligence services by enabling them to detect trends in our intelligence operations as the result of increases and decreases in the appropriation figure which will be reflected from year to year.* Combined with other information which might otherwise be known or available to our adversaries, such as personnel levels, pay scales, inflation rates, building costs, and known technological systems, trained analysts could isolate probable causes of increments or decreases in budget figures and thereby deduce this country's introduction of new systems or the retirement of old systems. Combined with other available data, the nature and purpose of a new system could well be surmised. As former DCI Richard Helms testified, "If (the Soviet Union) would just print one figure in *Pravda*, I would have found it enormously helpful."

Former DCI William Colby told the Committee that the level of risk involved in disclosing overall budget figures had been addressed by the intelligence community on several occasions. He recalled:

We looked into the trend lines of our expenditures over the years and saw the bulges that have appeared in it at certain times, and the drops that have appeared in it in certain times.

Some of these bulges clearly reflected the advent of some new technological effort or in some cases, some new political or even intelligence effort in various places in the world.

Mr. Colby has also provided the following graphic example of the danger involved:

[T]he development of the U-2 aircraft as an effective collection device would not have been possible if the CIA budget had been a matter of public knowledge. Our budget increased significantly during the development phase of that aircraft. The fact, if public, would have attracted attention. . . . If it had been supplemented by knowledge (available perhaps from technical magazines, industry rumor, or advanced espionage techniques) that funds were being committed to a major aircraft manufacturer and to a manufacturer of sophisticated mapping cameras, the correct conclusion would have been simple to draw. The U.S. manufacturers in question . . . would have become high priority intelligence targets . . . And I'm sure that the Soviets would have taken steps earlier to acquire a capability to destroy very-high-altitude aircraft. They did indeed take these steps, with eventual success, but only some time after the aircraft began operating over their territory—that is, once they had knowledge of a U.S. intelligence project.

The current Director of Central Intelligence, Adm. Stansfield Turner, was exceptionally candid with the committee on this subject. In informing the committee of the President's decision not to object to congressional disclosure of an overall budget figure, he gave his own professional assessment of the risk involved:

Question. But it does give people some indication.

Answer. Yes, sir. I have, of course, not said this is not without risk.

* * * * *

Question. Solely wearing your intelligence hat, not worrying about credibility in the Agency, would you feel more comfortable if the figure were not revealed, the gross figure?

Answer. Oh, yes. I mean, as I say, the natural inclination of every intelligence officer is to withhold as much information as is reasonable because there is a risk in every disclosure. . . .

In our judgment, the Senate should not take that risk.

B. Since disclosure of an intelligence appropriation figure will be meaningless without disclosure of what the money is being used for, there will be increased demands for additional budgetary information, and, in due course, more and more information about U.S. intelligence activities will be revealed. While such a revelation will be very useful to an adversary possessing a sophisticated analytic capability, it will be meaningless to even generally well-informed members of the public. Consequently, we doubt that the Congress will be able to hold the line with disclosure of only a single aggregate figure. Members of the public who urge that an overall figure should be disclosed are no doubt

sincerely concerned about the breadth, scope and nature of U.S. intelligence activities. In our judgment, their concerns will not be alleviated by the publication of a single overall figure and they will be quick to insist that they will only be satisfied once they have seen what the money is actually being used for. It seems clear, however, that oversight in such a sensitive area cannot be responsibly conducted by two hundred and ten million Americans. We are concerned that once we start down the road of publishing intelligence appropriation figures, we will be faced with irresistible demands from those who insist upon knowing more. Such additional disclosures would do irreparable damage to our intelligence operations.

History has demonstrated how disclosure of one figure invariably leads to revelation of more. Former DCI Colby recalled:

In 1947 the Atomic Energy Commission account for our then-secret atomic weapons program was felt to be so sensitive that only a one-line item was placed in the budget that year to account for all such weapons expenditures. In theory many of these expenditures are still secret, but that one-line item by 1974 had expanded to 15 pages of detailed explanation of the Atomic Energy Commission's weapons programs. I could only foresee a similar erosion of the secrecy which will be necessary to successful intelligence operations in the future.

We urge the Senate not to take the first step down a similar path.

II. The Constitution and public policy

A. *The Constitution does not require that the appropriated figure be published each year.* The relevant constitutional provision is the so-called Statements and Accounts clause (article 1, section 9, clause 7) which provides:

No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

It should first be noted that if the above clause requires the publication of *any* figures at all (and we do not believe it does), the figures would be those which are specifically identified in the above clause, i.e., the "Receipts and Expenditures." That being so, the issue would not be one for the Congress to address in the first instance since those figures are peculiarly available to the executive branch. It seems to us that there is no way in which the above clause may be read as requiring publication of the annually *appropriated* amount as the majority of this Committee has recommended.

Moreover, in our judgment, the Constitution does not require the annual publication of *any* national intelligence budget figure. The records of the Federal Convention reflect that the final version of the "Statements and Accounts" clause, quoted above, was not contained in the initial draft. The original version of the clause would actually have required an *annual* accounting of public expenditures but the clause was amended by James Madison to require such reporting only "from time to time", in order to "leave enough to the discretion of the Legislature." Similar necessary discretion was also clearly recognized

by the founding fathers in their inclusion in the Constitution of a "Journal Secrecy" clause (article one, section 5, clause 3) which provides that:

Each House shall keep a Journal of its Proceedings, and from time to time publish the same excepting such parts as may in their judgment require secrecy.

Such discretion has been observed by the Congress for over two hundred years. The same discretion is required today.

The question of whether annual publication of a national intelligence appropriation figure is constitutionally required has never been resolved by the courts. In 1974, the Supreme Court, in *United States v. Richardson*, 418 U.S. 166, ruled that a taxpayer did not have "standing" in a mandamus action to even raise the question, thus precluding, perhaps for all time, a definitive judicial interpretation of the "Statements and Accounts" clause with respect to this subject. The Court did note that Congress could confer "standing to sue" if it wanted to, suggesting one possible course for the Senate to consider in connection with its forthcoming decision on how to handle this question.

Notwithstanding the President's decision "not to object" to congressional disclosure of the budget figure, Attorney General Bell has agreed that the Constitution does not require such disclosure. He concluded:

* * * the Constitution does not require public disclosure of the aggregate authorization or appropriation figure, nor does it require publication of an account of the expenditures of the intelligence agencies, individually or as a whole.

Constitutional scholars who testified during the committee's hearings on this question disagreed as to precisely what the "Statements and Accounts" clause required with respect to intelligence budget figures. Moreover, their testimony dealt in broad terms with the question of disclosure, *qua* disclosure, and never specifically addressed the question of whether, even if some kind of disclosure were required, the figure to be disclosed should be the authorization level, or the appropriation level, or the amount actually expended.

B. *Nor should the intelligence budget figure be disclosed as a matter of public policy.* The Attorney General noted in his opinion that even though the Constitution does not require disclosure, "Congress in its discretion can decide as a matter of policy to make public any of these figures." We do not question that that is so. In other words, there is no constitutional prohibition *against* disclosure. Where the case of the disclosure advocates fails, however, is that they have demonstrated no compelling reason why the budget figure *should* be disclosed. What is gained by it? What facts will be learned which will assist the public with respect to any voice they wish to assert with respect to our intelligence operations?

In our view, this matter, simply put, involves "disclosure for the sake of the appearance of disclosure," since, as noted above, the overall figure will not tell the American public anything meaningful about the activities of the intelligence community. And where such a revelation might well result in damage to our intelligence services, it just seems not to be in accord with sound common sense.

We have heard no public outcry for disclosure of the amount appropriated for intelligence activities. There has been no evidence that such a revelation will result in a more meaningfully informed public, nor any insistence that knowledge of the figure would prevent any of the abuses or overreaching of the past. In short, we see absolutely no justification, compelling need, or even reasonable public interest in knowing the size of the intelligence budget—certainly no need or interest which would outweigh the potential risk involved.

Nor has there been even a claim that current congressional oversight of the intelligence community is not sufficient. At least fifty members of the Congress are now privy to some level of detail concerning intelligence operations. The number of congressional staff persons involved is at least double that figure. The intelligence community's budget has undergone a line-by-line analysis by this committee and votes have been taken with respect to specific intelligence operations. Some budgetary proposals have been rejected by the committee. Several committees are notified in advance of every contemplated covert action. And a detailed report on all the intelligence agencies' activities and plans, as well as a detailed accounting of the committee's recommendations for authorized amounts, have been made available to every Member of the Senate. We believe that this constitutes an abundance of responsible oversight, and that absolutely nothing will be gained by revealing the amount of money appropriated. To do so, in our judgment, would be a grave mistake, fraught with unnecessary risk, and not in the national interest.

As a matter of public policy, the Senate should again vote to maintain the security of the funding of intelligence operations. For that reason we have dissented from the committee's report.

ADDITIONAL VIEWS OF SENATOR WALLOP

The figures the committee seeks to release are a cruel hoax: a hoax designed to appease a public which is not restless. That public, having discovered the extent of the hoax and the inherent deception of the figures, will hold us accountable either by seeking more information or, more appropriately, by regarding its legislative leaders as irresponsible.

The reason I say the figure is a hoax is that the committee position holds the figure meaningless to our enemies. If indeed the figure is meaningless to our enemies, it can only follow that it is meaningless to America. The public has made no demand to disclose that which would render our country vulnerable. Therefore, if the figure has meaning, and I believe it does, it has meaning to our enemies. If it has no meaning, it has provided nothing except an insincere act of public penance. It is indeed, a move of weakness, a betrayal of the trust bestowed upon us. It is my feeling that the decision has been made, not to satisfy Americans, but to satisfy demands of a press. **IT WILL NOT STOP HERE.** If it is not meaningful, more figures, more preciseness, more detail will be pursued. If it has meaning, we will needlessly harm the country we seek to protect, all in the name of satisfying the curiosity of the press lords of America.

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