

Chronological: Defense Credit Union Council Conference, Honolulu

Senator Daniel K. Inouye Papers
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news from

Senator DANIEL K. INOUE

topic:

SPEECH BY SENATOR DANIEL K. INOUE
Defense Credit Union Council, Annual
Conference, Sheraton Waikiki Hotel,
Honolulu, Hawaii

date:

release date:

September 13, 1976 9:30 A.M.

I am honored by your invitation to participate in your convention.

I wish to report to you on the work of the Senate Select Committee on Intelligence of which I am Chairman. I have not spoken publicly on the work of the Committee since it was created five months ago. Because almost all of you who are at this convention today have served or are serving our country, sometimes in combat, and have devoted much of your lives to the security of this nation, I believe that it is fitting to talk with you today about the Senate's work in assuring that our first line of defense--our national intelligence system--is performing well and has the authorities and resources required to protect this nation from any potential enemies.

You are all aware, I am sure, of the headlines of the past several years which broadcast allegations of alleged improper activities by the intelligence agencies in the United States. These allegations were spread out before the eyes of the people in this nation and the world. For over a year and a half, the Senate, through a temporary investigative committee headed by Senator Frank Church of Idaho, investigated these allegations of improper activities. That experience was a most difficult time of trial for the intelligence agencies. But the time had clearly come for a close hard look at what had gone wrong. Righting what was wrong was clearly necessary. That task is largely done.

One of the major recommendations and perhaps the most important made by the Church investigative committee, was the creation of a permanent oversight committee. On May 19th, the Senate in Resolution 400, established a permanent oversight committee with the responsibility of overseeing all of the intelligence activities and programs of the United States Government. I would like to read to you the general responsibilities given the Select Committee: (quoted from S.Res. 400, page 2)

...the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation... It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

During these first four months, I have spent the majority of my time learning what the intelligence agencies of the United States are in fact doing. There are over a hundred entities in the United States Government involved in intelligence activities. The major agencies, of course, are the CIA, the DIA, the NSA, and some other highly technical elements in the Department of Defense and, of course, the counterintelligence activities of the FBI. Other important departments and agencies of the United States Government are involved, however, in intelligence activities: the Department of State, Commerce, Treasury, Agriculture, ERDA and the drug enforcement agencies are other examples. The list is long and their interrelationships are complex. So I think the time has been well spent learning the structure and activities of this vast and important government activity which employs thousands of people and costs many billions of dollars each year.

As I stated in May, when I accepted the job of Chairman of the Select Committee, it is not my purpose to break up the intelligence agencies; rather, it is my intent to strengthen the ability of the intelligence agencies to do their necessary work and to perform their necessary tasks under the Constitution and the laws of the land.

In the past, the Congress did not play a significant role in monitoring the activities of the intelligence agencies. This state of affairs, which existed from the end of World War II until the past year or so, was by agreement, on the part of the Congress. The lack of oversight, so much discussed in the recent past, occurred because the Congress did not choose to organize itself to meet its responsibilities. This failure to assume the task overseeing the activities of the intelligence agencies contributed to the abuses revealed in recent years. Now that the burden of policy direction for intelligence activities has been shifted onto the shoulders of the Congress as well as the Executive branch, we can reasonably expect that the widespread abuses of the past will not occur again.

I would like to tell you about some of the burdens that I and members of my Committee have assumed. One of the provisions of Senate Resolution 400 requires the Executive Branch to inform the Select Committee of any significant covert action prior to its implementation. The Senate believe this authority and responsibility was required because in the past, unchecked covert action has involved small wars in some cases; and in far too many other cases, improper activities. The responsibility for overseeing covert action alone has made my task as Chairman a 24-hour-a-day job. I must be on call at any hour of the day or night. Because I am not always in Washington and must sometimes be in my state as I am today, I must carry a beeper so that I can know instantly when a notification of a covert action project has been made by the President.

Thus far, the process has worked very well. My Committee has been notified in every instance, and the Committee has reviewed the reasons and problems associated with each particular covert program. I want to emphasize that the requirement to notify the Committee is not the same thing as a legislative veto. The President has no other obligation than to inform the Committee. Upon notification, the burden shifts to the Committee. The options that are available to the Committee are several. First, it can do nothing, either because it believes the activity is necessary and appropriate, or it may be that the Committee has decided that it should do nothing. If the Committee disagrees with the wisdom of the decision, it can express its disapproval by informing the President in person or by letter. It can ask other committees to take action. Or, in the most extreme cases, it can cut off funds or call the Senate into closed session to express its concern. And, of all else fails, it can, through a carefully prescribed procedure, disclose the information to the public. As you may have suspected, the fact that you have heard nothing from the Committee thus far about covert action is an indication that the Committee did not take any steps to stop the actions taken. I can also assure you that the review by the Committee was full and rigorous.

Our Committee is a new one with new problems to face, with duties never assumed by any previous legislative committee. We have been, in a sense, pioneering for the past four months. The Committee has to function under the most stringent security rules--rules that have been worked out with the intelligence agencies to assure that the most rigorous security procedures are followed. We have sought to build a staff of the highest integrity and ability. The staff must work with the 15 Senators on the Committee on the most sensitive material, including the most important secrets of

the country. We have moved to appoint staff slowly and carefully. No employee has been taken onto the staff until a full field background check has been completed, and until both the FBI and the CIA are satisfied that the loyalty and reliability of the person are beyond question.

The Senate has given the new Committee a number of tasks which are to be completed in its first year. Perhaps the most important of these tasks is the drafting of new charters and guidelines for the intelligence agencies. Very few of the members of the Congress have any idea what the purposes, missions, resources, and activities of our intelligence agencies are. In fact, until the Select Committee on Intelligence was created, only a handful of people in either House had even partial knowledge of the intelligence activities of the United States. My Committee has been called upon to write new guidelines, including new laws, which will give legitimacy to the intelligence agencies of the United States, and a clear legal mandate to undertake difficult and delicate missions required for the protection of the United States. But it has become evident to me how little we know as a Committee and how much we must learn before we should undertake to write into law the new charter for the intelligence agencies. Before the charters are written, I and my fellow Committee members must know, in detail, the work of the intelligence agencies. I have directed my fellow Senators on the Committee to travel to the Intelligence agencies at home and abroad so that we can know at first-hand the problems, needs, and performance of the agencies. Insofar as it is possible, I have ordered my fellow members to travel. (No Senator can order another Senator to do anything he does not wish to do). It is not politically advantageous to travel abroad. The press has been very critical of travel abroad. But in my view, if we attempt to draft charters and guidelines without having an indepth first-hand knowledge of our intelligence needs, we would not only be negligent, but could be guilty of tampering with the security of our country.

In the five months that I have been Chairman, I have met with Director Bush of the CIA, Mr. Kelly of the FBI, Secretary Ellsworth of the Department of Defense, and with many other officials of the intelligence community. We, as a Committee, have had briefings every week at the Senate and out at the agencies; and I have read almost all that is available on the subject. I quickly reached the realization how little I know. What I have learned is that this responsibility must be met. It is the duty to be sure that the United States has the intelligence required to protect its liberty and freedoms.

You and I know that every country in this world engages in intelligence activities. We all know that monies are spent by every nation to collect intelligence about the activities of other nations. Some call it espionage, others call it by the simpler word, spying. This has been the practice of all nations since recorded history began. Military, political, and economic intelligence has been part of the way of the world. No country to my knowledge has ever written into its laws authority to spy or placed specific limitations on its intelligence agencies. No country has ever identified its intelligence secrets. If the United States did this now, through unconsidered legislative action, we might be destroying vital systems and lose absolute critical information. I pledge to you that I will not be a part of any effort which leads to such a result.

The challenge of writing new guidelines and statutory charters is the greatest legislative challenge of my career. In my view, it is clear that a lawful mandate must be given to the intelligence agencies so that they can perform their functions. But the guidelines must be written in such a way that the activities themselves are not compromised and that the Constitution and the laws of the land are not in any way abridged by these intelligence activities. I think you will agree that this is not an easy task and that it can only be accomplished by a committee that is deeply knowledgeable as well as dedicated to the security of our country and the strength of our Constitution.

I want to turn to another important duty levied upon our Committee. For the first time, the Senate in the next fiscal year will have an authorization bill for the intelligence budget. It is here that the dilemma between openness and the requirements of security is particularly acute. The Constitution requires publication from time to time of all monies appropriated. This does not require the publication of the full details of the intelligence budget. The Senate has ordered the Select Committee on Intelligence to make a recommendation as to whether and, if at all, to what extent the details of the budget of the intelligence community should be made public. One further benefit of the new authorization process will be the determination, perhaps for the first time, of exactly how much the United States is spending for its intelligence activities. At the present time, you cannot tell what the United States is spending on foreign intelligence activities, and I am not going to tell you. It takes trained budgetary experts in the intelligence field to discreetly analyze the intelligence budget, so that it can be understood on the one hand and protected from those who do mischief against us on the other. But what I can do at this point is describe briefly the kinds of problems that our Committee faces. It is clear to me that if ten CPAs were brought into this room and asked to make an accounting of the intelligence activities of the United States and given full access to information, they would come up with ten different totals. So the first and perhaps the

most fundamental question is what should be included in intelligence. To give you some idea of the problem, do we include the S-2 in an infantry regiment, a destroyer on patrol, a U-2 aircraft, an early warning system? All of these things could be regarded as purely military or tactical or both tactical and strategic, depending on the circumstance. From the outset, even the problem of definitions creates problems of great complexity.

We have created a subcommittee under the chairmanship of Senator William Hathaway to deal with the budgetary question. We have put together a budgetary staff which I believe is as good as any in the government, comprised of men who know the budgetary process from the inside, from long years of able experience. I am confident that we will meet our responsibility.

I have described the work of two of the four Subcommittees into which the Select Committee is organized. The first was the Charters and Guidelines Subcommittee; the second, Budget Authorization Subcommittee. I would like to turn now to a description of the work of the Subcommittee on Rights of Americans which is chaired by Senator Birch Bayh. The main work of this Subcommittee is to assure that the activities of the intelligence agencies do not abridge the constitutional rights of Americans. We have just completed work on a bill which provides for the first time a fully accountable process for the use of electronic surveillance for intelligence purposes. This bill was developed jointly by Attorney General Levi, the Judiciary Committee and the Select Committee on Intelligence. The main features of this bill are to require the involvement of all three branches in their constitutionally appropriate ways in the approval certification and review process in these necessary but potentially dangerous intrusive techniques.

The basic premise of the bill is that a warrant for national security wiretaps can be devised which is consistent with the "reasonable search" requirements of the fourth amendment. The Committee found that national security wiretaps are justified in cases of espionage, sabotage, and counter-terrorism. Far more troublesome questions arose as to whether electronic surveillance is justified to gather economic intelligence or information related to, or deemed essential to, the conduct of foreign affairs. The Committee found that such surveillance was justified in certain limited circumstances to protect the security of the United States. Because of the breadth of the authorization required for such surveillance, each such surveillance must be the subject of a judicial warrant procedure and must be subject to the strictest review by the legislative branches.

Troublesome questions also arose as to whether electronic surveillance of United States citizens and permanent resident aliens

should be permitted in circumstances where probable cause to believe that there has been or is about to be a violation of the criminal law could not be shown. The Committee reviewed data on a variety of circumstances where it is not possible to meet a probable cause test, but where reasonable men would agree that information essential to the national security can be obtained only through electronic surveillance. The Committee has only begun to examine the possibility of resolving this problem through expanding the criminal law in the intelligence area. The Committee is impressed, however, with the difficulty of drafting constitutionally acceptable language which is sufficiently broad to bring all intelligence activities of which the United States needs to be aware within the ambit of the criminal law. Although it might be possible to review the criminal law, the difficulties experienced in other countries with "official secrets acts" are symptomatic of the problems.

While the Committee recognizes the requirements of the United States for intelligence which can be obtained only through electronic surveillance, we are also aware of the dangers that such surveillance poses to individual liberties. Such electronic surveillance should be conducted only through carefully defined procedures, with well-defined lines of authority within the Executive Branch. Finally, we are deeply committed to the view that this highly intrusive investigative technique must be subject to judicial review and congressional oversight.

In the absence of legislation such as I have just described, the United States is left with two options: To abandon electronic surveillance for any purpose other than law enforcement, and thus risk the loss of intelligence of importance to the security of the United States, or to engage in such surveillance in the absence of legislative guidelines and judicial or congressional review.

In the view of the Committee, neither option is acceptable. To meet the need posed, our bill provides for constitutional checks designed to determine whether there is a necessity for a particular electronic surveillance and proper execution of a warranted "reasonable search." The means used is the proper involvement of all three branches in their appropriate ways. Its main feature is that warrants for national security wiretaps are not solely within the discretion of the Executive Branch but must be reviewed by the courts. Further, they are subject to oversight by the Legislative Branch. Under the bill, no national security electronic surveillance in the United States, as defined in the bill, can take place without a judicial warrant. Further, the full details of all warranted electronic surveillance are subject to legislative oversight.

The fourth Subcommittee, which is chaired by Senator Adlai Stevenson of Illinois, is concerned with the quality of intelligence. Timely, accurate and relevant information is the main purpose of our intelligence system and it is the duty of that Subcommittee to assure that the system is working as well as possible. It is remarkable that there has never been a systematic review of the quality of intelligence outside the Executive Branch. The Subcommittee is receiving the full and complete cooperation of the intelligence agencies. Because of their cooperation and the excellent work done thus far, it is my expectation that the report of the Subcommittee will be to further strengthen the intelligence system of the United States and will make recommendations suggesting ways in which the leadership of both the Executive and Legislative Branches be assisted by the provision of intelligence information. Without question, the more our intelligence services improve, the greater the chances are that decisions made by our leaders in the Executive and the Congress will be of a corresponding higher quality.

In conclusion, I think you have some sense of how unique the new Senate Select Committee on Intelligence is. For politicians, there is little to be gained by service on the Committee. The members of the Committee cannot boast of their achievements. In fact, if our Committee does well, you will not hear very much about it. You will only hear of the Committee if it makes a mistake. I am quite certain that if there are any leaks, the Committee and its members will be castigated. I am proud to say that thus far there have been no leaks.

The Senators who serve on the Committee cover the political spectrum from left to right: Senator Baker, Senator Bayh, Senator Stevenson, Senator Hathaway, Senator Huddleston, Senator Biden, Senator Morgan, Senator Hart, Senator Case, Senator Thurmond, Senator Hatfield, Senator Goldwater, Senator Stafford and Senator Garn. No matter what our political views, we all realize that our activities may come under the surveillance of other countries. Our Committee staff is well aware of this danger. It is not a comfortable feeling. But it is my view that someone has to do this necessary task for our country. It is no secret that all of us do not expect any praise or political rewards for the job that we do on the Committee. But I wanted you to know something about how these Senators have shouldered their difficult responsibilities and how they are serving you and the nation in this very important work.