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IS THE CIA'S REFUSAL TO COOPERATE WITH CONGRESSIONAL INQUIRIES A THREAT TO EFFECTIVE OVERSIGHT OF THE OPERATIONS OF THE FEDERAL GOVERNMENT?

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS

AND THE

SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 18, 2001

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IS THE CIA'S REFUSAL TO COOPERATE WITH CONGRESSIONAL INQUIRIES A THREAT TO EFFECTIVE OVERSIGHT OF THE OPERATIONS OF THE FEDERAL GOVERNMENT?

WEDNESDAY, JULY 18, 2001

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS, JOINT WITH THE SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS AND INTERNATIONAL RELATIONS, COMMITTEE ON GOVERNMENT REFORM,

Washington, DC.

The subcommittees met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn and Hon. Christopher Shays (chairmen of the subcommittees) presiding.

Present for the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations: Representatives Horn and Schakowsky.

Present for the Subcommittee on National Security, Veterans Affairs and International Relations: Representatives Gilman, Shays, Otter, Kucinich, Tierney, and Clay.

Staff present for the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations: J. Russell George, staff director and chief counsel; Henry Wray, senior counsel; Bonnie Heald, director of communications; Darin Chidsey, professional staff member; Scott Fagan, assistant to the committee; Fred Ephraim, Davidson Hulfish, Fariha Khaliz, and Christopher Armato, interns.

Staff present for the Subcommittee on National Security, Veterans Affairs and International Relations: R. Nicholas Palarino, senior policy analyst; and Jason Chung, clerk.

Staff present for the minority: Michelle Ash and David Rapallo, counsels; David McMillen, professional staff member; and Jean Gosa and Earley Green, assistant clerks.

Mr. HORN. This subcommittee hearing will come to order.

James Madison once wrote, "A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both." President Madison was correct in his belief that the Government's ability to gather and provide reliable information to its people is vital to the health and well-being of our Nation.

Today's hearing should not be necessary. However, it is taking place because the Central Intelligence Agency has refused to com-

ply with the oversight efforts of the Committee on Government Reform and its several subcommittees. In so doing, the agency is assaulting Congress' constitutional responsibility to oversee executive branch activities. The CIA apparently believes that it is above that basic principle in our Constitution. We don't agree.

This hearing stems from a recent and contemptuous act by the Central Intelligence Agency during the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations' examination of security plans and policies to protect the Government's classified computer systems. As part of that oversight effort, the subcommittee requested the General Accounting Office to conduct a survey of computer security policies at all executive branch departments and agencies that maintain classified systems.

Every Federal agency except the Central Intelligence Agency responded to the survey. Those responding included the National Security Agency and the National Reconnaissance Office.

Initially, the CIA expressed concern about providing sensitive information in a public forum. In an attempt to accommodate that concern, the subcommittee agreed to allow the agency to present that information in a classified executive session. The CIA agreed and provided the subcommittee with the name of an individual who would be able to testify at the classified session. Then, only days before the session was to take place, the CIA informed the subcommittee that it would not participate regardless of the closed nature of the meeting.

In addition, members of the Central Intelligence Agency's Legislative Affairs Office called representatives of the National Security Agency and other witnesses who had agreed to participate, suggesting that they were under no obligation to testify before this subcommittee.

The CIA points to a recent change in the House rules as the basis for not cooperating with congressional inquiries other than those received from the Permanent Select Committee on Intelligence. The rule adopted by the 107th Congress provides that the Permanent Select Committee on Intelligence shall review and study on a continuing basis the laws, programs and activities of the intelligence community. In addition, the rule provides that the Permanent Select Committee on Intelligence shall review and study, on an exclusive basis, the sources and methods of entities involved in intelligence gathering, including the CIA, its Director, and the national foreign intelligence program.

The rule is clear in stating that congressional oversight of the CIA's, "sources and methods," falls exclusively to the House Permanent Select Committee on Intelligence. However, the rule also provides that congressional oversight in the areas other than, "sources and methods," is not to be limited to the Intelligence Committee.

The Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, which I chair, is charged with overseeing the efficiency and financial management of Federal agencies. It is also charged with the responsibility of overseeing governmentwide computer security efforts. We're not interested in pursuing issues that involve the CIA's sources or methods of oper-

ation. We do not want to jeopardize the security of this Nation or the safety of its intelligence agents and operatives.

To the contrary, our examination of computer security issues is part of the subcommittee's attempt to ensure that this and other information is being adequately protected. Surely, the CIA should not be exempted from such a governmentwide effort.

Today, we want to examine how the agency's lack of cooperation affects Congress' ability to oversee the activities of the executive branch departments and agencies. In addition, we want to examine whether the Central Intelligence Agency is thwarting the Government's separation of powers between legislative and executive branches by its attempted interpretation of a rule of the House of Representatives. Finally, we want to examine the Central Intelligence Agency's arrogant attempt here to undermine congressional oversight activities involving other agencies within the intelligence community.

[The prepared statement of Hon. Stephen Horn follows:]

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INDEPENDENT

Opening Statement
Chairman Stephen Horn
Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations
July 18, 2001

A quorum being present, this joint subcommittee hearing will come to order.

James Madison once wrote, "A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both." President Madison was correct in his belief that the Government's ability to gather and provide reliable information to its people is vital to the health and well-being of our nation.

Today's hearing should not be necessary. However, it is taking place because the Central Intelligence Agency has refused to comply with the oversight efforts of the Committee on Government Reform and its subcommittees. In so doing, the agency is assaulting Congress's constitutional responsibility to oversee executive branch activities. The CIA believes it is above that basic principle in our Constitution. We do not agree.

This hearing stems from a recent and contemptuous act by the Central Intelligence Agency during the Subcommittee on Government Efficiency's examination of security plans and policies to protect the government's classified computer systems. As part of that oversight effort, the subcommittee requested the General Accounting Office to conduct a survey of computer security policies at all executive branch departments and agencies that maintain classified systems.

Every federal agency <u>except</u> the Central Intelligence Agency responded to the survey. Those responding included the National Security Agency and the National Reconnaissance Office. Initially, the CIA expressed concern about providing sensitive information in a public forum. In an attempt to accommodate that concern, the subcommittee agreed to allow the agency to present that information in a classified executive session. The CIA agreed, and provided the subcommittee with the name of an individual who would testify at the classified session. Then, only days before the session was to take place, the CIA informed the subcommittee that it would not participate, regardless of the closed nature of the meeting.

In addition, members of the Central Intelligence Agency's legislative affairs office called representatives of the National Security Agency and other witnesses who had agreed to participate, suggesting that they were under no obligation to testify before this subcommittee.

The CIA points to a recent change in House Rules as the basis for not cooperating with congressional inquiries other than those received from the Permanent Select Committee on Intelligence. The rule adopted by the 107th Congress provides that the Permanent Select Committee on Intelligence shall review and study on a continuing basis the laws, programs, and activities of the intelligence community. In addition the rule provides that the Permanent Select Committee on Intelligence shall review and study on an exclusive basis the sources and methods of entities involved in intelligence gathering, including the CIA, its director, and the National Foreign Intelligence Program.

The rule is clear in stating that congressional oversight of the CIA's "sources and methods" falls exclusively to the House Permanent Select Committee on Intelligence. However, the rule also provides that congressional oversight in areas other than "sources and methods" is not to be limited to the Intelligence Committee.

The Subcommittee on Government Efficiency, which I chair, is charged with overseeing the efficiency and financial management of federal agencies. It is also charged with the responsibility of overseeing governmentwide computer security efforts. We are not interested in pursuing issues that involve the CIA's sources or methods of operation. We do not want to jeopardize the security of this nation or the safety of its intelligence agents.

To the contrary, our examination of computer security issues is part of the subcommittee's attempt to ensure that this and other information is being adequately protected. Surely, the CIA should not be exempted from such a governmentwide effort.

Today, we want to examine how the agency's lack of cooperation affects Congress's ability to oversee the activities of executive branch departments and agencies. In addition, we want to examine whether the Central Intelligence Agency is thwarting the Government's separation of powers between the legislative and executive branches by its attempted interpretation of a rule of the House of Representatives. Finally, we want to examine the Central Intelligence Agency's arrogant attempt to undermine congressional oversight activities involving other agencies within the intelligence community.

Mr. HORN. We now will swear in the witnesses, and we have Mr. Shays and we have Mr. Gilman—Mr. Gilman for an opening statement.

Mr. GILMAN. Thank you, Chairman Horn. I appreciate the opportunity to appear today, and I want to thank the committee for conducting this important review. I'm disappointed for the need to hold these kinds of hearings. The CIA and other elements of our Government's intelligence community hold a very important place in our overall defense planning needs and security needs. By their very nature elements of the intelligence community occupy places of unusual trust on behalf of our entire Nation. They have a special responsibility both to properly safeguard the information that they handle and to provide sufficient and appropriate information for oversight to the Congress.

While I acknowledge that this is a difficult balancing act, it is important that we protect the freedom and the openness of our Nation, symbolically and literally the leader of the Free World. That kind of responsibility requires accountability, largely achieved through the checks and balances of our three distinct and sometimes competing branches of government.

We look forward to hearing the testimony of our witnesses who are here today. As needed, I want to work for an effective system of oversight that both fully supports the principle of free and open society and yet simultaneously fully protects the elements of information from disclosure that would damage our Nation's safety and security.

And I want particularly to welcome the former chairman of our International Relations Committee, Congressman Lee Hamilton, now Director of the Woodrow Wilson Center, and James Woolsey, the former Director of the CIA, as well as our other distinguished witnesses who are here today.

Thank you, Mr. Chairman.

Mr. HORN. Well, we thank you.

And now I'll turn to our cochairman for this hearing, Mr. Shays, the gentleman from Connecticut, who is the chairman of the Subcommittee on National Security, Veterans Affairs and International Relations of the Government Reform Committee.

Mr. SHAYS. Thank you, Chairman Horn.

Like you, the members of the National Security, Veterans Affairs and International Relations Subcommittee would much rather conduct a hearing about constructive oversight findings than about obstructions to our oversight process. But when faced with persistent, institutionalized agency resistance to legitimate inquiries, we're compelled to reassert our authority, under the Rules of the House, to review the operation of government activities at all levels.

In 1994, the Central Intelligence Agency [CIA], adopted a self-described "hard-line" approach to congressional oversight inquiries, particularly General Accounting Office [GAO], reviews not initiated by the Select Intelligence Committees. The policy attempted to draw a bright-line between sharing intelligence products with congressional committees and submitting to any oversight which the agency believes will compromise the sources and methods of intelligence gathering.

Based on that dated, distorted concept of oversight, CIA refuses to discuss its approaches to governmentwide management reforms and fiscal accountability practices. Other intelligence agencies share information freely. Blinded by its own bright-line, the CIA often stands alone in refusing routine congressional requests for data, even going so far as attempting to persuade other agencies to resist as well.

The CIA position that congressional oversight jurisdiction is limited to the Select Intelligence Committees is not supported by the law, is not supported by House Rules and is not supported by sound public policy. National security will be enhanced, not undermined, by the full exercise of congressional oversight authority.

We have no interest in examining the sources and methods of intelligence gathering and analysis. But we do have a keen interest in how effectively and efficiently the CIA and other intelligence agencies manage human capital, manage fiscal resources and meet statutory program objectives. The bottom line: The source of all CIA funding is the American taxpayer and the methods of management efficiency and accountability must be within the purview of this and other committees of Congress.

Symptomatic of the CIA's misguided perception of its responsibilities to Congress, the agency would not even cooperate this morning by providing a witness to discuss why they won't cooperate. I find that outrageous.

But we do welcome a panel of most distinguished witnesses to discuss the indispensability of broad-based and far-reaching oversight of the intelligence community. Every one of our witnesses is very qualified to speak on this subject, and I, as the chairman of the National Security, Veterans Affairs and International Relations Subcommittee, am grateful to each and every one of you for being here and regret deeply the lack of cooperation of the CIA in even responding to basic questions about cooperation.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
July 18, 2001

Thank you Chairman Horn.

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We have no interest in examining the sources and methods of intelligence gathering and analysis. But we do have a keen interest in how effectively and efficiently the CIA and other intelligence agencies manage human capital, manage fiscal resources and meet statutory program objectives. The bottom line: The source of all CIA funds is the American taxpayer, and the methods of management, efficiency and accountability must be within the purview of this, and other committees of Congress.

Symptomatic of the CIA's misguided perception of its responsibilities to Congress, the agency would not even cooperate this morning by providing a witness to discuss why they won't cooperate. But we welcome a panel of distinguished witnesses to discuss the indispensability of broad based and far reaching oversight of the intelligence community.

Thank you for your testimony.

Mr. HORN. I thank the gentleman. And I put in, following his remarks, two documents from the Central Intelligence Agency. The first is dated July 7, 1994, a memorandum for the Director of Central Intelligence. It's from Stanley M. Moskowitz, the Director of Congressional Affairs, and the subject is the Director of Central Intelligence Affirmation of Policy for Dealing With the General Accounting Office.

Now, as we know, they are the arm of Congress for investigations, programmatic auditing; and they act for Congress, they act for these committees and other subcommittees.

[The information referred to follows:]

OCA 94-1908
7 July 1994

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence
Executive Director
Executive Director for Intelligence Community Affairs

FROM: Stanley M. Moskowitz
Director of Congressional Affairs

SUBJECT: DCI Affirmation of Policy for Dealing With the General Accounting Office (GAO)

ACTION REQUESTED

1. I recommend that you affirm the policies set forth in paragraphs 7 - 22 below to guide the Intelligence Community's future dealings with GAO. Implementation of these policies will directly affect the manner in which GAO interacts with defense intelligence agencies. Therefore, I recommend that you discuss your decisions with John Deutch, Deputy Secretary of Defense, and ask his assistance in making appropriate changes to DOD regulations and policy documents. A future DCI/SecDef breakfast would be an appropriate forum for this discussion.

COORDINATION

2. My staff has coordinated this memorandum with representatives of NSA, DIA, CIO, NRO and DOD/C3I. Additionally, we have had several meetings with Keith Hall, Craig Wilson and Jerry Burke of C3I to discuss the impact of these proposed policies upon DOD equities. They fully agree with the approach and proposed recommendations discussed herein and will be briefing Dr. Deutch on the issues presented to you for decision. Finally, we recently met with Robert Stone of the Vice-President's NPR staff to ensure that the staff will be aware of and not object to our future handling of NPR matters vis-à-vis the GAO.

BACKGROUND

3. Representatives of the General Accounting Office regularly seek information or briefings from the CIA on a wide variety of topics. As I will discuss below, the

SUBJECT: DCI Affirmation of Policy for Dealing With the General Accounting Office (GAO)

Agency's policy for dealing with requests for CIA information is well-established, clear and understood (if not entirely accepted) by all concerned. Since the beginning of FY 1994, however, we have become aware of several other GAO investigations relating to the field of intelligence and primarily directed at defense agencies: (a) a self-initiated review of DOD's reorganization of defense intelligence activities (SASC is aware of and seems to endorse this review); (b) a self-initiated review of classified intelligence programs and funding, to include programs within NFIP and TIARA and special access programs, (c) a review of Third Party SIGINT agreements undertaken at Senator Byrd's (Chairman, SAC) request, and (d) a GAO request to review and discuss Intelligence Community implementation of NPR actions (part of a larger NPR review undertaken pursuant to requests from several committees). Copies of documents describing these GAO activities are attached at Tabs A-D. I should note that two of the surveys were self-initiated at the staff level of GAO.

4. GAO staffers conducting these surveys have been aggressive in seeking information both from the defense elements themselves and from CMS. GAO is specifically seeking access to, inter alia, the August 1993 Joint Program Guidance, FY 1995 CBJB's for the GDIP and CIOP, detailed status of and actions taken to implement Community NPR recommendations, and DCID's pertaining to SIGINT agreements. These types of documents are traditionally considered as being under DCI cognizance. DOD/C3I representatives have told GAO that requests for access to "materials under the exclusive cognizance of the DCI", must be referred to the DCI for resolution. DOD has also advised GAO that they can request access through any Congressional staff elements to which the documents have been provided. The GAO investigators are not pleased with C3I's response and continue to pressure DOD and CMS for access.

5. As mentioned previously, CMS, OCA and DOD/C3I representatives have had several meetings to discuss the burgeoning GAO access problem and to develop a coordinated strategy. DOD representatives believe that GAO is engaged in a concerted effort - indeed, a "fishing expedition" - to increase their institutional access to Intelligence Community information. From my perspective, I believe that assessment is accurate and that we should resist further GAO incursions into the way we do business.

SUBJECT: DCI Affirmation of Policy for Dealing With the General Accounting Office (GAO)

6. We also understand that GAO representatives have met with key Committee staffers on the SASC (and perhaps the SSCI) to argue their need for access. For example, we recently learned that some SASC staffers were considering including language in the FY 1995 Defense Authorization Act broadening GAO access to the Intelligence Community and requiring that GAO be given access to CBJB's and related documents. (The bill and report which passed the Senate on 1 July do not contain any such language). In addition, we understand that GAO may be trying to persuade other senior officials to contact you concerning GAO access to NPR implementation issues. Because of the confluence of these events, it is important that you affirm your policies concerning GAO access and that we inform interested parties of your decision.

LEGAL BASES FOR GAO ACCESS

Policy Governing Access to CIA Information

7. The CIA's policy toward sharing information with the GAO has two components: (1) we provide briefings that convey the Agency's analytical conclusions on substantive issues relevant to ongoing GAO studies, but (2) we decline to answer inquiries that involve CIA programs, sources, or operational or analytical methodologies--so called "oversight" information. The GAO representatives we deal with understand and abide by this policy, although they assuredly dislike the resulting restriction of information. The CIA policy works quite well in practice, and GAO appreciates the information we do provide.

8. The legal bases for the CIA's policy derive from several statutes - the National Security Act of 1947, the CIA Act of 1949, the GAO Act of 1980, and the Intelligence Oversight Act of 1980. In the early years of CIA, there were attempts by GAO to conduct CIA audits, but these efforts were abandoned by mutual agreement due to the constraints imposed by CIA. Specifically, CIA limited GAO access to CIA information under the DCI's authority to protect intelligence sources and methods pursuant to the National Security Act, and under the DCI's unvouchered funds expenditure authority contained in the CIA Act of 1949.

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9. Under the GAO Act of 1980, the Comptroller General and GAO were given broad authority to audit, investigate and evaluate government programs, especially the receipt, disbursement and use of public money. 31 U.S.C. section 712. Under the Act, Congress may direct the GAO to conduct investigations, evaluate government programs, and make reports. 31 U.S.C. §712, 717. There are, however, two provisions of the Act which operate to exempt CIA "oversight" information from this broad grant of investigative and audit authority.

10. First, GAO's audit authority does not affect the DCI's authority under §8(b) of the CIA Act of 1949 to expend funds without regard to other fiscal laws and to account for expenditures solely on the certificate of the Director. 31 U.S.C. §3524. As previously indicated, CIA has traditionally interpreted this section as exempting the DCI's unvouchered funds from GAO audit. Second, GAO may not issue a subpoena or take civil action to obtain records denied by an agency, <u>if the records relate to activities the President designates as foreign intelligence or counter-intelligence activities</u>. (Emphasis supplied) 31 U.S.C. §716. The legislative history cites Executive Order 12036, replaced by E.O. 12333, as the source of the President's designation. Obviously, by definition, the Agency's activities fall within the ambit of this provision, and the Agency has traditionally relied on this section to deny GAO oversight type information.

11. In addition, the CIA has consistently argued that the Intelligence Oversight Act (§501 of the National Security Act, 50 U.S.C. 413), vests oversight responsibilities in the intelligence Committees, not the GAO. Therefore, if we provided oversight type information to GAO, we would be derogating the Congressional intent behind section 501. Significantly, the DOJ Office of Legislative Affairs issued a letter opinion on June 26, 1989 relying on section 501 to deny GAO access to information relating to the Iran/Contra investigations:

> "Moreover, it is our view that, when Congress seeks confidential intelligence information, Congress' intelligence committees, not GAO, are the exclusive means of access to such information."

Since GAO has no statutory power to compel production, they have no mechanism to enforce access.

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Policy Governing GAO Access to Records Maintained by Defense Intelligence Agencies

12. In theory, all Intelligence Community agencies should be able to rely on 31 U.S.C. §716, combined with 50 U.S.C. 413, to deny GAO access to any records relating to foreign intelligence or counterintelligence activities. Indeed, DOD Directive 7650.1, §E.2, (a copy of this subsection is at Tab E) specifically provides that the DOD component head may deny access to such materials. The directive cautions, however, that "such information shall not be denied categorically to properly cleared GAO representatives having a need to know" and that "careful consideration must be exercised before denying GAO access....".

13. In practice, defense agencies do not adopt the "hard line" CIA approach but generally seek to cooperate with GAO representatives. Within NSA, DIA, NRO and CIO, the process for interacting with GAO varies greatly. DIA informs us that they have had a long history of dealing with GAO; however, most involvement is of a substantive, vice oversight, nature. Although the DIA/GAO relationship is very active, to our knowledge this is the first time GAO has sought access to GDIP CBJB's or funding documents for DIA activities.

14. NSA advises that the GAO maintains a team permanently in residence at NSA, resulting in nearly continuous contact between the two organizations. NSA's practice has been to cooperate with GAO audits and investigations to the extent possible in accordance with DOD regulations. This includes providing the GAO with documents requested, including CCP CBJB's as long as (1) the request was in support of a valid audit or investigation and (2) the recipients of the classified material had the requisite accesses and could meet security requirements for classified data control and storage. Documents provided in the past have included CCP CBJBs.

15. The NRO's dealings with GAO have been limited to cases of contract protests. NRO has not provided GAO access to CBJB's. CIO reports only two previous instances of contact, but is being tasked to respond to the current surveys. CIO will normally follow DOD guidance in dealing with GAO. C3I representatives inform that, as a matter of policy, DOD affords GAO unfettered access to TIARA materials

and provides the GAO copies of TIARA CBJBs. All of these agencies believe that DCI and DOD guidance in this area, especially on the CBJB's issue, would be extremely helpful.

Policy Concerning GAO Access to DCI Controlled Materials, Particularly CBJB's, Joint Guidance, DCIDs

16. Until recently, the question of GAO access to DCI controlled, as opposed to CIA, materials had not been specifically considered. Agencies made their own decisions in granting access to materials such as CBJBs, DCIDs, and so forth, subject to DOD regulations. By letter dated December 13, 1993, Mr. Louis Rodrigues informed the DCI that GAO would request access to documentation for DOD programs within the NFIP. Significantly, however, GAO did not seek DCI approval or concurrence for such access. After consultations with OCA and DOD, the EXDIR/ICA concluded that such access would be inconsistent with the DCI's statutory authority to develop and present the NFIP budget, and with the oversight provisions of the National Security Act. Accordingly, by letter dated April 6, 1994 (attached at Tab F), Rich Haver informed GAO that we could not agree to such access. I encouraged Rich to take this stance, and I strongly recommend that you affirm this as your policy. I understand that GAO was quite upset by this decision and is choosing to ignore it while frantically reviewing the statutes to detect any legal flaws.

17. GAO representatives continue to press on several fronts for access to DCID's governing SIGINT relationships, joint guidance documents and for documentation of actions taken to implement NPR recommendations. We have not formally responded to these requests pending your review and decisions.

RECOMMENDATIONS

18. I believe that the current policy governing access to CIA information and Rich Haver's memorandum on access to CBJBs are reasoned, clear in execution, and fully supported by the law. I recommend that you formally endorse these policies. Further, many of the arguments underpinning these policies apply with equal force to other activities and documents under your direct operational control as Director of Central Intelligence, e.g. CMS and NIC activities, DCIDs, NPR implementations, and so forth. The reasoning also

applies to documents you sign jointly with the Secretary of Defense, e.g. MOU governing NRO personnel security processing. In my view, allowing GAO access to these activities or documents is not consistent with your responsibility to protect intelligence sources and methods, erodes your ability to protect other sensitive information, and duplicates the oversight responsibilities of the Congress. I therefore recommend that you affirm the policy that documents or information concerning these matters should not be generally shared with GAO.

19. Should you affirm this recommended policy, I believe we have a relatively bright line procedure for dealing with GAO. I do not recommend that you attempt to extend this policy to the execution, vice programmatic, details of NFIP programs carried out by DOD components. For example, I think we can logically deny access to programmatic documents relating to GDIP's COBRA BALL, such as collection requirements and their translation into resource needs in the CBJB. However, I am unsure whether your authority would extend to documents or information concerning the operational details of each mission. An exercise of your authority in this area would inevitably put you into conflict with the Secretary of Defense and, potentially, with committees like SASC or HASC.

20. The issue of GAO access to NPR policy recommendations and implementation actions is a bit thornier because of some recent actions. Some time ago, CMS provided the NPR Staff with an unclassified status report on the 32 actions set forth in the unpublished NPR report on the Intelligence Community. The Vice-President's staff apparently provided these recommendations, along with many others across the Executive Branch, to GAO for consolidation, evaluation and monitoring of implementation. Indeed, these recommendations have been published in an unclassified summary of NPR actions. Subsequently, the GAO representative contacted Wayne Peal of CMS to request information on how the Community is implementing the NPR actions.

21. Robert Stone of the Vice-President's Office has stated that the Staff will not pressure us to provide anything to GAO. If we do provide unclassified information to the staff, however, they feel they must share it with GAO. I believe this compromise position affords us considerable latitude in this area. We will soon provide

the staff with a status report on our implementation, and that report will be quite general in nature. I see no harm in the NPR staff providing that very general report to GAO. With your concurrence, we will not allow GAO access to detailed information underlying those actions, for example information on how we plan to implement the actions. Once again, this is a bright line we can follow.

22. If you ratify these recommendations, you should discuss your rationale with Secretary Perry or Deputy Secretary Deutch. We should notify all Intelligence Community agencies of your decisions, emphasizing that the policies do not sanction the denial of information to Congressional Committees. Indeed, we will continue to comply fully with any request from the Committees, be they SAC, HAC, SASC, HASC, SSCI or HPSCI. I should emphasize that these policies will not dramatically change intelligence agency dealings with GAO - the major exception being NSA's practice of sharing CBJBs with GAO. Rather, the policies will provide a clear guideline for future interaction with GAO, a line that preserves your prerogatives as DCI.

RISKS

23. In my view, it is important to curtail growing GAO initiatives to investigate intelligence activities. At the same time, you should realize that there are risks in adopting the policies we have recommended. GAO will complain, indeed has already complained, to the Armed Services Committees that we have damaged their ability to complete the reviews. Further, GAO feels that if you are successful in denying them NFIP information in response to self-initiated surveys, they will have no legitimate role in intelligence matters, save as an investigative arm of a specific Congressional request. Accordingly, you can expect that they will resist vigorously. Nevertheless, our response to GAO should be clear and unambiguous: the DCI is exercising his statutory responsibilities and following the intent of Congress in vesting intelligence oversight in the intelligence committees. In other words, we will respond directly to appropriate committees of the Congress, but not through the GAO.

24. The Committees, who may not have the resources to conduct audits on their own, and sensitive to GAO protests, may hesitate to accept this procedure. To them, having GAO look at the issue may be the easy way out. Once again, our

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position should be that GAO 'oversight' into the NFIP or into areas of DCI cognizance is flatly inconsistent with the mandate of the GAO Act and National Security Act. I and Rich can work with key staffers on the various committees, especially on the Senate side, to explain our reasons and to solicit their support.

CONCLUSION

25. I recommend you affirm the policies described above and individually listed below. If you concur, I will prepare, in coordination with Rich Haver, letters from you to the Secretary of Defense and NFIP Principals announcing these policies.

Continue CIA Policy on Dealing with GAO:

James Woolsey
Approved

_____
Disapproved

Deny GAO Access to CBJB's and Related documents:

James Woolsey
Approved

_____
Disapproved

Mr. HORN. The next document is from George A. Tenet, Director of Central Intelligence, to Stephen Horn, chairman, Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, and that's dated July 17, 2001.

[The letter referred to follows:]

Central Intelligence Agency

Washington, D.C. 20505

17 July 2001

The Honorable Stephen Horn
Chairman
Subcommittee on Government Efficiency, Financial
Management, and Intergovernmental Relations
Committee on Government Reform
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter inviting me to testify at a July 18, 2001 Subcommittee hearing, I regret to say that neither I nor any CIA representative will testify.

My decision is fully compatible with the wishes of the Chairman of the House Permanent Select Committee on Intelligence who urged me not to testify at the 18 July hearing. The House Intelligence Committee referred CIA to the recently passed House rule that stipulates clearly and unequivocally that the Intelligence Committee has "exclusive" responsibility to review and study the Intelligence Community's sources and methods.

Let me be clear. CIA has not questioned nor will it ever question the right of the Congress to have answers to questions it has asked.

As a former Senate staff member and staff director of the Senate Select Committee on Intelligence, I recognize perhaps better than most the requirement for CIA and the other intelligence agencies to work closely and cooperatively with the Congress, its members, and committees. Every year CIA provides many hundreds of briefings and reports and responds to questions from committees and individual members. In doing so, CIA is guided by the overarching principle that the American people, through their duly constituted representatives, have a right and a need to be informed of CIA's activities and to be benefited by CIA's work. Indeed, since I became DCI, the intensity of CIA's interaction with the Congress has grown as has the amount and timeliness of sensitive information that is passed to our House and Senate oversight committees.

The American people and the Congress have long recognized the importance of CIA's work and the criticality of discretion and even secrecy to that work. For this reason the Congress passed legislation that obligates me to protect sources and methods. Twenty-five years ago Congress passed legislation that created a system of oversight of the intelligence activities of CIA and the other intelligence agencies that has, in my opinion, balanced well the sometimes conflicting needs of oversight and confidentiality. This balance is not easily gained nor maintained and represents the constant work of all of us who recognize the importance of our intelligence agencies' contribution to the well-being of America and its people.

Finally, we sought to respond reasonably and in good faith to the Subcommittee's request(s) for information regarding CIA computer systems and security. For instance, although we did not answer directly the information systems security questionnaire you sent me, we did advise you that: computer security has been and is a top Intelligence Community (IC) priority; the IC continues to develop innovative security policies, controls, and tools; the IC was pursuing four initiatives, which we outlined, to maximize intelligence sharing while protecting IC infrastructure, sources and methods, and data integrity; and IC computer systems and security programs are designed to operate in compliance with DCI Directive 6/3, which requires safeguards beyond those OMB, GAO, and NIST require.

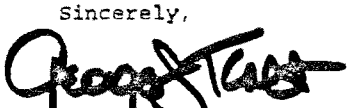
Our letter also said we were preparing an update to the HPSCI-mandated "Assessment of the [IC's] Information Infrastructure--Annual Report," a classified document that would contain detailed information on the information security posture of the IC's networks. On September 8, 2000, IC and CIA representatives, on an unclassified/for-official-use-only basis, briefed and answered questions from two members of your Subcommittee staff on IC information security. On April 13, 2001, in reply to a March 2, 2001 letter you sent me, we noted that we had completed and were coordinating with DoD the update to the HPSCI-mandated Assessment/Annual Report.

We believe we have been responsive to and cooperative with the Congress within the overall structure and process for congressional oversight of intelligence as developed by and under statute, rule, and a quarter-century of practice and precedent. Our notifications, briefings, and other

The Honorable Stephen Horn

provision of information to the Congress have furthered and facilitated congressional oversight of CIA operations and activities. We will continue to do so in the context of a process that has served us for 25 years.

Sincerely,



George J. Tenet
Director of Central Intelligence

Mr. HORN. We will now swear in the witnesses, and I share Mr. Shays' and Mr. Gilman's feeling that we have an excellent panel here today, and we're thankful that you know a lot of the history of the CIA and both of you have shown great expertise in serving our Nation and also to working with Congress. So if you will stand and raise your right hands, and the staff behind for GAO.

[Witnesses sworn.]

Mr. HORN. The clerk will note that all have affirmed, or said yes; and now we will start with—first one, a friend certainly of everybody in the Congress and that's the Honorable Lee Hamilton, who was for very many years chairman of the International Relations Committee, is now Director of the Woodrow Wilson Center, and was former chairman, House Permanent Select Committee on Intelligence.

Mr. Hamilton.

STATEMENT OF LEE H. HAMILTON, DIRECTOR, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS; DIRECTOR, CENTER ON CONGRESS AT INDIANA UNIVERSITY, AND FORMER MEMBER OF CONGRESS FROM THE STATE OF INDIANA

Mr. HAMILTON. Good morning, Mr. Chairman, Mr. Shays, Mr. Gilman. It's a pleasure to be with you.

I always thought it was a little easier to sit up there and ask the questions than it is to sit down here and answer them, and I'm quite confident of that this morning, but I'm very pleased to be with you. Let me make a few opening comments about the way I approach the question that the chairman has raised, and Mr. Gilman and Mr. Shays.

First of all, I think we all agree that good intelligence is essential for the security of the country. U.S. policy has to be based on the most accurate information available, and on correct prediction insofar as that is possible. Good intelligence does not guarantee good policy, but bad or poor intelligence almost certainly guarantees bad policy.

A Nation without intelligence is like a person without eyes and ears. Good intelligence is essential.

Second, the tasks that we assign to the intelligence community today are simply overwhelming—enormous, varied, expanding. The old proverb says that only a fool would make a prediction, especially about the future. But the problem, of course, is that we ask the CIA to make not just one, but hundreds of predictions, every week; and we want them to be as accurate as possible. And the toughest thing in the world to predict is intentions, and we ask the CIA to predict that all of the time.

I believe that our intelligence capabilities are very good—always room for improvement. I believe that the people who work at our intelligence agencies are highly talented and dedicated people. Jim Woolsey was an outstanding Director of the CIA, but he represents many hundreds, thousands of others who do marvelous work for the country.

I support the greater openness on the part of the intelligence community. I think the intelligence community should be forthcom-

ing in making available information on its work and the role that it plays in shaping U.S. policy.

Let me just say a word about the importance of oversight by the Congress of the intelligence community. My view, I gather your view, is that the intelligence community needs very strong, very vigorous, independent oversight; and the Congress is the only body that can really give independent oversight of the executive branch under our current laws, structures and practices.

The intelligence community is enormously large. It's very complicated and it is hugely expensive. In this town, information is power and the intelligence community has tremendous power to influence policy.

Intelligence is an area of great temptation for a President. Presidents can be tempted, I should say, to manipulate intelligence to influence the policy debate. I think oftentimes the executive sees intelligence as a tool to make policy look good, rather than a tool for making good policy. Presidents often resort to the intelligence information they have, to the CIA, for covert actions when they're frustrated by obstacles to their policies. So Congress, in a sense, stands between the President and the misuse of intelligence by the intelligence community and by the executive branch.

The congressional role in oversight—I'll get down to that more specifically—is limited, but extremely important for some of the reasons I have suggested. Unlike other Federal issues, Federal agencies, the intelligence community does not receive the kind of close scrutiny independent of the President that almost every other policy does.

There's very little media coverage of the intelligence community. There are very few academic studies of the intelligence community. There are no, or at least not a large number of lobbying groups for the intelligence community. Most of the meetings they have occur in secret, without public input and isolated from most Members of Congress.

There is an Inspector General of the CIA. There is a Foreign Intelligence Advisory Board. Those are appointed by the President, not independent of the President.

And intelligence is a very arcane business.

So I think oversight is very important. If the Congress fails to identify the problems in intelligence, they may go unspotted. And while they have been a very good agency in many respects, the CIA over a period of years has also been a very troubled agency.

At one point, not long ago I think, they had five Directors in 7 years. You can't possibly manage that shop over there with five Directors in 7 years. It's just too big and too complicated.

The intelligence community has not, I can assure you, come easily to the idea of congressional oversight, but I believe they have come to that; and that's an important fact.

Now, as I understand the law today—and it's quite extraordinary really that you have this massive intelligence community and yet you do not have any fundamental charter or law. We've tried to draft a charter for the intelligence community several times and never succeeded, but there are a number of pieces of legislation. There are a lot of rules and practices that have been put into place

over the period of the last few decades that set the framework, if you would, for oversight of the intelligence community.

The law provides that the executive keep the House and Senate intelligence community committees fully and currently informed of intelligence activities, and that judgment, as to whether it's fully informed or currently informed, is a judgment the Congress has to make, not the intelligence community. The law provides that illegal and failed activity be reported in a timely way and, of course, it has a special provision with regard to covert actions.

It's an extremely difficult problem of oversight because the intelligence committees are given legislative, investigative, and authorization authority over the intelligence community. They have exclusive jurisdiction of the CIA, but they share jurisdiction with other agencies, for example, the Department of Defense and NSA, DIA, State, Energy. So it's a very complex pattern that you have over oversight of the intelligence community.

There are a lot of benefits from oversight. I don't think I need to go into that, because I know very well the chairman's position on that. The Congress conducts that oversight, of course, through the budget process. I think the great task is to strike a balance between the need to ensure accountability and the intelligence community's need to gather and protect information.

It's the balance between oversight and secrecy. It is not an easy task. You will never get it right completely, but you have to keep working at it. And sometimes the Congress is a partner of the intelligence community, sometimes it's a critic, sometimes it's an advocate for the intelligence community, sometimes it's a watchdog; and those roles are very hard to keep in balance.

My view—and I'll conclude with this, Mr. Chairman—is that the Congress has to get information it needs from the intelligence community. Congress should be the judge of that. We have in place today a structure that has been developed over a period of decades really, where the information from the CIA is provided to the intelligence committees. Then the intelligence committees must decide how that information is made available to other Members of the Congress.

This system doesn't work perfectly, but my judgment is, it works reasonably well. And I do feel it is possible there may be a better way to do it, but we ought not to go to another way in an ad hoc manner by this subcommittee or that subcommittee or this committee or that committee demanding information from the CIA.

If you really want to change the way you do oversight of the intelligence community, then it has to be approached, it seems to me, in a very coherent, comprehensive way to change the structure that was put in place over the past few decades—a structure of law, a structure of precedent, a structure of practice.

And the question of sharing intelligence information outside of the intelligence committees to other members is always a very sensitive question in this institution and one that has created tensions as long as I can recall.

So the bottom line is that I think the system that we have certainly calls out for improvement. It's working reasonably well, but be careful not to throw it out unless you have something to put in

its place that has been carefully, comprehensively, coherently thought about.

Mr. HORN. Thank you very much. We appreciate the wisdom you had during the Congress and after Congress.

We now have the Honorable James Woolsey, who was a former Director of the CIA from 1993 to 1996 and was, again, highly respected here in both parties for his openness and his willingness to relate to people. Thank you very much.

STATEMENT OF R. JAMES WOOLSEY, PARTNER, SHEA & GARDNER, AND FORMER DIRECTOR, CENTRAL INTELLIGENCE AGENCY

Mr. WOOLSEY. Thank you, Mr. Chairman, and thank you for inviting me today.

I was Director of Central Intelligence for 2 years early in the Clinton administration. I also, however, in an earlier incarnation, was General Counsel of the Senate Armed Services Committee for 3 years. So I have seen this issue from both Capitol Hill and the executive branch; and the views, obviously, that I express today are only those of a private citizen and lawyer who got out the rule book and looked at it and tried to decide what he thought. And I thank you for inviting me.

This current issue apparently arose from the question of how this committee could investigate and assess and conduct oversight in connection with the cyberthreat to our government computers; and I would say, first of all, that I can think of no overall issue that is more substantively important to the Government right now than this. It is something that is of absolutely vital importance.

It's an area that I've been working on for some time as a private lawyer. I think such issues as whether fire walls, for example, can effectively protect computers is of extraordinary importance. I don't believe they're very effective, and I think that this committee's assessment of the best ways for government computers and government networks to be protected would be extremely important.

This procedural question of exactly how and under what circumstances what information should be provided to committees of the Congress other than the House and Senate Select Committees—the Permanent Select Committee and the Select Committee and the two Appropriations Committees is also an important and rather difficult one.

First of all, let me say, when I was Director of Central Intelligence, I certainly did not neglect the Congress; and I don't know any Director, really, who can or should. Congress was in session 185 days in calendar 1993, my first year as Director, and I had 195 appointments on the Hill that year, 10 more than the days Congress was in session, so on average, I was up here more than once a day. At one point, for example, I sat beside one of my analysts for 29 hours, before a number of different committees, because his judgment about Haiti had been called into question; and we answered questions from a large number of individual Congressmen, mainly Senators, on precisely what type of judgments we had made about President Aristide and why.

Any Director of Central Intelligence should spend a good deal of time on the Hill, and he owes not just his two oversight committees

and two appropriations committees, but the Congress as a whole, I think, what information he can provide and what help he can provide from the intelligence community.

Now, it's my understanding that a few weeks ago Larry Gershwin, an extraordinarily able national intelligence officer, testified on cyberthreat trends and U.S. network security before, I believe it was, the Joint Economic Committee. Now, this is, of course, the principal way in which the CIA provides information to the Congress; it provides intelligence product. And it is an issue, it seems to me, what the words of the House rules mean with respect to what other information is provided to congressional committees.

Rule 10, and in it clause 11, does say, as the chairman noted at the beginning, that nothing in this clause, clause 11, restricts other committees such as this one from reviewing intelligence activities or intelligence products. But I think one has to note that this right is circumscribed, at least as I read the rules, by a provision in clause 3, not clause 11, which limits exclusively to the House Permanent Select Committee the right to oversee sources and methods.

The way I read those two clauses is that the exclusive right to oversee sources and methods essentially trumps the right of other committees to review intelligence activities or products. So, in my mind, this whole issue comes down to the question of what is a "method of the CIA" in clause 3, it is a method of the entity, the CIA, that is at issue.

Now, some of my colleagues this morning have read this limitation, this word "method" in a quite limited way. Mr. Eland, in his prepared testimony, on pages 8 and 9, says that the CIA's method of protecting its own computers should be regarded no differently by the Congress than its assessment of the foreign threat. And Colonel Smith limits methods to collection methods, that is, whether one is taking photographs or reading lips, for example.

I don't read "methods of the CIA" that narrowly. I must say, it seems to me that the method by which the CIA protects its computers from intrusion is a method of the CIA.

Now, I fully agree it is up to the House to decide how to interpret its own rules, but I understand the House Permanent Select Committee on Intelligence has a different view than this committee with respect to the breadth, or lack thereof, of the meaning of the word "method."

Now, let me say why I believe briefing on the foreign threat, as Mr. Gershwin did before the Joint Economic Committee, rather than reviewing the CIA's method of maintaining its own computer security, is an understandable way for the Congress to operate. If one takes the members of the House Permanent Select Committee and the Senate Select Committee and of the two Appropriations Subcommittees for Defense, which cover intelligence, one has 72 Members of the Congress and 80 staff members, that's 152 people on the Hill who today are charged with intelligence oversight. Those 72 Members constitute 13 percent of the entire membership of the Congress.

If one adds this committee's and its parallel committee in the other body, Senate Governmental Affairs members and staff, one adds 58 Members and 193 staff members to the total that would

be engaged in overseeing the CIA. That's now a total of 403 people on Capitol Hill, and would constitute 24 percent of the Members of the House and Senate.

There are at least two other committees that have an understandable interest in overseeing some aspect of what the CIA does, House International Relations and Senate Foreign Relations and House and Senate Armed Services. If one adds the 149 members of those committees and the 219 staff members, one gets an added 368 individuals who would be involved in overseeing the CIA.

That would be a total of some 760–770 individuals on Capitol Hill, and if you deduct the Members who are on more than one of those committees, the way my numbers came out is that you would end up with 49.5 percent of the Members of Congress, one-half of the Members of Congress involved in overseeing the CIA if the Government Reform, Government Affairs, International Relations, Armed Services, as well as the Intelligence Committees and Appropriations Committees were involved.

Now, there may be some way, there may be some structure whereby a change in the process could be worked out and whereby, as former Chairman Hamilton said, a reform, a systematic reform of the whole process should be undertaken. I don't write off that possibility, but I must say that if one goes at this piecemeal and looks to just each individual committee or subcommittee in Government Reform, Government Affairs, International Relations, Foreign Relations, Armed Services that may have some understandable interest, and if one interprets the word "method" quite narrowly, so that pretty much anything that the CIA does other than a collection source or a collection method is subject to oversight from the other committees of the Congress, you are on a track to having half of the Members of the Congress and some 760 people on Capitol Hill engaged in CIA oversight.

I do not think that would be wise.

So I would identify myself with Chairman Hamilton's closing words, that I believe the current system works reasonably well and that it should only be reformed if it is reformed in some systematic and thorough and overall way, rather than piecemeal.

Thank you, Mr. Chairman and Members.

Mr. SHAYS. Thank you Mr. Woolsey.

Mr. Hinton, I think what we'll do is wait for Mr. Horn to come back. He left early so we could continue the flow, but I think what we'll do is, we'll go and vote.

So we'll recess for a second, but as soon as he gets back he'll start with you. Thank you. So we stand in recess.

[Recess.]

Mr. HORN. The recess is over. If you don't mind Mr. Woolsey, I heard you put a few details in the record here and I may be, I'd just like it for my benefit to get a repeat on that.

Mr. WOOLSEY. Surely. Do you mean now?

Mr. HORN. Sure.

Mr. WOOLSEY. I said several things but let me focus on two. One was that although this is a difficult and complicated issue, and I fully understand the substantive reasons behind the committee's interest in this very important area, I think we come down to a reading of the House rules.

And as I read them, and as I said, this is nothing more than a private citizen's reading. The authority for other committees to review intelligence activities and products are the words in clause 11 of rule 10; and nothing in this clause, i.e., clause 11, as the rule states, restricts nonintelligence committees from reviewing intelligence activities and products.

But the exclusive basis for the House Permanent Select Committee's jurisdiction over reviewing sources and methods of the CIA occurs in clause 3, not clause 11, and the way I read that interaction is that their exclusive basis with respect to sources and methods essentially trumps the provisions in clause 11.

So the question comes, what is a "method?" If an intelligence method is relatively limited, if it is as limited as Colonel Smith says in his testimony that he limits it essentially to collection methods, that is, whether you are learning something through photographs or through lip reading; and Mr. Eland says on pages 8 and 9 of his testimony that there should be no difference between the CIA's way or method of protecting its own computers, then the threat—that is, both of those—should be fully reviewable by other committees.

I must say, I read the word "method" more broadly. I believe that it is entirely plausible to contend that a "method of the CIA" includes its method of protecting its data; and under that reading, the way I would read it is that the House Permanent Select Committee's jurisdiction is exclusive with respect to the agency's methods.

Now, I agreed with Chairman Hamilton with respect to any reform needing to be—of the process or the oversight process needing to be an overall, systematic reform rather than something that is done piecemeal; and my illustration on that was the following: If one takes the House Permanent Select Committee and the House Appropriations Subcommittee that deals with intelligence together with the sister committees in the other body, you have 72 Members and 80 staff members who are involved in intelligence oversight, now 152 people, and those 72 Members are 13 percent of the membership of the Congress.

If one adds the members and the staff of the House Government Reform Committee and Senate Governmental Affairs, you get up to 403 people and 24 percent of the Members of the Congress; and if one adds in the members and staff of House International Relations and Senate Foreign Relations and House and Senate Armed Services, which I think have a plausible claim to being interested in perhaps some oversight responsibility for the intelligence community, under a broad reading you get up to right at 50 percent of the Members of the Congress and about 760 individuals, not counting the GAO if it gets into the business, who are involved in overseeing the CIA.

And I think those numbers suggest that one should move toward an oversight role for other committees only as part of some overall evaluation rather than a piecemeal step, because, I for one, don't see a way to draw a line between this subcommittee's responsibilities and other committees of Government Reform or Senate Governmental Affairs, or for that matter, many of the interests of

House International Relations, Senate Foreign Relations and the Armed Services Committees.

So, anyway, those were the main points, I think, Mr. Chairman.

Mr. HORN. Well, thank you very much.

We'll now proceed with the third witness, Mr. Hinton. Henry Hinton is the Managing Director of Defense Capabilities and Management of the General Accounting Office. The General Accounting Office works for the Congress of the United States and is a creature of the Congress, and we give a lot of assignments to them on many aspects in the executive branch.

And we welcome you here today.

STATEMENT OF HENRY L. HINTON, JR., MANAGING DIRECTOR, DEFENSE CAPABILITIES AND MANAGEMENT, GENERAL ACCOUNTING OFFICE

Mr. HINTON. Thank you, Mr. Chairman. I'm pleased to be here to discuss the subject of GAO access to information at the CIA. I will focus my comments this morning on our authority to review CIA programs and the status of our access to CIA information.

On the subject of authority, as with all Federal programs, Congress has given us broad authority to evaluate CIA programs. In reality, however, we face both legal and practical limitations on our ability to review these programs. For example, we have no access to certain CIA unvouchered accounts, that is, expenditures of a confidential or emergency nature that are accounted for solely on the certification of the Director.

We cannot compel our access to foreign intel and counterintelligence information. In addition, as a practical matter, we are limited by the CIA's level of cooperation, which has varied throughout the years. We have not actively audited the CIA since the early 1960's, when we discontinued such work because the CIA was not providing us with sufficient access to information to perform our mission. The issue has arisen since then, from time to time, as our work has required some level of access to CIA programs and information.

Most recently, in 1994, the CIA Director sought to further limit our audit work of intelligence programs, including those at DOD. In doing so, the CIA has maintained that the Congress intended the Select Intelligence Committees to be the exclusive means of oversight of the CIA. This action by the CIA Director has effectively precluded oversight by us. Given a lack of requests from the Congress for us to do work in this area and with our limited resources, we have made a conscious decision not to pursue this issue.

On the subject of the status of our current access, today, our dealings with the CIA are mostly limited to requesting information that relates to governmentwide reviews or analyses of threats to the U.S. national security on which the CIA might have some information. The CIA either provides us with the requested information, provides the information with some restrictions or does not provide the information at all.

In general, we are most successful at getting access to CIA information when we request threat assessments, and the CIA does not perceive our audits or evaluations as oversight of its activities. For

example, in our review of chemical and biological terrorist threats that we did for Chairman Shays, we requested, and the CIA provided us, access into formation on their threat assessments and access to the analysts that prepared them.

On the other hand, for our review of classified computer systems in the Federal Government, we requested basic information on the number and nature of such systems. In this case, and as you referred to in your opening statement, Mr. Chairman, the CIA did not provide us the requested information, claiming that they would not be able to participate in the review because the type of information is under the purview of the congressional entities charged with overseeing the intelligence community.

My written statement has other examples in it.

In conclusion, Mr. Chairman, our access to CIA information and programs has been limited by both legal and practical factors. Today, our access is generally limited to obtaining information on threat assessments when the CIA does not perceive our audits as oversight of its activities. We foresee no major change in our current access without substantial support from Congress.

Congressional impetus for change would have to include the support of the Intelligence Committees, who have generally not requested GAO reviews or evaluations of CIA activities. With such support, we could evaluate some of the basic management functions at CIA that we now evaluate throughout the Government.

That concludes my statement Mr. Chairman.

Mr. HORN. Thank you very much.

[The prepared statement of Mr. Hinton follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, and the Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Governmental Reform, House of Representatives

For Release on Delivery
Expected at 10:00 a.m.
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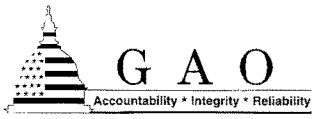
CENTRAL INTELLIGENCE AGENCY

Observations on GAO Access to Information on CIA Programs and Activities

Statement of Henry L. Hinton, Jr., Managing Director
Defense Capabilities and Management



GAO-01-975T

Messrs. Chairmen and Members of the Subcommittees:

We are pleased to be here to discuss the subject of access by the General Accounting Office (GAO) to information from the Central Intelligence Agency (CIA). Specifically, our statement will provide some background on CIA and its oversight mechanisms, our authority to review CIA programs, and the history and status of GAO access to CIA information. As requested, our remarks will focus on our relationship with the CIA and not with other intelligence agencies. Our comments are based upon our review of historic files, our legal analysis, and our experiences dealing with the CIA over the years.

Summary

Oversight of the CIA generally comes from two select committees of Congress and the CIA's Inspector General. We have broad authority to evaluate CIA programs. In reality, however, we face both legal and practical limitations on our ability to review these programs. For example, we have no access to certain CIA "unvouchered" accounts and cannot compel our access to foreign intelligence and counterintelligence information. In addition, as a practical matter, we are limited by the CIA's level of cooperation, which has varied through the years. We have not actively audited the CIA since the early 1960s, when we discontinued such work because the CIA was not providing us with sufficient access to information to perform our mission. The issue has arisen since then from time to time as our work has required some level of access to CIA programs and information. However, given a lack of requests from the Congress for us to do specific work at the CIA and our limited resources, we have made a conscious decision not to further pursue the issue.

Today, our dealings with the CIA are mostly limited to requesting information that relates either to governmentwide reviews or analyses of threats to U.S. national security on which the CIA might have some information. The CIA either provides us with the requested information, provides the information with some restrictions, or does not provide the information at all. In general, we are most successful at getting access to CIA information when we request threat assessments and the CIA does not perceive our audits as oversight of its activities.

Background

As you know, the General Accounting Office is the investigative arm of the Congress and is headed by the Comptroller General of the United States—currently David M. Walker. We support the Congress in meeting its constitutional responsibilities and help improve the performance and

accountability of the federal government for the American people. We examine the use of public funds, evaluate federal programs and activities, and provide analyses, options, recommendations, and other assistance to help the Congress make effective oversight, policy, and funding decisions. Almost 90 percent of our staff days are in direct support of Congressional requestors, generally on the behalf of committee chairmen or ranking members.

The U.S. Intelligence Community consists of those Executive Branch agencies and organizations that work in concert to carry out our nation's intelligence activities.[1] The CIA is an Intelligence Community agency established under the National Security Act of 1947 to coordinate the intelligence activities of several U.S. departments and agencies in the interest of national security. Among other functions, the CIA collects, produces, and disseminates foreign intelligence and counterintelligence; conducts counterintelligence activities abroad; collects, produces, and disseminates intelligence on foreign aspects of narcotics production and trafficking; conducts special activities approved by the President; and conducts research, development, and procurement of technical systems and devices.

Oversight of CIA Activities

Currently, two congressional select committees and the CIA's Inspector General oversee the CIA's activities. The Senate Select Committee on Intelligence was established on May 19, 1976, to oversee the activities of the Intelligence Community. Its counterpart in the House of Representatives is the House Permanent Select Committee on Intelligence, established on July 14, 1977. The CIA's Inspector General is nominated by the President and confirmed by the Senate. The Office of the Inspector General was established by statute in 1989 and conducts inspections, investigations, and audits at headquarters and in the field. The Inspector General reports directly to the CIA Director. In addition, the President's Foreign Intelligence Advisory Board assesses the quality, quantity, and adequacy of intelligence activities. Within the Board, there is an intelligence oversight committee that prepares reports on intelligence activities that may be unlawful or otherwise inappropriate. Finally, the Congress can charter commissions to evaluate intelligence agencies such

[1] The Intelligence Community includes the Office of the Director of Central Intelligence, the CIA, the National Security Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, the Defense Intelligence Agency, and other offices and services within the Departments of Defense, State, Justice, Treasury, and Energy.

as CIA. One such commission was the Commission on the Roles and Capabilities of the United States Intelligence Community, which issued a report in 1996.

GAO's Authority to Review CIA Programs

Generally, we have broad authority to evaluate agency programs and investigate matters related to the receipt, disbursement, and use of public money. To carry out our audit responsibilities, we have a statutory right of access to agency records. Federal agencies are required to provide us information about their duties, powers, activities, organization, and financial transactions. This requirement applies to all federal agencies, including the CIA. Our access rights include the authority to file a civil action to compel production of records, unless (a) the records relate to activities the President has designated as foreign intelligence or counterintelligence activities, (b) the records are specifically exempt from disclosure by statute, or (c) the records would be exempt from release under the Freedom of Information Act because they are predecisional memoranda or law enforcement records and the President or Director of the Office of Management and Budget certifies that disclosure of the record could be expected to impare substantially the operations of the government.

The National Security Act of 1947 charges the CIA Director with protecting intelligence sources and methods from unauthorized disclosure. In terms of our statutory access authority, however, the law creates only one specific exemption: the so-called "unvouchered" accounts. The exemption pertains to expenditures of a confidential, extraordinary, or emergency nature that are accounted for solely on the certification of the Director. These transactions are subject to review by the intelligence committees. Amendments to the law require the President to keep the intelligence committees fully and currently informed of the intelligence activities of the United States. The CIA has maintained that the Congress intended the intelligence committees to be the exclusive means of oversight of the CIA, effectively precluding oversight by us.

While we understand the role of the intelligence committees and the need to protect intelligence sources and methods, we also believe that our authorities are broad enough to cover the management and administrative functions that the CIA shares with all federal agencies.

We have summarized the statutes relevant to our relationship with the CIA in an appendix attached to this testimony.

GAO's Access to the CIA Has Been Limited

We have not done audit work at the CIA for almost 40 years. Currently, our access to the CIA is limited to requests for information that relates either to governmentwide reviews or programs for which the CIA might have relevant information. In general, we have the most success obtaining access to CIA information when we request threat assessments, and the CIA does not perceive our audits as oversight of its activities.

GAO Access to CIA Has Varied Through the Years

After the enactment of the National Security Act of 1947, we began conducting financial transaction audits of vouchered expenditures of the CIA. This effort continued into the early 1960s. In the late 1950s, we proposed to broaden its work at the CIA to include an examination of the efficiency, economy, and effectiveness of CIA programs. Although the CIA Director agreed to our proposal to expand the scope of our work, he placed a number of conditions on our access to information. Nonetheless, in October 1959, we agreed to conduct program review work with CIA-imposed restrictions on access.

Our attempt to conduct comprehensive program review work continued until May 1961, when the Comptroller General concluded that the CIA was not providing us with sufficient access to the information necessary to conduct comprehensive reviews of the CIA's programs and announced plans to discontinue audit work there. After much discussion and several exchanges of correspondence between GAO, the CIA, and the cognizant congressional committees, the Chairman of the House Armed Services Committee wrote to the Comptroller General in July 1962 agreeing that, absent sufficient GAO access to CIA information, GAO should withdraw from further audit activities at the CIA.[2] Thus, in 1962, we withdrew from all audits of CIA activities.

The issue of our access has arisen periodically in the intervening years as our work has required some level of access to CIA programs and activities. In July 1975, Comptroller General Elmer Staats testified on our relationship with the intelligence community and cited several cases where CIA had not provided us with the requested information. In July 1987, Senator John Glenn introduced a bill (S. 1458) in the 100th Congress to clarify our audit authority to audit CIA programs and activities. In 1994, the CIA Director sought to further limit our audit work of intelligence

[2] Separate Congressional committees on intelligence were not formally established in the Senate until 1976 and in the House until 1977.

programs, including those at the Department of Defense. We responded by writing to several key members of the Congress, citing our concerns and seeking assistance. As a result, we and the CIA began negotiations on a written agreement to clarify our access and relationship. Unfortunately, we were unable to reach any agreement with CIA on this matter. Since then, GAO has limited its pursuit of greater access because of limited demand for this work from Congress, particularly from the intelligence committees. Given a lack of Congressional requests and our limited resources, we have made a conscious decision to deal with the CIA on a case-by-case basis.

Current Access Falls Into Three Categories

Currently, the CIA responds to our requests for information in three ways: it provides the information, it provides the information or a part of it with some restriction, or it does not provide the information at all. Examples of each of these three situations, based on the experiences of our audit staff in selected reviews in recent years, are listed below.

Sometimes the CIA straightforwardly fulfills our requests for briefings or reports related to threat assessments. This is especially true when we ask for threat briefings or the CIA's assessments or opinions on an issue not involving CIA operations.

- For our review of the State Department's Anthrax Vaccination Program for the Senate Foreign Relations and House International Relations Committees, we requested a meeting to discuss the CIA's perspective on a recent threat assessment of chemical and biological threats to U.S. interests overseas. The CIA agreed with our request, provided a meeting within 2 weeks, and followed up with a written statement.

- While we were reviewing U.S. assistance to the Haitian justice system and national police on behalf of the Senate Foreign Relations and House International Relations Committees, we requested a meeting to discuss the Haitian justice system. The CIA agreed with our request and met with our audit team within 3 weeks of our request.

- For our review of chemical and biological terrorist threats for the House Armed Services Committee, and subcommittees of the House Government Reform Committee and the House Veterans Affairs Committee, we requested meetings with CIA analysts on their threat assessments on chemical and biological weapons. The CIA cooperated and gave us access to documents and analysts.

- On several of our reviews of counterdrug programs for the House Government Reform Committee and the Senate Foreign Relations Committee we requested CIA assessments on the drug threat and international activities. The CIA has provided us with detailed briefings on drug cultivation, production, and trafficking activities in advance of our field work overseas.

- During our reviews of Balkan security issues and the Dayton Peace Accords for the House Armed Services Committee and the Senate Foreign Relations Committee, we asked the CIA for threat assessments relevant to our review objectives. The CIA provided us with appropriate briefings and agreed to provide one of our staff members with access to regular intelligence reports.

  In some instances, the CIA provides information with certain access restrictions or discusses an issue with us without providing detailed data or documentation.

- During our evaluation of equal employment opportunity and disciplinary actions for a subcommittee of the House Committee on the Post Office and Civil Service, the CIA provided us with limited access to information. CIA officials allowed us to review their personnel regulations and take notes, but they did not allow us to review personnel folders on individual disciplinary actions. This was in contrast to the National Security Agency and Defense Intelligence Agency, which gave us full access to personnel folders on individual terminations and disciplinary actions.

- For our review of the Department of Defense's efforts to address the growing risk to U.S. electronic systems from high-powered radio frequency weapons for the Joint Economic Committee, the CIA limited our access to one meeting. Although the technology associated with such systems was discussed at the meeting, the CIA did not provide any documentation on research being conducted by foreign nations.

- On some of our audits related to national security issues, the CIA provides us with limited access to its written threat assessments and analyses, such as National Intelligence Estimates. However, the CIA restricts our access to reading the documents and taking notes at the CIA or other locations. Examples include our readings of National Intelligence Estimates related to our ongoing work evaluating federal programs to combat terrorism.

  In other cases, the CIA simply denies us access to the information we requested. The CIA's refusals are not related to the classification level of

the material. Many of our staff have the high-level security clearances and accesses needed to review intelligence information. But the CIA considers our requests as having some implication of oversight and denies us access.

- For our evaluation of national intelligence estimates regarding missile threats for the House National Security Committee, the CIA refused to meet with us to discuss the general process and criteria for producing such estimates or the specific estimates we were reviewing. In addition, officials from the Departments of Defense, State, and Energy told us that CIA had asked them not to cooperate with us.

- During our examination of overseas arrests of terrorists for the House Armed Services Committee and a subcommittee of the House Government Reform Committee, the CIA refused to meet with us to discuss intelligence issues related to such arrests. The CIA's actions were in contrast to those of two other departments that provided us full access to their staff and files.

- On our review of classified computer systems in the federal government for a subcommittee of the House Government Reform Committee, we requested basic information on the number and nature of such systems. The CIA did not provide us with the information, claiming that they would not be able to participate in the review because the type of information is under the purview of congressional entities charged with overseeing the Intelligence Community.

- For our review of the policies and procedures used by the Executive Office of the President to acquire and safeguard classified intelligence information, done for the House Rules Committee, we asked to review CIA forms documenting that personnel had been granted appropriate clearances. The CIA declined our request, advising us that type of information we were seeking came under the purview of congressional entities charged with overseeing the intelligence community.

Conclusion

Our access to CIA information and programs has been limited by both legal and practical factors. Through the years our access has varied and we have not done detailed audit work at CIA since the early 1960s. Today, our access is generally limited to obtaining information on threat assessments when the CIA does not perceives our audits as oversight of its activities. We foresee no major change in our current access without substantial support from Congress—the requestor of the vast majority of our work. Congressional impetus for change would have to include the

support of the intelligence committees, who have generally not requested GAO reviews or evaluations of CIA activities. With such support, we could evaluate some of the basic management functions at CIA that we now evaluate throughout the federal government.

This concludes our testimony. We would be happy to answer any questions you may have.

GAO Contacts and Staff Acknowledgment

For future questions about this testimony, please contact Henry L. Hinton, Jr., Managing Director, Defense Capabilities and Management at (202) 512-4300. Individuals making key contributions to this statement include Stephen L. Caldwell, James Reid, and David Hancock.

Appendix I: Legal Framework for GAO and CIA

GAO's Audit Authority

The following statutory provisions give GAO broad authority to review agency programs and activities:

- 31 U.S.C. 712: GAO has the responsibility and authority for investigating matters relating to the receipt, disbursement, and use of public money, and for investigating and reporting to either House of Congress or appropriate congressional committees.
- 31 U.S.C. 717: GAO is authorized to evaluate the results of programs and activities of federal agencies. Reviews are based upon the initiative of the Comptroller General, an order from either House of Congress, or a request from a committee with jurisdiction.
- 31 U.S.C. 3523: This provision authorizes GAO to audit financial transactions of each agency, except as specifically provided by law.
- 31 U.S.C. 3524: This section authorizes GAO to audit unvouchered accounts (i.e., those accounted for solely on the certificate of an executive branch official). The President may exempt sensitive foreign intelligence and counterintelligence transactions. CIA expenditures on objects of a confidential, extraordinary, or emergency nature under 50 U.S.C. 403j(b) are also exempt. Transactions in these categories may be reviewed by the intelligence committees.

GAO's Access-to-Records Authority

- 31 U.S.C. 716: GAO has a broad right of access to agency records. Subsection 716(a) requires agencies to give GAO information it requires about the "duties, powers, activities, organization, and financial transactions of the agency." This provision gives GAO a generally unrestricted right of access to agency records. GAO in turn is required to maintain the same level of confidentiality for the information as is required of the head of the agency from which it is obtained.
- Section 716 also gives GAO the authority to enforce its requests for records by filing a civil action in federal district court. Under the enforcement provisions in 31 U.S.C. 716(d)(1), GAO is precluded from bringing a civil action to compel the production of a record if:

  1. the record relates to activities the President designates as foreign intelligence or counterintelligence (see Executive Order No. 12333, defining these terms);

2. the record is specifically exempted from disclosure to GAO by statute; or

3. the President or the Director of the Office of Management and Budget certifies to the Comptroller General and Congress that a record could be withheld under the Freedom of Information Act exemptions in 5 U.S.C. 552(b)(5) or (7) (relating to deliberative process and law enforcement information, respectively), and that disclosure of the information reasonably could be expected to impair substantially the operations of the government.

- Although these exceptions do not restrict GAO's basic rights of access under 31 U.S.C. 716(a), they do limit GAO's ability to compel the production of particular records through a court action.

Relevant CIA Legislation

The CIA has broad authority to protect intelligence-related information but must keep the intelligence committees fully and currently informed of the intelligence activities of the United States.

- 50 U.S.C. 403-3(c)(6) and 403g: Section 403-3 requires the Director of the CIA to protect "intelligence sources and methods from unauthorized disclosure...." Section 403g exempts the CIA from laws "which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. With the exception of unvouchered expenditures, CIA's disclosure of information to GAO would be an authorized and proper disclosure under 31 U.S.C. 716(a).

- 50 U.S.C. 403j: The CIA has broad discretion to use appropriated funds for various purposes (e.g., personal services, transportation, printing and binding, and purchases of firearms) without regard to laws and regulations relating to the expenditure of government funds. The statute also authorizes the Director to establish an unvouchered account for objects of a confidential, extraordinary, or emergency nature. We recognize that the CIA's unvouchered account authority constitutes an exception to GAO's audit and access authority, but this account deals with only a portion of CIA's funding activities.

- 50 U.S.C. 413: This section provides a method for maintaining congressional oversight over intelligence activities within the executive branch. The statute requires the President to ensure that the intelligence committees (the Senate Select Committee on Intelligence and the House

Permanent Select Committee on Intelligence) are kept fully and currently informed of U.S. intelligence activities.

Mr. HORN. Our next witness is Ivan Eland, director of defense policy studies at the Cato Institute.

STATEMENT OF IVAN ELAND, DIRECTOR OF DEFENSE POLICY STUDIES, CATO INSTITUTE

Mr. ELAND. Thank you, Mr. Chairman and other members of the committee. It's a pleasure to appear before the committee to give my remarks on this vital topic.

As important as safeguarding sensitive intelligence information is to the CIA, the intelligence community and the executive branch, more paramount concerns exist in a constitutional republic. Reacting to European monarchs who ran foreign and military policy, often disastrously and with few constraints imposed by their subjects, the founders of the American Nation enshrined in the U.S. Constitution a vital role for Congress, the arm of the people in foreign and national security policy.

James Madison noted that experience showed that checks and balances within the Government were needed to guard against the Founders' greatest fear, the risky accumulation of power in one branch of government. In short, Madison wrote, "Ambition must be made to counteract ambition."

The checks and balances written into the Constitution, which go to the heart of a constitutional republican form of government, ensure that no branch of government can dominate U.S. foreign and defense policy. Thus, Congress has vital oversight responsibilities for executive branch agencies involved in foreign affairs and national security, including CIA and the intelligence community.

Even in a constitutional republic, however, some secrecy in foreign affairs and defense is needed, obviously; but when secrecy and accountability clash, which the presumption should be with accountability, accountability should be especially preferred in the lower external threat environment of a postcold war world.

Unlike most other government entities, the intelligence agencies get only limited scrutiny from the media, the public, conflicting interest groups and the courts. Also, U.S. Government secrets are not the exclusive property of the executive branch. Congressional committees are entitled to, and also have a duty to examine them to ensure that the secretive intelligence community is acting in the interests of the people it is supposed to be defending. Of course, we have well-known instances where the intelligence agency did not act in this fashion. For those reasons, congressional oversight by more than just the small and too easily co-opted, in my opinion, intelligence committees is especially vital.

However, in most cases accountability does not run afoul of secrecy. In fact, in this case, the Government Reform Committee is trying to ensure that the CIA's computer systems adequately secure the sensitive information. In fact, in recent decades, the trend has been to expand the circle of those responsible for overseeing intelligence activities. The expansion of oversight is even more appropriate now that the worldwide Communist menace has collapsed.

To help guide the House committees in performing oversight, the Rules of the House delineate special oversight functions for various committees. In that part of the Rules, clause (3)(1), the Permanent Select Committee on Intelligence, "shall review and study on a con-

tinuing basis laws, programs and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods," of agencies of the intelligence community, including CIA.

The phrase "on an exclusive basis" is very telling because the exclusive purview of the House Intelligence Committees is restricted to examining sources and methods. By implication, the other committees can study laws, programs and activities of the intelligence community, for example, CIA cybersecurity. If "sources and methods" is broadly read as Mr. Woolsey states, then why is the "on an exclusive basis" clause needed at all? The other committees can't review anything under this interpretation anyway, because the CIA method is all-encompassing.

My interpretation fits well with another passage in the House Rules that specifically governs the Permanent Select Committee on Intelligence, clause 11(b)3. It says, "Nothing in this clause shall be construed as prohibiting or otherwise restricting authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee."

Once again, "sources and methods" is normally taken to mean "collection." If "method" is read broadly, as Mr. Woolsey states, why even put this clause in at all? Everything is a method, and so other committees besides the Intelligence Committees cannot review anything.

Those same House Rules give the Government Reform Committee broad oversight over the operation of the executive branch agencies. Clause 3(e) states, "The Committee on Government Reform shall review and study on a continuing basis the operation of government activities at all levels with a view to determining their economy and efficiency." That's a pretty broad purview.

So it's been very clear from the time of the creation of the Intelligence Committees in the late 1970's that they did not have exclusive jurisdiction over intelligence and intelligence-related activities or access to intelligence products; the mere name, Select Committee, indicates that. The House Rules seem very clear on that point.

But if any dispute over internal House jurisdictions occurs, it should be between the intelligence community and another committee, not between the CIA and the other committee. The CIA should allow congressional committees to interpret rules made by their own Chamber, and in fact, maybe outside experts ought to let the committees work this out as well.

In short, the CIA appears to have no basis for its refusal to testify before the Government Reform Committee. The Government Reform Committee's effort to investigate CIA's cybersecurity seems to be well within its constitutional responsibilities and its jurisdiction under the House Rules to review government economy and efficiency.

Furthermore, as long as the committee refrains from directly examining the CIA "sources and methods of intelligence"—and I read this to be "collection," which is unlikely in an investigation of the CIA's cybersecurity, the committee seems to have a compelling case under the Rules for examining the agency's intelligence activities and products during its investigation.

That concludes my verbal statement. I'll be happy to answer questions at the appropriate time.

Mr. HORN. Thank you very much.

[The prepared statement of Mr. Eland follows:]

Testimony of Ivan Eland, Director of Defense Policy Studies, Cato Institute

Before the Subcommittee on Government Efficiency,

Government Reform Committee, U.S. House of Representatives

July 18, 2001

As important as safeguarding sensitive intelligence information is to the Central Intelligence Agency (CIA), the intelligence community, and the Executive Branch, more paramount concerns exist in a constitutional republic. Reacting to European monarchs who ran foreign and military policy--often disastrously--with few constraints imposed by their subjects, the founders of the American nation enshrined in the U.S. Constitution a vital role for Congress—the arm of the people--in foreign and national security policy. James Madison, writing in *The Federalist, No. 51,* stated: "A dependence on the people is, no doubt, the primary control of government." But he also noted that experience showed that "auxiliary precautions," that is, checks and balances within the government, were needed to guard against the founders' greatest fear—the risky accumulation of power in one branch of government. In short, Madison wrote: "Ambition must be made to counteract ambition."[1]

The checks and balances written into the Constitution—which go to the heart of the U.S. system of republican government—ensure that no branch of government can dominate U.S. foreign and defense policy. For example, the Senate must approve treaties with foreign nations and confirm the Secretary of State, other high level State Department

officials, and ambassadors. Furthermore, the Constitution says that the Congress has the power to declare war, provide for the common defense, raise armies, maintain a navy and make all laws "necessary and proper" to execute those powers. Thus, the Congress has vital oversight responsibilities for Executive Branch agencies involved in foreign affairs and national security, including the CIA and the intelligence community.

Secrecy Versus Accountability

Even in a constitutional republic, some secrecy in foreign affairs and defense is needed; but when secrecy and accountability clash, the presumption should be with accountability. Accountability should be especially preferred in the lower external threat environment of a post-Cold War world.

The constitutional checks and balances at the core of the U.S. Constitution should not be undermined lightly. Unlike most other government entities, the intelligence agencies get only limited scrutiny from the media, the public, conflicting interest groups, and the courts. Furthermore, bureaucracies in national security can abuse the security cloak to avoid doing what Congress wants them to do. U.S. government secrets are not the exclusive property of the Executive Branch; congressional committees are entitled to, and also have a duty to, examine them to ensure that the secretive intelligence community is acting in the interest of the people it is supposed to be defending. Although the intelligence community uses the excuse that Congress is a leaking sieve, the Executive Branch is widely recognized as the origin of most leaks of secrets. For all of those

reasons, congressional oversight by more than just the small (compared to the 45 Executive Branch entities involved in intelligence) and too easily co-opted intelligence committees is vital.

In most cases, accountability does not run afoul of secrecy. In fact, according to Loch Johnson, an analyst who spent 13 years interviewing more than 500 intelligence officers, many intelligence officials--including former CIA directors—concluded that recent improvements in accountability have not undermined the effectiveness of intelligence.[2] Congressional staffs have the same security clearances possessed by Executive Branch personnel, and hearings closed to the public can be used if the information to be discussed is too sensitive for an open airing.

Even when accountability does clash with secrecy, the Congress must ask if the secrecy is warranted. Intelligence agencies develop a "culture" of secrecy that can sometimes be excessive. For example, for a short window of time after the Cold War ended, the amount of the U.S. annual intelligence budget was made public. Eventually, the intelligence bureaucracy reasserted itself and again covered it with a blanket of secrecy. Yet for many years, the actual value of the intelligence budget has been one of the worst kept secrets in Washington.

In recent decades, the trend has been to expand the circle of those responsible for overseeing intelligence activities. Formerly, the monitoring of CIA activities used to be confined to the chairman and ranking minority of the defense committees and one or two

senior staff. In the 1970s, after congressional hearings exposing abuses in the intelligence community, the intelligence committees were formed. As the following examination of the House rules governing both the intelligence committee and congressional oversight of Executive Branch agencies will show, the number of committees that monitor intelligence and intelligence-related activities and have access to products from those activities has increased. That expansion of oversight is even more appropriate now that the worldwide communist menace has collapsed.

House Rules on Legislative Oversight

To help guide House committees in performing oversight, the rules of the House delineate "special oversight functions" for various committees. In that part of the rules (3 (l)), the Permanent Select Committee on Intelligence "shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study *on an exclusive basis* the sources and methods" of agencies of the intelligence community, including the CIA (emphasis added). The phrase "on an exclusive basis" is very telling. Because the exclusive purview of the House intelligence committee is restricted to sources and methods, by implication, other committees can study laws, programs, and activities of the intelligence community.

That interpretation fits well with two other passages in the House rules that specifically govern the Permanent Select Committee on Intelligence. Section 11(b)(3) states:

> Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

And according to Section 11(b)(4),

> Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

Thus, the House rules clearly state that other committees besides the intelligence committee can investigate intelligence and intelligence-related activities and obtain access to intelligence products, as long as they are related to a matter within the purview of those committees.

Those same House rules give the House Government Reform Committee broad oversight over the operation of Executive Branch agencies. Section 3(e) states:

> The Committee on Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.

Therefore, the House rules seem to give the Committee on Government Reform the authority to investigate intelligence and intelligence-related activities and obtain the products of such activity when it is reviewing any government activity for economy and efficiency (as long as it does not involve reviewing intelligence sources and methods).

Reinforcing the seemingly plain language of the previously cited passages of the House rules is the implied protection for other committees whose jurisdictions might overlap that of the House intelligence committee. By making the intelligence panel a select committee, instead of a standing committee, the House indicated that the panel did not have exclusive jurisdiction over most matters in intelligence (the Senate also made its intelligence panel a select committee). Furthermore, Section 11(a)(1) of the House rules provides that the intelligence committee will consist of at least one representative from other specified congressional committees. Although those committees are all security-related committees, the intent of the rules seems to be to preserve the right of other committees to examine intelligence and intelligence-related activities and products.

Further illustrating the prerogatives of other House committees is the right to have proposed legislation related to intelligence activities referred to them as long as it falls within their jurisdiction. The annual bill to authorize the funding of intelligence agencies

is regularly and sequentially referred to other committees with jurisdiction. When other committees are interested in specific legislative provisions, the intelligence committee often includes them in legislation separate from the intelligence authorization act. In practice, the intelligence committees seek concurrence of other committees before reporting other legislation that could trigger a request for a referral. The other committees have leverage over the intelligence committee because they could hold up—through a request for referral or other delaying tactic—or oppose a bill if the intelligence committee does not get their prior concurrence.

So it has been very clear from the time of creation of the intelligence committees in the late 1970s that they did not have exclusive jurisdiction over intelligence and intelligence-related activities or access to intelligence products. The House rules seem fairly clear on that point. But if any dispute over internal House jurisdictions occurs, it should be between the intelligence committee and another committee, not between the CIA and the other committee. The CIA should allow congressional committees to interpret rules made by their own chamber.

The CIA Appears to Have No Basis for Its Refusal to Testify Before the Government Reform Committee

The Government Reform Committee's effort to investigate cyber security seems to be well within its jurisdiction under the House rules to review government economy and efficiency. Furthermore, as long as the committee refrains from directly examining

the CIA's sources and methods of intelligence (unlikely in an investigation of CIA's cyber security), it seems to have a compelling case under the rules for examining the agency's intelligence activities and products during its investigation. While conducting the investigation, the committee seems to have the implicit authority under the rules to compel the CIA to testify at an oversight hearing. Because the committee does not have control over the CIA's budget (as do the intelligence committees and the appropriations committees' subcommittees on defense), its ability to compel CIA testimony at hearings becomes even more vital for conducting adequate oversight of economy and efficiency.

The CIA's refusal to testify before the Government Reform Committee is made all the more mysterious by its recent testimony before the Joint Economic Committee on a similar subject. On June 21, 2001, Lawrence K. Gershwin, the National Intelligence Officer for Science and Technology from the CIA, gave the testimony, "Cyber Threat Trends and U.S. Network Security," at the Joint Economic Committee's hearing, "Wired World: Cyber Security and the U.S. Economy."[3] Granted, that hearing was on the CIA's assessment of the vulnerability of the nation's computer systems to hostile entry rather than on the vulnerability of CIA's computers to similar penetration, but the House rules treat non-intelligence committees' review of intelligence activities similar to their access to intelligence assessments (see sections 11(b)(3) and 11(b)(4) of the House rules quoted above). In short, other committees are not restricted from reviewing intelligence activities or obtaining intelligence products. To comply with the House rules, other committees' access to information about CIA's cyber security efforts for its own

computers should be treated no differently by the agency than access to its assessment of foreign threats to U.S. computer systems.

Can the Intelligence Committees Alone Adequately Monitor the CIA?

After the abuses by the intelligence agencies in the early 1970s, the Congress correctly consolidated the fragmented oversight of those agencies into the Senate and House intelligence committees. But although their staffs are specialists in intelligence activities, the intelligence committees of both houses can sometimes get co-opted by the agencies they oversee or exhibit other self-restraints that can undermine their oversight. Some examples will illustrate the point. The intelligence committees:

- claim the right to hire their staff members over the security objections of the Director of Central Intelligence or the Secretary of Defense, but in practice it rarely occurs;

- are willing to restrict the scope of their requests for classified information or limit the manner in which it is handled;

- have a high turnover among the chairmen and members, which limits the accumulation of experience that can compete with the vast institutional memory

of the CIA and other agencies (on the other hand, the rotation of personnel may, in some respects, may make the panel less captive to the intelligence community);

- avoid investigating improprieties by individuals unless they are symptomatic of a system-wide problem or part of a bad policy at the agency involved. Even in that instance, the committees shy away from the problem if it is being considered by the agency;[4]

- make too little use of the U.S. General Accounting Office (GAO), the congressional investigative arm, especially for investigations of the CIA. Increased access to the CIA and other intelligence agencies by GAO and greater use of GAO by the committees could augment substantially the committees' ability to adequately monitor the activities of the intelligence community.

The first and second self-restraints by the committees allow the intelligence agencies to shield their activities from congressional inquiry under the guise of security considerations.

The best indicator of how much the Congress fears the cooptation of the intelligence committees by the spy agencies occurs during crises. During those periods, the Congress does not seem to seem to have much confidence in the intelligence committees. During the Iran-Contra affair in the late 1980s, the intelligence committees lost credibility and select committees were created to lead the congressional investigations. When covert

action in Angola during the Reagan administration became controversial, the issue migrated from the intelligence committees to other committees and the full chambers of both houses.[5]

Because the intelligence committees can be co-opted by the agencies whose operations they oversee on a day-to-day basis, the constitutional check by Congress on the Executive Branch is enhanced when other more disinterested committees look at the CIA's work. For example, in determining the economy and efficiency of the CIA's activities, the Subcommittee on Government Efficiency of the Government Reform Committee—which looks at the issue government-wide—might better assess the agency's efforts than the intelligence committee, which would have less comparative information from other government entities on which to base its analysis.

Conclusion

The Subcommittee on Government Efficiency of the House Government Reform Committee seems to have clear authority under both the U.S. Constitution and the House rules to conduct oversight of intelligence and intelligence-related activities for economy and efficiency—its areas of jurisdiction—and to gain access to intelligence products. (Under the House rules, the only area where the subcommittee seems to be restricted is in the direct examination of the highly classified sources and methods of intelligence, which is reserved for the intelligence committee. But the subcommittee would be unlikely to need to examine such sources and methods in a review of CIA cyber security.) It is clear

that the House (and the Congress as a whole) has never given the intelligence committee(s) sole oversight authority over intelligence activities, especially when other committees have legitimate jurisdiction.

Notes

[1] Quoted in Loch K. Johnson, *America's Secret Power: The CIA in a Democratic Society* (New York: Oxford University Press, 1989), p. 6.
[2] Ibid., pp. viii, 8.

[3] Testimony by Lawrence K. Gershwin, National Intelligence Officer for Science and Technology, National Intelligence Council, Central Intelligence Agency, at the Joint Economic Committee hearing, "Wired World: Cyber Security and the U.S. Economy," June 21, 2001.

[4] Select Committee on Intelligence, U.S. Senate, *Legislative Oversight of Intelligence Activities: The U.S. Experience*, 103rd Congress, Second Session, Senate Print 103-88, October 1994, p. 18.

[5] Frederick M. Kaiser, "Congress and the Intelligence Community: Taking the Road Less Traveled," in Roger H. Davidson, ed., *The Postreform Congress* (New York: St. Martin's Press, 1992), pp. 294, 298.

Mr. HORN. Our last presenter before the Chair is Colonel Daniel M. Smith, a West Point cadet who spent a lot of his time in the Army on intelligence assignments. So we welcome you here, Colonel Smith, and would appreciate any advice you wish to give the committee.

STATEMENT OF COLONEL DANIEL M. SMITH, USA (RET.), CHIEF OF RESEARCH, CENTER FOR DEFENSE INFORMATION

Colonel SMITH. Thank you, Mr. Chairman. My remarks are going to come from the perspective of an information gatherer, a user of finished intelligence, and last but not least important, as an ordinary citizen.

As a career military intelligence officer, I retain a bias in favor of the need for the U.S. Government to keep secret information that it deems might be helpful to an adversary or competitor if that information became known. The Government also has an interest in collecting information about other nations and foreign individuals with a view toward understanding, and if possible, influencing behavior of these nations and individuals. How and on what basis these decisions are made also is information that needs to be protected.

On the other hand, as a career citizen of the United States, a status that preceded and postdated my military service, I have a bias in favor of maximum openness in government, including justification of actions taken or not taken on behalf of myself and other citizens. Although there are legitimate security reasons to withhold information from the general public, such as sources and methods used to acquire information on which decisions are based, the threshold for withholding information from the elected representatives of the people must be significantly higher than for the general public. Otherwise, the Congress can never know for sure whether it is carrying out its sworn duty to protect the public's general welfare against potential government intrusion into areas protected by the Constitution, and to properly allocate resources among the various legitimate requirements of the Nation in general and the intelligence agencies in particular.

This subcommittee can, I believe, exercise oversight in intelligence activities from the standpoint of efficiency and fiscal management without increasing the possibility that sensitive information inadvertently will be revealed. Considering the size of the intelligence community itself, I am not overwhelmed by the possible numbers cited by Director Woolsey of those with an interest in oversight of intelligence activities.

While there is a legitimate security requirement to limit the dissemination of sensitive information and material on a need-to-know basis, such need-to-know restrictions must be carefully evaluated to ensure they do not become an excuse to withhold information arbitrarily or to conceal failures or even misdeeds. Making information usable to different levels of Government, and even to the public, by blending in as many sources and methods as possible and screening out information that could only come from restricted sources is a job of professional intelligence analysts.

Judging how well they are doing and whether priorities and expenditures are in line with the perceived threats is the job of Con-

gress, and for that, Congress needs to have access and to hear from—in executive session if necessary—knowledgeable representatives of U.S. intelligence agencies.

Thank you, Mr. Chairman.

Mr. HORN. Thank you.

[The prepared statement of Colonel Smith follows:]

Statement of Colonel Daniel M. Smith, USA (Ret.)
Chief of Research, Center for Defense Information
before the Subcommittee on
Government Efficiency, Financial Management, and Intergovernmental Relations
of the
House Committee on Government Reform
July 18, 2001

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Chief of Research, Center for Defense Information
before the Subcommittee on
Government Efficiency, Financial Management, and Intergovernmental Relations
of the
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Of my 26 years on active military service, 16 were spent in military intelligence assignments, including one year in Vietnam, three years in a regular Army division, and seven years in the Defense Intelligence Agency.

As a career military intelligence officer, I retain a bias in favor of the need for the United States government to keep secret information that it deems might be helpful to an adversary or competitor if that information became known. The government also has an interest in collecting information about other nations and foreign individuals with a view towards understanding and, if possible, influencing the behavior of these nations and individuals. How and on what basis these decisions are made also is information that needs to be protected.

On the other hand, as a career citizen of the United States, a status that preceded and post-dates my military service, I have a bias in favor of maximum openness in government, including justification of actions taken or not taken ostensibly on behalf of myself and other citizens. While there are legitimate security reasons to withhold information from the general public -- such as sources and methods used to acquire information on which decisions are based -- the threshold for withholding information from the elected representatives of the people must be significantly higher than for the general public. Otherwise the Congress can never know for sure whether it is carrying out its sworn duty to protect the public's general welfare against potential government intrusion into areas protected by the Constitution and to properly allocate resources among the

various legitimate requirements of the nation in general and the intelligence agencies in particular.

This subcommittee can, I believe, exercise oversight of intelligence activities from the standpoint of efficiency and fiscal management without increasing the possibility that sensitive information inadvertently will be revealed.

As stated already, the most sensitive aspects of intelligence are sources and methods. To repeat the obvious, sources are the origin of information -- for example, photographs; electronic communications such as telephones, telegraph, Email, and microwave transmissions; radar and sonar scans; people; and books and other printed material. Methods are the manner by which the information is collected -- satellites carrying cameras or electronic devices that can detect electro-magnetic signals; airplanes and ships similarly equipped; intercepting microwave or satellite communications; lip reading a conversation; going to an arms bazaar and observing, taking pictures, or picking up pamphlets; or asking a direct question of someone willing to provide information.

In general, the more closely held the information is, the fewer the sources. Thus, should an adversary learn that the United States has such information, the easier it is for the adversary to determine the source of the revealed information and close our access to the source. This is why every attempt is made to blend sources and to screen out information that could only come from one or a few sources from finished intelligence products that are to be disseminated to intelligence consumers lacking special clearances.

Similarly, the more closely held the information is, the fewer methods there are to obtain it. Planes like the Navy EP-3 that collided with the Chinese F-8 fighter on April 1 collect certain electronic signals, some of which can be collected by satellites. But satellites collect other or

confirming data via photographs and cover areas beyond the range of equipment on airplanes flying in international airspace, and the targets can be different echelons (national level vs. operational level). Some information, such as intentions of heads of government, can only be learned before an announcement by talking with people close to or at the top. And personal interaction also provides insight into what others know or suspect about U.S. offensive and defensive capabilities and plans.

Information that cannot be distributed to those who need it is useless. This applies both to those in the intelligence and military communities and to those in policy-making positions who have responsibilities under the Constitution to act in the name of, on behalf of, or to protect the citizens of the United States.

While there is a legitimate security requirement to limit the dissemination of sensitive material on a need-to-know basis, such need-to-know restrictions must be carefully evaluated to ensure they do not become an excuse to withhold information arbitrarily or to conceal failures or even misdeeds. Making information usable to different levels of government (and even to the public) by blending as many sources and methods as possible and screening out information that could only come from restricted sources is the job of professional intelligence analysts. Judging how well they are doing -- and whether priorities and expenditures are in line with the perceived threats -- is the job of Congress. And for that, Congress needs to have access to and hear from -- in executive session if necessary -- knowledgeable representatives of U.S. intelligence agencies.

Mr. HORN. We'll now have the opening statement of my colleague, the ranking minority member of the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I appreciate you and Mr. Shays for convening today's hearing to highlight some of the examples of roadblocks that the CIA has put up to necessary and effective congressional oversight. It's really an honor for me to be here with this expert panel, and I wanted to say, particularly to Mr. Hamilton, somebody I've admired for a very long time, I appreciated all of your informed testimony.

I am sure for each member here there's at least one story of frustration with the CIA and its unwillingness to cooperate. In the wake of the April 20th shoot-down of an American missionary plane over Peru and the killing of American citizens on board, members on both sides of the aisle were shocked when the CIA did not show up for a hearing of the Criminal Justice, Drug Policy and Human Resources Subcommittee to review circumstances that were leading to that tragedy.

Having a particular concern with the fact that private military personnel, under contract with the CIA, were responsible for providing the information that led to the shoot-down, I called the CIA to ask some questions. After numerous calls that I made personally, as well as my staff, someone from the agency finally called to inform me that I would not be provided with any information and that the agency would neither confirm nor deny any involvement.

As a Member of Congress with responsibility for voting on whether to allow such programs to exist and a member of the House's oversight committee, I was mystified and outraged. An American citizen and her infant daughter were killed, the United States played a prominent role, and now we have an agency telling Congress to mind its own business. This is our business, and I think we need to demand some answers.

So I share your frustration, Mr. Chairman, and urge you to work with Chairman Burton to subpoena the information you have requested. I'm still waiting to hear from the CIA about the details of the shoot-down over Peru and believe the committee should also subpoena all audio- and videotapes, transcripts and other materials pertaining to the shoot-down of the missionary plane.

The need for greater CIA compliance with inquiries and investigations is exemplified by their failure to even follow the most basic principles of law. Not only does the CIA refuse to recognize the rights of Congress, the agency often does not comply with laws that protect the public. In 1998, Amnesty International filed a Freedom of Information Act request with the CIA, seeking information about possible U.S. links to the Colombian military group, Los Pepes.

The FOIA request was not answered until a little over a month ago—1998 till a month ago—after Amnesty International had found no other alternative but to file suit. Under the terms of the FOIA law, every U.S. agency has an obligation to respond within 10 days. It took the CIA 3 years, numerous press reports and a hugely successful book on the subject, and a lawsuit to say they could neither, "confirm nor deny the existence or nonexistence of

records." Incidentally, what Amnesty International is trying to uncover, information about drug trafficking terrorists that may have colluded with U.S. agencies to carry out an assassination, should be at the forefront of every Member's concern.

In the fall of last year, I circulated a letter that was sent to President Clinton, asking for an investigation into these disturbing allegations. I realize it sounds more like a movie plot than real life, but unfortunately, this story line has come to characterize the way the agency is perceived by the public and the Congress.

It is difficult to stand behind an agency that refuses to cooperate and seems to thrive on the practice of stonewalling, so I appreciate very much the suggestions that you've made of more comprehensive approaches and look forward to working with the chairman, both chairmen, to resolve some of the concerns that we have. Thank you.

Mr. HORN. I thank the lady from Illinois.

Now I am going to start in with some questions with Mr. Hamilton. You mentioned independent oversight, and it's my understanding that the House Permanent Select Committee on Intelligence staff includes a number of current and former CIA personnel. I understand how this can be important to certain aspects of the committee's duties, but could this close relationship hinder the committee's ability to conduct independent oversight?

Mr. HAMILTON. Mr. Chairman, I think there is always a great deal of suspicion toward the Central Intelligence Agency, certainly by the American public, but also Members of the House who are not members of the committee. And I think it's the responsibility of the House Permanent Select Committee to, No. 1, do everything they can to conduct extremely rigorous, vigorous oversight of the Central Intelligence Agency, hold their feet to the fire, make them report on incidents like the Peru airplane incident, in very great detail.

Now, the problem has always been to what extent does the select committee share information with other members, and, quite frankly, that's a part of oversight that has never been worked out very well; and it's an internal matter, it seems to me, that has to be worked on and resolved. I think the Intelligence Committee needs to be responsive to Members of Congress who are not members of the Intelligence Committee. You raised the question kind of an incestuous relationship, I guess, between staff and the Intelligence Community. To some extent that may exist, but I think there also are a good many staffers there that are quite independent of it.

Let me emphasize again how important I think that independence is, because the President has the Foreign Intelligence Board. He appoints all those members. Very rarely in my experience will that Board step forward and say, Mr. President, the CIA, or some other aspects of our Intelligence Community, is out of bounds. The only independent oversight that this massive Intelligence Community gets is the Congress, and so it is important that oversight be done very rigorously and that it not fall prey to what the chairman is asking here, that it become co-opted by the Intelligence Community. You have to keep working at that. I mean it's something you just have to keep working at.

Incidentally, that's one reason you have a limitation on the terms of the members of the House Select Committee, the argument being that if you have a permanent membership, that relationship becomes too cozy.

Mr. HORN. Mr. Woolsey, during your tenure, did the CIA provide detailees to the congressional Intelligence Committees, and what was their role?

Mr. WOOLSEY. I remember one to the Senate committee that was requested by the Senate, but I don't remember any others. I'd have to go back and look, Mr. Chairman, but I don't recall more than one at this point.

Mr. HORN. Do you recall any other Directors before your position that did that?

Mr. WOOLSEY. I don't know. I got the impression that it was done from time to time but wasn't all that common. I don't remember retired CIA members, officers who were on the committees when I was Director, except, again, one. There might have been more, but certainly most of the staffers were not either detailees or former CIA.

Mr. HAMILTON. Mr. Chairman, if I may just observe, an awful lot of the work of the Intelligence Committee is highly technical, and you do need on the staff of that committee people who have detailed knowledge of satellites and all kinds of technological miracles. You don't pick that up on the street. You get it from people that have worked in that area. And so the problem that you raise, I think, is a real one. The flip side of it is that the committee has to have staff that can go head to head with the Intelligence Community experts on all of their technology.

Mr. HORN. Would that be your policy also, Mr. Woolsey?

Mr. WOOLSEY. Yes, Mr. Chairman. It's up to the committee chairman who he picks. I've been out of the CIA for 6½ years. I've testified before both committees, and my experience has been that the occasional staff member who has background in the Intelligence Community, whether it's CIA or otherwise, his loyalty is owed to the chairman of the committee. Also they have always been vigorous in their questioning and the like.

Mr. HORN. And you believe you had close relationships with the detailees? Did either your staff director or you sort of keep track of them?

Mr. WOOLSEY. You mean when I was Director?

Mr. HORN. Right.

Mr. WOOLSEY. I don't remember who they were, and I certainly didn't keep close track of them. My relations were with the chairman, the members, and occasionally with staff. And I had with my two House committee chairmen, Congressman Glickman and Appropriations Subcommittee chairman, Congressman Murtha, excellent relations with them and the staff. That didn't mean that they didn't question me vigorously, but we got along fine.

On the Senate side I got along fine with my appropriations chairman, Senator Inouye. The Senate Select Committee chairman, Senator DeConcini, and I were another matter. But what gave an overall cast to my relations with the four committees I dealt with was not the former status of any of the staff members, but it was dealings with the chairman and the ranking member.

Mr. HORN. Did either one of you use the General Accounting Office to conduct reviews in terms of the work of the committee?

Mr. HAMILTON. Mr. Chairman, my recollection is we did not use the General Accounting Office for reasons that I think Mr. Hinton made pretty clear. They just don't feel they have the authority to examine it in great detail; so it was not a useful arm for us.

Mr. WOOLSEY. And back in the days when I was general counsel of Senate Armed Services, Mr. Chairman, which was the early seventies, which was pre-Intelligence Committee days, there were only probably three or four staff members in the Senate who were cleared into the CIA and National Reconnaissance Office programs, and we did not use the GAO at all on those programs.

Mr. HORN. Mr. Hinton, is there any record that GAO has contributed to a lot of these oversight groups in terms of CIA? Has it been solely fiscal or——

Mr. HINTON. Well, back in the late fifties and early sixties, Mr. Chairman, we were looking at financial matters, and then we began to expand into some program areas; however, we were not able to get sufficient access to complete our mission, and as we had discussions with the CIA, and at that time it was the chairman of the House Armed Services Committee, we stopped doing work, and with the concurrence of the chairman of the House Armed Services Committee, who at that time had jurisdiction over the Intelligence area.

Mr. HORN. When did CIA have an Inspector General as part of its——

Mr. HINTON. My recollection is that it was in 1989 when the statute was passed, I believe, 1989.

Mr. WOOLSEY. I think the CIA had an Inspector General before then but after 1989 it was subject to the statutory requirement of all these various independent reporting obligations to the Congress and the like.

Mr. HORN. Did you find that was a useful office when you were Director?

Mr. WOOLSEY. Sometimes.

Mr. HORN. In terms of what they did, did they look at management processes or just fiscal matters?

Mr. WOOLSEY. Both. I even had them review my own office's operation.

Mr. HORN. And you felt they did a good job or——

Mr. WOOLSEY. Sometimes.

Mr. HORN. Sometimes. You're being very cautious here.

Mr. WOOLSEY. Yeah. I have a "on the one hand" this other and that view of my Inspector General during those years, Mr. Chairman.

Mr. HORN. And that's the Truman thing about economists.

Mr. WOOLSEY. Yes.

Mr. HORN. On the other hand, on the other hand, so forth.

Do you think that the current organization has other experts that can look at management? And of course that is what our interest is. We are not interested in methods and Intelligence people. We are interested simply in "is the place put together so it can achieve its mission?" In the case of computers that have been clas-

sified, we had that whole problem in the Y2K thing, and we finally got some of the information.

Mr. WOOLSEY. First of all, the Inspector General's Office does now do this sort of thing routinely, look at management practices for different parts of the Agency. And I think from what I've heard from Mr. Tenet, he's quite pleased with the operation of his Inspector General's Office now.

Second, the President has, I believe, asked Mr. Tenet and also the White House, I think, operating through the President's Foreign intelligence Advisory Board which I believe will be headed by General Skowcroft, to do two management reviews of the Intelligence Community as a whole, including the CIA, and I think those are underway.

And finally, the current No. 3 official at the CIA, who actually manages in a day-to-day sense the Agency, Buzzy Krongard, formerly the chief executive officer of Alex Brown and a very experienced executive, is someone that I think Mr. Tenet looks to for management advice about the operation of the Agency.

So my judgment from the outside, and I'm not in this in any detail, would be that currently they are, from both the outside and the inside, reasonably well equipped to look at management issues.

Mr. HAMILTON. Mr. Chairman, my view is that the question you raise on efficiency, it's an area that the Intelligence Committees over a period of time have not paid very much attention to. The whole question of cost effectiveness, we spend billions and billions of dollars on Intelligence—we all know the figure roughly, I don't know whether it's public or classified so I won't use it—but billions of dollars, and there's very little attention given to cost effectiveness.

The real key in Intelligence is are the right people getting the right information at the right time? That's the key. It doesn't matter how much intelligence you've got. If the commander on the ground is threatened with a car bomb, if he doesn't have the information he needs, your Intelligence is not worth a thing. And I think sometimes we get so captivated with the technology of the collection of intelligence that we take the position, the more the better.

The real question is not necessarily the amount of data that you've got. You've got to analyze that data, and then you've got to get it to the right people at the right time for it to be effective. I don't think the Intelligence Committees, and I don't mean in any way to criticize the President's Intelligence Committees because I don't know that much, but over a period of years we simply have not spent enough time on efficiency and cost effectiveness, and to that point I very much concur with your view.

Mr. HORN. Mr. Woolsey, any comments on that?

Mr. WOOLSEY. Well, the Director of Central Intelligence really is charged with doing this on a day-to-day basis, and one major aspect of what I call the needs process which—because I hate the word "requirements." I think it has a lot of the wrong connotations for what one should request and appropriate funds for. Part of the needs process that I instituted had a lot to do with making and trying to institutionalize some of the kinds of judgments that Chairman Hamilton suggested.

One of the types of things it tends to point out when you do an end-to-end look on a lot of intelligence product, from collection to its getting to the consumer, is that there are roadblocks of the sort he discussed. One very well-known one is translators. It doesn't do a great deal of good to accumulate a huge amount of data and material in Arabic if you're not willing to hire and train the number of Arabic speakers and readers necessary to make sure you're going through it on a reasonable and timely basis, and some of those types of things do jump out at one if one does a review of the needs during the budget process systematically, and that's the way I tried to do it. I don't know how it's been done since.

Mr. HORN. To your knowledge, are CIA's employees able to report allegations of mismanagement or crimes of authorities outside of the CIA, or is there a process inside the CIA where a Director can depend on either a certain group or whatever to see that these things are taken care of?

Mr. WOOLSEY. Inside the CIA they have access, of course, to the Inspector General. They would have access if he's running the place right, to the Director himself. And they certainly have access to the Oversight Committees of the House and Senate. I think that from the point of view of being able to report malfeasance or nonfeasance or just to complain about one's job, that system at least as of early 1995, from my point of view, worked reasonably well.

Mr. HORN. Now, did you use GAO for help on any of this?

Mr. WOOLSEY. No, Mr. Chairman, we did not. We operated with our own Inspector General. And with respect to the audit function, the Senate staff has a separate staff that does audit, and in the House it's my understanding they have several members of the staff that do it, although they don't call it a separate section of the committee.

Mr. HORN. I see my co-chairman, Mr. Shays and others. I do want you to have some question time here. OK, go ahead, Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I want to state first that I'm a rookie when it comes to these intelligence questions, and probably the questions that I will ask reflect those that perhaps ordinary citizens would be asking more than someone who has an expertise in this area of intelligence gathering and the rules of the game.

I'm wondering, Mr. Chairman, if I could ask you a question first. I feel that our committee has been disrespected to some degree by the CIA in ignoring your request to appear and in ignoring your questions; and while I think we have certainly heard helpful testimony, I'm just wondering why you made a decision, or if you did, to not subpoena the CIA to come. Could you have and, if so, can we maybe in the future?

Mr. HORN. Well, we leave that to Chairman Burton. He has that authority as chairman of the full committee.

Ms. SCHAKOWSKY. I see. There's a threshold question on this issue of secrecy. Who and how are decisions made about what will be classified and what will not, what is important for the public to understand and what is not? It seems to me that questions about computer security certainly are public policy questions, and I don't

know—Mr. Woolsey or others may disagree, that seems to me an obviously appropriate thing.

When we asked questions about the incident in Peru, not sources and methods but other kinds of questions, these seem appropriate for our committee and for the American people to hear. Chairman Burton said, "why is this information about whether or not the CIA hired private contractors classified?" Why shouldn't everybody understand what their taxpayer dollars are going for?

So, how are those decisions made, and then in what way can we appropriately question that threshold decision? Anyone can answer.

Mr. HAMILTON. Those decisions are made on the basis of officials of government that the Congress has given the power to classify information. You have given power to the Secretary of Defense or the Secretary of State to classify information. The Secretary of State and the Secretary of Defense do not sit there daily going through stacks of paper marking "Secret" on them. What do they do? They delegate that power. And they delegate it to literally hundreds and hundreds of people in this town, who have the authority derived from the secretaries to classify information. And we classify, in my judgment, way more information than we should, and it becomes almost impossible to declassify the information.

But it is a power that is derivative, of course, from the President, but the secretaries have the power to classify information, and many of them have it, many of them delegate it to hundreds of people. There are scores and scores of people in a Department of Defense and the Department of State who classify information. And the whole system operates so that the incentive for the person classifying, the safe incentive, is to classify it "Secret" because you won't get into any trouble. The problem becomes if you don't classify something you should have, then you can get into trouble.

So the incentives are to classify. As a result we have warehouses of secret information today, huge volumes of secrecy.

Mr. WOOLSEY. Could I add a second to that?

Ms. SCHAKOWSKY. Absolutely.

Mr. WOOLSEY. The question of classification is a separate question from whether something is a CIA method or not. Presumably, if I am wrong, for example, and Mr. Eland is right, "method" should be read as narrowly as he and Colonel Smith say and it only refers to collection, and that therefore the way the CIA protects its data is not a method and therefore this committee would have jurisdiction to hold hearings on it, I would certainly hope that this committee, if it held such hearings, it would hold executive session hearings, because even though this is a matter of important public policy, I trust we don't want to let Saddam Hussein or Russian hackers know how the CIA protects its data.

So this committee I would assume on something of that sensitivity would, if it dealt with those issues, would deal with them in a classified way. There are many very important matters of public policy that are classified—whether to buy one type of satellite or another—that the Government and indeed the Congress deal with routinely.

But I just wanted to say that I think there's a difference between whether something is classified or not, on the one hand, and I agree with former Congressman Hamilton that in a lot of cases

things are overclassified. But that's a separate question from the one that is before us here about which committee has jurisdiction over understanding for the Congress how the CIA protects its data and its computers.

Ms. SCHAKOWSKY. Yes, Mr. Eland.

Mr. ELAND. Yeah. I'd like to make a couple comments on this. I agree with the other two speakers that we have much too much classified information, and I think that has several ill effects. The first one is it undermines the whole system and then you get people saying, well, this is classified; but, you know, it's not really classified, so I can leak it to the press or whatever. So if we only hold the things that we need to hold secret, then I think everybody recognizes that is—you know, I'm saying Secret, Classified, you know, whatever level.

The other thing is I think a lot of times the executive branch uses classification to limit access to various programs. The Reagan administration put a lot of defense programs in the special access category which requires special compartments to limit the congressional inquiry that could be done on them.

Also, I think throughout this whole hearing there's been this assumption, and I think on the part of the CIA and maybe even some people in Congress, that the Congress is a bigger leak than the executive branch, and I don't think historically that is true. I think the biggest leaks have come out of the executive branch. Officials, for one political purpose or another, leak information. So I really don't think that the implication is if more congressional committees get involved in this that we're going to have secrets all over the place, as Mr. Woolsey was saying. It's just not true. I mean the——

Ms. SCHAKOWSKY. That's kind of a second question: What's a secret and what isn't a secret in general? And then once something is legitimately a secret, who gets access to that information, what you're referring to now, and that there may be more in Congress who are entitled to that information.

But you also brought up a question of the press. My short experience—I'm in my second term of Congress—has been that I have learned more information from reading the New York Times or the Washington Post than I have in any classified briefings, and certainly more information in regards to this Peruvian incident and the use of private contractors.

Does anybody feel that there is a certain responsibility of the CIA or others to explain to Members of Congress information that has appeared in the press about activities which——

Mr. HAMILTON. I think under the present regime the way it would operate is an incident occurs, you want to know more about that, you're entitled to know more about it. The CIA has the information or maybe the DOD has the information. The way it would operate today is that they would give that information to the House Select Committee on Intelligence. That's their responsibility. They are fulfilling their obligation under the law when they report to the Intelligence Committees fully and currently on any inquiry.

Now, the question of how the Intelligence Committee shares that information with nonmembers of the Intelligence Committee is an internal question that you have to resolve. As a member, you have the right to go to the Intelligence Committee and say I want to

know what you know about that information. My recollection is—and this procedure may have been changed—is that the committee then votes on whether or not that information is made available to you. I don't recall, frankly, very often it coming to a vote. I can recall some instances of it.

In other words, in most every instance, an arrangement is worked out so that the Member seeking the information can get it.

Now, that's only part of the problem. The other part of the problem is once you get it, what can you do with it? You cannot go public with it if it is classified information, unless you do it on the floor of the House; and you can say anything you want to on the floor of the House and you're protected. But there are very strong practical constraints against you from doing that.

So the question becomes how you get this flow of information from the Intelligence Committee to the other Members of the House, and it's been very difficult to work out over a period of time. In the end, if a Member is insistent, he or she can get that information but cannot necessarily use it publicly.

Mr. HORN. Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. I thank the members of the panel for your testimony and enlightenment today.

Mr. Hinton, reading your testimony and listening to you, I have to tell you I was going to say "annoyed," but I will say "concerned," for lack of a better word, because of the CIA's actions. You raised two examples, both involving national intelligence estimates, and they are, I think to everybody's understanding, the Intelligence Community's best analysis of the likelihood of different kinds of threats; right?

The first example, you said the CIA was cooperative when it came to discussing the national intelligence estimates involving chemical and biological threats. On the national—in the NIE for missile threats, however, you said that the CIA refused even to meet with you. Can you explain the difference in their attitude between those two?

Mr. HINTON. I think a lot of that has to do with the issue and what the questions were that we were asking and how they saw the oversight process play out. On the latter, we were seeking information about process, and they saw that falling in within their determination that this was subject to the exclusive oversight of the select committees. Therefore, they did not share the information with us.

Mr. TIERNEY. Did you only ask questions about process, or did you also——

Mr. HINTON. In that case, that was objectives that we were trying to look at on that job.

Mr. TIERNEY. Now, we're all aware that the President proposed huge new missile defense programs. Apparently the more we read, we find out he wants to talk about land, sea, air, and now even space systems. It can cost who knows how many hundreds of billions of dollars by the time he gets through this adventure. I think we risk alienating our allies, we risk some instability issues internationally, and this is a threat that many prominent critics claim does not exist at all or certainly is being greatly exaggerated.

If you can't even get a meeting with the CIA to discuss this threat assessment on this issue, how is Congress going to be expected to analyze the President's proposal with respect to national issues of defense and to determine whether or not it properly addresses that threat?

Mr. HINTON. I think that's going to have to be a shared responsibility among the Armed Services, the Appropriations, and the Intelligence Committees to pursue that.

Mr. TIERNEY. It is your feeling that this committee, particularly the Subcommittee on National Security, Veterans Affairs and International Relations, the Government Reform Committee, doesn't have any ability under its responsibilities to look at the economy and efficiency of weapon systems?

Mr. HINTON. I think that this committee will probably have to work closely with these other committees in seeking that information.

Mr. TIERNEY. You raised an issue in your testimony also about the CIA actually not only failing or refusing to meet with you, but actually actively encouraging other agencies not to cooperate with you; is that right?

Mr. HINTON. Yes.

Mr. TIERNEY. What other agencies were you trying to receive comment from that the CIA interfered with?

Mr. HINTON. I think in that case, it was DIA and NSA that we were told that the CIA had asked them not to cooperate with us, and State.

Mr. TIERNEY. I find that a little bit appalling, very much appalling. Given the history of the missile defense debate and the way its gone in this country and the huge waste of money up until this point in time, I don't think that this is the way we ought to proceed.

Mr. Chairman, I would strongly urge that the committee investigate this matter further; that we ask Mr. Hinton, if he can, to please provide us with the names of the CIA employees that refused to discuss the missile threat with his office. Could you do that, Mr. Hinton?

Mr. HINTON. We have the information of who we asked it of.

Mr. HORN. If I might just interject a minute, and I'll go back because, before Mr. Hamilton has to leave, I wanted to have my cochair ask any questions he has.

Mr. TIERNEY. I just want to wrap-up two questions and he can go all he wants on this. The second thing I want to ask is the names of the employees that tried to tell agencies not to cooperate with you. Do you have those, Mr. Hinton?

Mr. HINTON. I don't know that we do, but we'll check, sir. I'll give you what we have. Generally when we have requests, we go through their Office of Congressional Affairs to get things lined up, and they are generally the messenger coming back. I don't know who they got their direction from, but I can give you whatever details our documents have.

Mr. TIERNEY. If we could also have notes or interview summaries from your office regarding both of those issues, I would appreciate that. And, Mr. Chairman, I would just ask that those materials be made a part of the record.

Mr. HORN. Without objection, it will be part of the record at this point.

The gentleman from Connecticut and the co-chairman of this hearing.

Mr. SHAYS. Thank you. It's nice to have all of you here.

Mr. Woolsey, I do want to say, with no disrespect, you commented on the statements of other people in your opening statement, but they didn't have the—I don't think had your opening statement to be able to comment on it.

Mr. WOOLSEY. I did not—I was not asked to submit a written opening statement, Mr. Shays, and I talked from notes that I put together this morning.

Mr. SHAYS. I'm just trying to make the point to you. It's a small point.

Mr. WOOLSEY. Well, Mr. Eland has twice mischaracterized what I said, and if we want to get into this, I'd be delighted to——

Mr. SHAYS. I'm just making a point that in your opening statement you commented on the opening statements of others, and they didn't get the opportunity to comment on the opening statement of yours because they didn't see it, and you've explained why.

Mr. WOOLSEY. Well, but Mr. Eland did comment on my opening statement in his remarks, and he mischaracterized twice what I said. So I'll be glad to get into this if it's important.

Mr. SHAYS. No. After you made the opening statement, he didn't have your opening statement to look at. I'm just making a point——

Mr. WOOLSEY. That's correct, because I didn't write one out. I wasn't asked to by——

Mr. SHAYS. I have a sense that you want the last word. I have just made a point and you've made a point. I'm just making a point that the other gentlemen introduced an opening statement and they did not have the ability to see an opening statement of yours, and you did have an opportunity to comment on the opening statement of theirs, and that's the only point I made.

I'd like to know, Mr. Woolsey, why I shouldn't be outraged or at least unhappy that the CIA wouldn't at least come here to explain why they believe on merit they shouldn't have to respond to this committee on other issues? I mean we have you here, and I'm grateful you're here, because otherwise their argument wouldn't be made except in a tangential way. So under what basis—if you were Director, under what basis would you not at least allow someone to explain the logic of why they don't think they should cooperate with these two committees?

Mr. WOOLSEY. Well, I would think generally, Mr. Chairman, that it would be a good idea to show up and explain. I must say, however, I wrote yesterday or 2 days ago to the chairman because I hadn't seen a formal invitation. I'd only spoken with the staff on one occasion until 2 days ago; and then when I got it, the subject of the hearing, quote, The effect of the CIA's unwillingness to Cooperate with most congressional inquiries on Congress' ability to conduct oversight, is, if I may say so, from my perspective a somewhat argumentative statement of the issue. And were I George Tenet, I think I might come back and say we do not refuse to cooperate with most congressional inquiries. We, as the CIA, submit

a lot of information to the Congress: briefings, daily; several briefings daily on our product, on the substance, on the output of the Intelligence Community.

What is at issue here is oversight of what I believe is reasonably characterized as a CIA method. And Mr. Eland and others say no, it's not a method, it's an activity. But that's——

Mr. SHAYS. If you weren't here—I am just making the point that if you weren't here, the position wouldn't even be presented to Members of the Congress as to why they shouldn't participate, and I just think——

Mr. HAMILTON. Mr. Shays——

Mr. SHAYS. And I want to get right to you, Mr. Hamilton. I just think it is an affirmation of almost sticking their finger in our eye. I mean the least they could have done was to be here, and it seems dumb to me.

Mr. Hamilton.

Mr. HAMILTON. I can appreciate your point, but you have to see the Director of Central Intelligence's problem. His problem is that the chairman of the House Permanent Select Committee on Intelligence has told him not to come. The chairman of this subcommittee has told him to come. Now he's got to make a choice.

Mr. SHAYS. And the question I——

Mr. HAMILTON. His responsibility under the law is to keep the House and Senate Intelligence Committees currently and fully informed. I'm not——

Mr. SHAYS. Let me just explain another part of that story, though. You're not certain, nor am I, that he didn't request that the chairman tell him not to come. You don't know, nor do I. But we do know this: We do know the CIA tells other intelligence committees not to cooperate, which leads to my next question. Why is it OK for other intelligence committees to cooperate but not the Agency?

Mr. HAMILTON. Well, I'm not here to defend the Central Intelligence Director. He can do that himself. But I think it's important for you to see that he's caught in a bind that the Congress has created. You've created this problem for him.

Mr. SHAYS. No, that's not true.

Mr. HAMILTON. That is true.

Mr. SHAYS. No. No. In general terms we might have that argument. Whether or not to explain why it's important for him not to only cooperate with the Intelligence Committee, it could be something that he could explain. And I make the point to you, because I know for a fact that the Agency has told other intelligence committees not to cooperate.

Mr. WOOLSEY. Other intelligence agencies of the executive branch?

Mr. SHAYS. Of the executive branch, and told them not to come and testify before our committees, and they have. They've cooperated. And it gets to my point, and I want to know why the CIA shouldn't cooperate and why others do cooperate. And I throw it open to you, to either of you. Tell me why.

Mr. HAMILTON. Well, I don't want to try to speak for the Director. I can certainly understand your frustration, and it just exem-

plifies the problem that exists between the Congress and the Intelligence Community.

Mr. SHAYS. Let's get to my real question. My real question is simply to understand if we are talking about sources and methods, and we respect sources and methods with other intelligence agencies, there are 13 of them, and we don't have cooperation with 1. We have cooperation with 12. Why do the others accept that we can recognize that sources and methods—it shouldn't be the issue, but on other things they should cooperate. Why is the CIA separate?

Mr. HAMILTON. Well, your original question was why did the Director choose not to appear.

Mr. SHAYS. And——

Mr. HAMILTON. I can't answer for the Director, obviously, but I think I do see his problem.

Mr. SHAYS. I understand that. You see his problem, but now I'm on to the next question.

Why is it that of 13 intelligence agencies, 1 basically doesn't cooperate, the other 12 recognize that we respect the sources and methods as an issue that shouldn't be discussed, but there are other issues.

And the reason why I am here today, I will tell you, if there is any person that the Intelligence Community should respect, it's Mr. Horn and his efforts to deal with efficiencies. It's one of the most boring darn subjects in the world, and he's made more headway than anyone else. And so I just want to understand that question.

Mr. Hamilton, I know you have to leave, so I——

Mr. HAMILTON. I do. I apologize. Mr. Chairman, may I just make a concluding comment, if I may? I think the questions have brought out the difficulties of this relationship. I've been a little uneasy here this morning because the approach taken to this question, in my judgment, has become too legalistic. This is not a question that can be resolved by the interpretation of section 11(b)(4), section 11(a)(1), or (3)(a). If you want to get yourself into a position of not solving the problem, that's the way to do it in my view.

This is a huge, hugely difficult matter. On the one hand, how do you have a strong Intelligence Community that, by definition, has to operate secretly and confidentially or they cannot do their job? On the other hand, in a representative democracy, how do you get accountability of that kind of an operation? That's the overall problem here. I think it's hugely difficult.

The questions that Mr. Shays and others have operating simply bring out some of these difficulties, and I don't think there's a simple answer to that. My testimony was that the arrangement that we have today is far from perfect, but it works reasonably well. But it's quite obvious from your questions, it doesn't work, there are plenty of problems with it.

Thank you for looking into this. Thank you for letting me come for a few minutes to be with you.

Mr. SHAYS. Thank you, Mr. Hamilton.

Mr. HAMILTON. I appreciate what you're doing.

Mr. SHAYS. I would love to ask Mr. Hinton a question. Thank you very much.

Mr. HORN. I would just like to make a comment on the way I've been thinking. Why, with such a friendly group as this, the Director hasn't taken his wooden chair here that says "Director of CIA" at the table. And I think maybe we need a better ergonomic chair to give the Director, and I'm weighing those two facts there. So, since I was one of the few that voted for ergonomics around this——

Mr. SHAYS. Mr. Hamilton, I have tremendous respect for you, and I appreciate you being here. I do want to ask Mr. Hinton the question. You work with other intelligence agencies, do you get cooperation from other intelligence agencies?

Mr. HINTON. Yes, sir. And it's varied over the years. We did significant work up through the 1980's and the early 1990's. In 1994, the door started closing on us, and it was a memo that the Director of the CIA signed in July 1994 which in effect shut us out of most all of the intelligence work, related work, that we had been doing through the years, and also for some of the key clients up on the Hill, and also that work that we were doing without discretionary resources.

Now, this wasn't directly looking at the CIA. I mentioned that in 1962 we stopped the work that we were actively doing at the CIA, but we were working in the other aspects of the Intelligence Community, looking at the national foreign intelligence program, tactical intelligence, some of the systems that were being procured. Our work in that area has essentially dried up.

Mr. SHAYS. Let me ask you this. We found that the intelligence agencies have been cooperative with our committee, National Security, Veterans Affairs and International Relations. Are you saying that none of the agencies now are cooperating with GAO?

Mr. HINTON. No, I'm not saying that, sir. Where I am on that, it depends on what we are asking to do. You know, if we go out and seek out information around intelligence product like threat assessments, we find that we enjoy very good access.

Mr. SHAYS. Right.

Mr. HINTON. However, when we get into looking at particular programs to do the typical evaluations that we do elsewhere in the government, we are being challenged considerably now, given the guidance that came about in 1994 under that directive.

Mr. SHAYS. Mr. Eland or Colonel Smith, do you care to make any comments on these questions?

Mr. ELAND. Well, I used to work for GAO in the late 1980's, and I was monitoring on the frontlines, intelligence agencies, and my knowledge is dated—excuse me—pre-1984, but I found that the CIA was the only agency that we didn't actually get to go to. We had a site out at NSA. They gave us access. We looked at some even more sensitive intelligence-collecting entities of the U.S. Government which gave us much more access than the CIA.

The CIA has always been a problem, and I think we need to separate this discussion from the Intelligence Community and the intelligence information from the CIA. The CIA is the problem here, in my view.

Mr. SHAYS. I thank you, Mr. Chairman.

Mr. HORN. Let me just say again. Perhaps you weren't here when I put this memorandum in the record. It's a memorandum for

Director of Central Intelligence, dated July 7, 1994, via Deputy Director of Central Intelligence, the Executive Director, the Executive Director for Intelligence Community Affairs, from Stanley M. Moskowitz, Director of Congressional Affairs.

And here's the blow. Subject: Director of Central Intelligence Affirmation of Policy for Dealing With the General Accounting Office. And it's a clear plan on, you know, you guys are just wasting your time and you're wasting our time and so forth. I regard that as arrogant. And what you noted there, the word was "pipe down" and "sat on" and everything else. They just didn't want to see what you were looking at.

And all we care about, in fact, is computer security which is a major problem in the free world. I've talked to four Prime Ministers about it, and they know right now that they've got a problem in their economy where people are going and lousing up their computers, which means people could be out of work and everything else. So——

Mr. HINTON. Mr. Chairman——

Mr. HORN [continuing]. I want to put this, again without objection, in the record.

Mr. HINTON. Mr. Chairman, one thing I'd add to that, without sustained congressional support for us to do work today and to include that on behalf of the select committees, we are essentially not doing any of the work that we used to do.

Mr. HORN. Do you want to comment, Ms. Schakowsky?

Ms. SCHAKOWSKY. I just wanted to comment on the fact that I think the problem is not entirely unique to the CIA. Congressman Tierney led an effort to pry loose a report from the Pentagon regarding the critical report by Phillip Coyle on the missile defense program, and it was promised in this very room that it would be turned over, and it wasn't. And finally after a lot of work it finally happened.

But let me just ask one question of Mr. Woolsey, if you would indulge me, Mr. Chairman. If you broadly define a method, and looking back on the laws that govern the release of this kind of information, the dissemination of it, what would you define as appropriate? Is there any reason why the CIA Director would come here and talk to us about anything?

Mr. WOOLSEY. Absolutely, Congresswoman. Certainly a product. The two areas at issue here are product and activities. The product of the Intelligence Community is not a method. Sources and methods are used in putting together an intelligence product such as a national intelligence estimate or any other estimate. And as long as sources and methods are effectively dealt with at the appropriate level of classification, intelligence products are provided to the Congress all the time, several times a day, a lot of committees of the Congress.

I testified before the Science Committee, I testified before Senate Governmental Affairs, I testified before International Relations, Senate Foreign Relations, sometimes in classified settings, sometimes in unclassified. And I'm sure that intelligence briefings products are provided to individual members of this committee and as far as I know, if the—Mr. Gershwin's briefing, for example, on the

cyberthreat that he gave to the Joint Economic Committee—I can't speak for him—I'm sure that would be available, too.

So products are not at issue. What is at issue is activities; is essentially, if I read the rule right, and I think I am reading it correctly with respect to the exclusive authority of the House Permanent Select Committee over methods, the question is when is an activity not a method? Are there some activities of the Intelligence Community that are not exclusively methods under the jurisdiction of the House Permanent Select Committee?

To me, a method is something that has a certain regularity and procedure to it, and I think there's room here for this committee and the House Permanent Select Committee to have a dialog and work out some areas in which some things might be able to be provided here. I'm not saying that would not be the case. But certainly intelligence products, whether about ballistic missile threats or anything else, are available to all Members of the Congress, and briefings occur at committees in both bodies all the time from the CIA.

Mr. HORN. I just have one last question, Mr. Woolsey. During your recent appearance on C-Span you stated the number of the employees of the CIA is classified. Why is this information so important to keep secret?

Mr. WOOLSEY. Well, the overall total for the Intelligence Community was declassified for a couple of years, back several years ago, and now it's become classified again. The subordinate parts of that budget can relatively easily, not completely, but relatively easily, be calculated from manpower count. And so people generally have avoided declassifying not only the subordinate parts of the intelligence budget, but also the head counts of the agencies, because you can crosswalk relatively easily from one to the other.

I might say this is not a very well kept secret, Mr. Chairman, and it's not something that I think any government official ought to fall on his sword over. But the overall intelligence budget was declassified and the reason I was concerned about that when I was Director was I was afraid we would end up having smaller and smaller chunks of the overall intelligence budget made public and CIA head count would be one further step along that path.

Mr. HORN. Well, let me thank you, all of you, for the testimony you've given, and we appreciate it. And I want to thank the staff on both the majority and the minority: J. Russell George, staff director/chief counsel, behind me; and Henry Wray, senior counsel; and then Bonnie Heald is director of communications down there; and then the professional staff member for this particular hearing is Darin Chidsey, who is to my left; and Scott Fagan, assistant to the committee.

And then we have a wealth of interns: Fred Ephraim; Davidson Hulfish; Fariha Khaliq; Christopher Armato; Samantha Archey. And from the National Security, Veterans Affairs and International Relations Subcommittee, Nicholas Palarino, senior policy analyst; and Jason Chung, clerk; and Lawrence Halloran, staff director. Minority staff, David McMillan, professional staff; and Jean Gosa, clerk.

Our court reporters today are Melinda Walker and Lori Chetakian. And with that, we're adjourned. Thank you.

[Whereupon, at 11:59 a.m., the joint subcommittee was adjourned.]

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