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[Review of Proposed Omnibus Intelligence Community Reorganization and Reform Act of 1977 and Federal Intelligence Agencies Control Act of 1977]. ID-77-48; B-179296. August 9, 1977. 6 pp. + enclosure (1 pp.).

Report to Rep. Jack Brooks, Chairman, House Committee on Government Operations; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Law Enforcement and Crime Prevention (500).
Contact: Office of the General Counsel: General Government Matters.

Budget Function: Law Enforcement and Justice (750).
Organization Concerned: Federal Bureau of Investigation.
Congressional Relevance: House Committee on Government Operations.

Authority: Omnibus Intelligence Community Reorganization and Reform Act of 1977; H.R. 4173 (95th Cong.). Federal Intelligence Agencies Control Act of 1977; H.R. 6051 (95th Cong.). H.R. 12729 (94th Cong.).

The proposed Omnibus Intelligence Community Reorganization and Reform Act of 1977 (H.R. 4173) and the proposed Federal Intelligence Agencies Control Act of 1977 (H.R. 6051) would provide safeguards against the abuse of individual rights by Federal investigating agencies. The proposed laws attempt to assure that intelligence activities will not be inconsistent with openly stated foreign policy or defense objectives and will be in conformity with the Constitution and laws of the United States. Findings/Conclusions: Two matters appear to need careful attention. The basic effect of H.R. 4173 in suggesting that domestic intelligence and criminal investigation are both investigative functions and therefore essentially similar needs to be considered. The equation of criminal investigations, which are generally initiated after the fact and aimed solely at developing specific prosecutive evidence, with intelligence investigations is not proper. Additional study and debate is warranted to avoid placing on criminal investigations the restrictions intended to correct abuses in the domestic intelligence area. The inference in both bills that all covert intelligence collection techniques are contrary to the best interests of the American people and that valid and adequate foreign intelligence information can be obtained and foreign intelligence activities conducted with little or no use of these techniques also may not be reasonable.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-179296

AUG 9 1977

The Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

You requested our comments on H.R. 4173, the proposed Omnibus Intelligence Community Reorganization and Reform Act of 1977, and H.R. 6051, the Federal Intelligence Agencies Control Act of 1977. Both bills have essentially the same overall intent and purpose. They propose many safeguards against abuse of individual rights by Federal investigating agencies and attempt to assure that intelligence activities will not be inconsistent with openly stated foreign policy or defense objectives and will be in conformity with the Constitution and laws of the United States.

Our comments, particularly on foreign intelligence organizations, functions, and activities, are limited because the scope of prior audits involving intelligence activities has often been constrained by limits on our audit authority, clearances, and access problems.

Copies of our letters to Senator William Proxmire (May 10, 1974), to Senator Frank Church (July 10, 1975 and March 19, 1976), and to Representative Otis G. Pike (July 31 and November 10, 1975) are in enclosures 1-5. These letters commented in some detail on how we thought congressional oversight and control over the intelligence community might be improved in the context of the sensitivity necessarily attached to intelligence matters and the desire to limit risk of disclosure.

The view we expressed in these letters was that, because of our limited authority, clearance, and access, we could not conduct comprehensive management audits or be reasonably effective and helpful to the Congress. It is our view that Section 174 of H.R. 4173 deals with these constraints in a generally satisfactory way in its provisions for review of foreign intelligence activities; however, we are unclear as to the applicability of

this section to domestic intelligence activities. Section 121 of H.R. 6051, relating to GAO oversight of domestic intelligence activities, would require us to conduct an annual audit of all Federal Bureau of Investigation files and investigations. We oppose the language of Section 121 of H.R. 6051 concerning domestic intelligence activities, and believe we can provide a greater service to the Congress and the public by continuing to perform our program audits. In performing such audits, we are naturally alert to any evidence of illegal activity. We favor the language of Section 174 of H.R. 4173 for both foreign and domestic intelligence activities.

In the past, even where our right to access was clear, as it is in these bills, we had difficulty in obtaining the information necessary for our audits. The Committee may thus wish to consider our comments on H.R. 12729, 94th Congress, because they illustrate the need for some enforcement authority and contain proposed language to give us authority to enforce our requests for information when necessary. Enclosure 6 contains a copy of these comments, dated May 24, 1976.

Section 121 of H.R. 6051 which we referred to above provides for annual GAO audits of domestic intelligence activities, and for the results and any evidence of illegal activity to be reported to the Congress and the public. Section 133(b) grants a civil remedy to an "aggrieved citizen" for violations of Section 121. It is not clear what types of violations would be covered under Section 133(b). Without some clarification, we believe this provision could result in needless litigation, with minimal if any relation to furthering the purposes of this bill.

We are not in a position to comment generally on the need for, or effectiveness of, the many changes proposed in the organizations, functions, and controls of the intelligence community but note that certain of the proposed changes do address matters with which we have been concerned in the past. For example, in our prior letters we questioned (1) the adequacy of policy guidance and the procedures and criteria for initiating, and approving intelligence collection activities (2) whether internal evaluation processes could be effective given the compartmented structure of intelligence agencies or components, and (3) whether the intelligence collection

and operation functions should be carried out within one agency. For the most part, it appears that our questions are to be addressed by the House Select Committee on Intelligence which was established on July 14, 1977.

In addition, we understand that the executive branch expects to submit a proposal to reorganize the intelligence organizations and activities, possibly by modification of Executive Order 11905, as part of Presidential Review Memorandum 11, or as proposed legislation.

In our view, two matters appear to need careful attention: one concerns the basic effect of H.R. 4173, where it suggests that domestic intelligence and criminal investigation are both investigative functions and therefore essentially similar; the other concerns the use of covert intelligence collection techniques.

We feel that a major issue raised by the bills is whether or not domestic intelligence gathering, in some form, should be permitted. The bills forbid political surveillance. They also repeal the "speech crimes" section of Title 18 of the U.S. Code, which is the statutory basis for the FBI's domestic intelligence program. We agree with these aspects of the bills. In our report, "FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need to be Resolved" (GGD-76-60), we said, "No groups or individuals should be investigated merely because of their beliefs. Evidence should show that the groups or individuals have used violence or are truly likely to use it to achieve their ends." We found the FBI's interpretation of its authority to conduct domestic intelligence investigations inadequate and concluded that if the domestic intelligence program was to continue there was a need for legislation authorizing the program and delineating the program's objectives, scope, and functions.

Although our report on FBI domestic intelligence showed that the program had few tangible results, we did not recommend that domestic intelligence activities be eliminated. Instead, we recommended that the Congress enact legislation to clarify the FBI's authority to initiate and conduct domestic intelligence operations. We stated that only those groups involved in activities that have

resulted, or are likely to result, in use of violence should properly be investigated as part of the FBI's domestic intelligence operations. We also recommended changes in investigative policies which would limit the duration of investigations, limit investigative coverage to group leaders and persons who have committed or are likely to commit violence, and provide for close review of intelligence investigations by the Justice Department.

Operation of domestic intelligence activities under narrow and well-focused guidelines has the potential for improving the quality and usefulness of the program while eliminating the objectionable, intrusive aspects of such activities. Many of the limits on domestic intelligence activities that we advocate have been incorporated in the guidelines of the Attorney General. We are presently nearing completion of a follow-up review of the FBI domestic intelligence program in which the effect of these guidelines will be measured. We will report these results to Congress together with our reassessment of the need for domestic intelligence. In the interim, however, we believe it might be useful to focus primarily on the type of restrictions appropriate for domestic intelligence operations rather than on the need for such operations.

We believe H.R. 4173 creates some confusion when, throughout Title II, it uses the term "criminal investigations" and then in section 241 it seems to equate "criminal investigation" to "intelligence investigation" by defining the latter as "any investigative activity." We do not believe it is proper to equate criminal investigations, which are generally initiated after the fact and aimed solely at developing specific prosecutive evidence, with intelligence investigations.

H.R. 6051 appears to be more realistic than H.R. 4173 with respect to the restrictions it imposes on the conduct of criminal investigations. Certain restrictions may be necessary in the criminal investigative area. However, we believe that additional study and debate is warranted to avoid placing on criminal investigations the restrictions intended to correct abuses in the domestic intelligence area. For example, the procedures which sections 212 and 213 of H.R. 4173 propose for informant operations could effectively eliminate the use of informants for any investigations because the procedures would increase the chances that informants could be identified. H.R. 6051 has a better approach in that, in

section 202, it forbids informants and undercover agents to engage in covert surveillance of first amendment activity, but it does not impede their use in criminal investigations.

Our experience with FBI operations to date has generally been limited to domestic intelligence operations. Thus, we are not in the best position to comment on the restrictions aimed at criminal investigations. However, the patterns of abuse that pointed out the need for restrictions on intelligence activities are not as distinct in the criminal area. We wonder whether a sufficient factual basis exists to justify the limitations on criminal investigations proposed in these bills.

The second matter on which we wish to comment deals with the terms of both bills which infer that all covert intelligence collection techniques are contrary to the best interests of the American people and that valid and adequate foreign intelligence information can be obtained and foreign intelligence activities conducted with little or no use of these techniques. It might not be wise to effectively limit intelligence collection to non-human or overt methods because they may not focus sufficiently on foreign plans and intent and because technological gaps in foreign intelligence collection or in counter-intelligence capabilities may occur from time to time. In these circumstances it may be desirable--even necessary--to employ covert means to acquire information not otherwise available.

The Committee may thus wish to consider and provide for restrictions on available intelligence, possibly through a better controlled but flexible intelligence collection initiation and approval procedure. Specifically, we feel it may be necessary to limit the controls proposed in these bills to the types of intelligence collection processes and projects which clearly restrict first amendment activity or violate the basic principles of democratic government. The controls should avoid, if possible, creating difficulties for those who will continue to be responsible for national security and the enforcement of laws.

Our review of these bills also raised a number of questions about the meaning of various terms, the scope and intended relationship of various functions, and the implementation of various provisions. If you feel it would be helpful, we will be happy to further discuss with your staff our comments and views as well as the various technical and editorial points that came to our attention during our review of the bills.

Sincerely yours,

R. F. KELLER

Deputy, Comptroller General
of the United States

Enclosures - 6



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-179296

AUG 9 1977

The Honorable Melvin Price, Chairman
Committee on Armed Services
House of Representatives

Dear Mr. Chairman:

You requested our comments on H.R. 6051, the proposed Federal Intelligence Agencies Control Act of 1977. The Committee on Government Operations also requested our comments on H.R. 6051. At the time we received these requests, we were preparing comments for the Committee on Government Operations on an essentially similar bill, H.R. 4173, the proposed Omnibus Intelligence Community Reorganization and Reform Act of 1977.

Because both bills have essentially the same intent and purpose, we combined our comments on the two bills in our letter to the Committee on Government Operations. A copy of that letter is enclosed as our response to your request because we believe it will better serve your needs. Please let us know if we can be of any further assistance.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure