

INTELLIGENCE ACTIVITIES—THE NATIONAL SECURITY AGENCY AND FOURTH AMENDMENT RIGHTS

WEDNESDAY, OCTOBER 29, 1975

U.S. SENATE,
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Tower, Mondale, Huddleston, Morgan, Hart of Colorado, Baker, Goldwater, Mathias and Schweiker.

Also present: William G. Miller, staff director; Frederick A. O. Schwarz, Jr., chief counsel; Curtis R. Smothers, counsel to the minority.

The CHAIRMAN. The hearing will please come to order.

This morning, the committee begins public hearings on the National Security Agency or, as it is more commonly known, the NSA. Actually, the Agency name is unknown to most Americans, either by its acronym or its full name. In contrast to the CIA, one has to search far and wide to find someone who has ever heard of the NSA. This is peculiar, because the National Security Agency is an immense installation. In its task of collecting intelligence by intercepting foreign communications, the NSA employs thousands of people and operates with an enormous budget. Its expansive computer facilities comprise some of the most complex and sophisticated electronic machinery in the world.

Just as the NSA is one of the largest and least known of the intelligence agencies, it is also the most reticent. While it sweeps in messages from around the world, it gives out precious little information about itself. Even the legal basis for the activities of NSA is different from other intelligence agencies. No statute establishes the NSA or defines the permissible scope of its responsibilities. Rather, Executive directives make up the sole "charter" for the Agency. Furthermore, these directives fail to define precisely what constitutes the "technical and intelligence information" which the NSA is authorized to collect. Since its establishment in 1952 as a part of the Defense Department, representatives of the NSA have never appeared before the Senate in a public hearing. Today we will bring the Agency from behind closed doors.

The committee has elected to hold public hearings on the NSA only after the most careful consideration. For 23 years this Agency has provided the President and the other intelligence services with communications intelligence vital to decisionmaking within our Govern-

ment councils. The value of its work to our national security has been and will continue to be inestimable. We are determined not to impair the excellent contributions made by the NSA to the defense of our country. To make sure this committee does not interfere with ongoing intelligence activities, we have had to be exceedingly careful, for the techniques of the NSA are of the most sensitive and fragile character. We have prepared ourselves exhaustively; we have circumscribed the area of inquiry to include only those which represent abuses of power; and we have planned the format for today's hearing with great care, so as not to venture beyond our stated objectives.

The delicate character of communications intelligence has convinced Congress in the past not to hold public hearings on NSA. While this committee shares the concern of earlier investigative committees, we occupy a different position than our predecessors. We are tasked, by Senate Resolution 21, to investigate "illegal, improper, or unethical activities" engaged in by intelligence agencies, and to decide on the "need for specific legislative authority to govern operations of * * * the National Security Agency." Never before has a committee of Congress been better prepared, instructed, and authorized to make an informed and judicious decision as to what in the affairs of NSA should remain classified and what may be examined in a public forum.

Our staff has conducted an intensive 5-month investigation of NSA, and has been provided access to required Agency files and personnel. NSA has been cooperative with the committee, and a relationship of mutual trust has been developed. Committee members have received several briefings in executive session on the activities of the Agency, including a week of testimony from the most knowledgeable individuals, in an effort to determine what might be made public without damaging its effectiveness. Among others, we have met with the Directors of the NSA and the CIA, as well as the Secretary of Defense. Finally, once the decision was made to hold public hearings on the NSA, the committee worked diligently with the Agency to draw legitimate boundaries for the public discussion that would preserve the technical secrets of NSA, and also allow a thorough airing of Agency practices affecting American citizens.

In short, the committee has proceeded cautiously. We are keenly aware of the sensitivity of the NSA, and wish to maintain its important role in our defense system. Still, we recognize our responsibility to the American people to conduct a thorough and objective investigation of each of the intelligence services. We would be derelict in our duties if we were to exempt NSA from public accountability. The committee must act with the highest sense of responsibility during its inquiry into the intelligence services. But it cannot sweep improper activities under the rug—at least not if we are to remain true to our oath to uphold the Constitution and the laws of the land.

We have a particular obligation to examine the NSA, in light of its tremendous potential for abuse. It has the capacity to monitor the private communications of American citizens without the use of a "bug" or "tap." The interception of international communications signals sent through the air is the job of NSA; and, thanks to modern technological developments, it does its job very well. The danger lies in the ability of the NSA to turn its awesome technology against domestic communications. Indeed, as our hearings into the Huston plan demon-

strated, a previous administration and a former NSA Director favored using this potential against certain U.S. citizens for domestic intelligence purposes. While the Huston plan was never fully put into effect, our investigation has revealed that the NSA had in fact been intentionally monitoring the overseas communications of certain U.S. citizens long before the Huston plan was proposed—and continued to do so after it was revoked. This incident illustrates how the NSA could be turned inward and used against our own people.

It has been the difficult task of the committee to find a way through the tangled webs of classification and the claims of national security—however valid they may be—to inform the American public of deficiencies in their intelligence services. It is not, of course, a task without risks, but it is the course we have set for ourselves. The discussions which will be held this morning are efforts to identify publicly certain activities undertaken by the NSA which are of questionable propriety and dubious legality.

General Allen, Director of the NSA, will provide for us today the background on these activities, and he will be questioned on their origins and objectives by the committee members. Like the CIA and the IRS, the NSA, too, had a “watch list” containing the names of U.S. citizens. This list will be of particular interest to us this morning, though we will take up another important subject as well. The dominant concern of this committee is the intrusion by the Federal Government into the inalienable rights guaranteed Americans by the Constitution. In previous hearings, we have seen how these rights have been violated by the intelligence services of the CIA, the FBI, and the IRS. As the present hearings will reveal, the NSA has not escaped the temptation to have its operations expanded into provinces protected by the law.

While the committee has found the work of the NSA on the whole to be of a high caliber and properly restrained and has tremendous respect for the professional caliber of the people who work there, the topics we shall explore today do illustrate excesses and suggest areas where legislative action is desirable. That is why we are here.

Senator Tower would like to make an opening statement.

Senator Tower. Thank you, Mr. Chairman.

Mr. Chairman, I shall be brief. From the very beginning, I have opposed the concept of public hearings on the activities of the NSA. That opposition continues, and I should like to briefly focus on the reasons I believe these open hearings represent a serious departure from our heretofore responsible and restrained course in the process of our investigation.

To begin with, this complex and sophisticated electronic capability is the most fragile weapon in our arsenal; and unfortunately, I cannot elaborate on that, because that would not be proper. Public inquiry on NSA, I believe, serves no legitimate legislative purpose, while exposing this vital element of our intelligence capability to unnecessary risk, a risk acknowledged in the chairman's own opening statement.

S. Res. 21 does authorize the NSA inquiry, and this has been done very thoroughly in closed session. But that same resolution also picks up a recurring theme of the floor debate upon the establishment of this committee. Specifically, we were admonished not to disclose out-

side the committee information which would adversely affect intelligence activities. In my view, the public pursuit of this matter does adversely affect our intelligence-gathering capability.

Even if the risks were minimal—and I do not believe they are minimal—the NSA is the wrong target. The real quarry is not largely mechanical response of military organizations to orders. The real issues of who told them to take actions now alleged to be questionable should be addressed to the policy level. It is more important to know why names were placed on a watch list than to know what the NSA did after being ordered to do so.

In summary, Mr. Chairman, I believe we have fallen prey to our own fascination with the technological advances of the computer age. We have invited a three-star military officer to come before us to explain the awesome technology and the potential abuses of a huge vacuum cleaner. We have done this despite the fact that our exhaustive investigation has established only two major abuses in 23 years, both of which have been terminated. And despite the obvious risks of this sensitive component of the Nation's intelligence-gathering capability, I am opposed to a procedure which creates an unnecessary risk of irreparable injury to the public's right to be secure: even if offered under the umbrella of the acknowledged presumption of a citizen's right to know.

In taking such risks, we both fail to advance the general legislative purpose and, I believe, transgress the clearly expressed concerns of the Senate requiring us to, if we err at all, err on the side of caution. It is my view that there comes a point when the people's right to know must of necessity be subordinated to the people's right to be secure, to the extent that a sophisticated and effective intelligence-gathering capability makes them secure.

I do not think that any of us here, for example, would want us to sacrifice our capability for verification of Soviet strategic weapons capability. And whether or not that capability was thought posture in a first-strike configuration, I cite it only as an example. Hence, my opposition to the conduct of these public hearings.

I am aware, Mr. Chairman, that through the democratic process, the committee has, by a majority vote, voted to go this route. But I felt a compulsion to state my own reasons for being in opposition.

The CHAIRMAN. Senator Tower, I appreciate your statement, and I might say that there are two levels of concern in the committee, and relating to the two different practices that are of questionable legality. And so, we have divided this hearing into two parts, proceeding with the portion that has least objection from members of the committee who feel as Senator Tower does. And then, we will have an opportunity to discuss further the second part, after General Allen has left the witness stand. And that is the procedure, that is satisfactory with you?

Senator TOWER. I accept the procedure, and it is totally satisfactory to me.

The CHAIRMAN. Very well.

Now, General Allen has come prepared with his statement, after which, General, there will be questions from the committee. I wish you would identify those who will be sitting with you; and if they

might respond to questions, then I would ask them to stand with you to take the oath. Would you first identify them, please?

General ALLEN. Yes. On my right is Mr. Benson Buffham, who is the Deputy Director of the National Security Agency. On my left is Mr. Roy Banner, who is the General Counsel of the National Security Agency.

Sir, I suppose—or at least for our initial purposes—that I be the only witness.

The CHAIRMAN. Very well. Then you alone may stand and take the oath. Do you solemnly swear that all of the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

General ALLEN. I do.

The CHAIRMAN. Thank you.

General. I know you have a prepared statement. Will you please proceed with it at this time.

TESTIMONY OF LT. GEN. LEW ALLEN, JR., DIRECTOR, NATIONAL SECURITY AGENCY, ACCOMPANIED BY BENSON BUFFHAM, DEPUTY DIRECTOR, NSA; AND ROY BANNER, GENERAL COUNSEL, NSA

General ALLEN. Mr. Chairman, members of the committee, I recognize the important responsibility this committee has to investigate the intelligence operations of the U.S. Government and to determine the need for improvement by legislative or other means. For several months, involving many thousands of man-hours, the National Security Agency has, I believe, cooperated with this committee to provide a thorough information base, including data whose continued secrecy is most important to our Nation.

We are now here to discuss in open session certain aspects of an important and hitherto secret operation of the U.S. Government. I recognize that the committee is deeply concerned that we protect sensitive and fragile sources of information. I appreciate the care which this committee and staff have exercised to protect the sensitive data we have provided.

I also understand that the committee intends to restrict this open discussion to certain specific activities and to avoid current foreign intelligence operations. It may not be possible to discuss all these activities completely without some risk of damage to continuing foreign intelligence capabilities. Therefore, I may request some aspects of our discussion be conducted in executive session where there can be opportunity to continue our full and frank disclosure to the committee of all the information you require. The committee may then develop an appropriate public statement. We are therefore here, sir, at your request, prepared to cooperate in bringing these matters before your committee.

In the interest of clarity and perspective, I shall first review the purpose of the National Security Agency and the authorities under which it operates. Next, I will describe the process by which requirements for information are levied on NSA by other Government agencies. And finally, I will give a more specific description of an operation conducted in 1967-73 by NSA in response to external requirements, which I will refer to as "the watch list activity." This ac-

tivity has been subject to an intensive review by this committee and staff in closed session.

Under the authority of the President, the Secretary of Defense has been delegated responsibility for both providing security of U.S. governmental communications and seeking intelligence from foreign electrical communications. Both functions are executed for the Secretary of Defense by the Director, National Security Agency, through a complex national system which includes the NSA as its nucleus. It is appropriate for the Secretary of Defense to have these executive agent responsibilities, since the great majority of the effort to accomplish both of these missions is applied to the support of the military aspects of the national security.

The communications security mission is directed at enhancing the security of U.S. Government communications whenever needed to protect those communications from exploitation by foreign governments—a complex undertaking in today's advanced electronic world.

The United States, as part of its effort to produce foreign intelligence, has intercepted foreign communications, analyzed, and in some cases decoded these communications to produce such foreign intelligence since the Revolutionary War. During the Civil War and World War I these communications were often telegrams sent by wire. In modern times, with the advent of wireless communications, particular emphasis has been placed by the Government on the specialized field of intercepting and analyzing communications transmitted by radio. Since the 1930's, elements of the military establishment have been assigned tasks to obtain intelligence from foreign radio transmissions.

In the months preceding Pearl Harbor and throughout World War II, highly successful accomplishments were made by groups in the Army and the Navy to intercept and analyze Japanese and German coded radio messages. Admiral Nimitz is reported as rating its value in the Pacific to the equivalent of another whole fleet. According to another official report, in the victory in the Battle of Midway, it would have been impossible to have achieved the concentration of forces and the tactical surprise without communications intelligence. A congressional committee, in its investigation of Pearl Harbor, stated that the success of communications intelligence "contributed enormously to the defeat of the enemy, greatly shortened the war, and saved many thousands of lives." General George C. Marshall commented that they—communications intelligence—had contributed "greatly to the victories and tremendously to the savings of American lives."

Following World War II, the separate military efforts were brought together and the National Security Agency was formed to focus the Government's efforts. The purpose was to maintain and improve this source of intelligence which was considered of vital importance to the national security, to our ability to wage war, and to the conduct of foreign affairs.

This mission of NSA is directed to foreign intelligence, obtained from foreign electrical communications and also from other foreign signals such as radars. Signals are intercepted by many techniques and processed, sorted, and analyzed by procedures which reject inappropriate or unnecessary signals. The foreign intelligence derived from these signals is then reported to various agencies of the Government in response to their approved requirements for foreign intelligence.

The NSA works very hard at this task, and is composed of dedicated, patriotic citizens, civilian and military, most of whom have dedicated their professional careers to this important and rewarding job. They are justifiably proud of their service to their country and fully accept the fact that their continued remarkable efforts can be appreciated only by those few in Government who know of their great importance to the United States.

Congress, in 1933, recognized the importance of communications intelligence activities and acted to protect the sensitive nature of the information derived from those activities by passing legislation that is now 18 U.S.C. 952. This statute prohibits the divulging of the contents of decoded foreign diplomatic messages, or information about them.

Later, in 1950, Congress enacted 18 U.S.C. 798, which prohibits the unauthorized disclosure, prejudicial use, or publication of classified information of the Government concerning communications intelligence activities, cryptologic activities, or the results thereof. It indicates that the President is authorized: (1) to designate agencies to engage in communications intelligence activities for the United States; (2) to classify cryptologic documents and information; and (3) to determine those persons who shall be given access to sensitive cryptologic documents and information. Further, this law defines the term "communication intelligence" to mean all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients.

After an intensive review by a panel of distinguished citizens, President Truman in 1952 acted to reorganize and strengthen communications intelligence activities. He issued in October 1952 a Presidential memorandum outlining in detail how communications intelligence activities were to be conducted, designated the Secretary of Defense to be his executive agent in these matters, directed the establishment of the NSA, and outlined the missions and functions to be performed by the NSA.

The Secretary of Defense, pursuant to the congressional authority delegated to him in section 133(d) of title 10 of the United States Code, acted to establish the National Security Agency. The section of the law cited provides that the Secretary may exercise any of these duties through persons or organizations of the Department of Defense. In 1962 a Special Subcommittee on Defense Agencies of the House Armed Services Committee concluded, after examining the circumstances leading to the creation of defense agencies, that the Secretary of Defense had the legal authority to establish the National Security Agency.

The President's constitutional and statutory authorities to obtain foreign intelligence through signals intelligence are implemented through National Security Council and Director of Central Intelligence Directives which govern the conduct of signals intelligence activities by the executive branch of the Government.

In 1959, the Congress enacted Public Law 86-36 which provides authority to enable the NSA as the principal agency of the Government responsible for signals intelligence activities, to function without the disclosure of information which would endanger the accomplishment of its functions.

In 1964 Public Law 88-290 was enacted by the Congress to establish a personnel security system and procedures governing persons employed by the NSA or granted access to its sensitive cryptologic information. Public Law 88-290 also delegates authority to the Secretary of Defense to apply these personnel security procedures to employees and persons granted access to the National Security Agency's sensitive information. This law underscores the concern of the Congress regarding the extreme importance of our signals intelligence enterprise and mandates that the Secretary of Defense, and the Director, National Security Agency, take measures to achieve security for the activities of the NSA.

Title 18 U.S.C. 2511(3) provides as follows:

Nothing contained in this chapter or in Section 605 of the Communications Act of 1934, 47 U.S.C. 605, shall limit the constitutional power of the President to take such measures as he deems necessary to protect the nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities.

In *United States v. Brown*, U.S. Court of Appeals, Fifth Circuit, decided August 22, 1973, the court discussed this provision of the law as follows:

The constitutional power of the President is adverted to, although not conferred, by Congress in Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

Thus, while NSA does not look upon section 2511(3) as authority to conduct communications intelligence, it is our position that nothing in chapter 119 of title 18 affects or governs the conduct of communications intelligence for the purpose of gathering foreign intelligence.

Finally, for the past 22 years, Congress has annually appropriated funds for the operation of the NSA, following hearings before the Armed Services and Appropriations Committees of both Houses of Congress in which extensive briefings of the NSA's signals intelligence mission have been conducted. We appear before both the House and the Senate Defense Appropriations Subcommittees to discuss and report on the U.S. signals intelligence and communications security programs, and to justify the budgetary requirements associated with these programs. We do this in formal executive session, in which we discuss our activities in whatever detail required by the Congress.

In considering the fiscal year 1976 total cryptologic budget now before Congress, I appeared before the Defense Subcommittee of the House Appropriations Committee on two separate occasions for approximately 7 hours. In addition, I provided follow-up response to over 100 questions of the subcommittee members and staff. We also appeared before armed services subcommittees concerned with authorizing research, development, test and evaluation, construction and housing programs and also before the appropriations subcommittees on construction and housing.

In addition to this testimony, congressional oversight is accomplished in other ways. Staff members of these subcommittees have periodically visited the Agency for detailed briefings on specific aspects of our operations. Members of the investigations staff of the House Appropriations Committee recently conducted an extensive in-

vestigation of this Agency. The results of this study, which lasted over a year, have been provided to that committee in a detailed report.

Another feature of congressional review is that since 1955 resident auditors of the General Accounting Office have been assigned at the Agency to perform on-site audits. Additional GAO auditors were cleared for access in 1973, and GAO, in addition to this audit, is initiating a classified review of our automatic data processing functions. NSA's cooperative efforts in this area were noted by a Senator in February of this year. In addition, resident auditors of the Office of Secretary of Defense, Comptroller, conduct indepth management reviews of our organization.

A particular aspect of NSA authorities which is pertinent to today's discussion relates to the definition of foreign communications. Neither the Presidential directive of 1952 nor the National Security Council directive No. 6 defines the term foreign communications. The NSA has always confined its activities to communications involving at least one foreign terminal. This interpretation is consistent with the definition of foreign communications in the Communications Act of 1934.

There is also a directive of the Director of Central Intelligence dealing with security regulations which employs a definition which excludes communications between U.S. citizens or entities. While this directive has not been construed as defining the NSA mission in the same sense as has the National Security Council directive, in the past this exclusion has usually been applied and is applied now. However, we will describe a particular activity in the past when that exclusion has not applied.

NSA does not now, and with an exception to be described, has not in the past conducted intercept operations for the purpose of obtaining the communications of U.S. citizens. However, it necessarily occurs that some circuits which are known to carry foreign communications necessary for foreign intelligence will also carry personal communications between U.S. citizens, one of whom is at a foreign location.

The interception of communications, however it may occur, is conducted in such a manner as to minimize the unwanted messages. Nevertheless, many unwanted communications are potentially available for selection. Subsequent processing, sorting, and selecting for analysis is conducted in accordance with strict procedures to insure immediate and, wherever possible, automatic rejection of inappropriate messages. The analysis and reporting is accomplished only for those messages which meet specified conditions and requirements for foreign intelligence. It is certainly believed by NSA that our communications intelligence activities are solely for the purpose of obtaining foreign intelligence in accordance with the authorities delegated by the President stemming from his constitutional power to conduct foreign intelligence.

NSA produces signals intelligence in response to objectives, requirements and priorities as expressed by the Director of Central Intelligence with the advice of the U.S. Intelligence Board. There is a separate committee of the Board which develops the particular requirements against which the NSA is expected to respond.

The principal mechanism used by the Board in formulating requirements for signals intelligence information has been one of listing areas of intelligence interest and specifying in some detail the signals intel-

ligence needed by the various elements of Government. This listing, which was begun in 1966 and fully implemented in 1970, is intended to provide guidance to the Director of the National Security Agency, and to the Secretary of Defense, for programing and operating NSA activities. It is intended as an expression of realistic and essential requirements for signals intelligence information.

This process recognizes that a single listing, updated annually, needs to be supplemented with additional detail and time-sensitive factors, and it establishes a procedure whereby the USIB agencies can express directly to the NSA information needs which reasonably amplify requirements approved by USIB or higher authority.

In addition, there are established procedures for non-Board members, the Secret Service, and the BNDD at the time in question, to ask the NSA for information. The NSA does have operational discretion in responding to requirements, but we do not generate our own requirements for foreign intelligence. The Director, NSA is directed to be responsive to the requirements formulated by the Director of Central Intelligence. However, I clearly must not respond to any requirements which I feel are not proper.

In 1975 the USIB signals intelligence requirements process was revised. Under the new system, all basic requirements for signals intelligence information on U.S. Government agencies will be reviewed and validated by the Signals Intelligence Committee of USIB before being levied on the NSA. An exception is those requirements which are highly time-sensitive; they will continue to be passed simultaneously to us for action and to USIB for information. The new system will also attempt to prioritize signals intelligence requirements. The new requirements process is an improvement in that it creates a formal mechanism to record all requirements for signals intelligence information and to establish their relative priorities.

Now to the subject which the committee asked me to address in some detail—the so-called watch list activity of 1967 to 1973.

The use of lists of words, including individual names, subjects, locations, et cetera, has long been one of the methods used to sort out information of foreign intelligence value from that which is not of interest. In the past such lists have been referred to occasionally as watch lists, because the lists were used as an aid to watch for foreign activity of reportable intelligence interest. However, these lists generally did not contain names of U.S. citizens or organizations. The activity in question is one in which U.S. names were used systematically as a basis for selecting messages, including some between U.S. citizens, when one of the communicants was at a foreign location.

The origin of such activity is unclear. During the early sixties, requesting agencies had asked the NSA to look for reflections in international communications of certain U.S. citizens traveling to Cuba. Beginning in 1967, requesting agencies provided names of persons and organizations, some of whom were U.S. citizens, to the NSA in an effort to obtain information which was available in foreign communications as a by-product of our normal foreign intelligence mission.

The purpose of the lists varied, but all possessed a common thread in which the NSA was requested to review information available through our usual intercept sources. The initial purpose was to help determine the existence of foreign influence on specified activities of

interest to agencies of the U.S. Government, with emphasis then on Presidential protection and on civil disturbances occurring throughout the Nation.

Later, because of other developments, such as widespread national concern over such criminal activity as drug trafficking and acts of terrorism, both domestic and international, the emphasis came to include these areas. Thus, during this period, 1967-73, requirements for which lists were developed in four basic areas: international drug trafficking; Presidential protection; acts of terrorism; and possible foreign support or influence on civil disturbances.

In the sixties there was Presidential concern voiced over the massive flow of drugs into our country from outside the United States. Early in President Nixon's administration, he instructed the CIA to pursue with vigor intelligence efforts to identify foreign sources of drugs and the foreign organizations and methods used to introduce illicit drugs into the United States. The BNDD, the Bureau of Narcotics and Dangerous Drugs, in 1970 asked the NSA to provide communications intelligence relevant to these foreign aspects, and BNDD provided watch lists with some U.S. names [exhibit 4].¹ International drug trafficking requirements were formally documented in USIB requirements in August 1971.

As we all know, during this period there was also heightened concern by the country and the Secret Service over Presidential protection because of President Kennedy's assassination. After the Warren Report, requirements lists containing names of U.S. citizens and organizations were provided to NSA by the Secret Service in support of their efforts to protect the President and other senior officials. Such requirements were later incorporated into USIB documentation. At that time, intelligence derived from foreign communications was regarded as a valuable tool in support of Executive protection.

About the same time as the concern over drugs, or shortly thereafter, there was a committee established by the President to combat international terrorism. This committee was supported by an interdepartmental working group with USIB representatives. Requirements to support this effort with communications intelligence were also incorporated into USIB documentation.

Now let me put the watch list in perspective regarding its size and the numbers of names submitted by the various agencies:

The BNDD submitted a watch list covering their requirements for intelligence on international narcotics trafficking. On September 8, 1972, President Nixon summarized the efforts of his administration against drug abuse. The President stated that he ordered the Central Intelligence Agency, early in his administration, to mobilize its full resources to fight the international drug trade. The key priority, the President noted, was to destroy the trafficking through law enforcement and intelligence efforts. The BNDD list contained the names of suspected drug traffickers. There were about 450 U.S. individuals and over 3,000 foreign individuals.

The Secret Service submitted watch lists covering their requirements for intelligence relating to Presidential and Executive protec-

¹ See p. 151.

tion. Public Law 90-331 of June 6, 1968, made it mandatory for Federal agencies to assist the Secret Service in the performance of its protective duties. These lists contained names of persons and groups who, in the opinion of the Secret Service, were potentially a threat to Secret Service protectees, as well as the names of the protectees themselves. On these lists were about 180 U.S. individuals and groups and about 525 foreign individuals and groups.

An Army message of October 20, 1967, informed the NSA that Army ACISI, assistant chief of staff for intelligence, had been designated executive agent by DOD for civil disturbance matters and requested any available information on foreign influence over, or control of, civil disturbances in the U.S. [exhibit 1].¹ The Director, NSA, sent a cable the same day to the DCI and to each USIB member and notified them of the urgent request from the Army and stated that the NSA would attempt to obtain communications intelligence regarding foreign control or influence over certain U.S. individuals and groups [exhibit 2].²

The Brownell Committee, whose report led to the creation of NSA, stated that communications intelligence should be provided to the Federal Bureau of Investigation because of the essential role of the Bureau in the national security.

The FBI submitted watch lists covering their requirements on foreign ties and support to certain U.S. persons and groups. These lists contained names of "so-called" extremist persons and groups, individuals and groups active in civil disturbances, and terrorists. The lists contained a maximum of about 1,000 U.S. persons and groups and about 1,700 foreign persons and groups.

The DIA submitted a watch list covering their requirements on possible foreign control of, or influence on, U.S. antiwar activity. The list contained names of individuals traveling to North Vietnam. There were about 20 U.S. individuals on this list. DIA is responsible under DOD directives for satisfying the intelligence requirements of the major components of the DOD and to validate and assign to NSA requirements for intelligence required by DOD components.

Between 1967 and 1973 there was a cumulative total of about 450 U.S. names on the narcotics list, and about 1,200 U.S. names on all other lists combined. What that amounted to was that at the height of the watch list activity, there were about 800 U.S. names on the watch list and about one-third of these 800 were from the narcotics list.

We estimate that over this 6-year period, 1967-1973, about 2,000 reports were issued by the NSA on international narcotics trafficking, and about 1,900 reports were issued covering the three areas of terrorism, Executive protection and foreign influence over U.S. groups. This would average about two reports per day. These reports included some messages between U.S. citizens with one foreign communicant, but over 90 percent had at least one foreign communicant and all messages had at least one foreign terminal. Using agencies did periodically review, and were asked by the NSA to review, their watch lists to insure inappropriate or unnecessary entries were promptly removed.

I am not the proper person to ask concerning the value of the product from these four special efforts. We are aware that a major terrorist

¹ See p. 145.

² See p. 147.

act in the United States was prevented. In addition, some large drug shipments were prevented from entering the United States because of our efforts on international narcotics trafficking. We have statements from the requesting agencies in which they have expressed appreciation for the value of the information which they had received from us. Nonetheless, in my own judgment, the controls which were placed on the handling of the intelligence were so restrictive that the value was significantly diminished.

Now let me address the question of the watch list activity as the NSA saw it at the time.

This activity was reviewed by proper authority within NSA and by competent external authority. This included two former Attorneys General and a former Secretary of Defense.

The requirements for information had been approved by officials of the using agencies and subsequently validated by the United States Intelligence Board. For example, the Secret Service and BNDD requirements were formally included in USIB guidance in 1970 and 1971, respectively.

In the areas of narcotics trafficking, terrorism and requirements related to the protection of the lives of senior U.S. officials, the emphasis placed by the President on a strong, coordinated Government effort was clearly understood. There also was no question that there was considerable Presidential concern and interest in determining the existence and extent of foreign support to groups fomenting civil disturbances in the United States.

From 1967 to 1969 the procedure for submitting names was more informal, with written requests following as the usual practice. Starting in 1969 the procedure was formalized and the names for watch lists were submitted through channels in writing [exhibit 3].¹ The Director and Deputy Director of the NSA approved certain categories of subject matter from customer agencies, and were aware that U.S. individuals and organizations were being included on watch lists. While they did not review and approve each individual name, there were continuing management reviews at levels below the Directorate.

NSA personnel sometimes made analytic amplifications on customer watch list submissions in order to fulfill certain requirements. For example, when information was received that a name on the watch list used an alias, the alias was inserted; or when an address was uncovered of a watch list name, the address was included. This practice by analysts was done to enhance the selection process, not to expand the lists.

The information produced by the watch list activity was, with one exception, entirely a byproduct of our foreign intelligence mission. All collection was conducted against international communications with at least one terminal in a foreign country, and for purposes unrelated to the watch list activity. That is, the communications were obtained, for example, by monitoring communications to and from Hanoi.

All communications had a foreign terminal and the foreign terminal or communicant, with the one exception to be described, was the initial object of the communications collection.

The watch list activity specifically consisted of scanning international communications already intercepted for other purposes to derive

¹ See p. 149.

information which met watch list requirements. This scanning was accomplished by using the entries provided to NSA as selection criteria. Once selected, the messages were analyzed to determine if the information therein met those requesting agencies' requirements associated with the watch lists. If the message met the requirement, the information therein was reported to the requesting agency in writing.

Now let me discuss for a moment the manner in which intelligence derived from the watch lists was handled.

For the period 1967-69, international messages between U.S. citizens and organizations, selected on the basis of watch list entries and containing foreign intelligence, were issued for background use only and were hand delivered to certain requesting agencies. If the U.S. citizen or organization was only one correspondent of the international communication, it was published as a normal product report but in a special series to limit distribution on a strict need-to-know basis.

Starting in 1969, any messages that fell into the categories of Presidential/executive protection and foreign influence over U.S. citizens and groups were treated in an even more restricted fashion. They were provided for background use only and hand delivered to requesting agencies. When the requirements to supply intelligence regarding international drug trafficking in 1970 and international terrorism in 1971 were received, intelligence on these subjects was handled in a similar manner. This procedure continued until I terminated the activity in 1973.

The one instance in which foreign messages were intercepted for specific watch list purposes was the collection of some telephone calls passed over international communications facilities between the United States and South America. The collection was conducted at the specific request of the BNDD to produce intelligence information on the methods and locations of foreign narcotics trafficking.

In addition to our own intercept, CIA was asked by NSA to assist in this collection. NSA provided to CIA names of individuals from the international narcotics trafficking watch list. This collection by CIA lasted for approximately 6 months, from late 1972 to early 1973, when CIA stopped because of concern that the activity exceeded CIA statutory restrictions.

When the watch list activity began, the NSA and others viewed the effort as an appropriate part of the foreign intelligence mission. The emphasis of the President that a concerted national effort was required to combat these grave problems was clearly expressed.

The activity was known to higher authorities, kept quite secret, and restrictive controls were placed on the use of the intelligence. The agencies receiving the information were clearly instructed that the information could not be used for prosecutive or evidentiary purposes, and to our knowledge, it was not used for such purposes.

It is worth noting that some Government agencies receiving the information had dual functions. For instance, BNDD was concerned on the one hand with domestic drug law enforcement activities and on the other hand with the curtailment of international narcotics trafficking. It would be to the latter area of responsibility that the NSA delivered its intelligence.

However, since the intelligence was being reported to some agencies which did have law enforcement responsibilities, there was growing

concern that the intelligence could be used for purposes other than foreign intelligence. To minimize this risk, the material was delivered only to designated offices in those agencies, and the material was marked and protected in a special way to limit the number of people involved and to segregate it from information of broader interest.

In 1973, concern about the NSA's role in these activities was increased, first, by concerns that it might not be possible to distinguish definitely between the purpose for the intelligence gathering which NSA understood was served by these requirements, and the missions and functions of the departments or agencies receiving the information, and, second, that requirements from such agencies were growing, and finally, that new broad discovery procedures in court cases were coming into use which might lead to disclosure of sensitive intelligence sources and methods.

The first action taken was the decision to terminate the activity in support of BNDD in the summer of 1973. This decision was made because of concern that it might not be possible to make a clear separation between the requests for information submitted by BNDD as it pertained to legitimate foreign intelligence requirements and the law-enforcement responsibility of BNDD.

CIA had determined in 1973 that it could not support these requests of BNDD because of statutory restrictions on CIA. The NSA is not subject to the same sort of restrictions as CIA, but a review of the matter led to a decision that certain aspects of our support should be discontinued, and in particular the watch-list activity was stopped.

NSA did not retain any of the BNDD watch lists or product. It was destroyed in the fall of 1973, since there seemed no purpose or requirement to retain it.

With regard to watch lists submitted by FBI, CIA, and Secret Service, these matters were discussed with the National Security Agency Counsel and Counsel for the Department of Defense, and we stopped the distribution of information in the summer of 1973. In September 1973, I sent a letter to each agency head requesting him to recertify the requirement with respect to the appropriateness of the request, including a review of that agency's legal authorities [exhibit 6].¹

Somewhat later, on October 1, 1973, Attorney General Richardson wrote me, indicating that he was concerned with respect to the propriety of requests for information concerning U.S. citizens which NSA had received from the FBI and Secret Service [exhibit 7].² He wrote the following:

Until I am able more carefully to assess the effect of *Keith* and other Supreme Court decisions concerning electronic surveillance upon your current practice of disseminating to the FBI and Secret Service information acquired by you through electronic devices pursuant to requests from the FBI and Secret Service, it is requested that you immediately curtail the further dissemination of such information to these agencies.

He goes on to say :

Of course, relevant information acquired by you in the routine pursuit of the collection of foreign intelligence may continue to be furnished to appropriate government agencies.

¹ See p. 158.

² See p. 160.

The overall result of these actions was that we stopped accepting watch lists containing names of U.S. citizens and no information is produced or disseminated to other agencies using these methods [exhibit 8].¹ Thus, the watch list activity which involved U.S. citizens ceased operationally in the summer of 1973 and was terminated officially in the fall of 1973.

As to the future, the Attorney General's direction is that we may not accept any requirement based on the names of U.S. citizens unless he has personally approved such a requirement; and no such approval has been given. Additionally, directives now in effect in various agencies, including NSA, also preclude the resumption of such activity.

[The full statement of Lt. Gen. Lew Allen, Jr. follows:]

PREPARED STATEMENT OF LT. GEN. LEW ALLEN, JR., DIRECTOR, NATIONAL SECURITY AGENCY

Mr. Chairman Members of the Committee, I recognize the important responsibility this Committee has to investigate the intelligence operations of the United States Government and to determine the need for improvement by legislative or other means. For several months, involving many thousands of manhours, the National Security Agency has, I believe, cooperated with this Committee to provide a thorough information base, including data whose continued secrecy is most important to our nation.

I am now here to discuss in open session certain aspects of an important and hitherto secret operation of the U.S. Government. I recognize that the Committee is deeply concerned that we protect sensitive and fragile sources of information. I appreciate the care which this Committee and Staff have exercised to protect the sensitive data we have provided. I also understand that the Committee intends to restrict this open discussion to certain specified activities and to avoid current foreign intelligence operations. It may not be possible to discuss all these activities completely without some risk of damage to continuing foreign intelligence capabilities. Therefore, I may request some aspects of our discussion be conducted in executive session where there can be opportunity to continue our full and frank disclosure to the Committee of all information required. The Committee may then develop an appropriate public statement. We are therefore here, sir, at your request, prepared to cooperate in bringing these matters before your Committee.

WHAT I PROPOSE TO COVER

In the interest of clarity and perspective, I shall first review the purpose of the National Security Agency and the authorities under which it operates. Next, I will describe the process by which requirements for information are levied on NSA by other government agencies. And finally, I will give a more specific description of an operation conducted in 1967-1973 by NSA in response to external requirements, which I will refer to as "the watch list activity." This activity has been subject to an intensive review by this Committee and Staff in closed session.

NSA'S MISSION

Under the authority of the President, the Secretary of Defense has been delegated responsibility for both providing security of U.S. governmental communications and seeking intelligence from foreign electrical communications. Both functions are executed for the Secretary of Defense by the Director, National Security Agency, through a complex national system which includes the National Security Agency at its nucleus.

It is appropriate for the Secretary of Defense to have these executive agent responsibilities, since the great majority of the effort to accomplish both of these missions is applied to the support of the military aspects of the national security.

¹ See p. 162.

The Communications Security mission is directed at enhancing the security of U.S. Government communications whenever needed to protect the communications from exploitation by foreign governments—a complex undertaking in today's advanced electronic world.

The United States, as part of its effort to produce foreign intelligence, has intercepted foreign communications, analyzed, and in some cases decoded, these communications to produce such foreign intelligence since the Revolutionary War. During the Civil War and World War I these communications were often telegrams sent by wire.

In modern times, with the advent of wireless communications, particular emphasis has been placed by the government on the specialized field of intercepting and analyzing communications transmitted by radio. Since the 1930's, elements of the military establishment have been assigned tasks to obtain intelligence from foreign radio transmissions. In the months preceding Pearl Harbor and throughout World War II, highly successful accomplishments were made by groups in the Army and the Navy to intercept and analyze Japanese and German coded radio messages. Admiral Nimitz is reported as rating its value in the Pacific to the equivalent of another whole fleet; General Handy is reported to have said that it shortened the war in Europe by at least a year. According to another official report, in the victory in the Battle of Midway, it would have been impossible to have achieved the concentration of forces and the tactical surprise without communications intelligence. It also contributed to the success of the Normandy invasion. Both the Army and Navy obtained invaluable intelligence from the enciphered radio messages in both Europe and the Pacific. A Congressional committee, in its investigation of Pearl Harbor, stated that the success of communications intelligence "contributed enormously to the defeat of the enemy, greatly shortened the war, and saved many thousands of lives." General George C. Marshall, referring to similar activities during World War II, commented that they had contributed "greatly to the victories and tremendously to the savings of American lives." Similar themes run through the writings of many U.S. military officers and policy officials from that period and subsequently in our more recent history. Following World War II, the separate military efforts were brought together and the National Security Agency was formed to focus the government's efforts. The purpose was to maintain and improve this source of intelligence which was considered of vital importance to the national security, to our ability to wage war, and to the conduct of foreign affairs.

This mission of NSA is directed to foreign intelligence, obtained from foreign electrical communications and also from other foreign signals such as radars. Signals are intercepted by many techniques and processed, sorted and analyzed by procedures which reject inappropriate or unnecessary signals. The foreign intelligence derived from these signals is then reported to various agencies of the government in response to their approved requirements for foreign intelligence. The National Security Agency works very hard at this task, and is composed of dedicated, patriotic citizens, civilian and military, most of whom have dedicated their professional careers to this important and rewarding job. They are justifiably proud of their service to their country and fully accept the fact that their continued remarkable efforts can be appreciated only by those few in government who know of their great importance to the U.S.

NSA AUTHORITIES

Congress, in 1933, recognized the importance of communications intelligence activities and acted to protect the sensitive nature of the information derived from those activities by passing legislation that is now 18 U.S.C. 952. This statute prohibits the divulging of the contents of decoded foreign diplomatic messages, or information about them.

Later, in 1950, Congress enacted 18 U.S.C. 798, which prohibits the unauthorized disclosure, prejudicial use, or publication of classified information of the Government concerning communications intelligence activities, cryptologic activities, or the results thereof. It indicates that the President is authorized: (1) To designate agencies to engage in communications intelligence activities for the United States, (2) to classify cryptologic documents and information, and (3) to determine those persons who shall be given access to sensitive cryptologic documents and information. Further, this law defines the term "communication intelligence" to mean all procedures and methods used in the interception of

communications and the obtaining of information from such communications by other than the intended recipients.

After an intensive review by a panel of distinguished citizens, President Truman in 1952 acted to reorganize and strengthen communications intelligence activities. He issued in October 1952 a Presidential memorandum outlining in detail how communications intelligence activities were to be conducted, designated the Secretary of Defense to be his executive agent in these matters, directed the establishment of the National Security Agency, and outlined the missions and functions to be performed by the National Security Agency.

The Secretary of Defense, pursuant to the Congressional authority delegated him in Section 133(d) of Title 10 of the U.S. Code, acted to establish the National Security Agency. The section of the law cited provides that the Secretary may exercise any of these duties through persons or organizations of the Department of Defense. In 1962 a Special Subcommittee on Defense Agencies of the House Armed Services Committee concluded, after examining the circumstances leading to the creation of defense agencies, that the Secretary of Defense had the legal authority to establish the National Security Agency.

The President's constitutional and statutory authorities to obtain foreign intelligence through signals intelligence are implemented through National Security Council and Director of Central Intelligence directives which govern the conduct of signals intelligence activities by the Executive branch of the government.

In 1959, the Congress enacted Public Law 86-36 which provides authority to enable the National Security Agency, as the principal agency of the government responsible for signals intelligence activities, to function without the disclosure of information which would endanger the accomplishment of its functions.

In 1964 Public Law 88-290 was enacted by the Congress to establish a personnel security system and procedures governing persons employed by the National Security Agency or granted access to its sensitive cryptologic information. Public Law 88-290 also delegates authority to the Secretary of Defense to apply these personnel security procedures to employees and persons granted access to the National Security Agency's sensitive information. This law underscores the concern of the Congress regarding the extreme importance of our signals intelligence enterprise and mandates that the Secretary of Defense, and the Director, National Security Agency, take measures to achieve security for the activities of the National Security Agency.

Title 18 U.S.C. 2511(3) provides as follows: "Nothing contained in this chapter or in Section 605 of the Communications Act of 1934 (47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. . ."

In *United States v. Brown*, United States Court of Appeals, Fifth Circuit, decided 22 August 1973, the Court discussed this provision of the law as follows: "The constitutional power of the President is adverted to, although not conferred, by Congress in Title III of the Omnibus Crime Control and Safe Streets Act of 1968."

Thus, while NSA does not look upon Section 2511(3) as authority to conduct communications intelligence, it is our position that nothing in Chapter 119 of Title 18 affects or governs the conduct of communications intelligence for the purpose of gathering foreign intelligence.

Finally, for the past 22 years, Congress has annually appropriated funds for the operation of the National Security Agency, following hearings before the Armed Services and Appropriations Committees of both Houses of Congress in which extensive briefings of the National Security Agency's signals intelligence mission have been conducted.

We appear before both the House and the Senate Defense Appropriations Subcommittees to discuss and report on the U.S. signals intelligence and communications security programs, and to justify the budgetary requirements associated with these programs. We do this in formal executive session, in which we discuss our activities in whatever detail required by the Congress. In considering the Fiscal Year '76 total cryptologic budget now before Congress, I appeared before the Defense Subcommittee of the House Appropriations Committee on two separate occasions for approximately seven hours. In addition, I provided follow-up response to over one hundred questions of the Subcommittee

members and staff. We also appeared before Armed Services Subcommittees concerned with authorizing research, development, test and evaluation (RDT&E), construction and housing programs and also before the Appropriations Subcommittees on construction and housing.

In addition to this testimony, Congressional oversight is accomplished in other ways. Staff members of these subcommittees have periodically visited the Agency for detailed briefings on specific aspects of our operations. Members of the investigations staff of the House Appropriations Committee recently conducted an extensive investigation of this Agency. The results of this study, which lasted over a year, have been provided to that committee in a detailed report.

Another feature of Congressional review is that since 1955 resident auditors of the General Accounting Office have been assigned at the Agency to perform on-site audits. Additional GAO auditors were cleared for access in 1973 and GAO, in addition to this audit, is initiating a classified review of our automatic data processing functions. NSA's cooperative efforts in this area were noted by a Senator in February of this year.

In addition, resident auditors of the Office of Secretary of Defense, Comptroller, conduct in depth management reviews of our organization.

A particular aspect of NSA authorities which is pertinent to today's discussion relates to the definition of foreign communications. Neither the Presidential Directive of 1952 nor the National Security Council Directive No. 6 defines the term foreign communications. The National Security Agency has always confined its activities to communications involving at least one foreign terminal. This interpretation is consistent with the definition of foreign communications in the Communications Act of 1934. There is also a Directive of the Director of Central Intelligence dealing with security regulations which employs a definition which excludes communications between U.S. citizens or entities. While this Directive has not been construed as defining the NSA mission in the same sense as has the National Security Council Directive, in the past this exclusion has usually been applied and is applied now. However, we will describe a particular activity in the past when that exclusion was not applied. NSA does not now, and with an exception to be described, has not in the past conducted intercept operations for the purpose of obtaining the communications of U.S. citizens. However, it necessarily occurs that some circuits which are known to carry foreign communications necessary for foreign intelligence will also carry personal communications between U.S. citizens, one of whom is at a foreign location. The interception of communications, however it may occur, is conducted in such a manner as to minimize the unwanted messages. Nevertheless, many unwanted communications are potentially available for selection. Subsequent processing, sorting and selecting for analysis, is conducted in accordance with strict procedures to insure immediate and, where possible, automatic rejection of inappropriate messages. The analysis and reporting is accomplished only for those messages which meet specified conditions and requirements for foreign intelligence. It is certainly believed by NSA that our communications intelligence activities are solely for the purpose of obtaining foreign intelligence in accordance with the authorities delegated by the President stemming from his constitutional power to conduct foreign intelligence.

OVERALL REQUIREMENTS ON NSA

NSA produces signals intelligence in response to objectives, requirements, and priorities as expressed by the Director of Central Intelligence with the advice of the United States Intelligence Board. There is a separate committee of the Board which develops the particular requirements against which the National Security Agency is expected to respond.

The principal mechanism used by the Board in formulating requirements for signals intelligence information has been one of listing areas of intelligence interest and specifying in some detail the signals intelligence needed by the various elements of government. This listing which was begun in 1966 and fully implemented in 1970, is intended to provide guidance to the Director of the National Security Agency (and to the Secretary of Defense) for programming and operating National Security Agency activities. It is intended as an expression of realistic and essential requirements for signals intelligence information. This process recognizes that a single listing, updated annually needs to be supplemented with additional detail and time-sensitive factors and it establishes a procedure whereby the USIB agencies can express, directly to the National Se-

curity Agency, information needs which reasonably amplify requirements approved by USIB or higher authority. In addition, there are established procedures for non-Board members (the Secret Service and the BNDD at the time) to task the National Security Agency for information. The National Security Agency does have operational discretion in responding to requirements but we do not generate our own requirements for foreign intelligence. The Director, NSA is directed to be responsive to the requirements formulated by the Director of Central Intelligence, however, I clearly must not respond to any requirements which I feel are not proper.

In 1975 the USIB signals intelligence requirements process was revised. Under the new system, all basic requirements for signals intelligence information on United States Government agencies will be reviewed and validated by the Signals Intelligence Committee of USIB before being levied on the National Security Agency. An exception is those requirements which are highly time-sensitive; they will continue to be passed simultaneously to us for action and to USIB for information. The new system will also attempt to prioritize signals intelligence requirements. The new requirements process is an improvement in that it creates a formal mechanism to record all requirements for signals intelligence information and to establish their relative priorities.

THE WATCH LIST

Now to the subject which the Committee asked me to address in some detail—the so-called watch list activity of 1967–1973.

The use of lists of words, including individual names, subjects, locations, etc, has long been one of the methods used to sort out information of foreign intelligence value from that which is not of interest. In the past such lists have been referred to occasionally as "watch lists," because the lists were used as an aid to watch for foreign activity of reportable intelligence interest. However, these lists generally did not contain names of U.S. citizens or organizations. The activity in question is one in which U.S. names were used systematically as a basis for selecting messages, including some between U.S. citizens when one of the communicants was at a foreign location.

The origin of such activity is unclear. During the early '60's, requesting agencies had asked the National Security Agency to look for reflections in international communications of certain U.S. citizens travelling to Cuba. Beginning in 1967, requesting agencies provided names of persons and organizations (some of whom were U.S. citizens) to the National Security Agency in an effort to obtain information which was available in foreign communications as a by-product of our normal foreign intelligence mission. The purpose of the lists varied, but all possessed a common thread in which the National Security Agency was requested to review information available through our usual intercept sources. The initial purpose was to help determine the existence of foreign influence on specified activities of interest to agencies of the U.S. Government, with emphasis on presidential protection and on civil disturbances occurring throughout the nation. Later, because of other developments, such as widespread national concern over such criminal activity as drug trafficking and acts of terrorism, both domestic and international, the emphasis came to include these areas. Thus, during this period, 1967–1973, requirements for watch lists were developed in four basic areas: international drug trafficking, Presidential protection, acts of terrorism, and possible foreign support or influence on civil disturbances.

In the '60's, there was Presidential concern voiced over the massive flow of drugs into our country from outside the United States. Early in President Nixon's administration, he instructed the CIA to pursue with vigor, intelligence efforts to identify foreign sources of drugs and the foreign organizations and methods used to introduce illicit drugs into the U.S. The BNDD in 1970 asked the National Security Agency to provide communications intelligence relevant to these foreign aspects and BNDD provided watch lists with some U.S. names. International drug trafficking requirements were formally documented in USIB requirements in August 1971.

As we all know, during this period there was also heightened concern by the country and the Secret Service over Presidential protection because of President Kennedy's assassination. After the Warren Report, requirements lists containing names of U.S. citizens and organizations were provided to NSA by the Secret Service in support of their efforts to protect the President and other senior officials. Such requirements were later incorporated into USIB documentation. At

that time intelligence derived from foreign communications was regarded as a valuable tool in support of executive protection.

About the same time as the concern over drugs, or shortly thereafter, there was a committee established by the President to combat international terrorism. This committee was supported by a working group from the USIB. Requirements to support this effort with communications intelligence were also incorporated into USIB documentation.

Now let me put the "watch list" in perspective regarding its size and the numbers of names submitted by the various agencies:

The BNDD submitted a "watch list" covering their requirements for intelligence on international narcotics trafficking. On September 8, 1972, President Nixon summarized the efforts of his administration against drug abuse. The President stated that he ordered the Central Intelligence Agency, early in his administration, to mobilize its full resources to fight the international drug trade. The key priority, the President noted, was to destroy the trafficking through law enforcement and intelligence efforts. The BNDD list contained names of suspected drug traffickers. There were about 450 U.S. individuals and over 3,000 foreign individuals.

The Secret Service submitted "watch lists" covering their requirements for intelligence relating to Presidential and Executive protection. Public Law 90-331 of June 6, 1968, made it mandatory for Federal agencies to assist the Secret Service in the performance of its protective duties. These lists contained names of persons and groups who in the opinion of the Secret Service were potentially a threat to Secret Service protectees, as well as the names of the protectees themselves. On these lists were about 180 U.S. individuals and groups and about 525 foreign individuals and groups.

An Army message of 20 October 1967 informed the National Security Agency that Army ACSI had been designated executive agent by DoD for civil disturbance matters and requested any available information on foreign influence over, or control of, civil disturbances in the U.S. The Director, National Security Agency sent a cable the same day to the DCI and to each USIB member and notified them of the urgent request from the Army and stated that the National Security Agency would attempt to obtain COMINT regarding foreign control or influence over certain U.S. individuals and groups.

The Brownell Committee, whose report led to the creation of NSA, stated that communications intelligence should be provided to the Federal Bureau of Investigation because of the essential role of the Bureau in the national security.

The FBI submitted "watch lists" covering their requirements on foreign ties and support to certain U.S. persons and groups. These lists contained names of "so-called" extremist persons and groups, individuals and groups active in civil disturbances, and terrorists. The lists contained a maximum of about 1,000 U.S. persons and groups and about 1,700 foreign persons and groups.

The CIA submitted "watch lists" covering their requirements on international travel, foreign influence and foreign support of "so-called" U.S. extremists and terrorists. Section 403(d)(3) of Title 50, U.S. Code, provided that it was the duty of the Central Intelligence Agency to correlate and evaluate intelligence relating to the national security and to provide for the appropriate dissemination of such intelligence within the government using, where appropriate, existing agencies and facilities. These lists contained about 30 U.S. individuals and about 700 foreign individuals and groups.

The DIA submitted a "watch list" covering their requirements on possible foreign control of, or influence on, U.S. anti-war activity. The list contained names of individuals traveling to North Vietnam. There were about 20 U.S. individuals on this list. DIA is responsible under DoD directives for satisfying the intelligence requirements of the major components of the DoD and to validate and assign to NSA requirements for intelligence required by DoD components.

Between 1967 and 1973 there was a cumulative total of about 450 U.S. names on the narcotics list, and about 1,200 U.S. names on all other lists combined. What that amounted to was that at the height of the watch list activity, there were about 800 U.S. names on the "watch list" and about one third of this 800 were from the narcotics list.

We estimate that over this six year period (1967-1973) about 2,000 reports were issued by the National Security Agency on international narcotics trafficking, and about 1,900 reports were issued covering the three areas of terrorism, executive protection and foreign influence over U.S. groups. This would average about two reports per day. These reports included some messages between U.S.

citizens, but over 90% had at least one foreign communicant and all messages had at least one foreign terminal. Using agencies did periodically review (and were asked by the National Security Agency to review) their "watch lists" to ensure inappropriate or unnecessary entries were promptly removed. I am not the proper person to ask concerning the value of the product from these four special efforts. We are aware that a major terrorist act in the U.S. was prevented. In addition, some large drug shipments were prevented from entering the U.S. because of our efforts on international narcotics trafficking. We have statements from the requesting agencies in which they have expressed appreciation for the value of the information which they had received from us. Nonetheless, in my own judgment, the controls which were placed on the handling of the intelligence were so restrictive that the value was significantly diminished.

Now let me address the question of the "watch list" activity as the National Security Agency saw it at the time. This activity was reviewed by proper authority within National Security Agency and by competent external authority. This included two former Attorneys General and a former Secretary of Defense. The requirements for information had also been approved by officials of the using agencies and subsequently validated by the United States Intelligence Board. For example, the Secret Service and BNDD requirements were formally included in USIB guidance in 1970 and 1971, respectively. In the areas of narcotics trafficking, terrorism, and requirements related to the protection of the lives of senior U.S. officials, the emphasis placed by the President on a strong, coordinated government effort was clearly understood. There also was no question that there was considerable Presidential concern and interest in determining the existence and extent of foreign support to groups fomenting civil disturbances in the United States.

From 1967-1969 the procedure for submitting names was more informal with written requests following as the usual practice. Starting in 1969 the procedure was formalized and the names for "watch lists" were submitted through channels in writing. The Director and Deputy Director of the National Security Agency approved certain categories of subject matter from customer agencies, and were aware that U.S. individuals and organizations were being included on "watch lists." While they did not review and approve each individual name, there were continuing management reviews at levels below the Directorate. National Security Agency personnel sometimes made analytic amplifications on customer "watch list" submissions in order to fulfill certain requirements. For example, when information was received that a name on the "watch list" used an alias, the alias was inserted; or when an address was uncovered of a "watch list" name, the address was included. This practice by analysts was done to enhance the selection process, not to expand the lists.

The information produced by the "watch list" activity was, with one exception, entirely a by-product of our foreign intelligence mission. All collection was conducted against international communications with at least one terminal in a foreign country, and for purposes unrelated to the "watch list" activity. That is, the communications were obtained, for example, by monitoring communications to and from Hanoi. All communications had a foreign terminal and the foreign terminal or communicant (with the one exception) was the initial object of the communications collection. The "watch list" activity itself specifically consisted of scanning international communications already intercepted for other purposes to derive information which met "watch list" requirements. This scanning was accomplished by using the entries provided to NSA as selection criteria. Once selected, the messages were analyzed to determine if the information therein met those requesting agencies' requirements associated with the "watch lists." If the message met the requirement, the information therein was reported to the requesting agency in writing.

Now let me discuss for a moment the manner in which intelligence derived from the "watch lists" was handled. For the period 1967-1969, international messages between U.S. citizens and organizations, selected on the basis of "watch list" entries and containing foreign intelligence, were issued for background use only and were hand-delivered to certain requesting agencies. If the U.S. citizen or organization was only one correspondent of the international communication, it was published as a normal product report but in a special series to limit distribution on a strict need-to-know basis.

Starting in 1969, any messages that fell into the categories of Presidential/executive protection and foreign influence over U.S. citizens and groups were treated in an even more restricted fashion. They were provided for background

use only and hand-delivered to requesting agencies. When the requirements to supply intelligence regarding international drug trafficking in 1970 and international terrorism in 1971 were received, intelligence on these subjects was handled in a similar manner. This procedure continued until I terminated the activity in 1973.

The one instance in which foreign messages were intercepted for specific "watch list" purposes was the collection of some telephone calls passed over international communications facilities between the United States and South America. The collection was conducted at the specific request of the BNDD to produce intelligence information on the methods and locations of foreign narcotics trafficking. In addition to our own intercept, CIA was asked by NSA to assist in this collection. NSA provided to CIA names of individuals from the international narcotics trafficking watch list. This collection by CIA lasted for approximately six months, from late 1972 to early 1973, when CIA stopped because of concern that the activity exceeded CIA statutory restrictions.

When the "watch list" activity began, the National Security Agency and others viewed the effort as an appropriate part of the foreign intelligence mission. The emphasis of the President that a concerted national effort was required to combat these grave problems was clearly expressed. The activity was known to higher authorities, kept quite secret, and restrictive controls were placed on the use of the intelligence. The agencies receiving the information were clearly instructed that the information could not be used for prosecutive or evidentiary purposes and to our knowledge it was not used for such purposes.

It is worth noting that some government agencies receiving the information had dual functions: for instance BNDD was concerned on the one hand with domestic drug law enforcement activities and on the other hand with the curtailment of international narcotics trafficking. It would be to the latter area of responsibility that the National Security Agency delivered its intelligence. However, since the intelligence was being reported to some agencies which did have law enforcement responsibilities, there was growing concern that the intelligence could be used for purposes other than foreign intelligence. To minimize this risk, the material was delivered only to designated offices in those agencies and the material was marked and protected in a special way to limit the number of people involved and to segregate it from information of broader interest.

WATCH LIST ACTIVITIES AND TERMINATION THEREOF

In 1973, concern about the National Security Agency's role in these activities was increased, first, by concerns that it might not be possible to distinguish definitely between the purpose for the intelligence gathering which NSA understood was served by these requirements, and the missions and functions of the departments or agencies receiving the information, and second, that requirements from such agencies were growing. Finally, new broad discovery procedures in court cases were coming into use which might lead to disclosure of sensitive intelligence sources and methods.

The first action taken was the decision to terminate the activity in support of BNDD in the summer of 1973. This decision was made because of concern that it might not be possible to make a clear separation between the requests for information submitted by BNDD as it pertained to legitimate foreign intelligence requirements and the law enforcement responsibility of BNDD. CIA had determined in 1973 that it could not support these requests of BNDD because of statutory restrictions on CIA. The National Security Agency is not subject to the same sort of restrictions as CIA, but a review of the matter led to a decision that certain aspects of our support should be discontinued, in particular the watch list activity was stopped. NSA did not retain any of the BNDD watch lists or product. It was destroyed in the fall of 1973 since there was no purpose or requirement to retain it.

With regard to "watch lists" submitted by FBI, CIA and Secret Service, these matters were discussed with the National Security Agency Counsel and Counsel for the Department of Defense, and we stopped the distribution of information in the summer of 1973. In September 1973, I sent a letter to each agency head requesting him to recertify the requirement with respect to the appropriateness of the request including a review of that agency's legal authorities.

On 1 October 1973, Attorney General Richardson wrote me indicating that he was concerned with respect to the propriety of requests for information concerning U.S. citizens which NSA had received from the FBI and Secret Service. He wrote the following:

"Until I am able more carefully to assess the effect of *Keith* and other Supreme Court decisions concerning electronic surveillance upon your current practice of disseminating to the FBI and Secret Service information acquired by you through electronic devices pursuant to requests from the FBI and Secret Service, it is requested that you immediately curtail the further disseminations of such information to these agencies.

Of course, relevant information acquired by you in the routine pursuit of the collection of foreign intelligence information may continue to be furnished to appropriate Government agencies . . ."

The overall result of these actions was that we stopped accepting "watch lists" containing names of U.S. citizens and no information is produced or disseminated to other agencies using these methods. Thus, the "watch list" activity which involved U.S. citizens ceased operationally in the summer of 1973, and was terminated officially in the fall of 1973. As to the future, the Attorney General's direction is that we may not accept any requirement based on the names of U.S. citizens unless he has personally approved such a requirement; and no such approval has been given. Additionally, directives now in effect in various agencies also preclude the resumption of such activity.

General ALLEN. Sir, with your permission, I may make some concluding remarks after the questions, if I may.

The CHAIRMAN. Very good. Thank you very much for your initial statement.

With respect to the legal questions that are raised by the various watch lists that you have described, I might say for the benefit of everyone concerned, that it is the committee's intention to call on the Attorney General in order that the questions regarding the possible illegality of these watch list operations, and also questions relating to the constitutional guarantees under the fourth amendment, can be taken up with the proper official of the Government—the Attorney General of the United States. We would hope to have Attorney General Levi here to discuss the legal and constitutional implications of your statement at a later date, perhaps next week. So I would hope that on that score, members would not press you too far since the proper witness, I think, is the Attorney General.

General ALLEN. Yes, sir.

The CHAIRMAN. Now, Mr. Schwarz will commence the questions.

Mr. SCHWARZ. Mr. Chairman, I would like to ask just two questions which lay a factual basis for the questioning of the Attorney General, and I hope that is not out-of-line in light of your comment. They are not designed to have him discuss law, but to lay a factual basis for a dialog next week.

The CHAIRMAN. Very well. We will listen to your questions and then pass on them.

Mr. SCHWARZ. Very well. General Allen, were any warrants obtained for any of the interceptions involving U.S. citizens which you have recounted in your statement?

General ALLEN. No.

Mr. SCHWARZ. And the second question: you have stated that NSA does not, in fact, intercept communications which are wholly domestic. That is, communications between two domestic terminals, and that its interceptions are limited to wholly foreign, or second terminals, one of which is in the United States and one of which is outside. With respect to wholly domestic communications, is there any statute that prohibits your interception thereof, or is it merely a matter of your internal executive branch directives?

General ALLEN. My understanding, Mr. Schwarz, is that—at least the NSC intelligence directive defines our activities as foreign communications, and we have adopted a definition for foreign communications consistent with the Communications Act of 1934. And therefore, I think that is the—

Mr. SCHWARZ. But you believe you are consistent with the statutes, but there is not any statute that prohibits your interception of domestic communication.

General ALLEN. I believe that is correct.

Mr. SCHWARZ. I have nothing further, Mr. Chairman.

The CHAIRMAN. Just so I may understand your last answer, General, so that the definition of foreign intelligence is essentially one that has been given you by an executive directive from the NSC, and is not based upon a statutory definition.

General ALLEN. Yes, sir.

The CHAIRMAN. Very well. We are going to change our procedures today to give the Senators at the end of the table who are usually the last to ask questions, and sometimes have to wait a good length of time, instead of moving from the chairman outward. This I must say, has the consent of our vice chairman, Senator Tower—so we will move to the ends of the table first, and that means our first Senator to question is Senator Hart.

Senator HART of Colorado. Thank you, Mr. Chairman.

General Allen, there are two broad areas that this committee is concerned about in terms of legislative recommendations. One is congressional oversight, and the other is the issue of command and control. And it is in these two areas that I would like to ask a couple of questions.

First of all, you went to some lengths in your statement to talk about the history of NSA's briefing of Congress and various congressional committees. In that history, was there any occasion when officials of the NSA briefed members of Congress about the watch list activities?

General ALLEN. Sir, I honestly don't know about that, prior to my coming on in the summer of 1973. And the reason for that is that the testimony is in executive session—and there are conversations, and I really don't know whether previous Directors discussed it with Congress or not.

I would say that I have no evidence that they did.

Senator HART of Colorado. That they did or did not?

General ALLEN. I would say that I have no evidence that previous Directors discussed the watch list matters with Congress prior to the summer of 1973 when I came on board. Since I went on board, there have been a number of occasions where this has been discussed with various elements of Congress which, to a certain degree, began early in 1974 with the investigations of the House Appropriations Committee investigating team.

Senator HART of Colorado. With what degree of specificity did you brief elements as you say, of Congress about the watch list activities? With the same degree of specificity that is contained in your statement today—the numbers of names and so forth?

General ALLEN. The investigation that I refer to by the Appropriations Committee investigative team did go into the matter in substantially more detail than we have described today. There were a number of pages in their report that we related to that.

I would suspect that other briefings probably were of less detail—well, no, I would say the briefing before Mr. Pike's committee was in more detail, discussed today, in closed session.

Senator HART of Colorado. For the purposes of our record today, did you conduct some historical review, whether, prior to your assumption of the Directorship, such briefings on watch list activities took place?

General ALLEN. Well, to the extent that we're able to conduct those activities, we have. And we have no evidence that they did take place.

Excuse me, I have just been pointed out an exception to that, and that is, Mr. Nedzi was briefed on the—at a previous time on the general subject of how these kinds of communications are handled. And I presume that he was given a fairly thorough insight into this.

Senator HART of Colorado. Do you know when that was?

General ALLEN. We will find that out, sir.¹

Senator HART of Colorado. The same question applies to the other program which we have under consideration here today, and over which there is some dispute.

Could you tell us whether Congress, or any elements of Congress, were briefed on that program?

General ALLEN. I do not know. I do not know that they were.

Senator HART of Colorado. If you could find out and let us know, I think we would appreciate it.

The second broad area is the area of command and control: Who is in charge here? Who gives the orders? How high up are the officials who know what is going on? In this connection, it is my understanding that officials presently at NSA have testified, or given us information, that your predecessor, Admiral Gayler, and the former Deputy Director, Dr. Tordella, were completely aware of the watch list program, and their sworn testimony in the case of each or both of them is that they were not aware of this, or only became aware of it sometime after they assumed their positions.

Could you give us a definitive answer as to whether both Admiral Gayler or Dr. Tordella knew about the watch list activities?

General ALLEN. I am certain they did, sir. And I think the testimony you refer to must be misinterpreted in some way, because clearly, Admiral Gayler and Dr. Tordella knew, and have testified—I think, perhaps, sir, you may be referring to a question that did arise in our more complete closed discussions with the staff in which there was a question as to whether these analytic amplifications which NSA made to the lists—that is, where names were added by NSA people to enhance the selection process of the requirement already specified—whether those were approved by the proper command structure within NSA. And there has been a little bit of uncertainty about that.

It is fairly clear to me in my research that there was an appropriate Directorship, Deputy Director review of those procedures. It has been a little unclear as to whether each name was approved, and so on.

Senator HART of Colorado. In that connection, Admiral Gayler was asked, "Did people tell you the list included names of U.S. citizens or other entities?" and then came a rather long answer which includes

¹ In a Nov. 6, 1975, letter from David D. Lowman, Special Assistant to the Director, NSA, the select committee was informed that the date of the briefing referred to above was Jan. 10, 1975.

the following statement: "This particular subject didn't come to my attention until about the time this domestic problem was surfaced by the President."

The staff then asked, more specifically, when that was, and he said, "I became aware of that, I guess it was a year or so after I got there." So Admiral Gayler does not suggest that he was briefed on the existence of watch list activities until perhaps more than a year after he assumed the Directorship.

Do you know why that would be?

General ALLEN. No, sir, I don't. I was not aware of that aspect of his testimony. I do know, for example, of information that has been made available to the committee, that he was aware, and made fully aware, in 1971, early 1971 [exhibit 5].¹ Your time refers, actually, to before that.

Senator HART of Colorado. When did he assume the Directorship? In 1969?

General ALLEN. Yes; it must have been 1969. Yes, sir.

Senator HART of Colorado. So a period of time passed in which the Director of NSA apparently did not know that this activity was going on. We find that extraordinary.

You have stated that NSA officials or personnel were placing names on the list. There seems to be some dispute about that also. Admiral Gayler and Dr. Tordella both deny that they knew that NSA was putting names on the list, yet, I think the suggestion here is that this was knowledge that the Director and the Deputy Director didn't know about.

Is that the case?

General ALLEN. Well, we have clearly had a conflict in people's recollections in that period of time. It is the clear recollection—and there certainly are some internal memorandums that reflect—that the procedures by which amplifications are made to lists were explained to the Director and Deputy Director at the time, and that they were aware of them.

It apparently is also true that in the period of time when they gave testimony, they didn't recall that particular briefing.

Senator HART of Colorado. Well your testimony here this morning is a little confusing also. In your statement you say, we do not generate our own requirements for foreign intelligence, and yet the indication is that the staff or officials of NSA, do, or had in the past, added names out of the Office of Security, and so forth.

General ALLEN. I'm sorry, sir, that is another question. That does not actually relate to foreign intelligence. I believe it is not the subject of discussion today.

The question of adding names that relate to the amplifications in the foreign intelligence field was in no case a matter of adding anything new to the list. It was a matter of adding aliases, it was a matter of adding addresses in some cases where an organization had been specified, and it would assist picking up messages of that organization, the names of officials of the organization were added to enhance the selection process.

Senator HART of Colorado. But it is your testimony that out of the NSA itself there was no generation of new names or organizations?

¹ See p. 156.

General ALLEN. That is correct.¹

Senator HART of Colorado. In connection with the role of the Intelligence Board, you indicate in your statement that the U.S. Intelligence Board reviewed these activities and was kept cognizant of them. We have testimony—statements before this committee by people involved in the Board's activities in the past, that the Board itself, in being apprised that watch list activities were going on was not aware of the fact that communications of U.S. citizens were being monitored.

Is that the case, or not?

General ALLEN. Well the difficulty that we have here, sir, as I understand it, is there is no record that the U.S. Intelligence Board in its sessions ever considered or had this information presented to them. The circumstances are that the requirements process of the U.S. Intelligence Board, which is directed toward substantive requirements, did include in it various subject statements—that is, that related to these particular subjects. And on occasion, included such subjects as in satisfying the watch list individuals provided by whatever agency it was. So those things are in the U.S. Intelligence Board guidelines. It could be only presumed that U.S. Intelligence Board, which consists of membership of the requesting organizations, knew that the lists they were directing to us to follow were lists which their agency was preparing and did contain some U.S. names.

Senator HART of Colorado. And therefore, it is your testimony, or is it not, that the intelligence board knew that so-called civil disturbance names were being included on this list?

General ALLEN. Well, the U.S. Intelligence Board certainly knew that, because my predecessor, General Carter, made it a very specific point to notify them immediately upon getting what he considered to be the first request in this area. And that was his purpose for doing that.

Senator HART of Colorado. Including the civil disturbance names?

General ALLEN. Well, yes, sir. His message is here in the record [exhibit 2]², but it states that he is being asked to respond to this requirement and to seek intelligence regarding foreign influence on certain organizations.

Senator HART of Colorado. One final question, General.

In connection with the Huston plan, one recommendation of that group was that communications intelligence capabilities should be broadened and that the President was requested to authorize broadening of those capabilities.

To your knowledge, did President Nixon know about the extent of this watch list?

General ALLEN. To my personal knowledge?

Senator HART of Colorado. Well, to your knowledge as Director.

General ALLEN. No. I have no such knowledge one way or another as to President Nixon's personal knowledge.

¹ After reviewing a transcript of this testimony, NSA advised the committee that 50 to 75 names were added in its "amplification" of watch lists, and that this "was usually done either by adding the name of an executive officer of an organization, or by adding the organization name associated with a person who was placed on the watch list by another agency." (Letter from David D. Lowman, Special Assistant to the Director, NSA, to the select committee, Nov. 6, 1975.)

² See p. 147.

Senator HART of Colorado. So you, or perhaps Mr. Buffham, can't account for the fact that the President was being asked to broaden a capability that he did not know existed in the first place?

General ALLEN. Well, you asked me what I thought President Nixon knew.

Senator HART of Colorado. Yes.

General ALLEN. And I say I really don't know. There is some evidence as to what Mr. Huston thought because we have the various things which he wrote, and the documents that he prepared. Mr. Huston apparently believed that this activity which he knew of, and which he had seen the output of, was being conducted in a very restrictive and minimal manner—which was true—and that it would be of value to those problems which the President had on his mind if it were expanded. And he also recognized that the NSA would not respond to that kind of a request for expansion or broadening of this activity without very clear and specific Presidential direction to do so. So it is my understanding that Mr. Huston was making such a recommendation, and of course it did not come to pass.

Senator HART of Colorado. That is all, Mr. Chairman.

Thank you.

The CHAIRMAN. Thank you, Senator Hart.

Senator Schweiker?

Senator SCHWEIKER. Thank you, Mr. Chairman.

General ALLEN, who were the two Attorneys General and the Secretary of Defense who approved this activity?

General ALLEN. Our statement said they reviewed the activity.

Senator SCHWEIKER. Reviewed it?

General ALLEN. Yes, sir. We have documentation available in looking back at our records of this, that Admiral Gayler reviewed this activity in detail with Mr. Laird, Mr. Kleindienst, and Mr. Mitchell, on a couple of occasions, one very clear one relating to Mr. Laird and Mr. Mitchell. Approval is an awkward—it is not fair to those people in the sense that the memo for record shows that he discussed it with them in some detail, that there was agreement as to the procedures that were to be followed, and that he then submitted a memorandum back to them saying this is what we discussed and this is the procedure we followed.

Senator SCHWEIKER. That is Admiral Gayler reviewed it with him—with them, I should say?

General ALLEN. Yes, sir.

Senator SCHWEIKER. And then, just a moment ago, we heard there was some discrepancy as to whether Admiral Gayler knew about the watch list himself.

General ALLEN. Well sir, that was at the time—apparently Admiral Gayler's recollection had to do with a year or so afterward. I believe, as we look back at the records, it is probably true that that was not quite so long as a year.

Senator SCHWEIKER. General Allen, in the course of intercepting international communications, does the NSA accidentally or incidentally intercept communications between two American citizens if one of them happens to be abroad?

General ALLEN. Yes, sir.

Senator SCHWEIKER. And what procedures, and what do you do after you intercept a message between two American citizens, either in terms of what you feel the law is or what your directives are?

General ALLEN. The directives are that we do not do anything to those communications, and we reject it as early—reject such communications as early in the process as it is possible for us to do. For example, if by tuning the receiver, it is possible to reject them, that is what one does. If it turns out to be somewhat later in the process, one does it then. But the rules are clear, and that is that one rejects those messages as quickly in the selection process and as automatically as it is physically possible to do.

Senator SCHWEIKER. Is there any law that you feel prohibits you from intercepting messages between American citizens if one is at a foreign terminal and the other is at a domestic terminal, or do you feel there is no law that covers this situation?

General ALLEN. No, I do not believe there is a law that specifically does that. The judgment with regard to that is an interpretation.

Senator SCHWEIKER. General Allen, in a few words, what was Project MINARET? Would you just describe, just briefly, what the objectives of Project MINARET was?

General ALLEN. Well, sir, that was the project we have been talking about. That was a code word used for it during part of the time we described.

Senator SCHWEIKER. Relating to the individuals, organizations involved in civil disturbances, antiwar movements, demonstrations, and things such as that: is that correct?

General ALLEN. Yes, sir. MINARET is a term that began in 1969, and as we described somewhat formalized the process by which these messages were handled, which had begun apparently about 1967 [exhibit 3].¹

Senator SCHWEIKER. Now, in the initial communication on MINARET, is it true that one of the equally important aspects of MINARET was not to disclose that NSA was doing this?

General ALLEN. That appears in the documentation regarding it. Yes, sir.

Senator SCHWEIKER. And what was the reason for not disclosing to the other intelligence agencies—because this information only went to other intelligence agencies—what was the reason for not disclosing to the other intelligence agencies, who were the consumers, that NSA was doing this?

General ALLEN. It is hard for me to really answer it, because I am not exactly sure as to what was the feeling of the people at the time. My understanding is that the concern was that the people at NSA felt it was terribly important that the activity be solely related to foreign intelligence, and that by delivering these kinds of messages to an agency which also had a law enforcement function, there was a danger that the material would end up being used for a purpose which would not be appropriate. Therefore, for that reason there were a set of procedures adopted which made the material be handled in a distinctive and separate way to where it went to only specified individuals, only hand-carried, clearly marked "For Background Use Only;" also de-

¹ See p. 149.

void of the kind of designators that are placed on the kind of intelligence information which NSA produces for a broader range of users.

Senator SCHWEIKER. Might there have been some concern that this was a questionable legal area and that therefore dissemination of who was doing it and how they were doing it might also have been injurious to the Agency?

General ALLEN. It is possible. I think that of course the concern was that if the material was—the basic concern is, I imagine it was in people's minds at that time, was that if the material were used for some purpose associated with prosecutive or evidentiary basis, that the sources and methods which were used to obtain that intelligence would then be vulnerable to disclosure or demands by courts to see it; so there was a very great concern to insure that this material was handled in such a way as to minimize the possibility that it would be used in that fashion.

Senator SCHWEIKER. Would it be possible—granted this is not your policy, and that you state you have not done this—would it be possible to use this information and apparatus that you have to monitor domestic conversations within the United States if some person with malintent desired to do it? Not that you have done it, not that you intend to do, not that you don't have a prohibition about it; I am just asking you about capacity or capability.

General ALLEN. I don't think I really know how to answer the question. I suppose that such a thing is technically possible. It is clearly in violation of directives procedures which are established throughout the entire structure and which are monitored with great care.

Senator SCHWEIKER. And it has not been done by your agency, is that correct?

General ALLEN. Yes, sir.

Senator SCHWEIKER. The names that were put on the watch list could have been sent in by any one of almost, I guess, a dozen security agencies or intelligence agencies. Did you have any criteria as to whether you accepted their names or not? In other words, suppose the FBI put names on a list; did you reject any of their names, or did you just accept that as the input and the recommendation or the suggestion from the FBI, for example?

General ALLEN. It is my understanding, in going back and discussing how that process worked at that time, that there were, in at least two cases, discussions about substantial increases to names for a couple of different problems. These problems looked to the people at NSA as though they were in the law enforcement area, and therefore these agencies were told not to submit those kinds of names, and they were not so submitted. So, there was that kind of a review made, at least in some cases.

In general it is true that the agencies did submit names and NSA accepted them based on the assurance of senior officials at those agencies that that was an appropriate thing to do.

Senator SCHWEIKER. So, it is NSA's basic position that the responsibility as to determining what criteria was used for putting names on the list, with the exceptions you have noted in terms of specifics, was basically the responsibility of the originating agencies, is that correct?

General ALLEN. Yes, sir. You will note in the record that when I arrived at NSA, one of the first things that I did was to contact each

of the agency heads and request them to reexamine exactly that point, and to reassure me that they had reviewed these names on the list and that their requests for information were appropriate within their statutory and executive authorities. That, of course, ended up with having the effect of terminating the program. But the view that we had was that that responsibility was one held by the requesting agency.

Senator SCHWEIKER. Do you think that the responsibility should rest with each agency? I am thinking of prospective legislation. Where do you think that responsibility should lie as to who makes demands on your agency at this point for the future? Shall we forget the past?

General ALLEN. Well, for the future, we certainly have directives now which prohibit this kind of activity in the future, and those are internal NSA directives which I have issued. There are also, I understand, similar directives at the requesting agencies. I believe that it has to be a responsibility of both, and I think the question of oversight was in the executive branch is one that is appropriate for the executive.

Senator SCHWEIKER. Yes. And yet, Mr. Huston wrote a memo that we referred to a moment ago, where the memo indicated, at least as far as the memo was concerned, he wasn't even aware that the kind of activity we are talking about was going on. This was a memo to Haldeman, to the whole White House structure, and unless somebody was misleading people in terms of writing a false memo, or badly informed, the memo went out implying that none of this activity really was being conducted now.

Is that not correct?

General ALLEN. No, sir, that is not correct.

Senator SCHWEIKER. The Huston memo didn't say that you needed more authority to do what you were doing?

General ALLEN. The Huston memo, according to my recollection, sir, said that the NSA was providing some intelligence pertinent to this problem at the present time in accordance with very restrictive and in a minimal way, and that in order to do more of it, presumably in accordance with the President's desires, they would have to receive additional instructions in order to do that.

Senator SCHWEIKER. Yet, the watch list was going on in full blast at the time with any agency having a right to put in any name that they wanted. I have trouble reconciling that.

General ALLEN. Well, Number one, sir, I am not sure what you mean by "full blast." The program I described was in process. Agencies were, I trust, constrained in their placing names on it, and NSA at least exercised some constraints in their accepting of names. There was a great deal of constraint in the manner in which the information was handled. There were also no activities undertaken by NSA, with the one exception we noted, to obtain these communications, only to select them. And, it was to these issues, I think, that Mr. Huston was probably referring when he said he thought there should be an expansion.

Senator SCHWEIKER. One final question, General.

You testified that in 1973, the CIA decided to discontinue certain activities because those activities might be in violation of the CIA's statutory charter. Now, NSA has no such charter, and yet, I think obviously you, too, are concerned about the activities of the past.

Shouldn't we have a charter for NSA, and shouldn't we write into law some things that won't be misconstrued or misunderstood or might be abused in the future? Shouldn't NSA have a charter like the CIA does?

General ALLEN. Well, sir, I really must leave that judgment up to the Congress. It is certainly clear now that the directives relating to foreign intelligence, and that the interpretations of foreign communications as they are appropriate at this time, are both clear in executive directives, and are enforced.

Senator SCHWEIKER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Schweiker.

Senator MORGAN is next.

Senator MORGAN. General Allen, I noticed in your testimony that you said between the years 1967 and 1973 you had at most about 450 names on the watch list for the purpose of watching for narcotics. Is that correct?

General ALLEN. Yes, sir, I believe so.

Senator MORGAN. And about 1,200 other names altogether.

General ALLEN. Yes, sir.

Senator MORGAN. So during that period of time of about 6 years you had about 1,650 names on the watch list.

General ALLEN. Yes, sir.

Senator MORGAN. And I believe you said—

General ALLEN. U.S. names, sir.

Senator MORGAN. U.S. names, that is right. And that the most that you had at any one time was about 800 names.

General ALLEN. Yes, sir.

Senator MORGAN. Now all of these names, or U.S. names, were names that had been involved in communications between a foreign station and either this country or some other foreign station.

General ALLEN. Well, the reports which were generated as a result of those names fit that description, yes, sir.

Senator MORGAN. That is right. And you were watching, of course—you put those names on, you testified, for many purposes; one, in an effort to stem the narcotics traffic. Is that one of the reasons?

General ALLEN. Yes, sir.

Senator MORGAN. And I believe you testified earlier that some large shipments of narcotics were identified through this watch list and were prevented from coming into this country.

General ALLEN. That is my understanding, yes, sir.

Senator MORGAN. Well, that was your testimony and your best information, was it not?

General ALLEN. Yes, sir.

Senator MORGAN. You testified also that on one occasion an assassination attempt on a prominent U.S. figure abroad was identified and prevented by the use of this watch list. Is that correct?

General ALLEN. Sir, I would have to set the record straight. We did identify that in an earlier version. In reviewing that particular item, there is some question in our mind as to whether the actual watch list procedures that we described here were the reason for selecting out the message that made that revelation. So, in an attempt to be completely fair, I would like to not say that was a result of the watch list.

Senator MORGAN. It did come from a message though that you intercepted.

General ALLEN. Yes, sir.

Senator MORGAN. You gave us another example as a value of this service, a notification to the FBI of a major foreign terrorist act that was planned in a large city in this country, which action was prevented because of information you received?

General ALLEN. Yes, sir.

Senator MORGAN. Is this the sort of information that you are looking for and watching for?

General ALLEN. Yes, sir.

Senator MORGAN. In all that period of time, in all of those 6 years then, is it fair to say you had about 1,650 American names out of about 200 million Americans?

General ALLEN. Yes, sir.

Senator MORGAN. All right, sir. Now, have you made all of that information available to the members of this committee or to the staff of this committee in executive session before?

General ALLEN. Yes, sir.

Senator MORGAN. Now, there is another project that has been alluded to but has not been named here today. Have you also testified to the members of this committee and/or to the staff all the information relevant to that project?

General ALLEN. Yes, sir.

Senator MORGAN. Have you been willing at all times to disclose any and all information about the NSA to the members of this committee in executive session?

General ALLEN. Yes, sir.

Senator MORGAN. And are you still now ready—are you now ready and willing to disclose that or any other information?

General ALLEN. In closed session? Yes, sir.

Senator MORGAN. In closed session, to this committee of the United States Senate.

General ALLEN. Yes, sir.

Senator MORGAN. Now you testified also about the law with regard to this disclosure of information. If you would bear with me just a minute—I believe you testified that:

The Congress of the United States in 1933, both the House and the Senate, enacted a law encoded in 18 U.S. Code 952, which prohibits the divulging of the contents of decoded foreign diplomatic messages or information about them.

And you also said that:

Again in 1950, the Congress, both the House and the Senate, enacted another law, encoded in 18 U.S.C. 798, which prohibits the unauthorized disclosure, prejudicial use, or publication of classified information of the government concerning communication intelligence activities, cryptologic activities, or the results thereof.

Is it your opinion that that is still the law?

General ALLEN. Yes, sir.

Senator MORGAN. Is it your opinion that the information with regard to the other project, if disclosed publicly, would be detrimental or could be detrimental to the national security of the United States?

General ALLEN. Yes, sir.

Senator MORGAN. To your knowledge, is it still not the position of the President of the United States that that information should not be disclosed publicly?

General ALLEN. That is my understanding, sir.

Senator MORGAN. And the Attorney General of the United States has so communicated that to this committee. But you are still willing—in the first place, you have communicated that information, all that you have been asked for, to this committee and you are now willing to communicate any other information within your command to this committee in executive session.

General ALLEN. Yes, sir.

Senator MORGAN. All right. Thank you, sir. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Morgan.

Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman.

General, on the last page of your statement, you say that :

Thus, the watch list activity, which involved U.S. citizens, ceased operationally in the summer of 1973 and was terminated officially in the fall of 1973.

I think that is perhaps the most important sentence in your statement. And I want you to tell us if that is now the status.

General ALLEN. Yes, sir, it is.

Senator MATHIAS. And this was done on the advice of Attorney General Richardson, but in fact, by the agency itself. Is that correct?

General ALLEN. Yes, sir. I terminated the—well, the distribution of materials was terminated in the summer. I requested each of the agencies to review it and it was shortly after that that the Attorney General also then wrote to me and said he was questioning the requests from FBI and the Secret Service.

Senator MATHIAS. Well, this is the kind of judgment and restraint that I wish more of the agencies of the Government had exercised throughout the years. I think, General, you are to be congratulated for the action that you took. I think it is a very important addition to the administrative history of the Federal Government. I think it is an example that I wish others would follow.

I have no further questions.

Senator GOLDWATER. He is Air Force, that does not surprise me.

Senator MATHIAS. Do you want that on the record?

General ALLEN. Yes, sir.

The CHAIRMAN. Senator Mondale?

Senator MONDALE. Thank you, Mr. Chairman.

General Allen, I would like to say for the record that I think that the work of the NSA and the performance of your staff and yourself before the committee is perhaps the most impressive presentation that we have had. And I consider your Agency and your work to be possibly the most single important source of intelligence for this Nation. Indeed, so much so that I am not convinced that we fully perceived the revolution that has occurred in recent years in intelligence gathering as a result of technological breakthroughs, and it is your agency which basically deals with that area. But it is that most impressive capacity which works so often for the purposes of defending this country and informing it that also scares me in terms of its possible abuse.

That is why I am interested in knowing what limitations exist, in

your opinion, upon its use that could be described as an abuse of the legal rights of American citizens. As I understand your testimony, you limit yourself to the interception of communications between—either to or from—a foreign terminal and one in the United States. You do not intercept messages to and from persons within the United States.

General ALLEN. That is correct, sir.

Senator MONDALE. But I also understand that this is a matter of policy and not of law, that the basis for this limitation is a judgment on the part of our Government that that ought to be as far as you go. There is not, in your judgment, or in the judgment of the Agency, a restriction that would limit you precisely to those policy guidelines that you now have.

General ALLEN. Well, I believe that is correct, sir, as far as the precise restriction is concerned. But there is no misunderstanding with regard to the Executive directives that exist, the restriction is to foreign intelligence purposes and foreign communications which are defined in some way.

Senator MONDALE. Given another day and another President, another perceived risk and someone breathing hot down the neck of the military leader then in charge of the NSA; demanding a review based on another watch list, another wide sweep to determine whether some of the domestic dissent is really foreign based, my concern is whether that pressure could be resisted on the basis of the law or not.

General ALLEN. Well, it is very hard for me, of course, to project into a future unknown situation. And there are certainly risks that seem to have occurred in the past. I can certainly assure you that at the present time, under any combination of the present players, as I understand the rules and the players themselves, there is no possibility of that.

Senator MONDALE. I will accept that. But what we have to deal with is whether this incredibly powerful and impressive institution that you head could be used by President "A" in the future to spy upon the American people, to chill and interrupt political dissent. And it is my impression that the present condition of the law makes that entirely possible. And therefore we need to, in my opinion, very carefully define the law, spell it out so that it is clear what your authority is and it is also clear what your authority is not.

Do you object to that?

General ALLEN. No, sir.

Senator MONDALE. I am very heartened by that answer. In the old days of the watch list, as I understand our earlier testimony, when a name was presented to you from the FBI, from the CIA, or from other sources, your agency really could not determine whether the purpose of including that name was for a legal objective or for an illegal purpose. In a sense, your role was largely ministerial. The names were received. They were placed on the watch list. You intercepted information and sent it to the consumer agency. But why they really asked for it, other than the very generalized description they would often give you, or how the information was used, was largely unknown to the NSA. Is that correct?

General ALLEN. Well, it is certainly to some degree correct, sir. The points that you have made were recognized at the time and there were

steps taken to try to protect against the dangers that you point out. For example, there was, as a matter of practice, a description of the foreign intelligence requirement to which names were requested.

Senator MONDALE. Yes, they would say this would be for drugs or this is for personal security of the President, or this is for the purpose of determining whether there is foreign influence in terms of the antiwar movement, and so on. But there was no way that you really knew in most cases, what may have been behind a request or how that information was being used. Was there?

General ALLEN. Yes, sir. In a strict sense that is certainly correct.

Senator MONDALE. Thus similarly, the IRS is in the same position that if some agency like the FBI in its COINTEL Program is pursuing an illegal objective, you may be tasked to intercept messages in order to procure information for an illegal purpose. That too, then, ought to be defined very carefully to protect your agency from abuse. Would you agree with that?

General ALLEN. Yes, sir.

Senator MONDALE. I find that answer heartening.

During the watch list days, you were oppressed heavily, along with the other agencies, to find evidence of foreign involvement, direction, or control of the antiwar movement. Would you say that you found much evidence of such foreign control and direction?

General ALLEN. Sir, my understanding of that is not complete. From a review of results of those messages which we did provide other agencies, they essentially did deal with foreign influences and foreign support to certain domestic activities. And so, in that sense, I would say that the results of the NSA activity did show foreign influence. It is also my understanding that when that information was put in perspective by particularly the CIA, I believe, that their conclusion was that the degree of foreign control was very small.

Senator MONDALE. The first part of your answer surprised me a little bit because almost uniformly we have heard evidence from the various other agencies that they found little or no foreign direction, even though they were being pressed so hard to find it by the—

General ALLEN. Well sir, you must bear in mind that we were only dealing with messages that related to a foreign contact or a foreign interaction for the person involved. So all we saw was that. And so our perspective on it is clearly biased. What we saw was foreign involvement and foreign support. I don't want to use the word control because I do not know how to assess that. But my understanding is that the agencies evaluating it concluded as you said.

Senator MONDALE. One of my concerns, and I think this has come up with the other agencies—the Postal Department, the IRS and so on—is that when you are tasked to review something as vague as foreign involvement or direction, it becomes so vague that it is very hard to restrain the review at all. And we have one example that it is agreed that we could raise today. A leading U.S. antiwar activist—and we know him to be a moderate, peaceful person, as a matter of fact, someone who quit the antiwar movement even though he was desperately against the war, because he so much opposed some of the militancy and violent rhetoric—sent a message to a popular singer in a foreign country asking for contributions to a peace concert—and also his participation. The message noted the planned participation

in this concert of some of the most popular musicians and groups in the United States at that time and asked the recipient "either to participate directly in providing the entertainment, or support the concert financially." Now, we have agreed not to use the names. I do not know why we have agreed not to use the names, but we have.

The CHAIRMAN. I might say there, Senator, the reason being that we have not first cleared it with these individuals and there is a matter of their own privacy that we have to take into account.

Senator MONDALE. All right, fine. But in any event, when you are picking up stuff like this from peaceful people who just are opposed to a war which now most Americans feel was unwise, do you not think that it raises very serious questions about how you contain snooping and spying on American citizens—particularly when your agency is required to pursue an objective which virtually defies definition and so easily can spill over in a way to undermine and discourage political criticism and dissent in this country?

General ALLEN. I am afraid, sir, I have to dodge the basic philosophic nature of your question because the facts are, that as a technical collection agency, NSA was asked a far more simple question, which is a little hard for me to go back and construct all the emotion at the time. It is certainly not the same as today. But that question was that the Defense Intelligence Agency, in this particular case, asked for information on the funding of certain U.S. peace and anti-Vietnam war groups. And this message was from such an organization or person to an overseas location where foreign funding and support was requested. It's certainly true that in this time in history one would certainly have a substantially different view of that than at the time.

Senator MONDALE. But it shows how very difficult it is to define the outer parameters of a search like that, does it not? I mean, if we could use the names today, I think people would be surprised at governmental concern or the feeling that Government had the right to snoop in such messages, would they not?

General ALLEN. Well, I only can say I don't know how to answer your question. The requirement to us, the request for information was very specific and very constrained and addressed to a very narrow point. The broader aspects of your question, I think I am not really qualified to answer.

Senator MONDALE. I think that is why we have to define your requirements to include some very precise limits on the interruption of citizens' rights, because as I see it now, at least as the agency has defined its restrictions in the past, you are largely unrestricted. It has been the interpretation of your agency that you can roam very far indeed.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you Senator Mondale.

Senator Goldwater.

Senator GOLDWATER. First, I want to be on the record as opposed to public hearings on this matter.

General, as I remember correctly, when you were before our committee, you stated that the law did not allow you to testify on any aspect of the NSA. Is that correct?

General ALLEN. That is what I believe to be the case, yes, sir.

Senator GOLDWATER. Then, theoretically, you are violating the law in being here.

General ALLEN. It would seem so, yes, sir.

Senator GOLDWATER. Well I wanted to ask that question to get two rules that bear on this committee that maybe some of our members have forgotten about.

In the Senate Rule 36 paragraph 5 it says:

Whenever, by the request of the Senate or any Committee thereof any documents or papers shall be communicated to the Senate by the President or the head of any Department relating to any matter pending in the Senate, the proceedings in regard to which are secret or confidential, under the rules, said documents and papers shall be considered as confidential and shall not be disclosed without leave of the Senate.

I wanted to make that a part of the record in the event that any classified information might be offered by members of this committee under the assumption that we have the power to downgrade or declassify classified information.

Then, we in our own rules, under Senate Resolution 21 "a select committee is required to protect classified information."

Section 7 reads as follows:

The Select Committee shall institute and carry out such rules and procedures as it may deem necessary to prevent . . . (2) the disclosure, outside of the Select Committee, of any information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal government.

So you are probably, in your opinion, operating outside the law. I just wanted to set the stage so that this committee would not try to operate outside the rules of the Senate and the rules of its own committee.

I have no questions.

The CHAIRMAN. Thank you Senator Goldwater.

I think at the appropriate time I will reply to the suggestion that the committee is operating outside of the rules of the Senate or outside of the law. I do not believe that to be a correct statement of the position of this committee. But I will not interrupt the line of questioning at this time, because I think Senators would like to have a chance to complete the questioning of the witness.

Senator GOLDWATER. Mr. Chairman, I did not charge that we had operated outside the rules. I said we may.

The CHAIRMAN. Very well, we will discuss that at greater detail unless the Senator would like to discuss it now. I thought we would go through the line of questioning first.

Senator GOLDWATER. I just want to protect you and all of us.

The CHAIRMAN. All right, fine. Thank you Senator Goldwater. I really appreciate that.

Senator TOWER. I must say, Mr. Chairman, I am very touched by Senator Goldwater's concern for your safety.

The CHAIRMAN. I am too, Senator. Let us see, who is next here? Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much.

General, I notice in your statement in speaking of the utilization of the watch list and your efforts in that respect over the years. This sentence: "Examples of the value of this effort including the notifica-

tion to the FBI of a major foreign terrorist act planned in a large city which permitted action to prevent completion of the act and thus avoid a large loss of life." Are you at liberty to elaborate on that at this point?

General ALLEN. I really am not, sir.

Senator BAKER. And the balance of the statement is equally provocative to me. It says: "An assassination attempt on a prominent U.S. figure abroad was identified and prevented." Can you give us any further information on that? I am not urging you to go beyond the confines of those things you are permitted to testify to at this point.

General ALLEN. Sir, we will certainly provide that in executive session to you and go into some detail.

Senator BAKER. On both those points in executive session?

General ALLEN. Yes.

Senator BAKER. Then I will not, General, insist on it at this time except to ask you whether or not I am to assume by your statement that both of these activities, which I will hear more about in executive session later, were in fact prevented as a result of your activities in conjunction with the watch list.

General ALLEN. No, sir. Well, Senator Morgan asked the question and you have an earlier draft of the statement, the one with regard to the assassination attempt, on more careful review, we really could not support that it was a watch list entry that caused us to select the message that revealed that particular act. So that was an error on my part to have included that. The situation is correct in the interception of the message and all of that is correct. But it is unfair to say that we selected because of the watch list.

Senator BAKER. But both of them were involved with your watch list activities.

General ALLEN. Yes, sir.

Senator BAKER. Well I will look forward to your further statement on that a little later.

On the general watch list operations, General, did you ever receive the written approval of any Attorney General of the United States about these activities?

General ALLEN. Not to my knowledge, no, sir.

Senator BAKER. Was any ever sought that you know of?

General ALLEN. No, sir. The briefings which a predecessor of mine gave had some of those characteristics and the record shows that they were briefed in some detail and had some agreement on the procedures to follow. But it is probably unfair to the Attorneys General involved to say that it was a specific written approval.

Senator BAKER. Do you know of particular circumstances where a President or an Attorney General or any Cabinet member for that matter may have suggested names to be included on the watch list?

General ALLEN. No, sir, I do not.

Senator BAKER. Were any names ever suggested to the NSA that were rejected for inclusion on the watch list?

General ALLEN. My understanding, sir, as we have looked back at the history of that is that there were substantial numbers of names which were suggested, a large number from the FBI and from another agency as well which were rejected in the sense that a discussion took place as to the appropriateness of these names. The NSA people pointed

out to them that it was too close to law enforcement and that therefore they should not be included. And, therefore, they were rejected.

But that is not documented in the sense of it was turned down before it got to the Director of the FBI and he did not in fact submit the name.

Senator BAKER. That is a fairly general statement. But let me tell you the impression that I draw from it. You are saying that in these particular cases that the NSA said these names and the purposes for which you would include these names are not close enough to intelligence gathering, which is our bag, and are probably only justified as law enforcement, which is your bag, and therefore we are not going to include them.

Is that the essence of what you have said?

General ALLEN. Yes, sir.

Senator BAKER. Who made that determination? Did you make that determination?

General ALLEN. No, sir. It was made at a lower level within the agency, so the request never came. I am reminded it was actually not the FBI but the Department of Justice.

Senator BAKER. I see. All right.

General ALLEN. And it was turned down before it got to the Attorney General.

Senator BAKER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Baker.

Senator BAKER. Before we go on, General I do want to be briefed on the other two points, Mr. Chairman, either in executive session or if the General would agree to fill me in on the details at a later time, I would be grateful for that.

The CHAIRMAN. Very well.

Senator Tower.

Senator TOWER. General, you are familiar of course with the efforts that have been made by the committee, by representatives of the administration and your agency to be circumspect in this public inquiry. Now, taking into account that effort and the good faith of all concerned, is there, in your opinion, a substantial risk still that these open hearings may impact adversely on the mission of your agency?

General ALLEN. Yes, sir.

Senator TOWER. Thank you, General.

The CHAIRMAN. General, your answer to the last question reflects the position of the administration, does it not, which is opposed to any public hearings on all matters past or present relating to the NSA.

General ALLEN. That was terribly broad, sir.

The CHAIRMAN. Well it seemed to me that the administration took a terribly broad position.

General ALLEN. I believe it is probably fair to say on all matters that relate to the intelligence operations of the NSA.

The CHAIRMAN. And it is also clear that although the administration opposed these hearings this morning on the watch list question, they did declassify the documents at the committee's insistence and did authorize you to appear as a witness this morning to respond to the committee's questions.

General ALLEN. That is correct, sir.

The CHAIRMAN. I have listened with great interest to your testimony, General, and to the answers. And it seems to me that the real area of concern for this committee has nothing to do with the fact that on occasion, your operation, watch list operation related to a perfectly good and important matter. I do not think that anybody here would quarrel about the fact that information affecting the protection of the President is a very important matter and if you have a capacity to help in that regard, I do not suppose any member of this committee would want to argue that that is irrelevant or unimportant.

The same thing can be said about narcotics. We are all concerned about narcotics. So our inquiry here has not as its purpose criticizing given objectives that you sought to serve, of the kind that you described. But, rather the lack of adequate legal basis for some of this activity and what that leads to. For example, you yourself testified that in connection with some information that you obtained on narcotics and turned over to law enforcement agencies of the Government, prosecutions could not be initiated because it was not possible to introduce that evidence into court. It was not lawful and under the rules of the court and laws of the land it could not be used. So prosecutions could not be initiated. Is that not correct?

General ALLEN. Well, I do not know sir. The reason that that concern was felt at the time was because the information could not be used in court because to do so would reveal intelligence sources and methods.

The CHAIRMAN. Well, for whatever reason we will question the Attorney General on the legality of the use of that information. But for one reason or another, it could not be used in actual prosecutions.

Now, Senator Mondale, it seemed to me, touched upon the root cause of our concern. Here we have an agency, the NSA, that is not based upon a statute, like the CIA, which undertakes to define its basic authority. And your testimony makes clear that whatever foreign intelligence may mean, it is being defined, from time to time by the executive. Is that not correct?

General ALLEN. Yes, sir.

The CHAIRMAN. Now, ordinarily, the executive does not decide such basic matters. Ordinarily, as in the case of the CIA, an agency of this importance finds its fundamental power derived from legislation. Suppose for example we had a President, we cannot be so certain what kinds of things may happen in this country, suppose we had a President one day who would say to you: "I have determined with my advisers, who are my appointees, that foreign intelligence is seamless and it is quite impossible to differentiate between domestic and foreign intelligence because we need to know it all, and some of it we can gather from domestic sources. And so, in the overriding interest of obtaining the maximum amount of foreign intelligence you are instructed to intercept messages between Americans that are purely domestic and various agencies of the Government will furnish you with lists of people whose messages you are to intercept—all without warrant, all without any judicial process, all without any sanction in the law."

Now, under those circumstances, is there anything in the present law that would permit you to say we cannot do this, Mr. President, and we refuse to do it because it is illegal?

General ALLEN. Yes, sir.

The CHAIRMAN. What provision is there in the law?

General ALLEN. It is my understanding that the interpretations which deal with the right to privacy of unreasonable search and seizure of the fourth amendment.

The CHAIRMAN. Well all of those questions—

General ALLEN. Those domestic intercepts which cannot be conducted under the President's constitutional authority for foreign intelligence, then we are not authorized by law or constitutional authority and they are clearly prohibited.

The CHAIRMAN. But those very questions were raised with respect to some of the watch list activities. In other words, do you not think that it would be in the interest of all of us if we had some statutory law like most all other agencies have that defines the basic mission and defines as a matter of law foreign intelligence and contains whatever other guidelines may be necessary to be sure that this tremendous capability you possess is outward looking and is confined to legitimate intelligence concerns of the country.

General ALLEN. Clearly, sir, neither I nor the agency I represent has objection to laws which are needed by this country. And we look to the Congress to make those decisions. On the other hand, I certainly do not want to leave the impression, sir, that there are these broad ranges of evil activities which would be done which in themselves—in my understanding of the status of the law and the executive branch directives—are clearly prohibited.

The CHAIRMAN. The executive branch directives which are largely determinative of the scope of your action at any given time are subject to change within the executive branch. The point I make is that there is a legislative responsibility here. And since it normally obtains with respect to the work of all other Federal agencies, it would seem to me advisable that it should also obtain with respect to the NSA.

I have no further questions of you General.

Are there any other further questions on the part of the members of the committee?

Yes, Senator Mondale.

Senator MONDALE. May I ask, is it Mr. Buffham?

General ALLEN. Yes, that is correct.

Senator MONDALE. If he is not sworn in, he doesn't have to be. I just want to ask, you were I understand, representing the NSA, or at least representing General Gayler, in the preparation of the Huston plan, is that correct?

Mr. BUFFHAM. Yes, sir.

Senator MONDALE. Can you help explain to us the mystery of why NSA appeared to be requesting authority from the President to do what it was already doing? What, in addition, was expected if the President signed off? What did you want to be able to do that was not then thought to be within the authority of the NSA?

Mr. BUFFHAM. Well, the activities which were ongoing at that time were very, very carefully controlled and very, very restrictive and very, very minimal.

The procedures which Senator Schweiker described under MINARET were drawn up to insure the most careful handling of this very, very restricted, very, very minimal effort. It appeared when this—when we were asked to cooperate by the President in providing more information that would be helpful in the domestic area, it ap-

peared to us that we were going to be requested to do far more than we had done before and it appeared to us that this might actually involve doing some collection, which we had never done before, doing some collection for this purpose. And we did not feel that we could engage in such activity unless there was approval at the very highest levels. So that was the reason that there was a reservation on NSA's part, and the feeling that any increase in these activities must have Presidential approval.

Senator MONDALE. So it was your judgment at that time that you were being asked, or were about to be asked, to do something that went substantially beyond—

Mr. BUFFHAM. That we could do, but we weren't certain. It appeared as if this was a request to increase activities.

Senator MONDALE. Could you tell the committee what kinds of things you would expect to follow had the Huston plan been approved, in terms of the use of the NSA?

Mr. BUFFHAM. I don't think we ever made an analysis of that, Senator.

Senator MONDALE. But you indicated you were concerned about what would be expected of you—the degree to which you would have to go beyond your current practices—should the Huston plan be approved. Can you tell us what things concerned you?

Mr. BUFFHAM. Well, remember there was a lot of confusion on this particular item.

The committee, which Admiral Gayler was a member of, was tasked to draw up a plan, not a plan, it was tasked to draw up an analysis of what kind of foreign threat existed and where there were gaps in intelligence and they were not asked to make any recommendations, they were merely asked to identify gaps and to suggest various alternatives which could remedy possibly that gap.

Senator MONDALE. One of the remedies suggested was to greatly broaden the authority of the NSA to intercept messages.

Mr. BUFFHAM. That was one of a series of alternatives under that particular item. There was no recommendation made by Admiral Gayler or any members of that Ad Hoc Intelligence Committee. What happened was that after the committee's report went to the White House, Mr. Huston analyzed all of the alternatives and he selected those which, in his judgment, he felt the President should approve. And he then prepared a memorandum to the President through Mr. Haldeman, which was approved and then later, withdrawn and rejected and never implemented. But those were Mr. Huston's ideas of what should be done.

Senator MONDALE. What did Mr. Huston have in mind? Had this approval been given to the NSA?

Mr. BUFFHAM. That I do not know, sir.

Senator MONDALE. You have no idea whatsoever? I am told this option was submitted by the NSA.

Mr. BUFFHAM. No. This was one of three or four alternatives drawn up under that particular item.

Senator MONDALE. Did the NSA want it? Did Admiral Gayler oppose it?

Mr. BUFFHAM. Admiral Gayler did not want it, to my knowledge.

Senator MONDALE. He opposed it! Is there anything in writing suggesting—

Mr. BUFFHAM. He was specifically asked, as all the members of the committee were asked by Huston, not to make recommendations, but merely to specify alternatives. But the determination as to what alternative, if any, was to be selected was to be a White House matter. Now, the only exception to that was that Mr. Hoover, after the report had been signed by the other members, he gave his personal views as to what should be done with those various alternatives, and that was not checked with the other members of the ad hoc committee report.

In other words, Admiral Gayler did not know that Mr. Hoover was going to submit separate comments, and Admiral Gayler did not submit separate comments himself; because it was his understanding, as it was all of us that were involved in that exercise, that that was not what was required or desired.

Senator MONDALE. Mr. Buffham, is it your testimony that you do not have any idea what Mr. Huston had in mind by the option which we are discussing; namely, to greatly broaden the discretionary authority of the NSA?

Mr. BUFFHAM. Well, I don't know positively. But I would assume that he would have thought that the other intelligence agencies would then increase the numbers of names on their lists, and ask NSA to do something by way of specifically targeting those people, including for collection. And that was not a practice that was done then or ever has been done by NSA.

Senator MONDALE. It was one that concerned you a great deal?

Mr. BUFFHAM. Yes; it concerned all of us in the NSA.

Senator MONDALE. Were you concerned about its legality?

Mr. BUFFHAM. Legality?

Senator MONDALE. Whether it was legal.

Mr. BUFFHAM. In what sense; whether that would have been a legal thing to do?

Senator MONDALE. Yes.

Mr. BUFFHAM. That particular aspect didn't enter into the discussions.

Senator MONDALE. I was asking whether you were concerned about whether that would be legal and proper.

Mr. BUFFHAM. We didn't consider it at the time; no.

Senator MONDALE. But at least you would not do it without the President's direct authority.

Mr. BUFFHAM. That is correct.

Senator MONDALE. All right.

May I ask one more question of the General Counsel? In your opinion, was the watch list legal?

Mr. BANNER. I think it was legal in the context of the law at the time.

Senator MONDALE. Has any law changed that legality?

Mr. BANNER. Well, we have since had decisions such as in the *United States v. U.S. District Court* case in 1972 which placed—which stated in effect that the President does not have the authority to conduct a warrantless surveillance for internal security purposes.

The CHAIRMAN. May I just suggest that in line with my earlier statement, it seems to the committee that the Attorney General of the United States should be asked about the legal and constitutional questions that are raised by the disclosures this morning. I do not mean to cut you off, Senator.

Senator MONDALE. I will live with that. But what I was trying to demonstrate is what I think the private record discloses; that they thought that to be legal. I think that is important to the determination of this committee of how these laws are interpreted. I believe they still think it is legal. That is what worries me.

Mr. BANNER. May I make just one comment, Mr. Chairman? There is one court decision on the matter. It was held in that decision to be lawful.

Senator MONDALE. Then you think it is lawful? That is what it held?

Mr. BANNER. I think it was lawful at the time.

Senator MONDALE. That is my point. They still think it is legal.

Senator MORGAN. Mr. Chairman, could we ask him to give us a decision some time?

Senator GOLDWATER. He said it was lawful at the time.

The CHAIRMAN. I think all relevant decisions on the matter should be supplied by the General Counsel of the Agency. But we will look, in the main, to the Justice Department on these legal questions.

General, thank you very much for your testimony. If there are no further questions, you are excused at this time.

The CHAIRMAN. Now we have another matter that needs to be brought up before the public hearing concludes this morning, and I will speak of it just as soon as these gentlemen have an opportunity to depart.

Please come back to order. At the outset this morning, I mentioned that this hearing would be conducted in two parts. The reason for doing so has been made evident in the course of the proceedings. Although the administration had objected to a public hearing on any matter relating to the NSA, the committee, by majority vote, believed that it was necessary to bring the facts relating to the watch lists to the attention of the American people through a public hearing. As I mentioned earlier, though the administration opposed the hearing, it did cooperate to the extent of declassifying the materials, and consenting to General Allen's appearance as a witness. Now, we come to the second part, another matter that the committee must decide upon to which the administration has given no consent either to furnish witnesses or to declassify materials.

Senator Goldwater, I think, had special reference to this second aspect.

Senator GOLDWATER. It does, but I would like to correct the record. We did not take a vote on this subject.

The CHAIRMAN. Yes; in executive session yesterday, with a quorum present, the procedures which we have followed today were presented and approved without objection. And I took that to mean, in accordance with normal procedure, that the committee had given its consent.

Senator GOLDWATER. I left a note to be recorded against it, and I had assumed a vote would be taken. But it was not.

The CHAIRMAN. Well, had a vote been taken, or anyone on the committee had moved to take a vote, Senator, your objection would have been recorded as you requested.

Now, in connection with the second matter, I would like first to respond to some of the questions that were raised earlier by Senator Goldwater with respect to the legality of our making a public disclosure of the second subject. I personally have no problem with the legality of doing so. The Constitution of the United States provides, in article I, section 5, clause 2, that each House may determine the rules of its proceeding; and in clause 3, that each House shall publish its proceedings, except parts as may, in their judgment, require secrecy.

This committee was empowered by a resolution of the Senate to inquire into this subject matter, including the NSA. And that resolution, S. Res. 21, gives the committee the power to pass such rules as it may deem necessary on disclosure, and makes clear that the committee rules can authorize disclosure. So that the rules are based solidly on S. Res. 21, the underlying resolution by which the committee was created.

SENATOR GOLDWATER. Would the Senator yield?

THE CHAIRMAN. If I may just complete the—

SENATOR GOLDWATER. I wish you would read section 2 of that also.

THE CHAIRMAN. Yes, I will. I was just getting to the Senate rule, and I will read it all. In pursuance of S. Con. Res. 21, the committee adopted its rules, and the relevant rule is section 7. Section 7.5 is the relevant rule. If counsel will find it for me, I will read it. It reads:

No testimony taken, including the names of witnesses testifying, or material presented at an executive session, or classified papers or other materials received by the staff or its consultants while in the employ of the Committee, shall be made public in whole or in part, or by way of summary, or disclosed to any person outside the Committee, unless authorized by a majority vote of the entire Committee; or after the determination of the Committee in such manner as may be determined by the Senate.

So, it appears to me that making a public disclosure of the matter now under consideration is subject to the will of this committee; and I would like to read into the record the reasons why I believe such a public disclosure should be made; after which I will invite Senator Tower, who disagrees with me on this subject, to express for the record the reasons why he thinks such a disclosure should not be made.

It being 25 minutes of 1 now, Senator, it may not be possible for this whole matter to be discussed or debated. But if it cannot be resolved at this time, it will be taken up in the next session of the committee this afternoon, and with the hopes that the committee can then reach a final determination by vote.

SENATOR TOWER. Mr. Chairman, if you would yield at that point.

THE CHAIRMAN. Yes.

SENATOR TOWER. I will state my reasons briefly at the conclusion of your remarks. Obviously, it is difficult to pursue the matter in open session, because those who oppose disclosure have some difficulty in explaining the reasons why in an open session.

THE CHAIRMAN. And for that reason, I will certainly accommodate the request in the interest of fairness, so that there can be a full and complete discussion within the committee and the vote then can be taken by the committee. That, I would anticipate, would occur this afternoon when the committee goes into executive session.

The reasons why I believe that this second matter should be made public are as follows. This committee has proceeded with great caution

throughout its investigation, which has covered a broad range of NSA activities. Testimony has been taken from numerous NSA officials, all in executive session until this morning. The committee has also received extensive briefings from General Allen and others in private.

Most of these activities we have found to be legitimate, clearly within the scope of the intelligence purposes of the agency, and for reasons that the committee feels relate to sensitive national security matters, should be kept secret. But our investigation did uncover two NSA activities which I believe are properly subject to some form of public disclosure. Because, one, they would appear to be unlawful; two, they have now been terminated, and thus do not represent ongoing activities; three, they can be discussed without revealing the NSA's sensitive techniques; and four, legislation is needed to prevent their repetition. What has occurred yesterday could occur tomorrow, if we leave it all to executive decision.

Now, as I have said, as to one of these—the watch list—the administration agreed to declassify the documents, and authorize General Allen to testify as he has. As to the other, the executive branch has consistently opposed public hearings or any other form of public disclosure. Yesterday, the committee, in the manner I described in response to Senator Goldwater, agreed that we nevertheless would disclose facts concerning the second program to the American public.

I believe that the public is entitled to an explanation of why that decision was made yesterday, in face of the administration's strongly stated opposition. I do not suggest that the administration has acted in any way other than in good faith to exercise its responsibilities as it perceives them. However, Congress has a right and duty to exercise some judgment on its own. It must do so fairly, properly, and with due regard to the views of the executive. But it cannot simply abdicate to the executive.

We believe that—or at least let me speak for myself—I believe that yesterday's decision does represent a proper exercise of the constitutional responsibility of the committee, which is charged with an investigation of this importance, and charged by the legislative branch to perform it. As I understand it, the executive branch makes two arguments, which were stated often in executive sessions of the committee, against a public disclosure of this second matter. Neither of them, as I heard the many spokesmen who came up to present them, made any particular point of sensitive technology, or anything of a character that would reveal the nature of NSA's operations. Their arguments seemed, rather, to focus first on their concern that the disclosure of the identity of certain companies and activities would make other companies hesitate to cooperate with our intelligence agencies in the future; and second, that such a disclosure might be of embarrassment to the particular companies concerned.

I believe that the answer to the first argument is that companies should hesitate to comply with requests of the Government at least long enough to determine if the actions they are requested to do are lawful and do not violate the constitutional rights of American citizens. And I believe the answer to the second argument is that fairness to the companies themselves requires that the facts be fully and fairly stated, which I think this committee is in a position to do.

I believe that it would be inappropriate to keep secret the facts of this second program, since in my judgment they establish apparent violations of section 605 of the Federal Communications Act, and of the fourth amendment to the Constitution. Second, the program involved neither ongoing activity nor technological secrets. And third, exposing it is directly related to whether the NSA needs a legislative charter to govern and control its activities in the future. Finally, the public debate that we hope will ensue from this session may make both the Government and private companies more careful to weigh the legality of programs that may be suggested in the future.

So in balancing the arguments for and against disclosure, which we have done most carefully, we have consulted extensively with the executive branch. Several times we have delayed our action to make certain that we had heard all of the executive branch's arguments. We have engaged in extensive interrogations of General Allen and Director Colby and the Secretary of Defense, Mr. Schlesinger, and finally, from the Attorney General and representatives of the President. So we believe we have listened fully to the arguments that they wish to present.

If the committee remains firm in its decision, the second matter is what form of disclosure would be most appropriate. Since witnesses have not been made available by the executive branch, it seems to me that the most appropriate form of disclosure would be that of a statement issued on the authority of the committee itself, carefully drawn to present the key facts unemotionally and without fanfare. As to the accuracy of the statement, it would be carefully checked with the Agency itself so that there would be no factual distortions in the presentation. The statement, I might emphasize, would be based on testimony received by the committee in executive session. It would not quote in whole or in part from the text of any classified document presented by the executive branch to the committee. Because the testimony given in executive session before this committee was classified by the committee itself, pursuant to the committee's rules, the committee has every right to release such facts based upon such testimony. Indeed, it has the right to release the testimony itself should it so decide.

So the decision taken yesterday to release this information was based primarily on the belief that programs of such dubious legality should be disclosed; because, absent real national security factors, which are not present in this case, classification should not be used to hide or cover wrongdoing. And, as I have said, in the technical sense, I do not think that classified information is being released at all.

The decision to make this matter public should, in my view, be tested not only against its particular facts but also in the light of several general principles. First, in a democratic society, there should be a strong preference in favor of letting the people know what their Government has been doing. Democracy depends upon an informed electorate. As one of our Founding Fathers, Edward Livingston, stated:

No nation has ever found any inconvenience from too close an inspection into the conduct of its officers, but many have been brought to ruin and reduced to slavery by suffering gradual impositions and abuses which are imperceptible, only because the means of publicity had not been secured.

Second, the general principle for disclosure is particularly apt in the context in which this committee finds itself. For 30 years this

country has had a huge and highly secret intelligence apparatus whose actions have not been the subject of an informed public debate. Laws governing their activity have all too often been lacking, as with the NSA, or overly vague, as with the CIA. The agencies have sometimes acted in ways that appear to be unconstitutional and illegal. The Congress and the public should now be given a chance to decide whether changes in the laws and procedures governing the intelligence agencies are necessary. That has not happened for 30 years, and surely we can afford a debate at least once in a generation.

Third, it does not follow, of course, that everything we learn in the work of this committee should be disclosed. And from what I have previously said, much of what we have learned about the NSA, which, in the judgment of the committee, falls clearly within its province, will not be disclosed. This country should have strong and effective intelligence services, but we must act legally. Keeping unlawful programs secret can only serve in the long run to weaken our intelligence efforts.

Unless the people are convinced that the intelligence agencies are acting within the law and in the best interests of the United States, a democratic people will not support these agencies for long. "Eternal vigilance," as Thomas Jefferson said, "is the price of liberty." And as James Madison concluded, "the right of freely examining public characters and measures and the free communication thereon is the only effective guardian of every other right." For these reasons, I believe that it would be proper for the committee to approve the disclosure of the second matter to which the discussion relates.

Now, I defer to Senator Tower.

Senator TOWER. Thank you, Mr. Chairman.

Mr. Chairman, I was unavoidably absent from the meeting yesterday in which, without objection, it was decided that this matter would be spread on the public record today. Had I been there, I would have objected, and perhaps this debate could have ensued at that point. My justification for not being there is that I am the ranking minority member of the Banking Committee which was at that moment considering the plight of New York City. So I was buried in the bowels of the fiscal mismanagement of that great city, and I am sorry that I was not there.

I really see no legislative basis for this public disclosure. I do not think it is necessary, from the standpoint of our legislative mandate. It appears that Committee Rule 7.5 is the only point having any merit at all. And in my view, it must fail. This rule provides for procedures insuring the protection of classified materials. This rule does not authorize the unilateral release of classified information. A proper reading would be that the rule goes to disclosure of information, not declassification. A majority vote is necessary prior to committee release of any material of a classified nature. But it is spurious to state that a simple majority vote is enough to declassify a document or information, an action which I do not believe has before been recognized as a congressional prerogative.

Let me read from the resolution, which I believe is superior to any rule that we may adopt:

The Select Committee shall institute and carry out such rules and procedures as it may deem necessary to prevent the disclosure outside the Select Com-

mittee of any information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal government.

At this point, I read into the record a note from Mr. David D. Lowman, Special Assistant to the Director, NSA, for Congressional Review, to Mr. Barry Carter of the Select Committee staff.

Barry, we have reviewed Senator Church's proposed statement on SHAMROCK. With the exceptions noted here previously, the statement is essentially correct. After reviewing the document, we have concluded that, since it does reveal sources, methods and capabilities, its classification should be Secret, Handle via COMINT Channels Only.

It is my view that it is not necessary for us to make this matter public. Therefore, we should not, by virtue of the risks that we run in doing so. It occurs to me that today's disclosure, should we do so, would be cited in some future date as a precedent to allow each Member of Congress and committee the right to decide what should be publicly available from what the executive branch has determined to be secret. This would mean revelation through public channels to our enemies and would lead to chaos and ultimately destruction of the very fragile intelligence effort.

President Truman decided that this matter should be kept secret. President Ford has personally and specifically requested of the committee that it be kept secret. Of course, a Member of the other body has threatened to make this matter available to the public before we have acted on it. I do not think we should rush to do the same. I think, quite to the contrary, we should implore the House not to. I think one Member out of 435 in the House of Representatives should not be encouraged to reveal matters that impact on the lives and safety of the people in the other 434 congressional districts in this country. They have a stake in this matter, too.

Now, I think that if this information is released, as the chairman has proposed, the ripple effect will seriously impair the confidence that other nations have in dealing with us, impact on the efficacy of Strategic Arms Limitation Agreement, progress in mutual balance of force agreements, nonnuclear proliferation arrangements. Already the intelligence services of other countries are showing some indisposition to cooperate with the United States, for fear that their own methods, their own resources, their own activities, to the embarrassment of their respective governments, or to the detriment of their intelligence-gathering capability, will be affected. For these reasons, Mr. Chairman, I urge that this matter of the details of the SHAMROCK operation not be made public. I would urge the members of the committee to reconsider the decision of yesterday in an executive session.

The CHAIRMAN. Thank you, Senator Tower.

Before we close, are there any other comments?

Senator Mondale.

Senator MONDALE. Mr. Chairman, I just wanted to comment briefly on what I thought I heard to be the argument, that somehow the classification and determination of the executive department should govern how this committee decides to release or not to release information to the public. I do not think we can accept that definition for a moment. If we do, I think we are no longer a coequal branch of Government.

We have just been through one of the most dispiriting periods of American history, and the defense that was always raised, every time you wanted to find out about it, was national security. So it seems to me there are occasions when the national security interests clearly dictate and require secrecy. And there are instances when national security is raised, not to protect this Nation's security, but to protect some contemporary politicians from embarrassment. It is our job, as Members of the Congress, to decide where that line is and to do so with a firm notion of our sacred responsibility not only to investigate but to inform the public.

I am glad that it has been decided that we will hold this debate in private. I think it ought to be thoroughly aired, but finally, it is our responsibility as members of the Senate and of this committee to make our own determination as to whether or not these matters, if disclosed, would undermine the Nation's security. I look forward to that argument.

But I did want to say that I do not think for a moment that we can accept the simple declaration by the Executive that it is classified, as precluding or undermining our capacity to make an independent judgment.

The CHAIRMAN. Thank you, Senator.

I agree with that. I think we would be a prisoner of the Executive if we took such a position.

Senator TOWER. May I say, Mr. Chairman, that I have been cooperative, I believe, and have supported every effort to obtain the documents that we require. That is one thing. I believe that we should have those documents. We should have access to them; we should have access to witnesses, and we should be fully informed, and we should make thorough investigations.

The question here is whether or not this information should be made public. Yes, there is a right of the people to know, but that must be balanced against the fact that when these matters are made public record, they are available also to our enemies. Let me cite one example. A weekly magazine published the fact that we had been reading the telemetry on Russian weapons systems from Turkey. As soon as that matter was made a matter of public record, it was also available to the Soviets, and that source was then and thereafter denied us. This impacts on our capability for verification in terms of strategic arms capabilities and deployment. I do not think that the public interest was served in the release of that information. Indeed, it was not served. So I think there are some very strong examples that can be cited.

I appreciate the chairman's disposition to take this matter up in executive session and, hopefully, I can prevail there. I have no illusions about these matters.

The CHAIRMAN. Well, I think the Senator always states his case with great authority and has persuaded the committee on occasion. I hope he will not persuade the committee on this occasion, because the examples he gives that are so terrifying have nothing to do with the case at hand, which relates to quite a different matter.

Senator TOWER. Yes, they do, because we are talking about people's rights to know here.

The CHAIRMAN. I think what we are talking about—

Senator TOWER. I think it is proper to cite examples of where that right can be subordinated.

The CHAIRMAN. Of course, Senator, when you cite your examples, who would argue with them? But the case at hand has to do with unlawful conduct that relates to certain domestic companies in this country. And it is not a matter of such gravity that it would even impair the national security of the United States—

Senator TOWER. Well—

The CHAIRMAN. In ways that your examples suggest.

Senator TOWER. That is a matter to be debated in executive session.

The CHAIRMAN. Yes. Very well, we will debate it in executive session.

Senator TOWER. There is more to be said then.

The CHAIRMAN. A good deal.

Senators who wish to be heard; I want to recognize first—Senator Morgan wants to be recognized. First, let me recognize Senator Baker.

Senator BAKER. Mr. Chairman, thank you. I will not take very long. I simply want to say, as a matter of legal argument, that the rules of this committee can be no broader nor create any authority and jurisdiction beyond the rules of the Senate from which we derive our authority, and it seems to me that the rules of the Senate, at least arguably, say that a classified document cannot be declassified or released to the public without the prior consent of the executive department, or at least, not without changing the rules of the Senate itself. So the argument that our committee rules give us that authority by majority vote, I think must be tempered by the proposition that the committee rules are subordinate to and can be no greater than the rules of the Senate itself, which appear to say something else.

Beyond that, as the chairman knows, and as I believe other members of the committee know, I have sometimes been the only member of the committee, always, however, in a minority, who has contended that all of our proceedings should be in public, and I am rather perturbed really, that we are about to go into executive session on this matter and to deal with only just a report. I am rather perturbed rather that we are going into public session instead of executive session, when you compare the relative potential for harm, the relative comparison for the potential for embarrassment in the case of the assassination plots, which were some time ago, versus the potential for destruction of intelligence sources and methods when we are dealing with an ongoing program today. In a word, if you are going to have public hearings on NSA, you sure should have had them on assassinations because I think assassinations are far less sensitive, in term of the welfare of this country, than the NSA situation is, the SHAMROCK situation.

Now, Mr. Chairman, I think that the proper course for us to take and the course we will, no doubt, debate in executive session this afternoon, is to try to gain access to as much information as we can and to obtain the concurrence of the executive department on as much information as we can before we proceed then to public hearings. I favor public hearings. I do not, however, favor public hearings until we have exhausted every opportunity to obtain the declassification of as much information as possible. I will oppose the unilateral declassifi-

cation by this committee of this information, which I am afraid is the sum total and the functional effect of what is being proposed.

The CHAIRMAN. I thank the Senator. I know his position on public hearings, but frequently in executive session, he has voted against them on the grounds that we were not adequately prepared.

Senator BAKER. No, I have not.

The CHAIRMAN. I think in this case we are very adequately prepared because we have had all kinds of executive hearings, and we have heard the executive agencies and their spokesmen again and again relating to all the particulars of this particular subject.

Senator BAKER. Mr. Chairman, if I understand you correctly, I believe you said that in executive session I had voted against public hearings. I do not believe the record will disclose that. I think the record will disclose that I voted against declassifying or proceeding with a particular piece of information. I do not believe the record will show that I voted against public hearings on any issue.

The CHAIRMAN. The record can speak for itself, but in any event, I have heard the Senator make the argument before in connection with public hearings that we were not prepared.

Senator BAKER. And I persist in the hope that someday I may prevail.

The CHAIRMAN. I do not know what more exhaustive preparation could have been laid than the one that has been laid for the matter now before the committee. Senator Morgan.

Senator MORGAN. Mr. Chairman, I would not want to go away from here with anyone having the misunderstanding that information has been withheld from this committee.

As General Allen testified this morning—and that is correct according to my knowledge—he has furnished to us all of the information that we have asked for and has indicated his willingness to furnish it to us. The thing that concerns me—and I was in and out of the meeting yesterday afternoon. Like Senator Tower, I had to be on the Banking Committee and on the floor—the thing that concerns me is so many people express their concern about going public with this hearing after we have been able to work out almost every difficult situation in the past.

I know from your own statements that the President himself has personally intervened with you or talked with you. No later than this morning he talked with me about it again through his emissary. He has expressed his concern. I have a great deal of confidence in the President. I think we ought to pass judgment on it ourselves, but I just would want the record to reflect that nobody is withholding information from this committee. There is one other thing I think Senator Tower's comments pointed out—the danger of going public. A couple of times Senator Tower referred to a couple of things that, so far, maybe we should not refer to, but since he referred to President Truman, let me say President Truman long, long ago was involved in this and gave his word and, because of it, I am awfully reluctant to go against the word of the President of the United States. If we cannot depend on the word of the President of the United States, I do not know who else the American people can look to.

The CHAIRMAN. Well, I think just to complete that since the Senator has stated it, President Truman also said that his word would not

be binding. He could not bind future administrations. So I really believe that was a long time ago and the commitment was one that he, himself, put a condition on, and moreover the program changed. It changed greatly after the original agreement was entered into.

So, anyway, this is a matter for executive debate.

Senator GOLDWATER. Mr. Chairman, I want to emphasize that had we known that this subject was going to be decided yesterday, I would have stayed away from the floor, where I had to be to engage in a debate on the promotion of an Air Force General, and these other gentlemen would have been there, too. I do not even know if there was a quorum present, but the rule calls for a majority vote, and I do not believe the question was ever put, so that the answer could have been from the Chairman by unanimous consent it is agreed. I have not found a member yet that could substantiate that kind of a move, so we have not voted on this. In fact, as I recall it, we have only had a couple of votes in the whole history of this Committee.

The CHAIRMAN. Well, Senator, it is clear that this will be debated once more in executive session and will then be voted, so there will be no basis for a complaint that the rules have not been completely, faithfully, and scrupulously adhered to.

If there is no further comment, this public session is now adjourned.

[Whereupon, at 1:07 p.m., the committee recessed, subject to the call of the Chair.]

