

FRIDAY, DECEMBER 5, 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 10:10 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

Present: Senators Church, Hart of Michigan, Mondale, Huddleston, Hart of Colorado, Baker, Mathias, and Schweiker.

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

The CHAIRMAN. The hearing will please come to order.

The purpose of today's hearings is to consider the major question of whether covert action should continue as an instrument of American foreign policy. If so, what kinds of covert action should be permitted and under what restraints.

We are fortunate to have as one of our panel of witnesses Mr. Clark Clifford, who was one of the framers of the 1947 National Security Act [see app. B, p. 210], which created the Central Intelligence Agency and the National Security Council. Mr. Clifford is in a unique position to comment on how changes in the world scene since 1947 have impacted upon that 1947 National Security Act. The committee will be particularly interested in hearing his views as to the changes required because of the different times in which we now live, and the impact of intelligence activities upon the domestic life of the United States.

An important element in covert action in the past has been the use of clandestine military operations, so-called secret wars. It is important for the committee to come to a judgment as to how covert military operations, if they are considered necessary, can be made accountable to and consistent with the constitutional role of Congress to declare war. In this respect, we are fortunate to have as a witness Mr. Cyrus Vance, who was Deputy Secretary of Defense and can from an informed perspective address the question of what the United States should do to bring the gray area between declared war and peace under constitutional control.

Mr. David Phillips brings to bear the long career of experience in covert action. He will be able to inform the committee of the utility of covert action techniques, and on the basis of that experience point out the limitations for covert operations as a part of American foreign policy.

Finally, Mr. Morton Halperin will speak to the view that covert action should be prohibited. The committee's interest in examining this point of view will be to weigh the possible disadvantages that

the prohibition of covert action might bring to the valid national security interests of the United States, and, I might say, to consider on balance whether through the years the whole activity has done the country more harm than good.

Mr. Halperin was a former Deputy Assistant Secretary of Defense for International Affairs and a member of the National Security Council staff; he has also been a longtime student and practitioner in the area of national security affairs.

Gentlemen, we are pleased to welcome you this morning.

And since I understand that each of you has an opening statement you would like to make, I will call first on Mr. Clark Clifford.

STATEMENT OF CLARK M. CLIFFORD, COUNSEL TO PRESIDENT TRUMAN; FORMER MEMBER AND CHAIRMAN, PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD; FORMER SECRETARY OF DEFENSE

Mr. CLIFFORD. Thank you, Senator Church.

My statement is shortened, for I thought it would be of advantage to leave as much time as possible for questioning so that we might then determine more accurately just which areas the committee is interested in.

I welcome your invitation to appear here today to discuss with your committee the problems surrounding the conduct of covert activities. The public has given much attention to this subject and a national dialog has ensued. Some contend that it is necessary in the preservation of our democratic form of government to have a full disclosure of operations in this delicate area to ascertain if abuses have occurred. Others contend, with equal sincerity, that such an inquiry damages our country's image in the world and adversely affects the ability of our intelligence services to perform their tasks.

It is my opinion that the inquiry being conducted by this committee became absolutely necessary as the result of certain disclosures which demonstrated that gross abuses had occurred. Our country may sustain some temporary reduction in the effectiveness of its intelligence operations, but I consider this temporary in nature, and an appropriate price to pay in presenting the facts to the American people and in making progress toward the goal of preventing repetition of such abuses in the future. With the right kind of machinery, our country can take those actions which it believes necessary to help maintain freedom in the world and, at the same time, avoid the opprobrium that has been directed toward us as the result of improper activities in the field of clandestine and covert operations.

In 1946, President Truman stated that we must have a formalized intelligence agency. The lessons learned as the result of Pearl Harbor and increased tensions following World War II convinced him that we needed an institutionalized peacetime intelligence agency. As a result, the Central Intelligence Agency was created in the National Security Act of 1947 [see app. B. 210].

Because those of us who were assigned to this task and had the drafting responsibility were dealing with a new subject with practically no precedents, it was decided that the act creating the Central Intelli-

gence Agency should contain a "catch-all" clause to provide for unforeseen contingencies. Thus, it was written that the CIA should "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." It was under this clause that, early in the operation of the 1947 Act, covert activities were authorized. I recall that such activities took place in 1948 and it is even possible that some planning took place in late 1947. It was the original concept that covert activities undertaken under the act were to be carefully limited and controlled. You will note that the language of the act provides that this catch-all clause is applicable only in the event that the national security is affected. This was considered to be an important limiting and restricting clause.

However, as the cold war continued and Communist aggression became the major problem of the day, our Government felt that it was necessary to increase our country's responsibilities in protecting freedom in various parts of the world. It seems apparent now that we also greatly increased our covert activities. I have read somewhere that as time progressed we had literally hundreds of such operations going on simultaneously.

It seems clear that these operations have gotten out of hand. The knowledge regarding such operations has become so widespread that our country has been accused of being responsible for practically every internal difficulty that has occurred in every country in the world. Our reputation has been damaged and our capacity for ethical and moral world leadership has been impaired. The need to correct this unfortunate development is long past due.

As one attempts to analyze the difficulty, and hopefully offer constructive suggestions for improvement, he finds much confusion existing within the system. It is clear that lines of authority and responsibility have become blurred and indistinct.

The National Security Council, under the act of 1947, is given the responsibility of directing our country's intelligence activities. My experience leads me to believe that this function has not been effectively performed. The members of the NSC already have full-time jobs and do not have the time to oversee meticulously the actions of the intelligence community. Even though special committees have been set up from time to time to perform this task, we learn that many covert activities are undertaken without the knowledge of the National Security Council or its special committee. In the staff report on covert action in Chile [see app. A, p. 144], the startling statement is made that only one-fourth of all covert action projects are considered by the 40 Committee.

Another condition exists that helps explain the unfortunate predicament in which we find ourselves. I believe, on a number of occasions, a plan for covert action has been presented to the NSC and authority is requested for the CIA to proceed from point A to point B. The authority will be given and the action will be launched. When point B is reached, the persons in charge feel that it is necessary to go to point C, and they assume that the original authorization gives them such a right. From point C, they go to D and possibly E, and even further. This has led to some bizarre results, and, when an investi-

gation is started, the excuse is blandly presented that authority was obtained from the NSC before the project was launched.

I believe that the present system is no longer adequate to meet the task. The lack of proper controls has resulted in a freewheeling course of conduct on the part of persons within the intelligence community that has led to spectacular failures and much unfortunate publicity. A new approach is obviously needed for it is unthinkable that we can continue to commit the egregious errors that have caused such consternation to our friends and such delight to our enemies.

This inquiry today is part of the broad investigation conducted by this committee to ascertain the facts. This is a preliminary phase which hopefully will lead to recommendations that will help eliminate the errors of the past, and provide the country with the expectation that we can operate successfully in the future in this sensitive area with dignity and effectiveness. I know that this committee will be considering the means by which we can attain the improvement that is so necessary and is so desired by our people.

In this connection, permit me to present to the committee a brief five-point plan that I believe would make progress toward achieving our goal.

First, the 1947 law creating the CIA should be substantially amended and a new law should be written covering intelligence functions. We have had almost 30 years of experience under the old law and have learned a great deal. I believe it has served us reasonably well, but its defects have become increasingly apparent. A clearer, more definitive bill can be prepared that can accomplish our purposes. By creating clearer lines of authority and responsibility and by carefully restricting certain activities, we can hopefully prevent the abuses of the past.

Second, the creation of an effective joint House-Senate Committee to oversee intelligence operations. I consider this the most important function of a new law. Proper congressional oversight has been sadly lacking. I would hope that a small oversight committee of possibly five members of each chamber might be created. It should be considered an assignment of outstanding importance and the members should be willing to give the necessary time to it. By keeping the committee small, security can be maintained and the possibility of disclosures can be minimized.

With reference to covert activities, I believe it would be appropriate for this committee to be informed in advance by the executive branch of the Government before a covert project is launched. The committee should be briefed and, if it approves, then the activity can go forward. If the committee disapproves, it should inform the President of its disapproval so that he will have the benefit of the joint committee's reaction. If necessary, the President and the committee can confer, after which the President may decide to abandon the project or possibly modify it. If he persists in going ahead despite the committee's disapproval, then the committee might choose to withhold funds necessary to finance the activity in question. It is my feeling that the importance of the decisionmaking process in this very delicate field is such that there should be a joint effort by the executive and legislative branches.

I would assume that this committee will have questions in that regard, and I'm sure it will be valuable for us to discuss it.

Third, a new position of Director General of Intelligence should be created. This man would be the chief intelligence officer of the United States. It would be his responsibility to correlate and synchronize the activities of the various agencies within the intelligence community. Under this concept there would still be a director of the CIA, but his duties would be confined to the day-by-day operation of that agency. The Director General would be responsible for the product that would be produced by the intelligence community, and he would be the chief adviser to the President on intelligence matters.

The Director General would also be charged with the duty of seeing that the various agencies operated effectively and complied with the law. In this connection, he would have under him a number of inspectors who would assist him in carrying out this function.

Fourth, the decision regarding the undertaking of covert projects should be made by the Director General of Intelligence and the National Security Council, and he would have the responsibility of seeing that such covert projects were properly carried out by the CIA and other members of the intelligence community.

In the beginning, there was a separation between the CIA and the group charged with covert activities. In the early 1950's, they were consolidated. I believe that there should be much stricter control over the launching of covert projects, but that after the basic decision is made, then all the assets possessed by the CIA and other agencies should be utilized.

The close supervision provided for in this concept will inescapably diminish the number of covert operations. In my opinion, this is a highly desirable result. Many of the plans launched in the past should have been vetoed at their inception. I am sure that decisions have been made in the field that never would have been made in higher levels of our government. The guiding criterion should be the test as to whether or not a certain covert project truly affects our national security.

Fifth, the new intelligence agency should be forbidden to undertake any domestic operations except to police its own employees. There should not be any type of catch-all provision in the new law which would permit the intelligence agency to spy on American citizens. All domestic operations of this nature should be handled by the FBI. It is equipped to do it and a close cooperation between the CIA and the FBI is desirable and necessary. Certainly one agency charged with the responsibility of domestic surveillance activities is enough.

We have a big job to do in this country. Our people are confused about our national goals and cynical about our institutions. Our national spirit seems to have been replaced by a national malaise. It is my conviction that the efforts of this committee will assist us in regaining confidence in our national integrity, and in helping to restore to our Nation its reputation in the world for decency, fair dealing and moral leadership.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much for a very fine statement. We will go next to Mr. Vance, please.