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LEGISLATIVE HISTORY OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE

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August 16, 1978

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On May 19, 1976, the U.S. Senate established the Senate Select Committee on Intelligence by agreeing, 72 to 22, to S. Res. 400. That action during the 94th Congress, creating a committee with consolidated jurisdiction over intelligence activities and with unprecedented legislative and fiscal authorization jurisdiction for the same, culminated a lengthy heritage of deliberations on similar proposals, dating from the mid-1950s. The establishment of such a unique select committee—i.e., one with budget and legislative approval (for intelligence activities) as well as with the traditional oversight authority—climaxed an involved process of debate and deliberation, in the chamber, on controversial proposals and provisions that generated hearings and meetings conducted by five standing committees, reports or recommendations from four standing and one select committee, five distinct versions of the basic Senate resolution, and floor debate spanning ten days and including thirteen proposed amendments, ten of which were ultimately accepted.

This legislative history summarizes the action and developments associated with the origination of the Senate Select Committee on Intelligence in the 94th Congress. 1/ The categories of examination are: background and

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1/ A more extensive legislative history of the Select Committee on Intelligence is found in U.S. Library of Congress. Congressional Research Service. To Create a Senate Select Committee on Intelligence: A Legislative History of Senate Resolution 400 (by) William Newby Raiford. (Multilith 76-149F)(Washington) August 12, 1976: 189 p.

previous recommendations, bills and resolutions introduced in the 94th Congress; committee action; floor action; and subsequent development regarding jurisdictional issues in the 94th Congress.

I. Background

The theretofore unprecedented creation of a congressional committee on intelligence with both oversight and legislative authority occurred with approval of S. Res. 400, more than twenty years after the initial Senate vote on a similar proposal (i.e., to establish a joint committee on intelligence). S. Res. 400 followed a series of intelligence oversight hearings and investigations in the 94th Congress, including instituting temporary select committees on intelligence in both Chambers. The House Select Committee on Intelligence and the Senate Select Committee to Study Governmental Operations with Respect to Intelligence activities were specially created to investigate allegations of abuses of authority, illegalities, and improprieties of certain intelligence agencies, especially the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and National Security Agency (NSA). These hearings and investigations were the work of several committees, including the most recent predecessor to the Senate Select Committee on Intelligence. This section reviews these and other historical antecedents to such a Senate committee, including previous Senate proposals and relevant Government commission recommendations.

A. Senate Concurrent Resolution 2, Jan. 5, 1955 -- Senator Mike Mansfield, along with 32 co-sponsors, proposed S. Con. Res. 2 on Jan. 5,

1955, to provide for the creation of a Joint Committee on Central Intelligence, modeled after the Joint Committee on Atomic Energy. The proposed joint committee was to include six members from each chamber, three from each of the intelligence subcommittees of the Appropriations and Armed Services Committees in the Senate and House of Representatives.

A parallel recommendation for a joint committee on foreign intelligence was advanced the previous year by the Second Hoover Commission, following an extensive review of U.S. intelligence activities by the Clark Task Force. 2/ S. Con. Res. 2, although reported favorably by the Senate Committee on Rules and Administration on Feb. 23, 1956, 3/ was defeated on a roll call vote of 27 yeas and 59 nays on April 11, 1956. 4/

2/ U.S. Commission on the Organization of the Executive Branch of the Government (2d Hoover Commission, 1953-1955). The Report on Intelligence Activities in the Federal Government. Report to the Congress. Washington, U.S. Govt. Print. Off., 1955. Part II, pp. 3-76. The task force on intelligence activities was chaired by General Mark W. Clark. A second Clark Task Force report was and remains classified.

3/ U.S. Congress. Senate. Committee on Rules and Administration. Joint Committee on Intelligence Agency; Report to Accompany S. Con. Res. 2. Washington, U.S. Govt. Print. Off., 1956. (84th Congress, 2d session. Senate. Report no. 1570). This report contains a summary of the Clark Task Force efforts and recommendations. Ibid., pp. 8-12.

4/ Senate debate and vote in Congressional Record, v. 102, April 9, 1956: 5890-5891, 5922-5939; April 11, 1956: 6047-6063, 6065, 6067-6068. On the April 11, 1956 vote, twelve of the original co-sponsors of S. Con. Res. 2 reconsidered their position and voted against the concurrent resolution.

B. Senate Resolution 283, July 14, 1966--On July 14, 1966, an original resolution, S. Res. 283, was proposed by Senator William Fulbright, Chairman of the Foreign Relations Committee, which had considered a similar proposal by Senator Eugene McCarthy (S. Res. 210, Jan. 24, 1966) in executive session. S. Res. 283 advocated the creation of a separate Senate Committee on Intelligence Operations to oversee the major intelligence agencies, and was ordered reported by a Foreign Relations Committee vote of 14 to 5. 5/ S. Res. 283, as reported, read:

> To create a Committee on Intelligence Operations composed of 9 members - 3 from Appropriations, 3 from Armed Services, and 3 from Foreign Relations - to keep currently informed of the activities of the Central Intelligence Agency, the Defense Intelligence Agency, the Bureau of Intelligence and Research of the Department of State, and the activities of other agencies relating to foreign intelligence or counterintelligence.

The Senate vote which affected S. Res. 283 was not on the proposal per se but on a point of order raised by Senator Richard Russell, Chairman of the Senate Armed Service Committee: i.e., that under Rule XXV of the Senate, S. Res. 283 consisted of matter predominantly under the jurisdiction of Armed Services and was improperly before the full Chamber. The point of order was sustained by a vote of 61 yeas to 28 nays on July 14, 1966; and the resolution was referred to the Armed Services Committee. 6/ No further action was taken on the proposal.

5/ U.S. Congress. Senate. Committee on Foreign Relations. Report to Accompany S. Res. 283. Washington, U.S. Govt. Print. Off., 1966. (89th Congress, 2d session. Senate. Report no. 1371.)

6/ Congressional Record. v. 112, July 14, 1966: 15672-15699.

However, despite this adverse reaction to the proposal, the Senate Armed Services Subcommittee on Intelligence invited three senior members of the Foreign Relations Committee to attend CIA briefings before the Subcommittee. This ad hoc arrangement was continued until the early 1970s. Later in 1974, the Armed Services Subcommittee on Intelligence invited the Senate Majority and Minority leaders to attend Subcommittee sessions with the CIA officials.

C. Senate Bill 2224, July 7, 1971--On July 7, 1971, S. 2224 was introduced by Senator Cooper, who was later joined by 19 other Senate cosponsors representing both parties. S. 2224, a proposed amendment to the National Security Act of 1947, was, according to its sponsor, intended, "to keep the Congress better informed on matters relating to foreign policy and national security by providing it with intelligence information obtained by the Central Intelligence Agency and with analysis of such information by such agency." 7/ The specific recipients of such regular and special CIA reports were to be the Committees on Armed Services in both Chambers, which already possessed oversight and legislative authority for the CIA, and the Senate Foreign Relations and House Foreign Affairs Committees, which would thereby acquire new oversight jurisdiction.

S. 2224 was referred jointly to the Senate Foreign Relations and Armed Services Committees. The Foreign Relations Committee thereupon referred

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7/ Statement by Hon. John Sherman Cooper on behalf of S. 2224. Congressional Record, vol. 117. July 7, 1971: 23673.

the bill for comment to the State Department, which issued three objections to it: the perceived incompatibility of the CIA reporting obligation with the Secretary of State's role as the President's principal foreign policy adviser; a possible constitutional question involving the separation of powers doctrine; and the concern that the resulting dissemination of intelligence information and analyses would be "so wide as to derogate the DCI's capability to protect intelligence sources and methods..." 8/ The Foreign Relations Committee dismissed these objections, finding that they "were considered by the committee and the witnesses to be largely irrelevant and incorrect;" that "the requirement for an Executive agency to report to Congress does not raise a constitutional question as to the separation of powers;" and that "the intention of the bill is to exclude intelligence sources and methods of acquisition." 9/

Senate Foreign Relations, following public hearings, favorably reported S. 2224, as amended, on July 17, 1972. 10/ The Committee amendments removed the original provision permitting further distribution to other Members of Congress and to congressional officers and employees, and, instead, "simply provide(d) that the four committees named to receive the information shall treat it in accordance with such rules for appropriate security as each

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8/ U.S. Congress. Senate. Committee on Foreign Relations. Amending the National Security Act; Report to Accompany S. 2224. Washington, U.S. Govt. Print. Off., 1972. (92nd Congress, 2nd session. Senate. Report no. 92-964). pp. 5-6.

9/ Ibid., p. 6.

10/ Ibid.

such committee may establish...(e)ach committee having already had long experience in handling classified information..." 11/ The basic precedent and rationale for the Committee's approval was the operation of the Joint Committee on Atomic Energy, whose mandate to be kept fully and currently informed, "to fulfill more effectively its responsibilities, with regard to atomic matters, should also apply to the critical areas of foreign policy and defense." 12/

Subsequent to the action by the Foreign Relations Committee, S. 2224, as amended, was referred to Senate Armed Services. On September 14, 1972, the Armed Services Committee received an adverse report on the bill from the Central Intelligence Agency 13/ and no further Armed Services Committee or Senate action occurred.

11/ Ibid., p. 5.

12/ Ibid., p. 2.

13/ U.S. Congress. Senate. Committee on Armed Services. Legislative Calendar, 92nd Congress, 2nd session, 1971-1972. Washington, U.S. Govt. Print. Off., 1973, p. 29.

D. Congressional Action in the 93d Congress—Prior to the establishment of the temporary select committees on intelligence in the 94th Congress, three significant actions occurred at the end of the previous 93d Congress, restructuring congressional oversight of intelligence: the granting of "special oversight" over intelligence activities relating to foreign policy to the House Committee on International Relations; adoption of an amendment to the 1974 Foreign Assistance Act limiting certain intelligence operations in foreign countries, by imposing a reporting requirement thereon; and hearings by a Senate subcommittee on proposals for a congressional committee on intelligence oversight.

The House Committee Reform Amendments of 1974 (H. Res. 988), approved October 8, 1974, provided a new type of authority, "special oversight," which permits House committees to conduct comprehensive oversight of matters directly bearing upon their specific responsibilities even if those matters fall within the legislative jurisdiction of other standing committees. The Committee on International Relations, then titled the Committee on Foreign Affairs, was granted special oversight over four areas, including "intelligence activities relating to foreign policy." This House action, for the

first time, officially removed oversight of the Central Intelligence Agency from the exclusive jurisdiction of the Committees on Appropriations and Armed Services.

The second development in the 93d Congress affecting oversight of intelligence was the adoption of the Foreign Assistance Act of 1974 (P.L. 93-559), which included an amendment providing reporting requirements for certain foreign operations of the Central Intelligence Agency to designated congressional committees, the foreign policy committees in each body, plus other "appropriate committees." Section 32 of the 1974 act, commonly referred to as the Hughes-Ryan Amendment, 14/ amended section 662 of the Foreign Assistance Act of 1961 to provide the following:

> Sec. 662. LIMITATION ON INTELLIGENCE ACTIVITIES.—"(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.
>
> (b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.

14/ Variations of the Hughes-Ryan Amendment were included in committee and floor action on the Foreign Assistance Act of 1974, S. 3394 and H.R. 17234. The Conference Report on the Foreign Assistance Act of 1974 (House Report no. 93-1610), issued Dec. 17, 1974, was agreed to by the Senate that day and by the House on Dec. 18, 1974. Congressional Record, v. 120, Dec. 17, 1974: 21795 and Dec. 18, 1974: 12214-12215. On December 30, 1974, the bill was signed into law as Public Law 93-559.

In addition to these actions in the 93d Congress, the Senate Subcommittee on Intergovernmental Relations considered proposals to restructure legislative oversight of intelligence. The proposals--S. 4019, S. Res. 419, S. 2738, and S. 1547--engendered two days of hearings in December, 1974, but were not reported out before the end of the Congress. 15/ The various proposals were an outgrowth of the investigations by the Senate Select Committee on Presidential Campaign Activities, popularly referred to as the "Watergate" Committee and chaired by Senator Sam Ervin. 16/ That inquiry discovered abuses of authority by and (attempted) political manipulation of certain U.S. intelligence agencies, including the FBI, CIA, and Internal Revenue Service. 17/ In his opening statement on the proposals to create new congressional intelligence oversight committees, Senator Edmund Muskie, the Intergovernmental Relations Chairman, summarized the history and perceived need for improved oversight:

> The question of what constitutes appropriate congressional oversight of intelligence activites has spurred debate since 1947, when the National Security Act was enacted.
>
> Over the past 25 years more than 150 bills have been offered to strengthen the intelligence oversight structure.

15/ U.S. Congress. Senate. Committee on Government Operations. Subcommittee on Intergovernmental Relations. Legislative Proposals to Strengthen Congressional Oversight of the Nation's Intelligence Agencies. Hearings, 93d Congress, 2d session, Dec. 9 and 10, 1974. Washington, U.S. Govt. Print. Off., 1975.

16/ U.S. Congress. Senate. Select Committee on Presidential Campaign Activities. Final Report. Washington, U.S. Govt. Print. Off., 1974. (93d Congress, 2d session. Senate. Report no. 93-981).

17/ Ibid.

> Not one of these proposals has become law.
>
> Time and again serious proposals--from Congress, from scholars and from Presidential task forces--have been met with little more than indifference. By our efforts here in the subcommittee, I hope we can bring an end to such studied neglect....
>
> The four proposals now before this subcommittee would deal with intelligence oversight in various ways. But they all reflect a common concern: That today's intelligence agencies report to far too few people on far too little of their operations. 18/

E. Recommendations by Government Commissions in 1975—In 1975, two Government commissions--the Commission on CIA Activities Within the United States and the Commission on the Organization of the Government for the Conduct of Foreign Policy--reported their findings and recommended, inter alia, congressional reorganizations to improve oversight of the intelligence community and its activities.

The Presidential Commission on CIA Activities Within the United States was created by Executive Order 11828, issued by President Ford on Jan. 4, 1975, in the aftermath of allegations concerning CIA improprieties and illegalities, and was chaired by Vice President Rockefeller. The Commission released its report in June of 1975. Finding congressional oversight of intelligence inadequate, the CIA Commission recommended that:

> The President should recommend to Congress the establishment of a Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees. 19/

President Ford adopted that recommendation among a series of proposals and reorganizations advanced on Feb. 18, 1976:

18/ U.S. Congress. Senate. Committee on Government Operations. op.cit. pp. 1-2.

19/ U.S. Comission on CIA Activities Within the United States. Report to the President. Washington, U.S. Govt. Print. Off., 1975. p. 81.

> Congress should seek to centralize the responsibility for oversight of the foreign intelligence community...I recommend that Congress establish a Joint Foreign Intelligence Oversight Committee. Consolidating Congressional oversight in one committee will facilitate the efforts of the Administration to keep the Congress fully informed of foreign intelligence activities. 20/

The Commission on the Organization of the Government for the Conduct of Foreign Policy, established by Title VI of the Foreign Relations Authorization Act of 1972 (P.L. 92-352), released its report coincidentially with that of the CIA Commission, in June, 1975. With regard to intelligence oversight and control by the Congress, the Commission on Government Organization offered a two-fold recommendation: the creation of a Joint Committee on National Security with extensive legislative and oversight authority as a first priority and, barring its establishment, a Joint Committee on Intelligence as an oversight unit. 21/

F. Senate Resolution 21, Jan. 27, 1975 -- At the commencement of the 94th Congress on Jan. 27, 1975, the Senate overwhelmingly approved S. Res. 21, creating the Senate Select Committee To Study Governmental Operations With Respect to Intelligence Activities, the most immediate and direct predecessor to the Senate Select Committee on Intelligence. 22/ This action,

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20/ Message from the President (House Doc. no. 94-374). Congressional Record (daily ed.), v. 122, Feb. 18, 1976: H1124.

21/ U.S. Commission on the Organization of the Government for the Conduct of Foreign Policy. Report. Washington, U.S. Govt. Print. Off., 1975. pp. 208-210.

22/ S. Res. 21, introduced by Senator Pastore on Jan. 21, 1975, was approved by the full Senate on Jan. 27, 1975 by a vote of 88-4, following endorsement by the Senate Democratic Conference, 45-7. Congressional Record (daily ed.), vol. 121, Jan. 21, 1975: S524-S529 and Jan. 27, 1975: S967-S984. Similar resolutions preceded this action at the commencement of the 94th Congress, including S. Res. 6, introduced by Senators Proxmire and Schweiker on Jan. 15, 1975; and S. Res. 19, introduced by Senator Mathias and co-sponsored by Senators Baker, Mansfield, and Muskie, on Jan. 17, 1975.

which antedated a similar reorganization in the House of Representatives, 23/ was in response to public allegations of illegalities, improprieties, and abuses of authority by intelligence agencies. Included in the eventual investigations by the Senate Select Committee were CIA assassination plots against foreign leaders and domestic surveillance programs; FBI infiltration, counter-intelligence, and harrassment of "dissident" groups and individuals; NSA monitoring of the international communications of U.S. citizens included on "watchlists" compiled by domestic agencies, such as the Secret Service and the then-Bureau of Narcotics and Dangerous Drugs; U.S. Army surveillance of civilian political activity; and CIA and military intelligence drug testing programs involving unwitting subjects. 24/

The Senate Select Committee, chaired by Senator Frank Church and composed of eleven members, six majority and five minority party members, found that:

> Congress, which has the authority to place restraints on domestic intelligence activities through legislation, appropriations, and oversight committees, has not effectively asserted its responsibilities until recently. It has failed to define the scope of domestic intelligence activities or intelligence

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23/ The House approved H. Res. 138 on Feb. 19, 1975, creating the Select Committee on Intelligence. That select committee was replaced by an expanded select committee possessing identical authority and mandate by H. Res. 591 on July 17, 1975.

24/ U.S. Congress. Senate. Select Committee To Study Governmental Operations with Respect to Intelligence Activities. Final Report. Foreign and Military Intelligence: Book I. Intelligence Activities and the Rights of Americans: Book II. Washington, U.S. Govt. Print. Off., 1976. (94th Congress, 2d session. Senate. Report no. 94-755).

> collection techniques, to uncover excesses, or to propose legislative solutions. Some of its members have failed to object to improper activities of which they were aware and have prodded agencies into questionable activities. 25/

As a consequence, the Select Committee recommended that "congressional oversight be intensified":

> The Committee reendorses the concept of vigorous Senate oversight to review the conduct of domestic security activities through a new permanent intelligence oversight committee. 26/

During the twenty years prior to the establishment of the Senate Select Committee on Intelligence, proposals and recommendations for congressional restructuring of intelligence oversight and control had been advanced by Government commissions, Senate committees, and individual congressmen. The common denominator of all had been the perception that congressional supervision had been inadequate, given the developments in intelligence operations and activities. Moreover, the recommendations commonly advocated a permanent unit with consolidated oversight jurisdiction in order to ensure proper accountability for intelligence activities as well as clear responsibility within the Congress for that accountability. The differences among the various proposals, however, included several serious and controversial items:

- --whether the intelligence committee's jurisdiction would encompass only the CIA or extend to other intelligence agencies;
- --whether it would centralize jurisdiction over the CIA and exclude other standing committees or only consolidate such jurisdiction, thereby, sharing jurisdiction with other standing committees;

25/ Ibid., Book II, p. 277.

26/ Ibid., Book II, p. 339.

--whether it would be a joint or single chamber unit; and

--whether it would have legislative and authorization authority or only oversight authority.

II. Senate Bills and Resolutions Introduced in the 94th Congress

Five prominent bills or resolutions were introduced in the Senate during the 94th Congress that would have created a new congressional committee on intelligence. The proposals--S. 189, S.317, S.2865, S. 2893, and S. Con. Res. 4--varied in terms of jurisdiction, authorities, and composition of such a committee. 27/ S. 2893, introduced by Senator Frank Church, Chairman of the Senate Select Committee To Study Governmental Operations With Respect to Intelligence Activities, and cosponsored by seven of the ten remaining members of the Select Committee, received the greatest initial consideration. S. 2893 was also one of two proposals to advocate a Senate committee vis-a-vis a joint committee, as the other major bills or resolutions had. Digests of the five proposals, their (co)sponsors, and dates of introduction follow.

27/ The proposals are reprinted in U.S. Congress. Senate. Committee on Government Operations. Oversight of U.S. Government Intelligence Functions. Hearings, 94th Congress, 2d session, Jan. 21...Feb. 6, 1976. Washington, U.S. Govt. Print. Off., 1976. pp. 487-498.

S. 189, introduced Jan. 16, 1975, by Mr. Nelson, co-sponsored by Senators Jackson and Muskie, and referred to Government Operations:

Establishes in the Congress a Joint Committee on the Continuing Study of the Need to Reorganize the Departments and Agencies Engaging in Surveillance.

Sets forth the membership of the Committee.

States that it shall be the function of the joint committee: (1) to make a continuing study of the need to reorganize the departments and agencies of the United States engaged in the investigation or surveillance of individuals, (2) to make a continuing study of the intergovernmental relationship between the United States and the States insofar as that relationship involves the area of investigation or surveillance of individuals; and (3) to file reports at least annually and at such other times as the joint committee deems appropriate, with the Senate and the House of Representatives containing its findings and recommendations with respect to the matters under study by the joint committee.

Requires that the joint committee shall, at least annually, receive the testimony under oath, of a representative of every department, agency, instrumentality, or other entity of the Federal Government, which engages in investigations or surveillance of individuals. States that such testimony shall relate to: (1) the full scope and nature of the respective department's, agency's, instrumentality's, or other entity's investigations or surveillance of individuals; and (2) the criteria, standards, guidelines, or other general basis utilized by each such department, agency, instrumentality, or other entity in determining whether or not investigative or surveillance activities should be initiated, carried out, or maintained.

Sets forth the powers of the Committee.

Specifies that the provisions of this Act shall not in any way limit or otherwise interfere with the jurisdiction or powers of any committee of the Senate, or the House of Representatives, or of Congress to request or require testimony or the submission of information from any representative of any department, agency, instrumentality, or other entity of the Federal Government.

S. 317, introduced Jan. 23, 1975, by Mr. Baker, co-sponsored by Senators Weicker, Muskie, Mansfield, Percy, Mathias, Javits, Brock, Montoya, Packwood, Burdick, Domenici, Beall, Stafford, McIntyre, Inouye, Leahy, Hollings, Hatfield, Cranston, Brooke, Roth, Taft, Proxmire, Bartlett, Helms, Clark, and Dole, and referred to Government Operations:

> Joint Committee on Intelligence Oversight Act - Establishes the Joint Committee on Intelligence Oversight, consisting of seven members from each House, to conduct a continuing study and investigation of the activities of the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), the United States Secret Service, the Defense Intelligence Agency, the National Security Agency, and all other departments and agencies insofar as their activities pertain to intelligence gathering.
>
> Prohibits the appropriation of funds for intelligence activities unless such funds have been specifically authorized by legislation enacted after enactment of this Act.
>
> Requires that legislation pertaining to intelligence activities be reported from such joint committee.
>
> Grants subpena power to the chairman of such joint committee.

S.2865, introduced Jan. 22, 1976, by Mr. Brock and referred to more than one committee:

> Committee on Intelligence Oversight Act - Establishes within the Senate the Committee on Intelligence Oversight comprised of ten members. Directs that all proposed legislation or other matters in the Senate relating to the United States intelligence community, including: (1) the Central Intelligence Agency; (2) the Defense Intelligence Agency; and (3) the National Security Agency, be referred to the Committee.
>
> Prohibits disclosure to unauthorized persons of any information in the possession of the Committee by any Committee member, agent, or employee. Provides for the automatic suspension of any Committee member who violates the nondisclosure provisions of this Act and subjects such Senator to possible expulsion from the Senate. Sets criminal penalties for any employee of the committee who violates the nondisclosure provisions of this Act.
>
> Requires annual reports to the Committee from the Directors of the FBI, CIA, and Defense Intelligence Agency reviewing the operations of each agency or bureau. Directs that such reports be unclassified and available to the public.

S. 2893, introduced Jan. 29, 1976, by Mr. Church, co-sponsored by Senators Hart (Mich.), Mondale, Mathias, Schweiker, Huddleston, Morgan, and Hart (Colo.), and referred by unanimous consent to Government Operations:

Intelligence Oversight Act - States that the purpose of this Act is to establish a standing committee of the Senate to oversee and make continuing studies of the intelligence activities and programs of the United States Government. Establishes the Committee on Intelligence Activities, consisting of nine members limited to terms of no more than six years.

Requires that all proposed legislation and other matters relating to the Central Intelligence Agency and intelligence activities of all other departments and agencies of the Government shall be referred to the committee, which shall have exclusive jurisdiction over such matters. States that to the extent that the jurisdictions of other standing committees of the Senate include those matters, the jurisdiction of the other committees shall be concurrent with that of the Committee on Intelligence Activities.

Prohibits the unauthorized disclosure of intelligence information held by the Committee, but permits disclosure of information when the Committee deems that the public interest requires disclosure. States that if the Committee wishes to disclose information requested to be kept secret by the President, the President shall be notified ten days before such proposed disclosure. Provides that if the President replies that the threat to national security posed by such disclosure outweighs the public interest in such disclosure and that the question of disclosure is so vital as to require a decision by the full Senate and if the Committee agrees concerning the importance of the issue, the question of disclosure shall be submitted to the Senate to be acted on within three legislative days.

Requires the head of each department and agency of the United States to fully inform the Committee with respect to current intelligence activities conducted by such entity.

Prohibits any significant covert or clandestine activity unless the Committee is informed of such activity before it takes place. Exempts from such prohibition necessary intelligence collection and activities during military operations pursuant to a declaration of war or exercise of powers by the President under the War Powers Resolution.

S. Con. Res. 4, introduced January 23, 1975, by Mr. Hathaway and referred to Government Operations:

> Establishes a joint congressional committee to be known as the Joint Committee on Information and Intelligence to be composed of seven Members of the Senate appointed by the President of the Senate, and seven Members of the House of Representatives appointed by the Speaker of the House of Representatives.
>
> Directs the joint committee to make continuing studies of: (1) the activities of each information and intelligence agency of the United States; (2) the relationships between information and intelligence agencies of the United States and United States-based corporations and the effect of such relationships on the United States foreign policy and intelligence operations abroad; (3) the problems relating to information and intelligence programs; and (4) the problems relating to the gathering of information and intelligence affecting the national security, and its coordination and utilization by the various departments, agencies, and instrumentalities of the United States.
>
> Requires each information and intelligence agency of the United States to give to the joint committee such information regarding its activities as the committee may require.
>
> Requires the joint committee to make an annual report to both Houses of Congress and to make such additional reports as it deems necessary in carrying out its duties.

III. Committee Action in the 94th Congress

During the 94th Congress, four standing committees of the Senate--Armed Services, Government Operations, Judiciary, and Rules and Administration--conducted hearings and/or meetings on the various proposals to establish a committee on intelligence. The initial examination, beginning January 21, 1976, was conducted by Government Operations which voted unanimously on February 24, 1976, to approve a resolution, S. Res. 400, designed to establish a new standing committee of the Senate with broad jurisdiction and legislative and authorization authority

over the intelligence activities of the Government. 28/

S. Res. 400 was later modified by the Committee on the Judiciary, which deleted certain provisions affecting its jurisdiction over the Federal Bureau of Investigation and other Justice Department intelligence activities, and by the Committee on Rules and Administration, which reported out a separate proposal as an amendment in the nature of a substitute on April 29, 1976. 29/ It was only after another version of S. Res. 400 was introduced--the "Cannon Compromise," an informally-devised resolution by the Senate Majority leader and other Senators, including Howard Cannon, Chairman of the Rules Committee--that the Armed Services Committee held hearings on the proposals.

The complexity of establishing a committee with jurisdiction that overlaps with existing units and the controversy surrounding such a transfer, new authorities attendant to the prospective committee, and determination of membership composition are reflected in the fact that five distinct versions of S. Res. 400 emerged as a result of the committee deliberations:

28/ U.S. Congress. Senate. Committee on Government Operations. Senate Committee on Intelligence Activities; Report to Accompany S. Res. 400. Washington, U.S. Govt. Print. Off., 1976. (94th Congress, 2d session. Senate. Report no. 94-675). pp. 1-3.

29/ The report of the Judiciary Committee is included in that of the Rules and Administration Committee. U.S. Congress. Senate. Committee on Rules and Administration. Proposed Standing Committee on Intelligence Activities; Report Together with Minority Views and Recommendations of the Committee on the Judiciary to Accompany S. Res. 400. Washington, U.S. Govt. Print. Off., 1976. (94th Congress, 2d session. Senate. Report no. 94-770).

(1) S. Res. 400, as approved by the Government Operations Committee and reported March 1, 1976;

(2) S. Res. 400, as amended by the Judiciary Committee and reported to the Rules and Administration Committee on March 30, 1976;

(3) S. Res. 400, as reported by the Rules and Administration Committee as an amendment in the nature of a substitute on April 29, 1976;

(4) S. Res. 400, as amended by the Rules and Administration Committee prior to adoption of the substitute version but unreported to the full Chamber; and

(5) S. Res. 400, the "Cannon Compromise," as introduced on May 12, 1976, following informal deliberations among a number of Senators.

A. Committee on Government Operations: The Senate Committee on Government Operations formally considered the various bills and resolutions designed to establish a congressional committee on intelligence--S. 317, S. 189, S. Con. Res. 4, S. 2893, and S. 2865--during nine days of hearings from January 21, 1976 through February 6, 1976. 30/ S. 2893, introduced by Senator Frank Church, Chairman of the Senate Select Committee on Intelligence which was still conducting its inquiry of intelligence agency abuses, and cosponsored by seven other Select Committee members, was referred to Government Operations pursuant to a unanimous consent agreement with instructions that it report to the full Senate on legislation by March 1, 1976.

30/ U.S. Congress. Senate. Committee on Government Operations. Oversight of U.S. Government Intelligence Functions. Hearings, 94th Congress, 2d session on S. 317, S. 189, S. Con. Res. 4, S. 2893, S. 2865. January 21, 1976...February 6, 1976. Washington, U.S. Govt. Print. Off., 1976.

Following three days of mark-up (February 19, 20, and 24, 1976), the Government Operations Committee voted unanimously on February 24, 1976, to approve S. Res. 400, establishing a permanent standing Senate Committee on Intelligence Activities with comprehensive legislative jurisdiction over the intelligence activities of the Federal Government. S. Res. 400, as reported by Government Operations, would create:

> ...a permanent 11-member Senate Committee on Intelligence Activites with legislative jurisdiction, including authorization authority, over the intelligence activities of the Government.
>
> The Senate's oversight of the intelligence community will be centered in this new committee.
>
> The chief intelligence agencies it will have jurisdiction over are the Central Intelligence Agency, and the intelligence activities of the Department of State, Department of Defense, and the Federal Bureau of Investigation, including its domestic intelligence activities.
>
> The companies [sic] will have all necessary authority to exercise effective oversight over the intelligence agencies. The executive branch will be expected to keep the new committee fully and currently informed about its activities, including advanced notice of significant anticipated activities, including significant covert operations.
>
> The resolution also establishes procedures controlling the disclosure of information by the committee to the public and to other committees, or to other Members of the Senate in order to safeguard the unauthorized disclosure of information that the committee, or the Senate, has determined should not be publicly disclosed. 31/

Twenty-six witnesses testified before Government Operations, reflecting a range of viewpoints and including: Senators Frank Church and John Tower, Chairman and Vice Chairman, respectively, of the temporary Select Committee on Intelligence; other members of the Select Committee,

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31/ U.S. Congress. Senate. Committee on Government Operations. Senate Committee on Intelligence Activities; Report to Accompany S. Res. 400. Washington, U.S. Govt. Print. Off., 1976. (94th Congress, 2d session. Senate. Report no. 94-675). Summary of Resolution, p. 1-2.

Senators Howard Baker, Barry Goldwater, and Walter Huddleston; Senate Majority Leader Mike Mansfield; (former) Directors of Central Intelligence William Colby, John McCone, and Richard Helms; Secretary of State Henry Kissinger and former Secretary of State Dean Rusk; Attorney General Edward Levi and former Attorney General Nicholas Katzenbach; among others.

In opening the hearings, Committee Chairman Abraham Ribicoff recognized the "challenge...to find a way to reconcile the need for secrecy (surrounding intelligence) with the right of the people in a democracy and the right of Congress under our system of checks and balances, to oversee the activities of our intelligence agencies." 32/ Certain specific questions, according to Senator Ribicoff, should guide consideration of "creation of a new intelligence committee with adequate power to ensure effective oversight...," an objective he favored:

> First, should the committee be a joint committee of Congress or a permanent committee of the Senate, should Senators serve on the committee on a rotating basis, and should the legislation explicitly reserve seats on the committee for members of other committees?
>
> Second, should the new committee have jurisdiction over legislation, including authorization legislation, involving the Government's national intelligence activities?
>
> Should the entire intelligence activities of the Government be subject to annual authorization legislation reviewed by the new committee?
>
> Third, should the committee have jurisdiction over domestic intelligence activities and, if so,--what type of jurisdiction?

32/ U.S. Congress. Senate. Committee on Government Operations. Oversight of U.S. Government Intelligence Functions. op. cit., p. 2-3.

> Fourth, to what extent should the legislation spell out the extent and nature of the duty of the executive branch to keep the new committee fully and currently informed of its activities and plans?
>
> Fifth, should the bill amend the procedures now governing notice to Congress of any covert actions undertaken by the executive branch? When should such notice be provided?
>
> Sixth, what, if any thing, should the legislation say about the standards and safeguards that should govern the committees disclosure of sensitive information to other Senators, and to the general public? 33/

Differences on these and other issues emerged among those testifying. Senator Mansfield recommended "a facility that will provide regular, comprehensive, and systematic oversight regarding the Nation's intelligence function;" 34/ and Senator Church concurred, advocating "a permanent oversight committee...(with) the right to pass upon the authorization legislation...(with) rotating membership, both for the members of the committee and for the staff...(and with) procedures...for dealing with legitimate secrets." 35/ The last issue--classified information--was a particularly controversial area; but Senator Church stated that "to grant the executive such prerogative (to classify information exclusively) would, in my judgment, undermine any reasonable opportunity for a permanent oversight committee to expose wrongdoing, to expose the abuse of power, to correct inefficiencies, to expose illegal action contrary

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33/ Ibid., p. 3.

34/ Ibid., p. 13.

35/ Ibid., p. 28-29.

to the intent of the Congress and contrary to the well-being of this Republic." 36/

Other Senators disagreed with the recommendations to establish a new intelligence committee, including the three ranking minority members--Senators Thurmond, Goldwater, and Tower--of Senate Armed Services, whose intelligence jurisdiction would be affected by such a realignment. Senator Goldwater based his opposition on several grounds: the lack of need of another committee in this area and differences between the proposed oversight committee and other standing committees in terms of assignment of members, tenure, and selection of a chairman and vice chairman. 37/ Senator Tower concurred, regarding the proposals as "simplistic" and advocating that "existing committees can and should perform required oversight." 38/

Former and then-current Executive Branch officials who testified generally approved of a new intelligence oversight committee, preferably a joint committee which would centralize intelligence oversight. As Secretary of State Kissinger phrased the consideration:

> I believe the best oversight is concentrated oversight--ideally by a joint committee. The benefits of such an arrangement are numerous: It would permit rapid responses both ways between the Congress and the intelligence community when time was crucial; it would reduce the chance of leaks by limiting the number of people

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36/ Ibid., p. 30.

37/ Ibid., p. 338.

38/ Ibid., p. 46-47.

with access to sensitive information; it would encourage maximum sharing of information; and it would permit a rapid development of expertise to facilitate penetrating and effective oversight. 39/

William Colby, then Director of Central Intelligence (DCI), also advised that "oversight be concentrated exclusively in the minimum number of committees necessary to effectively conduct it, which to me means one..." and that it be composed of a "representative group" of Members of Congress. 40/ Director Colby then took issue with any proposals to require prior notice of sensitive intelligence operations, arguing that such a requirement would "conflict with the President's constitutional rights, would be totally impractical during times of congressional recess when crises can arise, and would add nothing to the ability of the Congress to express its views about any of our activites." 41/

B. Committee on the Judiciary: On March 18, 1976, S. Res. 400 was referred simultaneously to the Committee on Rules and Administration and to the Committee on the Judiciary, which was to report its

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39/ Ibid., p. 419. (Within two weeks after Secretary Kissinger's February 5, 1976 testimony, President Ford recommended establishment of a Joint Foreign Intelligence Committee with centralized intelligence oversight responsibility. Message from the President (House Doc. no. 94-374). Congressional Record (daily ed.), v. 122, February 18, 1976: H1124.)

40/ Ibid., p. 120-121. By way of information, DCI Colby's testimony on January 23, 1976, preceded by four days his replacement as Director by George Bush, who was confirmed by the Senate on January 27, 1976.

41/ Ibid., p. 121.

recommendations to the former, no later than March 29, a date subsequently extended to April 1, 1976. The Judiciary Committee met on March 25 and 30, 1976, and recommended passage of S. Res. 400, as amended by the Committee:

> The total effect of the various amendments contained in committee print number one is to retain the present jurisdiction of the Committee on the Judiciary over all functions of the Federal Bureau of Investigation and to strike from Senate Resolution 400 all grants of jurisdiction to the contemplated Committee on Intelligence Activities over the FBI. 42/

On March 25, the Committee heard testimony from the Attorney General and the Director of the FBI, who favored retention of Justice Department oversight by the Judiciary Committee, and Senator Walter Mondale, Chairman of the Domestic Intelligence Subcommittee of the Select Committee on Intelligence. 43/ Senator Mondale suggested that with regard to disagreements over FBI and other Justice Department intelligence operations jurisdiction, S. Res. 400 might be amended to permit concurrent oversight

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42/ The Judiciary Committee recommendations are included in the Rules and Administration Committee report: U.S. Congress. Senate. Committee on Rules and Administration. Proposed Standing Committee on Intelligence Activities; Report Together with Minority Views and Recommendations of the Committee on the Judiciary to Accompany S. Res. 400. Washington, U.S. Govt. Print. Off., 1976. (94th Congress, 2d session. Senate. Report no. 94-770). (Seven of the 15 members of the Judiciary Committee dissented from the recommendations, urging instead concurrent jurisdiction over the FBI. The dissenting views were not included in the Judiciary Committee recommendations but were acknowledged in later floor debate. Congressional Record (daily ed.), May 19, 1976. p. S7558.)

43/ The hearings, noted in the Judiciary Committee calendar for the 94th Congress, have not been published but transcripts are available at the Committee offices. A summary of the Judiciary Committee deliberations is provided in the report of the Committee on Rules and Administration. Ibid., p. 79.

and joint referral of bills to both Judiciary and the proposed committee. 44/ An amendment to that effect, proposed by Senator Kennedy, was rejected by voice vote in the full Committee. FBI Director Clarence Kelley cautioned against shared jurisdiction on the grounds that "conflicting directives" might ensue if oversight of the Bureau were exercised by more than one committee. 45/

C. Committee on Rules and Administration: S. Res. 400, reported by the Committee on Government Operations on March 1, 1976, was referred to the Committee on Rules and Administration on that same date for a period extending no later than March 20, 1976. However, on March 18, 1976, the Senate, by unanimous consent, agreed to refer S. Res. 400 simultaneously to both the Judiciary and the Rules and Administration Committees, requiring the latter to report no later than April 5, 1976, a date later extended to April 8, and then to April 30, 1976. The Committee on Rules and Administration filed its report on April 29, 1976, following four days of hearings; adoption of amendments to S. Res. 400, during the mark-up on April 27 and 28; and a 5-to-4 vote to report S. Res. 400 with an amendment in the nature of a substitute, referred to as the "Cannon Amendment." 46/

44/ Ibid.

45/ Ibid.

46/ Ibid., p. 1.

The substitute version, introduced by Howard Cannon, Chairman of the Rules Committee, would establish a separate Senate Select Committee on Intelligence with oversight jurisdiction over the intelligence community but would leave exclusively with the Committees on Armed Services, Foreign Relations, and the Judiciary, their existing relevant legislative jurisdictions. A summary explanation of this decision was provided in the Committee report:

> This Committee believes a separate oversight committee, fully and currently informed and armed with subpoena power, can provide effective oversight for the intelligence community without a grant of legislative jurisdiction. No such legislative authority was necessary for the select Senate and House Intelligence Committees which exposed certain abuses. Nor did the Senate "Watergate" Committee have such authority. 47/

The Rules Committee determined that a standing Committee on Intelligence Activities, as advanced in the Government Operations Committee version of S. Res. 400, "at this time, would be premature, and...constitute an overreaction to the undesirable situation within the Federal intelligence community which has recently become exposed to public view." 48/ Moreover, the Committee argued that ample time had not existed to consider all the implications surrounding the establishment of such a standing committee, especially in light of the recency of the final report of the Senate Select Committee To Study Governmental Operations With Respect to Intelligence Activities, issued on April 26, 1976. 49/

47/ Ibid., p. 2.

48/ Ibid., p. 11.

49/ Ibid., p. 8.

The time factor was but one element in the Rules Committee decision; the jurisdictional issue was paramount, according to the Committee:

> The overriding question posed by Senate Resolution 400 is this: Shall the jurisdictions of the existing Standing Committees on Armed Services, Foreign Relations, and the Judiciary over intelligence activities of the Departments or agencies within their respective legislative areas be stripped therefrom and collectively be posed in a new Standing Committee of the Senate on Intelligence Activities? 50/

The Rules Committee majority found the proposal incorporated in the Government Operations version "to be completely unsatisfactory" 51/ on this point and that stripping the existing committees of their jurisdictions over intelligence matters "would seriously damage the abilities of those committees to adequately perform the overall duties the Senate has assigned to them...(and) would remove from those vitally important committees the means of access to information which is necessary for their proper functioning." 52/

The four dissenters in the 5-4 vote favoring the Cannon Amendment issued minority views, judging that the substitute version "would not grant this new Committee sufficient authority to properly carry out this important function...." 53/ Other arguments emphasized the need

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50/ Ibid.

51/ Ibid., p. 9.

52/ Ibid.

53/ Ibid., p. 15

for consolidated oversight jurisdiction vis-a-vis the "piecemeal basis" of oversight by existing committees "heavily occupied with other vital matters." 54/ The minority views found the Rules Committee substitute deficient in that the Select Committee would lack legislative authorization authority and would fail to centralize the responsibility for oversight of the foreign intelligence community. In addition, according to the minority views, the substitute version "would not require the intelligence agencies to keep the new committee fully and currently informed, or that they inform the committee in advance of significant anticipated activities" and, given the "procedure for selecting members... would insure that the new committee will, in effect, be an extension of the committees or subcommittees that have been solely responsible for Congressional oversight of the intelligence community in the past." 55/

Prior to adoption of the Cannon Amendment, the Rules Committee had approved several important amendments to S. Res. 400 as reported by Government Operations. That amended version, reprinted in the Rules Committee report, 56/ deleted the requirement for annual authorizations of the intelligence activities of the Department of Defense, the Department of State, the FBI, and the Central Intelligence Agency. Furthermore, this amended version of S. Res. 400 adopted the concept of

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54/ Ibid.

55/ Ibid., p. 18.

56/ Ibid., p. 49-72.

concurrent, sequential jurisdiction for legislation involving intelligence activities, as had been considered (and rejected) in the Senate Judiciary Committee deliberations and as would be included in the final version of S. Res. 400, as approved by the Senate. The novel concept of concurrent, sequential legislative jurisdiction permits referral of bills and resolutions, where there is a jurisdictional overlap, to a second committee, subsequent to hearings and reporting of the proposals by the initial committee. As amended in this version of S. Res. 400, the concurrent, sequential jurisdiction would have enabled existing committees to consider (and report) legislation already reported by the proposed select committee on intelligence, which falls within their jurisdiction upon the request of the chairman. A reciprocal arrangement was provided for the select committee to request referral of reported legislation that would be contained within its jurisdiction. A thirty-day time limitation for reporting was placed on the second referral. Other amendments to the Government Operations Committee version of S. Res. 400 by the Rules Committee terminated the limitation (of six years) on staff employment by such a select committee; required the full Senate (and not the select committee) majority and minority party to select the committee chairman and vice chairman, respectively; and, were otherwise designed to bring the resolution into conformity with Senate Rules.

The Rules Committee decision to report S. Res. 400 with an amendment in the nature of a substitute followed four days of hearings that

included testimony from the recently-confirmed Director of Central Intelligence, George Bush; and from chairmen of affected Senate committees or those which had considered restructuring congressional intelligence jurisdiction, including Senators Stennis of Armed Services, Church of the temporary Select Committee on Intelligence, and Ribicoff of Government Operations; among others. 57/

Many of the same prominent issues were addressed in those hearings that were treated in the previous sessions conducted by Government Operations and Judiciary and that later emerged in the Rules Committee report. The emphases were on the jurisdiction of the new committee and whether it would be shared (or held exclusively) with existing Senate standing committees, ensuring the protection of classified or confidential information received by a select committee on intelligence, and authority for (annual) authorizations for intelligence activities.

D. Committee on Armed Services: The Senate Committee on Armed Services did not conduct hearings on S. Res. 400 until May 13, 1976, when a single meeting was held. 58/ That consideration followed introduction of not only S. Res. 400, as reported with an amendment in the

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57/ U.S. Congress. Senate. Committee on Rules and Administration. Proposed Standing Committee on Intelligence. Hearings, 94th Congress, 2d session, on S. Res. 400. Washington, U.S. Govt. Print. Off., 1976.

58/ U.S. Congress. Senate. Committee on Armed Services. Establish a Senate Select Committee on Intelligence. Hearings, 94th Congress, 2d session, on S. Res. 400, May 13, 1976. Washington, U.S. Govt. Print. Off., 1976.

nature of substitute by the Rules Committee on May 10, 1976, but also another modification of S. Res. 400, the "Cannon Compromise," introduced on May 12, 1976. The Armed Services Committee did not issue a report; and it lacked official jurisdiction over the resolution, a contrast to the situation in 1966 in which a Senate resolution to create a Committee on Intelligence Operations, S. Res. 283, was referred to Armed Services. 59/

The Armed Services Committee hearing, focusing on the "Cannon Compromise," reviewed the issue of an annual authorization requirement for intelligence activities, its impact on the Rules of the Senate, its perceived affect on budget approval for intelligence units since the House of Representatives would not have modified its system, and its potential consequences for maintaining the confidentiality of intelligence budget information. Testimony was received from Floyd Riddick, Parliamentarian Emeritus of the Senate and a professional staff member of the Senate Rules Committee, and from Robert Ellsworth, Deputy Secretary of Defense.

In addition, members of Senate Armed Services questioned whether the provision for sequential referral of legislation and exchange of information to standing committees from the Select Committee on Intelligence was mandatory or at the discretion of the Select Committee. The following exchange between Senators Taft and Hart (Colorado) dealt with the issue:

59/ See page 4 above for a discussion of S. Res. 283, 89th Congress.

Senator TAFT. But the ban on disclosure of information that is presently in the bill as I read it would apply even to a disclosure of information by the ex officio Armed Services Committee member to the chairman of the Armed Services Committee, if he is not a member...the Armed Services Committee would have no way to know whether or not there would be a referral.

Senator HART. I think it is mandatory language. They don't have a choice.

Senator TAFT. It says deem, and deem to me confers a choice. They have to make a judgment, the legislative committee makes a judgment as to whether they think the Armed Services Committee ought to have this. If they decide that, then they have to defer it.

Senator HART. It is not an arbitrary kind of power that they have to decide whether to turn something over to the Armed Services Committee or not. If it is a defense-related matter, they have to. That is the way I read this language.

Senator TAFT. I don't read it that way, Senator. I think that is something that ought to be cleared up. I am thinking about an amendment, [sic] is why I am asking these questions along this line. 60/

IV. Senate Floor Action

Important developments on the floor of the Senate extended from May 10, 1976, when the Committee on Rules and Administration's version of S. Res. 400 (with an amendment in the nature of a substitute) was introduced, through May 19, 1976, when the Chamber approved a still-different version of S. Res. 400, the "Cannon Compromise," and established the Senate Select Committee on Intelligence.

A. May 10, 1976; Introduction of S. Res. 400, Rules Committee Substitute

On May 10, 1976, S. Res. 400, as approved by Senate Rules and

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60/ Ibid, p. 10.

Administration in the form of an amendment in the nature of a substitute, was introduced and an additional statement on the resolution was supplied by Senator Howard Baker, a member of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities and Vice Chairman of the Select Committee on Presidential Campaign Activities, i.e., the "Watergate" committee, in the 93d Congress. 61/

Senator Baker's supplemental statement to the Rules Committee substitute version of S. Res. 400, which received no further attention, revealed that a "compromise version" of the resolution was being considered by a bipartisan group of Senators:

> Since [S. Res. 400 was reported by the Rules Committee]...
>
> a bipartisan group of Senators have labored at trying to reach a compromise version of S. 400. This morning, we had another meeting of a bipartisan group of Senators in an effort to resolve the remaining differences with regard to the various proposed resolutions. I am pleased to be able to say that it now appears likely that we will reach agreement on a single resolution which will enjoy wide bipartisan support. 62/

B. May 12, 1976; Introduction of S. Res. 400, "Cannon Compromise" version

On May 12, 1976, the bipartisan compromise version of S. Res. 400 reached fruition with the introduction of another resolution, later referred to as the "Cannon Compromise" after Senator Howard Cannon who

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61/ Congressional Record (daily ed.), v. 122, May 10, 1976. p. S6767-S6769.

62/ Ibid., p. S6768.

introduced this new version. 63/ In addition to Senator Cannon, Chairman of the Rules Committee, the "Cannon Compromise" had cosponsorship of 27 other Members, reflecting a spectrum of Senate committee memberships; both parties, including endorsement by Senators Mike Mansfield and Hugh Scott, the Majority and Minority Leaders, respectively; and, according to Senator Cannon, "representing groups of Senators holding various points of view...." 64/

Senator Cannon's introductory remarks emphasized that the new resolution was "a compromise version between that reported by Government Operations and the substitute amendments acted on by the Committee on Rules and Administration." 65/

It was this version, technically Amendment No. 1643, that served as the basis of the final version of S. Res. 400 as approved by the Senate. The major ingredients of the "Cannon Compromise" affecting a Select Committee on Intelligence included:

63/ Congressional Record (daily ed.), v. 122, May 12, 1976. pp. S7082-S7085. Discussion of the resolution as introduced extended from pp. S7081-S7098.

64/ Ibid., p. S7081. The cosponsors were: Mr. Robert C. Byrd, Mr. Mansfield, Mr. Hugh Scott, Mr. Percy, Mr. Hatfield, Mr. Ribicoff, Mr. Church, Mr. Mondale, Mr. Baker, Mr. Cranston, Mr. Philip A. Hart, Mr. Huddleston, Mr. Morgan, Mr. Gary Hart, Mr. Mathias, Mr. Schweiker, Mr. Javits, Mr. Kennedy, Mr. Durkin, Mr. Roth, Mr. Stevenson, Mr. Brooks, Mr. Brock, Mr. Weicker, Mr. Humphrey, Mr. Clark, and Mr. Pell.

65/ Ibid., p. S7082.

--investigatory and oversight jurisdiction over all intelligence activities and programs and investigatory authority, including subpoena power;

--legislative authority for the CIA, DCI, and all other intelligence activities of the Federal Government;

--authorization authority of both direct and indirect annual authorization to enumerated agencies, including CIA, DCI, and FBI, and units within the Departments of Defense and State;

--such legislative and authorization jurisdiction would be held by the Select Committee exclusively over the CIA and DCI but would be concurrent, sequential jurisidication over other intelligence activities that fell within the jurisdiction of existing standing committees;

--authority over matters relating to Executive organization and reorganization involving intelligence activities;

--regular and periodic reporting to the full Senate on the nature and extent of the intelligence activities of various agencies and departments;

--receipt of all reports, documents, files, and other materials held by the Select Committee to Study Governmental Operations With Respect to Intelligence Activities;

--procedural requirements to maintain the confidentiality of classified information held by the Select Committee;

--disclosure provisions affecting any information held by the Select Committee, including a Committee vote, submission to the President, and if he objects, full Senate consideration;

--receipt of an annual report from the Directors of the Central Intelligence Agency and of the Federal Bureau of Investigation and the Secretaries of Defense and of State by the Select Committee for public disclosure;

--17 members, selected on a rotating basis but with a limitation of nine years (exclusive of the 94th Congress); eight members to be selected equally from the Committees on Appropriations, Armed Services, Foreign Relations, and the Judiciary and nine not to be members of those four committees; a nine to eight party ratio between majority and minority party members; exemption from the limitations placed on the number of committee assignments to which

a Senator is entitled; and selection of the Select Committee Chairman and the Vice Chairman by the members of their respective political parties in the full Senate.

Proponents of the "Cannon Compromise" emphasized several supporting arguments. Senator Robert Morgan, a member of the former Select Committee on Intelligence, chaired by Senator Church, suggested that "by concentrating oversight in a new committee with jurisdiction to treat intelligence activity exclusively, we should not only get better oversight of intelligence, but existing committees should themselves be able to devote greater time to non-intelligence operations of the agencies they oversee." 66/ Such consolidated oversight jurisdiction was perceived as "appealing from a security point of view," resulting in "more cooperation and better coordination between Congress and the intelligence community than heretofore." 67/ Moreover, according to Senator Morgan, "effective oversight...is dependent upon the ease of access which a committee has to records and personnel involved in that activity. It has been my experience that unless a congressional committee has legislative or monetary clout, its inquiries are largely ignored." 68/ As a result of the proposed changes, Congress was seen as being "in a position for the first time, to exercise its own independent judgment with respect to intelligence operations. With a membership and a staff devoted

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66/ Ibid., p. S7094

67/ Ibid.

68/ Ibid.

solely to intelligence and problems, the committee would be in a position to understand and evaluate the decisions made by the intelligence community...." 69/

Opponents of the "Cannon Compromise" reiterated earlier arguments advanced in the previous deliberations and reports from the Judiciary and Rules and Administration Committees. Senator Roman Hruska, a member of the Judiciary Committee, perceived that:

> There is a real potential that a splitting of the oversight jurisdiction of intelligence and nonintelligence aspects of the FBI may create much confusion and result in conflicting congressional guidance to that agency. 70/

C. May 13, 1976; Debate and Amendment of the "Cannon Compromise"

In addition to continued debate on S. Res. 400, as introduced in the compromise version the previous day, i.e., the "Cannon Compromise," the Senate adopted three amendments: 71/

(1) An amendment, offered by Senator Percy, reducing from nine to eight the number of years a Senator may serve on the proposed Select Committee on Intelligence, adopted by voice vote; and

(2) An amendment, offered by Senator Huddleston, charging the Select Committee on Standards and Conduct with the responsibility of investigating any unauthorized disclosure of intelligence information by a Member or staff employee, adopted by voice vote; and

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69/ Ibid.

70/ Ibid., p. S7095.

71/ Congressional Record (daily ed.), v. 122, May 13, 1976. pp. S7254-S7283.

(3) An amendment, offered by Senator Cannon, reducing from 17 to 15 the membership of such Select Committee, approved 75 yeas to 17 nays.

A fourth proposed amendment was rejected. Senator Abourezk proposed that the Select Committee have a greater degree of authority to disclose sensitive information than provided for in the compromise version. The amendment was tabled by a vote of 77 to 13.

The three successful amendments per se engendered little controversy and only moderate discussion during the floor debate, which tended to concentrate on the broader merits of creating a new select committee on intelligence with consolidated jurisdiction versus maintenance of the status quo. Senator Percy argued in favor of reducing from nine to eight the number of years of service on the Selection Committee on Intelligence on the grounds that the maximum nine-year term would require "interruption of a Congress and that it would be better to have an even number of years." 72/ The designation of an eight- opposed to a ten-year term was not explained, other than to state that it was the preference of several Members. 73/

Senator Huddleston's proposed amendment to require investigation by the Select Committee on Standards and Conduct of unauthorized disclosures by Members or staff of the Select Committee on Intelligence was offered for two principal reasons. The first was to activate an

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72/ Ibid., S7271.

73/ Ibid.

automatic investigation once it is determined by the Select Committee on Standards that an unauthorized disclosure occurred. This would make it unnecessary for any one Senator or group of Senators, in the words of Senator Percy, "to actually make charges and request such an investigation be made. It was felt...that that might, in itself, almost constitute an indictment." 74/ Secondly, such an amendment would, although imposing a "considerable responsiblity" on Standards and Conduct, according to Senator Huddleston, "make it clear that the committee is to have the flexibility, the discretion, to dismiss frivolous and unwarranted allegations." 75/

The amendment by Senator Cannon, reducing the membership from 17 to 15, would not affect the basic eight appointments from the four affected committees: two members from each of the Committees on Appropriations, Armed Services, Foreign Relations, and the Judiciary. It would, therefore, reduce the number from outside those committees from nine to seven and change their majority-minority party ratio from 5-4 to 4-3. The major rationale for the reduction was that "a membership of 18 tends to make a somewhat unwieldy committee," according to Senator Cannon, 76/ and that other investigating committees, such as the predecessor Select Committee on Intelligence and the "Watergate" Committee,

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74/ Ibid., p. S7273.

75/ Ibid., p. S7274.

76/ Ibid.

were smaller. Such a size would "work more efficiently and reduce the possibility of sensitive or secret information from being improperly disclosed and at the same time give the four standing committees concerned and the other Members of the Senate not on those committees a more equally balanced representation." 77/ It was noted that the ratio between those two groups was 59 to 41, or that 59% of the Senate Members were on one of the four designated committees. 78/

During the discussion of this issue, Senator Ribicoff reviewed an understanding with regard to the membership selection process as it would affect the proposed Select Committee on Intelligence and how it would be conducted by Senator Mansfield for the majority party members:

> During all these discussions and at the hearings, and, as a matter of fact, questioning Senator MANSFIELD when he appeared before the Committee on Government Operations as to the makeup, Senator MANSFIELD--speaking for himself, of course, and not for Senator SCOTT--pointed out that in making these appointments, he would take into account the makeup of the entire Senate to reflect, for example, the sectional diversity of the Senate, the differences in seniority, and age, and the like. I have the utmost confidence in the appointing discretion of Senator MANSFIELD and his wisdom and judgment. No matter what we write in as formula, I am confident that Senator MANSFIELD and Senator SCOTT on this first committee will see to it that the first appointments to the committee reflect the composition and the philosophy of the entire Senate. 79/

The fourth amendment of the day would have effected greater Select Committee discretion in disclosing information it possessed but was

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77/ Ibid.

78/ Ibid.

79/ Ibid., p. S7275.

tabled. Senator Abourezk, who introduced the amendment, perceived that the existing provision in the Cannon Compromise version "would encroach upon congressional prerogatives and skew the balance of powers. This amendment corrects that imbalance...by permitting the committee, by majority vote, to disclose or to keep confidential, information to whose disclosure the President objects." 80/ Without such an amendment, Senator Abourezk interpreted the existing language as "creating two dangerous precedents. For the first time the executive branch classification system will be applied to Congress.... Second, one reading of the ambiguous provision would establish a formal procedure for Presidential veto of committee actions...." 81/

Senator Ribicoff noted that the Abourezk amendment was "taken practically verbatim from the original proposal of the Committee on Government Operations." 82/ He further instructed:

> It was one of the main items that was involved in the compromise worked out by representatives of the Committee on Government Operations and the Committee on Rules and Administration. We do believe that we have protected the rights of the Senate by assuring that rule XXXV still will be applicable so that any two Senators would have the opportunity of bringing to a closed session of the Senate any differences with the President of the Unites States over the disclosure of information...(the existing provision governing disclosure) was cleared with, we thought, almost every element involved in this entire problem, including Senator Church.... I would be reluctant to see the Cannon substitute in jeopardy. 83/

80/ Ibid., p. S7277.

81/ Ibid.

82/ Ibid., p. S7278.

83/ Ibid.

Other discussion included statements of support for the compromise resolution. Senator Mondale summarized his position as follows:

> We have now the worst possible system for congressional oversight of intelligence. Responsibility and authority are fragmented in several committees; it is impossible to look at intelligence as a whole; because authority and responsibility are not welded together, we are incapable of dealing with problems privately, and there is the inevitable temptation to deal with them through leaks. And finally, the committees that currently examine the intelligence agencies do so as an adjunct to their principal business. 84/

Senator Church, noting the findings of intelligence abuses and illegalities by his temporary Select Committee on Intelligence, asserted that "(t)he worth of the work done by the Select Committee on Intelligence Activities over the past 15 months will be judged by the outcome of the resolution now under consideration. A strong and effective oversight committee of the kind set forth in the resolution now under consideration is required to carry out the necessary reforms and contained in the Select Committee's final report. In order to restore legitimacy to what are agreed to be the necessary activities of the intelligence community, a strong oversight committee with a well-trained staff is required." 85/

Another member of that Select Committee on Intelligence Activities, Senator Goldwater, however, disagreed. Instead of a new Senate committee, he suggested, "A joint committee combined with a repeal of the

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84/ Ibid., p. S7259.

85/ Ibid., p. S7262.

Hughes-Ryan amendment could be an attractive proposition." 86/

D. May 17, 1976; Further Debate and Amendment of "Cannon Compromise"

Consideration of the Cannon substitute of S. Res. 400 proceeded and three amendments were offered and agreed to by voice vote. 87/

(1) A modified amendment, offered by Senator Taft, to remove the mandatory requirement that annual reports of the Directors of the CIA and of the FBI and Secretaries of Defense and State be made public;

(2) A modified amendment, offered by Senator Allen, to provide that in these four reports the appropriate officials not be required to disclose intelligence methods employed in gathering information; and

(3) A modified amendment, offered by Senator Taft, to require that the proposed Select Committee on Intelligence communicate to the appropriate standing committee any intelligence matter, as well as any legislation considered.

Arguments in favor of not requiring that the annual reports of the intelligence agencies be made public emphasized the possible adverse impact of such disclosure on intelligence sources. Senator Taft, who introduced the amendment noted the previous (May 13, 1976) hearings conducted by Senate Armed Services in which this provision was questioned by several Members of the Committee. Testimony from Deputy Secretary of Defense Robert Ellsworth at that hearing was inserted in the record to the effect that such a public release "would...apprise foreign nations of the extent of our familiarity with their operations against us, and

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86/ Ibid., p. S7256.

87/ Congressional Record (daily ed.), v. 122, May 17, 1976. pp. S7339-S7364.

would assist them in perfecting and strengthening their operations against us." 88/ Further discussion with Senator Brock, who "put [the original section] in the bill," 89/ and Senator Ribicoff, the bill's floor manager, produced a modified amendment that provided that the Senate Select Committee on Intelligence may at its discretion release such reports publicly and removed the mandatory requirement. 90/

The amendment dealing with the disclosure of intelligence methods in the four reports by the four agencies was offered by Senator Allen. As introduced, Senator Allen's amendment would add intelligence methods to provisions against disclosure of names of the individuals engaged in intelligence activities and the sources of information on which such reports are based:

> Otherwise, if (the agencies) were required to disclose the intelligence methods employed, the methods, of course, would be made available to adversaries and would become common knowledge. 91/

It was noted that the amendment was acceptable to the floor manager of the bill, Senator Ribicoff, Chairman of the Government Operations, Committee, to Senator Percy, ranking minority member of that Committee, and to Senator Cannon, Chairman of the Rules Committee. Other than Senator Allen's statement on behalf of the amendment and a technical modification,

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88/ Ibid., p. S7349.

89/ Ibid.

90/ Ibid., p. S7353

91/ Ibid., p. S7351.

there was no discussion of the substance of the proposal.

The amendment regarding concurrent, sequential referral of matters reported by the Select Committee on Intelligence was offered by Senator Taft and was an outgrowth of the May 13, 1976 hearing held by Senate Armed Services:

> ...the question that occurred to us in the hearings before the Armed Services Committee with regard to this amendment was whether there was any way in which the chairman of the standing committee could possibly know what matters were before the intelligence committee so that he could ask for jurisdiction to be asserted under this particular clause.... The point that I would like to make is that there is no way under which the Armed Services Committee can know what is before the Select Committee on Intelligence unless the Select Committee on Intelligence itself makes a judgment that it wants to refer to the Armed Services Committee. 92/

Senator Ribicoff, in commenting upon the amendment, cited a concern that the "mandatory nature of the proposed language, in conjunction with its vague reference to the words 'any matter,' could unduly hamper the new committee's operation." 93/ He cited other provisions which insist that nothing in the resolution shall be construed as amending, limiting, or otherwise changing the authority of any standing committee and provide that two members of the new Select Committee shall be from the Committee on Armed Services, along with two each from Appropriations, Foreign Relations, and Judiciary, which also have concurrent jurisdiction. 94/

92/ Ibid., p. S7361-S7362.

93/ Ibid., p. S7362.

94/ Ibid.

Senator Ribicoff expanded his comments regarding the transmittal of information about matters under consideration by the Select Committee to appropriate standing committees by the Senators with dual memberships:

> [Such Senators] are actual, voting members of that 15-member committee. There is a provision that at the request of the so-called parent committee there is a sequential referral for a period of 30 days.
>
> ...If this is going to work at all, there has to be comity between the standing committees, the select committee, and the executive branch of our Government.... It is inconceivable to me that any intelligence matter would be kept back from the parent committee. 95/

However, Senator Taft was uncertain that individual Senators with dual memberships could transmit appropriate information in light of the provision which requires the full Select Committee on Intelligence to develop regulations governing such transmittal, regulations which, according to Senator Ribicoff, the compromise version intentionally avoided drafting. 96/ To meet this concern, Senator Ribicoff offered modifying language to the amendment, which was acceptable to the former with the result that, according to Senator Ribicoff:

> It is definitely our intention if there is any matter of importance involving any other committee that that matter should go to this other committee for its attention...it is the intention of this resolution that when a matter of substance comes before the Intelligence Committee it then goes over to the Committees on Armed Services, Foreign Relations, Judiciary, or Appropriations. 97/

95/ Ibid., p. S7362.

96/ Ibid.

97/ Ibid., p. S7363.

The remaining floor action on May 17, 1976, consisted largely of discussion of a prospective amendment to be offered by Senators Tower and Stennis regarding deletion of intelligence activities of the Department of Defense from the jurisdiction of the proposed Select Committee. Opponents of this prospective amendment, such as Senator Percy, argued that jurisdiction of Defense intelligence should remain because of the size of the Defense intelligence apparatus and budget (i.e., "nearly 90% of the Nation's spending on intelligence programs," according to the Church Select Committee report), the previous lack of congressional knowledgeability of the broad spectrum of Defense intelligence operations, the abuses committed by Defense Department agencies, the criticisms on managerial grounds of certain Defense intelligence units operations, the separability of national or strategic intelligence from tactical defense intelligence, and the fact that the Cannon compromise requires maintenance of this area or else other areas might be returned to the respective standing committees exclusively. 98/ Senator Mondale concurred, commenting in addition on the role of the Defense Intelligence Agency in covert action abroad, the National Security Agency, also within the Department of Defense, maintenance "watch lists" of American citizens, and the Army counterintelligence operations, and citing them as reasons for maintaining Senate Select Committee on Intelligence jurisdiction

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98/ Ibid., pp. S7340-S7342.

over Defense intelligence. 99/

Senator Thurmond, in opposing both S. Res. 400 and the proposed substitute, raised a number of issues, including his position that the "substitute constitutes an entirely new bill...and was not written in the Government Operations Committee and has not had the benefit of hearings." 100/ He also took issue with the provisions regarding the disclosure of sensitive information and the ability to protect classified information on the part of the Select Committee and the entire Senate if the Select Committee is created. 101/

E. May 18, 1976; Further Debate and Amendment of "Cannon Compromise"

During the May 18, 1976, consideration of the Cannon substitute version of S. Res. 400, three additional amendments were offered, two of which were accepted by voice vote. 102/

(1) A modified amendment, offered by Senator Cranston, to provide that the President personally notify the Committee on his objections to its disclosure of certain information;

(2) A modified amendment, offered by Senator Griffin, of a clarifying nature to the same provision regarding Presidential notification.

A third amendment, offered by Senator Taft and permitting a Senator

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99/ Ibid., pp. S7343-7348.

100/ Ibid., p. S7353.

101/ Ibid., pp. S7353-7361.

102/ Congressional Record (daily ed.), v. 122, May 18, 1976. pp. S7408-7416.

to serve on the Select Intelligence Committee in addition to any other committee on which he presently serves until the 96th Congress, was rejected by a vote of 38 yeas to 50 nays.

It was further decided that the final vote on the Cannon substitute version of S. Res. 400 would occur the next day, May 19, 1976, following a vote on proposed amendment no. 1649, the Tower-Stennis amendment to delete Defense intelligence jurisdiction from the proposed Select Committee on Intelligence.

The purpose of the Cranston amendment was "to insure that this will in all cases be a Presidential notification and not done through delegation to some other official without the President's knowlege or the request." 103/ A modification that the phrase "in writing" accompany "personally" was added, at the request of Senator Griffin, so that the amendment would not be misinterpreted as requiring that the President appear personally but only as requiring a personal communication from the President. 104/

Senator Griffin offered his own amendment, subsequently modified by Senator Ribicoff, to the effect of replacing the words "vital and" with the phrase "of such gravity that" in determining the reasons the President must certify in requesting that certain information not be disclosed. 105/ The new language of sec. 8(b)(2) reads:

103/ Ibid., p. S7414.

104/ Ibid.

105/ Ibid., p. S7414-S7415.

> ...the President...certifies that the threat to the national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure. (Emphasis added.)

Senator Griffin found the word "vital" overly restrictive, asking: "Are we going to limit it [the President's certification] to that kind of a situation, where the life of the Nation has to be involved?" 106/ Senator Ribicoff suggested inserting the phrase--"of such gravity that"--that had been incorporated in the "original Church committee bill." 107/

The third amendment, advanced by Senator Taft, if approved, would have removed the Select Committee on Intelligence from being, "in essence, a 'B' committee...Members, particularly those with the greatest abilities, may tend to seek to avoid such a committee assignment because it is an uncompensated add-on to their primary committee responsibilities. 108/ Senator Taft also perceived such "B" committees "to rely on their committee staffs very heavily" with the effect of:

> ...building up a staff of so-called intelligence experts in this area, who, unless the Senators have the time...to devote a great deal of attention to the work of the committee, are going to become the actual, functional working committee. 109/

Senator Ribicoff responded against this amendment, arguing that the provision in the Cannon substitute permits a Senator to serve on

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106/ Ibid., p. S7414.

107/ Ibid.

108/ Ibid., p. S7409.

109/ Ibid.

the new intelligence committee in addition to any other committee on which he already serves, and that if the Taft amendment were adopted, it would restrict the eligible members. 110/

Other comments during the floor debate included an endorsement of the new Select Committee on Intelligence by Senator Bayh, who said:

> I believe a permanent oversight committee with legislative authority is an important first step in gaining control of intelligence activities. One committee with responsibility solely for intelligence oversight and legislation should serve us far better than maintaining the exclusive jurisdictions for intelligence matters in committees which have many other responsibilities.
>
> The new committee can serve as a watchdog to keep the intelligence agencies in check, and equally as important, work on legislation to insure protection of human rights and to make our intelligence efforts as effective as possible. Recent experience shows there is much to be done in this last area.
>
> Mr. President, nearly every person or group which has studied the intelligence agencies has called for an intelligence oversight committee, including the Senate select committee, the Rockefeller Commission, President Ford, George Bush, William Colby, and the Murphy Commission. It is up to us now to act.
>
> The compromise proposal introduced by the distinguished chairman of the Rules Committee will provide us with an effective oversight committee. While I do not believe it is perfect and there are many changes I would make, I believe it merits support and passage. 111/

F. May 19, 1976; Further Debate, Amendment, and Passage of S. Res. 400, the Cannon Compromise

On May 19, 1976, the Senate approved S. Res. 400, specifically the amended version of the Cannon Compromise, but not until after considering

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110/ Ibid.

111/ Ibid., p. S7415.

several additional amendments. 112/

(1) An amendment, offered by Senator Nunn, to provide that, without leave of the Senate, the Select Committee shall not publicly disclose information which the President has interposed an objection to disclosing; approved by voice vote; and

(2) An amendment, no. 1643, in the nature of a substitute bill, as amended, offered by Senator Cannon, approved 87-7.

The majority of the discussion during the day and the intensity of the debate surrounded another amendment, the Stennis-Tower Amendment, which would have denied the new Select Committee on Intelligence any jurisdiction over intelligence activities of the Department of Defense. It was rejected by a vote of 31 yeas to 63 nays. 113/ This amendment, introduced by Senators John Stennis and John Tower, the Chairman and second ranking minority member on the Armed Services Committee, respectively, was principally supported on the grounds that intelligence and defense are generally inseparable in the Defense Department and to so separate them in terms of legislative and authorization authority shared concurrently by two committees "would be a serious mistake," according to Senator Tower. 114/ He expanded on this theme:

> Also, in the Department of Defense, tactical and national intelligence are impossible of separation; for what, in peacetime, is apparently purely tactical information, may certainly, in times of crisis or high tension, be of great national importance. In

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112/ Congressional Record (daily ed.), v. 122, May 19, 1976. pp. S7533-S7569.

113/ Ibid., p. S7555.

114/ Ibid., p. S7534.

testimony before the select committee, as well as the Senate Armed Services Committee, it was revealed that the DCI, who is responsible for the national intelligence budget, as well as Defense officials, found it almost impossible and inconceivable to separate these two areas. 115/

Moreover, according to Senator Tower:

> I think that few Members of the Senate realize that section 12 of Senate Resolution 400 would, in its present form, require a separate bill or joint resolution to authorize appropriations for the various agencies and departments involved in intelligence activities. I am concerned that this section would create unworkable problems regarding public disclosure of the intelligence budgets of the intelligence agencies and departments. 116/

Concurring arguments were offered by Senator Stennis, reminding that the amendment would not remove the CIA from the new committee's jurisdiction, but only the Department of Defense entitites, and endorsing the concept of a joint intelligence oversight committee. 117/ He further pointed out that the Stennis-Tower amendment would remove the Defense intelligence agencies from the authorization process that "would be binding on this body in open or secret session, and then be binding on the Appropriations Committee and binding on this body when the appropriations bill came back for passage.... (But the) authorization will not be binding on the House of Representatives, not binding on their committees, not binding on their representatives at the conference that it has always had on the Defense appropriation bill.... It (S. Res. 400)

115/ Ibid.

116/ Ibid.

117/ Ibid., p. S7536.

creates this additional fatal defect...that will keep this system, as proposed, from working." 118/

Senator Nunn raised a supplementary question about the effect of concurrent authorization jurisdiction: "If there is a difference between, say, what the committee on Armed Services authorized in terms of manpower and what the intelligence (committee) authorized in terms of manpower how would that difference be brought to the Chamber?" 119/ Senator Ribicoff responded that:

> ...the Senate would have to resolve this as they resolve all other conflicts.... But again, looking at the makeup of the committee with eight members coming from basic committees and seven from the remainder of the Senate, and the Committee on Armed Services being well represented by two members, personally, I do not think we are going to have any problems. 120/

Senator Thurmond added support for the Stennis-Tower amendment by emphasizing "the difficulty in separating military intelligence activities from the defense budget," the absence of a staff size restriction in the resolution, possible adverse impact on military intelligence, the likely by-product of additional Defense personnel to respond to increased congressional inquiries, and the problem of coordinating the Defense intelligence budget with the House, if S. Res. 400 were approved. 121/

118/ Ibid.

119/ Ibid., p. S7540.

120/ Ibid.

121/ Ibid., p. S7546.

Comments by Senator Goldwater and others focused additionally on the disclosure provisions of S. Res. 400 as contained in the Cannon compromise version, anticipating that with a new 15-member Select Committee, "covert action will become something that will be very overt..." 122/

The challenges to the Cannon substitute version of S. Res. 400 were countered by numerous Senators and the Stennis-Tower amendment which would have removed Defense intelligence activities from the Select Committee legislative and authorization jurisdiction was defeated, 63-31. Many of the comments and their authors were noted in previous floor deliberations on S. Res. 400. Senator Ribicoff summarized the basic thrust of those opposing the Stennis-Tower amendment as follows:

> If the new committee did not have jurisdiction over the defense intelligence agencies, it would be denied jurisdiction over most of the intelligence community.... It is very important to achieve the proper relationship between the civilian intelligence agencies and the military intelligence agencies.... It would be difficult to achieve this goal if responsiblity in Congress for the intelligence community was split up so that one committee was responsible for the civilian intelligence agencies and one the military intelligence agencies. 123/

The remaining action on May 19, consisted of voting on the Cannon compromise version, Amendment no. 1643, in the nature of a substitute, and then formally on S. Res. 400. The substitute was agreed to 87 to 7,

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122/ Ibid., p. S7550.

123/ Ibid., p. S7537.

replacing the language of the existing S. Res. 400, as approved by the Rules and Administration Committee and reported May 10, 1976, with the bipartisan compromise version, introduced May 12 and subsequently amended.

The specific vote on S. Res. 400, 72 to 22 with 6 Senators not voting, authorized the establishment of the Senate Select Committee on Intelligence operating under the following mandate:

> Resolved, That it is the purpose of this resolution to establish a new select committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

V. Subsequent Jurisdictional Development in the 94th Congress

On July 1, 1976, a memorandum of understanding was issued regarding shared jurisdiction concerns of the Senate Select Committee on Intelligence and the Armed Services: "Memorandum of Understanding Between the Chairman of the Senate Select Committee on Intelligence and the Chairman of the Senate Armed Services Committee." 124/

That memorandum of understanding came about because of the extensive

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124/ Congressional Record (daily ed.), v. 122, July 1, 1976. p. S11355.

concurrent jurisdiction of the two units and, in fact, was issued during the Senate floor consideration of an area of mutual concern, the nomination of the Deputy Director of Central Intelligence. The nomination had been initially referred to the Armed Services Committee; but, subsequently, the Select Committee on Intelligence held hearings and reported the nomination as one of its first orders of business following formation. 125/

The Memorandum of Understanding, signed by Armed Services Committee Chairman John Stennis and Select Committee on Intelligence Chairman Daniel Inouye, was described by the former, as a "working paper between these two committees so that...there can be a free exchange as well as covering of the matters in which both are interested." 126/ The Memorandum, in its entirety, reads:

> In all matters of concern to both the Senate Armed Services Committee and the Senate Select Committee on Intelligence, the Chairman, members, staffs of the two Committees shall make every effort to assist and facilitate the work of the two Committees.
>
> In legislative matters relating to intelligence the procedures and responsibilities set forth in S. Res. 400 will be followed. Both Committees will make every effort to assure that the U.S. Intelligence Community supplies all intelligence information requested by either committee. In addition, both Committees will cooperate to preserve the right of either Committee to call witnesses from the U.S. Intelligence Community, obtain appropriate information and hold hearings on intelligence matters necessary to the work of either Committee.
>
> Where there are questions of joint concern between the Senate

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125/ Nomination of E. Henry Knoche to Be Deputy Director of Central Intelligence. Ibid.

126/ Ibid.

Select Committee on Intelligence and the Senate Armed Services Committee, they will be promptly made a matter of consultation and resolution between the Chairmen of the two Committees, the full Committees, and the Chiefs of Staffs of both Committees as may be appropriate.

FMK/mhs/ln