

# INTELLIGENCE ACTIVITIES—THE NATIONAL SECURITY AGENCY AND FOURTH AMENDMENT RIGHTS

THURSDAY, NOVEMBER 6, 1975

U.S. SENATE.

SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS  
WITH RESPECT TO INTELLIGENCE ACTIVITIES,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:05 a.m., in room 318, Russell Senate Office Building, Senator Frank Church (chairman) presiding.

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

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

The CHAIRMAN. The committee will please come to order.

Last week, it will be remembered, a question developed over whether or not the committee should make a public disclosure on one operation that had been conducted in the past by the NSA. The committee took that question under advisement and had the statement that it was proposed for the chairman to read, carefully checked for accuracy, and carefully checked to make certain that it would reveal no method or technology that would be harmful to the intelligence operations of the United States. The committee then voted on Monday, November 3, by a vote of seven to three, that the information should be made public, subject to confirmation by the Senate Parliamentarian that doing so would not constitute a violation of the Senate rules. The committee received such confirmation from the Parliamentarian yesterday and that was read to the committee in the session yesterday afternoon.

The reasons, it seems to me, for the disclosure are clear. The program certainly appears to violate section 605 of the Communications Act of 1934, as well as the fourth amendment of the Constitution. That program has been terminated as of now, and the statement to be given today does not divulge technology or sensitive intelligence methods. Indeed, no particular technology was ever involved in the procedure that was used. It amounted to a simple turnover of telegraph traffic to the Government.

The committee believes that serious legal and constitutional questions are raised by this program. For that reason, the committee voted to disclose it. The following statement is the one that has been reviewed by the committee and voted on for disclosure this morning.

SIAMROCK was the cover name given to a message-collection program in which the Government persuaded three international telegraph companies, RCA Global, ITT World Communications, and

Western Union International, to make available in various ways certain of their international telegraph traffic to the U.S. Government. For almost 30 years, copies of most international telegrams originating in or forwarded through the United States were turned over to the National Security Agency and its predecessor agencies.

As we discuss more fully below, the evidence appears to be that in the midst of the program, the Government's use of the material turned over by the companies changed. At the outset, the purpose apparently was only to extract international telegrams relating to certain foreign targets. Later, the Government began to extract the telegrams of certain U.S. citizens. In defense of the companies, the fact is that the Government did not tell them that it was selecting out and analyzing the messages of certain U.S. citizens. On the other hand the companies knew they were turning over to the Government most international telegrams, including those of U.S. citizens and organizations. There is no evidence to suggest that they ever asked what the Government was doing with that material or took steps to make sure the Government did not read the private communications of Americans.

The select committee made its first inquiries into this operation last May. It was not until early September, however, that the select committee received a response to its questions. At that time, we obtained preliminary briefings from NSA operational personnel. Subsequently, we examined three NSA officials, including former Deputy Director Louis Tordella. These persons were the only ones at NSA with substantial knowledge of the SHAMROCK operation. The committee also reviewed all existing documentation relating to the operation. The select committee again examined NSA officials in executive sessions. Subsequently, the companies which had participated were contacted. Sworn testimony was taken from officials in each company, and company counsel have worked with the committee to reconstruct, as nearly as possible, what has taken place over the last 30 years.

During World War II, all international telegraph traffic was screened by military censors, located at the companies, as part of the wartime censorship program. During this period, messages of foreign intelligence targets were turned over to military intelligence.

According to documents in possession of the Department of Defense, the Department sought in 1947 to renew the part of this arrangement whereby the telegraph traffic of foreign intelligence targets had been turned over to it. At that time, most of these foreign targets did use the paid message facilities of the international carriers to transmit messages.

At meetings with Secretary of Defense James Forrestal in 1947, representatives of the three companies were assured that if they cooperated with the Government in this program they would suffer no criminal liability and no public exposure, at least as long as the current administration was in office. They were told that such participation was in the highest interests of national security.

Secretary Forrestal also explained that the arrangements had the approval of President Truman and his Attorney General, Tom C. Clark. Forrestal explained to the companies, however, that he could not bind his successors by these assurances. He told the companies, moreover, that Congress would consider legislation in its forthcoming session which would make clear that such activity was permissible. In fact, no such legislation was ever introduced.

In 1949, the companies sought renewed assurances from Forrestal's successor, Louis D. Johnson, and were told again that President Truman and Attorney General Clark had been consulted and had given their approval of these arrangements. As I will explain later in this statement, neither the Department of Defense nor any of the participating private companies has any evidence that such assurances were ever sought again.

The Army Security Agency (ASA) was the first Government agency which had operational responsibility for SHAMROCK. When the Armed Forces Security Agency was created in 1949, however, it inherited the program; and, similarly, when NSA was created in 1952, it assumed operational control.

There are no documents at NSA or the Department of Defense which reflect the operational arrangements between the Government and the telegraph companies. The companies decided at the outset that they did not want to keep any documents, and the Government has none today other than those relating to the 1947 and 1949 discussions which I previously covered.

According to the testimony given to us, it appears, however, that the companies were given to understand at the outset that only traffic of foreign intelligence targets would be gleaned by NSA. In practice, the arrangements with each company varied somewhat. RCA Global and ITT World Communications provided NSA with the great bulk of their international message traffic, which NSA then selected for traffic of foreign intelligence targets. Western Union International sorted the traffic itself and provided NSA only with copies of the traffic of certain foreign targets and all the traffic to one country.

In the beginning, the Government received paper tapes of messages that had been transmitted by overseas cables, as well as microfilm copies of messages that had been sent by radio. These were, at the outset, sorted by hand apparently for certain foreign intelligence targets only; such traffic could be readily identified by special codes in the heading of each telegram. As a practical matter, the inherent limitations of manual sorting precluded the traffic from being sorted on its content.

In the early 1960's, there was a change in technology which had a significant impact upon the way in which SHAMROCK was run. RCA Global and ITT World Communications began to store their international paid message traffic on magnetic tapes, and these were turned over to NSA. Thereafter, the telegrams were selected in precisely the same way in which NSA selects its information from other sources. This meant, for example, that telegrams to or from, or even mentioning, U.S. citizens whose names appeared on the watch list in the late sixties and early seventies, would have been sent to NSA analysts, and many would subsequently be disseminated to other agencies.

The NSA officials examined by us had no recollection of NSA's ever informing the companies how NSA was handling the information they were providing. They furthermore had no recollection of any of the companies making such an inquiry, even after NSA began receiving magnetic tapes from two of the companies. Several company officials corroborated this testimony, stating that they had no knowledge of any inquiry by their respective companies or that NSA ever volunteered any information in this regard.

Only the Director, Deputy Director, and a lower-level manager at NSA had operational responsibility for SHAMROCK at any one time. Moreover, their contacts with company officials were extremely rare: in fact, the Director never met with company representatives and the Deputy Director only met once with a company official. Any communications with the companies were usually relayed by NSA couriers who made routine pickups and deliveries at the companies.

No one examined from NSA or the companies knew of any effort by the companies since 1949 to seek renewed assurances from the Government for their continued participation in SHAMROCK. Indeed, each of the companies has given sworn statements to the committee that they did not think the arrangements with NSA were ever considered by the executive levels of their respective companies. Moreover, Dr. Tordella, the former Deputy Director, told us that he would have known if additional assurances had ever been sought and testified that to his knowledge they were not.

NSA and company officials likewise knew of no compensation given the companies by the Government for their participation in SHAMROCK, and testified that they knew of no incident where favoritism was shown any of the participating companies by an agency of the Federal Government. Again, Dr. Tordella has stated under oath that he would have been told about such an incident if it had taken place.

NSA never received any domestic telegrams from these companies. Indeed, none of these companies, at least since 1963, has had domestic operations.

Approximately 90 percent of the messages collected in SHAMROCK came from New York. Company offices in Washington, San Francisco, and, for a short while, Miami, also participated in a similar fashion. In Washington, the companies turned over copies of particular traffic intelligence targets to agents of the FBI. These were later delivered to NSA.

Of all the messages made available to NSA each year, it is estimated that NSA in recent years selected about 150,000 messages a month for NSA analysts to review. Thousands of these messages in one form or another were distributed to other agencies in response to "foreign intelligence requirements."

Until the current controversy arose, only a handful of officials in the executive branch over the last 30 years were apparently aware of the SHAMROCK operation. Dr. Tordella testified that to the best of his knowledge no President since Truman had been informed of it.

SHAMROCK terminated by order of the Secretary of Defense on May 15, 1975.

Senator TOWER. Mr. Chairman.

The CHAIRMAN. Senator Tower.

Senator TOWER. Thank you, Mr. Chairman.

Although I have consistently endorsed the aims and efforts of this committee and have pledged myself to an exhaustive and responsible evaluation of all aspects of our intelligence community, I must state my firm opposition to this unilateral release of classified information. I am greatly concerned that any unwarranted disclosures could severely cripple or even destroy the vital capabilities of this indispensable safeguard to our Nation's security.

Despite the very best intentions of this committee, and despite its established record of sensitivity to the delicate nature of national security, I cannot assent to its decision to declassify information whose disclosure the Director of NSA has consistently asserted would hamper the NSA mission.

The NSA has furnished the staff in executive session with all requested documents and information. General Allen and his colleagues repeatedly made good their promise to keep this committee fully informed. They have comprehensively briefed this committee in executive session and have answered all our requests and questions. I simply see no purpose to selected release of classified matters about which we have already been fully briefed, thereby running the very real risk of compromising the work of this extremely important, but exceptionally fragile agency.

I say again, the public's right to know must be responsibly weighed against the impact of release on the public's right to be secure.

I must therefore take strong exception to the action this morning which, in effect, unilaterally releases classified information. Such a decision does not comport with the stated aims of this committee, nor further the objectives of this investigation. Indeed, it may very well contravene the resolution establishing this committee by improperly promoting disclosure outside the select committee of information which would adversely affect our intelligence activities in foreign countries.

Therefore, I voice my concern and my dissent.

Senator GOLDWATER. Mr. Chairman.

The CHAIRMAN. Senator Goldwater.

Senator GOLDWATER. Mr. Chairman, I support the statement of the vice chairman. I was one of the three in the committee that voted against releasing the SHAMROCK information. I believe the release of communications intelligence information can cause harm to the national security; moreover it can lead to serious diplomatic problems with our allies.

The committee has all the information it needs to recommend legislation on communications intelligence, and I believe we ought to get on with the job. Up to now this committee has had a very commendable record for maintaining secrecy, and I hope we are not going to stray from that good course. The fact that the other body, the House, seems to be irresponsible in its treatment of the subject is no reason in my opinion for the Senate to try to use that as an excuse for disseminating secret material, nor to try to copy irresponsibility.

The American people expect the Congress to take remedial action when necessary. The American people also expect the Congress to act responsibly in maintaining our national defense.

The CHAIRMAN. Are there any other Senators who would like to comment? Senator Huddleston.

Senator HUDDLESTON. Mr. Chairman, just very briefly to comment on the action of the majority of the committee in releasing this report. This is certainly the kind of judgment that this committee has had to make on numerous occasions since the beginning of our inquiry. I might say prior to this decision there was a great deal of effort, a great many meetings between the NSA, the White House, the com-

mittee members, and the committee staff as to just precisely how the people's right to know might be balanced with the need for security.

I believe the manner in which this has been done has revealed to the public certain elements of activities that might be considered to be incorrect. I do not see how you can pass legislation in a vacuum. I believe that there has to be a certain amount of knowledge made available to the public and made available to the Congress before reasonable and meaningful legislation can be processed. I believe that this has not in any way jeopardized or compromised the security of our country or the activity of the NSA or other intelligence gathering agencies of our Nation, that they can go forward just as effectively, perhaps more so, following the result of action of this committee in developing the proper guidelines and proper procedures for our entire intelligence organization's policy.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Huddleston.

Senator Hart.

Senator HART of Colorado. Mr. Chairman, I agree with the action taken here this morning, even though, as you know, I was one of those who originally opposed public hearings on this matter.

This project involved soliciting and obtaining cooperation of certain international telegraph companies in providing large volumes to the Government for nearly 30 years, in some cases all of the international traffic passing over their facilities. Project SHAMROCK is improper it seems to me for many reasons, including, first, that it appears unlawful under section 605 of the Communications Act of 1934, and the fourth amendment, although there is no case exactly in point. Second, it placed the Government in a position to request illegal acts of the companies, contrary to the proper role of the executive to see that the laws are faithfully executed. Third, it resulted in the Government promising the companies immunity from criminal prosecution to obtain the cooperation. It raised the possibility which did not occur insofar as our effort shows, that the companies might some day terminate their participation unless the Government granted some benefit, withheld some penalty, or halted some investigation. It resulted in the invasion of privacy of American citizens whose private and personal telegrams were intercepted as a result of their being on the NSA watch list from 1967 to 1973.

It resulted in companies betraying the trust of their paying customers who had a right to expect that the messages would be handled confidentially. It was undertaken without the companies first ascertaining its legality. It was not disclosed to the Congress until this year. Finally, it continued without interruption for nearly 30 years, even though apparently no express approval of the project was obtained from any President, Attorney General, or Secretary of Defense after 1949.

The CHAIRMAN. Would any other Senator like to comment?

Then I might just add to what Senator Hart said, that after 1947, the program changed without notice to the companies. It changed in ways that really placed the responsibility on the Government to notify the companies of the change in character of the program, and this apparently was not done.

I do not think that there is any purpose to be served debating the issue any further, but I would like to say that the lack of any statutory

base for NSA, establishing its proper limits, is one of the problems, and there came a time when even the NSA had doubts about the legality of this program, and also whether it extended beyond the scope of that Agency's own purpose and authority. For that reason, the Agency itself finally terminated the program, but such programs can be re-instituted after investigations of this kind. I think it is clear that laws are needed, a basic law for the NSA, just as we have a basic law for the CIA.

Senator TOWER. Mr. Chairman?

The CHAIRMAN. Senator Tower.

Senator TOWER. I would simply like to say that my remarks were not intended to endorse or condone the activity in question because I do not endorse or condone it. But I strongly object to the disclosure because I think it serves no useful purpose. The Agency has been very cooperative with the committee in making disclosures to the committee to enable us to pursue our investigation effectively. I think that disclosure serves no useful purpose, and I think that when we get to the question of public disclosure, that if we err in terms of withholding information or publishing information, that we should err on the side of safety and I think that we have not done that in this instance. I think that at this point, should this be considered a precedent, and should we pursue this pattern of disclosure in the future, then this committee will have effectively crippled the intelligence-gathering capability of the United States of America.

Senator GOLDWATER. Mr. Chairman.

The CHAIRMAN. Senator Goldwater.

Senator GOLDWATER. I guess a lot of us are guilty of operations like this because many of us censored letters during World War II, reading those letters. So I think I would have to join the guilty as you would have to, also.

The CHAIRMAN. I think that we should recognize the distinction between war and peace. It poses the question whether this country in peacetime wants to live always under the customs of war. This was a peacetime operation.

Senator MATHIAS. Mr. Chairman?

Senator TOWER. Mr. Chairman.

The CHAIRMAN. In any case—

Senator MATHIAS. Mr. Chairman.

The CHAIRMAN. Senator Mathias.

Senator MATHIAS. Senator Goldwater indicted those who had that long and tedious duty of reading letters during World War II. I certainly read at least my share, and I expect a little more than my share. I would say it was perhaps the most boring duty I had in the entire period of service in the U.S. Navy, but I would have to plead not guilty because I think the circumstances were very different. One of the different circumstances is the fact that what was done there was done in accordance with the law. The law provided—in fact, the law compelled us to read those letters and to make the appropriate changes that were required, and it is the law that I think is important here. I think that the law does not extend to the activities of the NSA. The law must be made to extend to the NSA. That certainly is going to be one of the cardinal recommendations of this committee at the conclusion of its work.

The CHAIRMAN. Thank you.

Senator TOWER. Mr. Chairman.

The CHAIRMAN. Senator Tower.

Senator TOWER. I think to make fine distinctions on a matter of war and peace ignores the fact that we are confronted in this world by a very powerful adversary that would not hesitate to resort to military means to achieve its political objectives. A powerful adversary that itself, through its clandestine activities and overt activities, generates military activity all over the world to accomplish political ends, thereby jeopardizing the peace and security of everybody in this world who aspires to self-determination and wants to have some reasonable hope of the realization of that aspiration.

So I think that we cannot draw this in strict terms of war and peace, in terms of whether or not the United States is actually at war. We are in effect in a war of sorts. That is a war of the preservation of the climate in this world where national integrity will be respected.

The CHAIRMAN. Thank you, Senator Tower.

I would only make a final point. Since we are trying to preserve a free society we do not want to emulate the methods of the Russians in the name of defense. The actions we do take of a proper security nature and proper intelligence nature ought to be within the confines of the law. There are ways that we can write the law and preserve freedom in this country and still maintain our security against the Russian threat or any other foreign threat. And 200 years of American history testifies to this.

Senator TOWER. May I say I do not condemn the investigation, nor do I endorse what was done. It was wrong and without the law, but what I object to is the disclosure because I think it serves no useful purpose and is helpful to the adversary.

The CHAIRMAN. Thank you, Senator.

I would like now to invite the Attorney General of the United States to come in.

Mr. Attorney General, if you would please be seated at the witness stand.

Before I introduce the Attorney General, Senator Schweiker has a comment.

Senator SCHWEIKER. The debate that we just had points out very clearly the lack of law in a very critical area. I hope the debate will highlight the fact that laws are needed and that there is honest room to differ among members of this committee. I think that is our first and most significant aspect of the discussion. I happen to decide this issue on the basis that the public's right to know outweighs any danger that might exist to the Government.

In this case I think it was a matter more of embarrassment to the Government than a matter of damaging security. But I think it was because we did not have law, and because the area was in a vacuum, that we got into this kind of debate. I believe because it was the kind of Government snooping that I personally could not condone, that the committee and my standard in this case was that silence is consent. I thought that the committee and I had a right to speak out on this matter because I believe to be silent would be to give consent. That is why I voted consistently to release this. Thank you.

The CHAIRMAN. Thank you, Senator Schweiker. And I would hope that corporations in the future may find it possible because of the ways the laws are written to cooperate with the Government in the public interest. I think we all agree on that.

The Attorney General of the United States has been invited to appear before the select committee today to discuss the fourth amendment of the Constitution and its application to 20th century problems of intelligence and surveillance. In the case of the NSA, which is of particular concern to us today, the rapid development of technology in the area of electronic surveillance has seriously aggravated present ambiguities in the law. The broad sweep of communications interception by NSA takes us far beyond previous fourth amendment controversies where particular individuals and specific telephone lines were the target.

How can we control this sophisticated technology allowing NSA to perform its legitimate foreign intelligence task without also allowing it to invade the privacy of American citizens by sweeping in messages unrelated to the interests of national security? What are we to do about communications that fall outside the realm of traditional intelligence concerns, such as the vague category of economic or business intelligence? Are we to allow communications to or from U.S. citizens regarding economic matters to be intercepted, analyzed and disseminated by NSA? In an era of economic crisis are the international phone calls and cables of American businessmen fair game for government computers? If so, should warrants or some other special procedure be required? These are matters of the most serious concern. The central question is: How should we balance the right to privacy against the need for national security?

Mr. Attorney General, your appearance here marks an important step on the road to more effective controls in these areas. As you know, in addition to practices of the NSA, the committee has also received considerable testimony on the subject of break-ins and mail openings and other such factors. We are hopeful that we can explore all of these subjects with you today. We value your views on the basic principles at stake and we look forward to working together with you to develop legislative recommendations which will help solve these dilemmas.

I understand that you have prepared a statement and have given very careful thought to this question, and I recognize that the statement is somewhat lengthy because of the subject, that can hardly be treated in a truncated fashion. So I invite you now to read your statement.

Attorney General LEVI. Thank you, Mr. Chairman. I have a lengthy statement that I have shortened somewhat, hoping to help the committee in that respect—

Senator MATHIAS. Mr. Chairman, I am wondering whether the Attorney General would yield for just a moment, so that I could request that his statement in its entirety be included as part of the record because I believe that it will be a very valuable part of this record. We need the benefit of all of it, although he may be inclined to somewhat shorten it in his oral presentation.

The CHAIRMAN. I fully agree, and without objection the original statement in its entirety will be included in the record.

[The prepared statement of Attorney General Levi in full follows:]