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Secrecy vs. Disclosure of the Intelligence Community Budget: An Enduring Debate

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Abstract

Little known U.S. congressional documents, dating from the 1970s, debate public disclosure of Intelligence Community (IC) budget. The documents offer a rich repository of the arguments on both sides of the debate and shine a light on the thoughtful, measured congressional oversight practiced in formative years of the House and Senate intelligence committees.

Keywords

budget, Congress, disclosure, intelligence, oversight, public participation, national security, transparency

Secrecy vs. Disclosure of the Intelligence Community Budget: An Enduring Debate

Anne Daugherty Miles¹

Democracies are not strangers to secrets. Protecting secrets when appropriate, disclosing secrets when proper, and managing secrecy are all normal parts of the democratic process. (Berkowitz 2003)²

Abstract

Little-known US congressional documents, dating from the 1970s, debate public disclosure of Intelligence Community (IC) budget. The documents offer a rich repository of the arguments on both sides of the debate and shine a light on the thoughtful, measured congressional oversight practiced in formative years of the House and Senate intelligence committees.

Keywords

disclosure, intelligence, Intelligence Community, oversight, public participation, national security, transparency, U.S. budget, U.S. Congress

As Bruce Berkowitz points out in the opening quote, democracies are seldom synonymous with complete transparency. Democratic governments must routinely reconcile the demands of national security against the ideals of a completely open government. There is no one universal model for how to oversee the most secret aspects of a nation's national security

establishment.³ And there are no universal guidelines on what should be secret and what should be in the public domain.

In the United States, congressional overseers act as a surrogate American public. A number of provisions in the U.S. Constitution, expounded upon by Supreme Court rulings, public laws, and congressional rules, grant Congress the authority, as a coequal branch of government, to oversee and investigate executive and judicial branch activities.⁴

Within this context, the U.S. Intelligence Community (IC) - operating in secret, concealed from public scrutiny - is overseen by a number of intelligence-related congressional committees.⁵ Remarks made by Representative Edward Boland in 1978, when he was Chairman of the House Permanent Select Committee on Intelligence (HPSCI), reflect his sense of the tension between the public's right to know and the risk that such knowledge - in the hands of the nation's enemies—could undermine the country's very existence:

On the one hand, we have a commission from the House to bring about the credibility and accountability in the U.S. intelligence community. Against this, we must measure the possible damage to national security that could result from any unwise action by the Congress. We simply do not want to arm our adversaries with weapons of our own manufacture. So, we seek a balance between open government and the protection of the national security.⁶

Many congressional committees have jurisdictional claims to oversight on IC-related topics, not only because IC elements are embedded in a number of separate Cabinet departments and agencies within the executive

branch, but also because some IC-related topics challenge fundamental and overarching principles within the jurisdiction of many committees, such as privacy and human rights.⁷ However, based on House and Senate rules, only the House and Senate Intelligence, Armed Services, and Appropriations Committees may either authorize or appropriate funding for IC programs. These six committees conduct the majority of the day-to-day oversight of IC programs and activities. Their oversight focuses on particular programs as well as general policies. These are the six committees most relevant to the debate over disclosure of intelligence-related spending.

There is occasional disagreement between the executive branch and congressional overseers over what information should be in the public domain. Disclosure of all or some of the IC budget is one such area of disagreement and has been debated for decades. At present, statute dictates that only the National Intelligence Program (NIP) topline figure must be publicly disclosed.⁸ The Director of National Intelligence (DNI) is not required to disclose any other information concerning the NIP budget, whether the information concerns particular intelligence agencies or particular intelligence programs. In 2010, the Secretary of Defense began disclosing Military Intelligence Program (MIP) appropriations figures on an annual basis and in 2011 disclosed those figures back to 2007.⁹ These actions have provided public access to previously classified budget numbers for national and military intelligence activities. Intelligence-related spending has

remained relatively constant over the past decade - representing roughly 10 percent of national defense spending.¹⁰ For those unfamiliar with the NIP and MIP, a brief background on the two programs is provided at the end of this article.¹¹

The Senate Select Committee on Intelligence (SSCI) and House Permanent Select Committee on Intelligence (HPSCI) were established in 1976 and 1977, respectively, to better integrate (not replace) the interests, responsibilities, and depth of intelligence-related expertise of all the intelligence-related standing committees, and to respond to the perceptions of widespread abuse by certain intelligence agencies.¹² The overarching goal was *vigilant legislative oversight* over the intelligence and intelligence-related activities of the United States.¹³

With the creation of the HPSCI and SSCI, authorization of the funds associated with what was then known as the National Foreign Intelligence Program (NFIP) became part of each year's Intelligence Authorization Act (IAA).¹⁴ U.S. congressional documents from the 1970s provide a rich repository of the arguments voiced in favor of, or in opposition to, disclosing the intelligence budget. At that time, the debates typically focused on whether to disclose one NFIP top-line number, or whether to disclose all IC agency top-line numbers.

Good arguments existed on both sides of the disclosure debate, and then, as now, there was no one right answer, which is why the debate is an

enduring one. Available literature is usually one-sided - typically arguing for more transparency. It is difficult for those interested in this subject to find any authoritative sources that discuss both sides of the disclosure debate in a comprehensive and meaningful way. This article suggests several sources—little known and publicly available, and dating from the 1970s - that provide a number of insights into the perspectives of those on both sides of the issue. Unfortunately, few know the topic was debated in the 1970s and that these documents—capturing the details of the discussion - even exist. Many of the arguments remain germane to today's disclosure debate. The suggested congressional documents include:

1. *Whether Disclosure of Funds for the Intelligence Activities of the United States is in the Public Interest*, Hearings, and Senate Report 95-274, both published by the SSCI in 1977;¹⁵ and
2. *Disclosure of Funds For Intelligence Activities*, Hearings (no report) published by the HPSCI in 1978.¹⁶

These documents contain the testimony and views of a number of individuals from the legal, intelligence, legislative, and public interest group communities. The witness list included then-Director of Central Intelligence (DCI) Stansfield Turner, former DCIs William Colby and Richard Helms, former DIA Director Daniel Graham; Senators William Proxmire and Barry Goldwater, Congressman Michael Harrington, University of Chicago Law

Professor Gerhard Casper; Yale Law School Professor Thomas Emerson; and many others.

In 1977, at the conclusion of its internal debate, the SSCI voted 9-8 in favor of disclosure of the topline NFIP number. The HPSCI, however, reported that it had found “no persuasive reason why disclosure of any or all amounts of the funds authorized for intelligence and intelligence-related activities of the Government would be in the public interest.”¹⁷ In its passage of the IAA for Fiscal Year 1979, Congress did not require public disclosure of the IC budget topline. The remainder of this article summarizes some of the major arguments made for and against disclosure in the congressional documents suggested above and summarized in Table 1.

Table 1. Disclosure of Intelligence-Related Spending: Arguments For and Against

Argument	Disclosure (Transparency)	Non-Disclosure (Secrecy)
<i>“Right to Know”?</i>		
Constitution	Yes, based on Article 1, Section 9, Clause 7: “No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”	No, based on Article 1, Section 5, Clause 3: “Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy.”
<i>Congressional Oversight as Substitute for Public Participation?</i>		
Sufficient substitute for public participation?	No, “Congressional oversight is not a complete substitute for public participation.”	Yes, “[P]ublic interest in disclosure is satisfied by congressional oversight of intelligence expenditures.”

Argument	Disclosure (Transparency)	Non-Disclosure (Secrecy)
<i>Enhanced Understanding, Legitimacy, and Efficiency for IC?</i>		
Understanding	Enhanced: Allows public to make rough judgments about the relative priorities of their government and helps to eliminate inaccurate speculation about amount of money used for intelligence activities.	No Benefit: Public no better off in its ability to make informed judgments on intelligence-related spending.
Legitimacy and public confidence	Enhanced: Evidence of U.S. commitment to national and collective security.	Undermined: Transparency demonstrates an inability to function effectively in our own national defense.
Efficiency	Enhanced: "Constructive criticism requires access to information."	No Change: Oversight by congressional intelligence committees sufficiently in-depth to satisfy those concerned about IC's efficient use of taxpayer dollars.
<i>Necessary to Protect National Security?</i>		
<i>Conspicuous Bump theory</i>	Not persuasive: Too many possible explanations for the bump to determine the precise cause.	Persuasive: Careful analysis of changes in the aggregate figure reveals 'bumps' caused by the introduction of new and significant programs.
<i>Slippery Slope theory</i>	Not persuasive: Release of detailed information will not harm national security, and/or demands for more information can be resisted.	Persuasive: Disclosure will result in irresistible demands for more detailed information, the disclosure of which would be damaging to national security.

Source: Miles, based primarily on U.S. Congress, Senate Select Committee on Intelligence (1977).¹⁸

A Constitutional "Right to Know"?

Demands for greater IC budget transparency often use the Constitution for justification. At issue is Article I, section 9, clause 7, which reads: "No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

In 1977, proponents of transparency, such as Gerhard Casper, Professor of Law, University of Chicago, argued that clause 7 requires disclosure that is “both meaningful and accurate. An accounting so broad that it fails to convey useful information to the public, or so inaccurate as to be misleading...would not meet constitutional requirements” (4).¹⁹ In similar fashion, Senator Birch Bayh stated his belief that “where the Constitution imposes a specific duty, then we must make every possible effort to perform it.” Bayh's full statement reads as follows:

Where the Constitution is silent we have greater leeway to choose a proper course of action. But where the Constitution imposes a specific duty, then we must make every possible effort to perform it. In other words, if there are to be secret expenditures, the secrecy must be justified on the grounds of compelling necessity and not just convenience or utility. The constitutionality of our action may depend on whether we seriously consider alternatives which would, without endangering national security, fully satisfy one of the fundamental principles of free government—the peoples’ right to know.²⁰

Proponents of non-disclosure (secrecy) countered that Clause 7 “does not require public disclosure of the aggregate authorization or appropriation figure, nor does it require publication of an account of the expenditures of the intelligence agencies, individually or as a whole.”²¹ Several witnesses testified that “Congress has plenary power [implied authority] in interpreting the requirements of this constitutional provision and therefore can constitutionally withhold this figure from the public.”²²

Proponents of non-disclosure also argued that the *principle of secrecy*²³ was acknowledged by Founding Fathers in the Constitution's *Journal Secrecy Clause* - Article 1, Section 5, Clause 3:

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.²⁴

The Senate Report noted that the Constitution "provides explicitly for secrecy in the congressional journals, but no such exception is included in the publication requirement of article I, section 9, clause 7."²⁵ It also noted that "the United States informs its electorate, in great detail, of expenditures for sensitive activities such as defense."²⁶

Congressional Oversight as Substitute for Public Participation?

Several senators pointed out that the public's "right to know" was well-served by the "abundance of responsible oversight" in the Congress. They stated:

At least fifty members of the Congress are now privy to some level of detail concerning intelligence operations. The number of congressional staff persons involved are at least double that figure. The intelligence community's budget has undergone a line-by-line analysis by this committee and votes have been taken with respect to specific intelligence operations. Some budgetary proposals have been rejected by the committee. Several committees are notified in advance of every contemplated covert action. And a detailed report on all the intelligence agencies' activities and plans, as well as a detailed accounting of the committee's recommendations for authorized amounts, has been made available to every Member of the Senate. We believe that this constitutes an abundance of responsible oversight.²⁷

The Senate Report acknowledged the strengths of the oversight structure but acknowledged that “congressional oversight is not a complete substitute for public participation”:

While budgetary oversight has increased dramatically, congressional oversight is not a complete substitute for public participation. Congress and the Executive may secretly agree on intelligence expenditures, but the public has a right to know as much as possible about such decisions consistent with national security interests. Only if the public has such knowledge can it judge how the executive branch and the Congress utilize funds and oversee intelligence activities.²⁸

Increased Understanding, Legitimacy and Efficiency for IC?

A number of witnesses argued that a more transparent IC budget could potentially eliminate misperceptions and also increase public confidence in the legitimacy of intelligence-related government activities.²⁹ If there was full disclosure, “the public would be able to weigh spending for intelligence against expenditures for health, education, or a particular weapon system.”³⁰ For example, then-DCI Turner testified:

[D]isclosure would help the public “put into perspective the intelligence activity of their country.” It would allow the American public to make rough judgments about the relative priorities of their government as seen in governmental expenditures, eliminate harmful speculation about amount of money used for intelligence activities, and help to restore public confidence in the legitimacy of such activities. Such disclosure would also eliminate misconceptions about the uses of funds appropriated to the Department of Defense.³¹

Some proponents of disclosure argued that “publishing an aggregate figure for intelligence activities on the basis of constitutional and policy arguments would be a reflection of the qualities that distinguish our

democracy from all other nations."³² Senator Adlai Stevenson argued that "disclosure of the aggregate figure will reassure large parts of the world now doubting U.S. resolve. It is evidence of a continuing U.S. commitment to national and collective security."³³

Senator Proxmire argued that greater scrutiny would "increase the likelihood of a more efficient government. Public criticism leading to improvements cannot take place in a vacuum; such constructive criticism requires access to information."³⁴ However, a number of proponents of non-disclosure argued that "disclosure would provide little benefit to the public. Without detailed knowledge of expenditures the public would not be in any better position than at present to make informed judgments on governmental spending for intelligence."³⁵ Senator Chaffee, and others, stated:

Neither this Nation nor any other country in the world has ever embarked upon this dangerous path. It is a course which is neither required under our Constitution nor consistent with sound commonsense. It would serve no useful public purpose and would undermine the confidence of our own people and that of our allies in our ability to function effectively in our own national defense.³⁶

Secrecy Necessary to National Security?

The Senate Report discusses the "conspicuous bump" theory - the argument that an analysis of changes in the aggregate figure reveal bumps, or increases, caused by the introduction of new and significant programs that when combined with other information known to adversaries, could

undermine national security. Former DCI Colby, for example, argued that the introduction of the U-2 caused such a bump in the CIA's budget. This bump, if the CIA budget had been public, might have alerted the Soviet Union, enabling it to prepare countermeasures.³⁷

The Senate Report concluded that disclosure of the much larger IC budget was less susceptible to bumps than the smaller budget of the CIA, and that there had been no bumps in the aggregate figure for the IC during the last decade.³⁸ It decided that "changes in the aggregate figure over time would not reveal trends as there are simply too many variables involved to be able to determine the cause of any changes."³⁹ Furthermore:

The committee was influenced in this by the President's decision not to object to disclosure on national security grounds and by his willingness to disclose the figure. No witness suggested that this one-time disclosure of funds appropriated for intelligence activities would be damaging to the national security. Those who had the burden of demonstrating damage to national security from such disclosure failed.⁴⁰

The Senate Report also discusses the "slippery slope" theory - an argument made by those who believe that disclosure of one aggregate number results in irresistible demands for more detailed information.⁴¹

Several senators summarized the slippery slope theory this way:

We are concerned that once we start down the road of publishing intelligence appropriation figures, we will be faced with irresistible demands from those who insist upon knowing more. ... History has demonstrated how disclosure of one figure invariably leads to revelation of more. Former DCI Colby recalled: "In 1947 the Atomic Energy Commission account for our then-secret atomic weapons program was felt to be so sensitive that only a one-line item was placed in the budget that year to account for all such weapons

expenditures. In theory many of these expenditures are still secret, but that one-line item by 1974 had expanded to 15 pages of detailed explanation of the Atomic Energy Commission's weapons programs. I could only foresee a similar erosion of the secrecy which will be necessary to successful intelligence operations in the future." We urge the Senate not to take the first step down a similar path.⁴²

Then-DCI Turner countered, "I think we can hold the line at one figure almost as well as we can hold it at zero figures."⁴³

Summary

In sum, those in favor of disclosure (greater transparency) tended to argue that:

- It is constitutionally mandated, citing Article 1, Section 9, Clause 7;
- It can potentially eliminate misperceptions about the IC and increase confidence in the IC and funds spent on its behalf;
- It allows for greater scrutiny of intelligence-related spending beyond a few congressional overseers; and
- It will not harm national security, because (1) knowing how much a program costs tells you nothing about capabilities, and (2) demands for more information can be resisted.

Those in favor of non-disclosure tended to argue that:

- It is constitutionally mandated, citing Article 1, Section 5, Clause 3;
- The scrutiny of congressional overseers is in-depth and sufficient;
- Disclosure will harm national security because (1) if the enemy knows the specifics of where intelligence dollars are being spent, it will also

know where those dollars are not being spent, and may direct its efforts toward that perceived vulnerability;⁴⁴ and (2) demands for more and more information will be relentless.

A Question of Balance

The disclosure debate has been rekindled a number of times in the years following Senate Report 95-274. Most recently, H.R. 2272, and an identical bill, S. 1307, both titled the “Intelligence Budget Transparency Act of 2015,” were introduced in the House and Senate respectively on May 12, 2015.⁴⁵ Both bills require disclosure of the top-line budget figure associated with each IC component. The bills add a new topic to the debate: projected appropriations for the next four fiscal years. They require release of “the total dollar amount proposed in the budget for intelligence or intelligence related activities of each element of the Government engaged in such activities in the fiscal year for which the budget is submitted and the estimated appropriation required for each of the ensuing four fiscal years.”⁴⁶

Neither bill has passed, in large part because the Congress continues to grapple with the same basic question the Congress grappled with four decades ago: “Even if disclosure would assist the public, would it be so damaging to the national security as to require continued secrecy in this area?”⁴⁷ Before attempting to change the current status quo, it may be useful

for all parties in the debate to revisit the arguments voiced in 1977 and 1978.

Appendix:

Brief Background on the National and Military Intelligence Programs

Origins of an intelligence budget—separate and distinct from the defense budget—date back to reforms initiated in the 1970s to improve oversight and accountability of the IC. Since that time, IC programs have been grouped, for the most part, under two labels: (1) the national, which covers the programs, projects, and activities of the IC oriented toward the strategic needs of decision makers; and (2) military or tactical, which funds defense intelligence activities intended to support tactical military operations and priorities. The two programs are managed and overseen separately.

Until 2004, the National Foreign Intelligence Program (NFIP) was managed by the DCI, in consultation with the Secretary of Defense. The term “NIP” was created by the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 (P.L. 109-458 §1074). The IRTPA deleted “Foreign” from NFIP and created the position of DNI. The DNI was given greater budgetary authority in conjunction with the NIP than the DCI had in conjunction with the NFIP.⁴⁸ The NIP funds the CIA and the strategic-level intelligence activities associated with the National Security Agency, Defense Intelligence Agency, and National Geospatial-Intelligence Agency.

Until 1994, military-specific tactical and/or operational intelligence activities were referred to as Tactical Intelligence and Related Activities (TIARA) and were managed separately by the Secretary of Defense. TIARA referred to the intelligence activities “of a single service” that were considered “organic” (meaning “to belong to”) military units and addressed a unique DOD requirement. In 1994, a new category was created, called the Joint Military Intelligence Program (JMIP) for defense-wide intelligence programs. A DOD memorandum signed by the Secretary of Defense in 2005 merged TIARA and JMIP to create the MIP, and outlined the role of Under Secretary of Defense (Intelligence) as its program executive.⁴⁹

- 1 Dr. Miles serves has served as an adjunct on the faculties of the Intelligence and Security Academy and the National Intelligence University for a number of years. She recently left her position as the intelligence analyst at the Congressional Research Service, specializing in the U.S. Intelligence Community and National Security Policy.
- 2 Bruce Berkowitz, "Democracies and Their Spies," *Hoover Digest*, no. 1 (Winter 2003), at <http://www.hoover.org/research/democracies-and-their-spies>. Berkowitz is the author of several books about U.S. national security policy, including *American Security* (New Haven, CT: Yale University Press, 1986); *Calculated Risks* (New York: Simon and Schuster, 1987); *The New Face of War* (New York: Free Press, 2003); and *Strategic Advantage: Challengers, Competitors, and Threats to America's Future* (Washington: Georgetown University Press, 2008).
- 3 See for example, a paper by Cat Barker et al., comparing the oversight of intelligence agencies in five democracies, in *Oversight of Intelligence Agencies: A Comparison of the Five Eyes Nations* (December 15, 2017, Parliament of Australia), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/OversightIntelligenceAgencies
- 4 For example, provisions in the U.S. Constitution grant Congress the authority to: appropriate funds; create, abolish, reorganize, and fund federal departments and agencies; make all laws for "carrying into Execution" Congress's own enumerated powers as well as those of the executive; confirm officers of the United States; conduct investigations and inquiries into executive and judicial misbehavior; and impeach and remove officials from office, to include the U.S. President and judges. The Supreme Court has ruled that such power is essential to the legislative function.
- 5 The U.S. Intelligence Community (IC) is comprised of 17 entities that include 2 independent agencies and 15 component organizations within six separate departments of the federal government. Department of Defense (DOD) Elements include: Defense Intelligence Agency (DIA), National Geospatial-Intelligence Agency (NGA), National Reconnaissance Office (NRO), National Security Agency (NSA), U.S. Air Force Intelligence (USAF/IN), U.S. Army Intelligence (USA/IN), U.S. Marine Corps Intelligence (USMC/IN), U.S. Navy Intelligence (USN/IN). Non-DOD Elements include: Office of the Director of National Intelligence (ODNI), Central Intelligence Agency (CIA); Department of Energy's (DOE's) intelligence component: Office of Intelligence and Counter-Intelligence (I&CI); Department of Homeland Security's (DHS's) intelligence components: Office of Intelligence and Analysis (I&A) and U.S. Coast Guard Intelligence (USCG/IN); Department of Justice's (DOJ's) intelligence components: Drug Enforcement Agency's Office of National Security Intelligence (DEA/ONSI) and Federal Bureau of Investigation's National Security Branch (FBI/NSB); Department of State's (DOS's) intelligence component: Bureau of Intelligence and Research (INR); Department of Treasury's (Treasury's) intelligence component: Office of Intelligence and Analysis (OIA). See <https://www.dni.gov/index.php/what-we-do/members-of-the-ic>
- 6 Remarks of Representative Edward Boland, Chairman, U.S. Congress, House Permanent Select Committee on Intelligence, *Disclosure of Funds for Intelligence Activities*, Hearings January 24-25, 1978, 95th Cong., 2nd sess. (Washington: GPO, 1978), 2.
- 7 Committees like the House and Senate Judiciary, House Foreign Affairs and Senate Foreign Relations, and House and Senate Homeland Security, may propose their own intelligence-

related (non-funding) legislation. For example, the Judiciary Committees take the lead on legislation concerning domestic surveillance that affects the policies and procedures of the entire IC. See, for example, P.L. 107-56, *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001*.

- 8 P.L. 110-53, *Implementing the 9/11 Commission Recommendations Act of 2007*, enacted August 3, 2007, §601 (a) and (b). Section 601(a) states: "Not later than 30 days after the end of each fiscal year beginning with fiscal year 2007, the Director of National Intelligence shall disclose to the public the aggregate amount of funds appropriated by Congress for the National Intelligence Program for such fiscal year." Section 601(b) allows the President to "waive or postpone the disclosure" if the disclosure "would damage national security." The Intelligence Authorization Act (IAA) for Fiscal Year (FY) 2010 (P.L. 111-259) further amended Section 601 to require the President to publicly disclose the amount requested for the NIP for the next fiscal year "at the time the President submits to Congress the budget."
- 9 U.S. Department of Defense, "DOD Releases Military Intelligence Program Top Line Budget for Fiscal 2007, 2008, 2009," News Release no. 199-11, March 11, 2011, available at <http://archive.defense.gov/Releases/Release.aspx?ReleaseID=14328>. The Secretary of Defense is not required by statute to disclose the MIP topline. According to this news release, it was a decision made by the Secretary of Defense.
- 10 For tables detailing topline spending between FY2007 and FY2017, see Anne Daugherty Miles, CRS Report R44381, *Intelligence Community Spending: Trends and Issues*, November 8, 2016, <https://www.everycrsreport.com/reports/R44381.html>
- 11 See also Anne Daugherty Miles, CRS Report R44681, *Intelligence Community Programs, Management and Enduring Issues*, November 8, 2016, <https://www.everycrsreport.com/reports/R44681.html>
- 12 *A Resolution to Establish a Standing Committee of the Senate on Intelligence Activities*, 94th Cong., 2nd sess., S.Res. 400, May 19, 1976; and *A Resolution to amend the Rules of the House of Representatives and establish a Permanent Select Committee on Intelligence*, 95th Cong., 1st sess., H.Res. 658, July 14, 1977.
- 13 See opening paragraphs of S. Res. 400 and H. Res 658.
- 14 These funds are now part of a program known as the National Intelligence Program, or NIP. Authorization of funds associated with Tactical Intelligence and Related Activities (TIARA) remained under the jurisdiction of the SASC and HASC, and thus part of each year's National Defense Authorization Act (NDAA). TIARA is now part of the Military Intelligence Program (MIP).
- 15 U.S. Congress, Senate Select Committee on Intelligence, *Whether Disclosure of Funds for the Intelligence Activities of the United States is in the Public Interest*, report pursuant to S. Res. 400, 95th Cong., 1st sess., S.Rept. 95-274, June 16, 1977 (Washington: GPO, 1977), <https://www.intelligence.senate.gov/sites/default/files/publications/95274.pdf>
- 16 U.S. Congress, House Permanent Select Committee on Intelligence, *Disclosure of Funds for the Intelligence Activities*, 95th Cong., 2nd sess., Hearings, January 24-25, 1978 (Washington: GPO, 1978), at <https://babel.hathitrust.org/cgi/pt?>

[id=umn.31951p00515340p;view=1up;seq=3](#)

- 17 See U.S. Congress, House Permanent Select Committee on Intelligence, *Authorizing Appropriations for Fiscal Year 1979 for Intelligence and Intelligence-Related Activities of the U.S. Government, the Intelligence Community Staff, the CIA Retirement and Disability System, and for other Purposes*, 95th Cong., 2nd sess., H.Rept. 95-1075 Part 1 to accompany H.R. 12240, April 20, 1978 (Washington: GPO, 1978), 2.
- 18 U.S. Congress, Senate Select Committee on Intelligence (1977), *Whether Disclosure of Funds for the Intelligence Activities of the United States is in the Public Interest*, 95th Cong., 1st sess., S.Rept. 95-274, June 16, 1977 (Washington: GPO, 1977).
- 19 Gerhard Casper, Professor of Law, U. of Chicago, S.Rept. 95-274, p. 4.
- 20 Senator Birch Bayh, SSCI member, quoted in S.Rept. 95-274, p. 6.
- 21 Griffin Bell, then-U.S. Attorney General, quoted in letter to committee, dated May 23, 1977, signed by President Jimmy Carter, S.Rept. 95-274, p. 6; Additional Views of Senators John Chafee, Jake Garn, Barry Goldwater, William Hathaway, Richard Lugar, Daniel Patrick Moynihan, James Pearson, and Malcolm Wallop, S.Rept. 95-274, p. 15.
- 22 Reference to testimony by former-DCI William Colby and former-General Counsel of the CIA, John Warner, S.Rept. 95-274, p. 5.
- 23 For more on the *principle of secrecy*, see for example, S.Rept. 95-274, p. 5: "Congress and the executive branch, through their actions since the republic's earliest days, have established the principle of secrecy in funding certain activities. For example, the Secretary of State has, for almost 200 years, been appropriated 'confidential' funds for the conduct of foreign negotiations."
- 24 Additional Views of Senators John Chafee, Jake Garn, Barry Goldwater, William Hathaway, Richard Lugar, Daniel Patrick Moynihan, James Pearson, and Malcolm Wallop, S.Rept. 95-274, p. 16. "[D]iscretion was also clearly recognized by the founding fathers in their inclusion in the Constitution of a 'Journal Secrecy' clause (article one, section 5, clause 3). ... Such discretion has been observed by-the Congress for over two hundred years. The same discretion is required today."
- 25 S.Rept. 95-274, p. 5.
- 26 S.Rept. 95-274, p. 7.
- 27 Additional Views of Senators Chafee et al., S.Rept. 95-274, p. 17.
- 28 S.Rept. 95-274, p. 7.
- 29 Public confidence as reflected in domestic opinion and/or world opinion.
- 30 S.Rept. 95-274, p. 7.
- 31 DCI Stanfield Turner, Admiral, USN, quoted directly and paraphrased in S.Rept. 95-274, p. 6. See similar views expressed by Senator Adlai Stevenson, p. 11; and Senator Walter Huddleston, p. 12.

32 S.Rept. 95-274, p. 7.

33 Additional Views of Adlai E. Stevenson, S.Rept. 95-274, p. 11.

34 Senator William Proxmire, S.Rept. 95-274, p. 6.

35 S.Rept. 95-274, p. 6.

36 Additional Views of Senators Chafee et al., S.Rept. 95-274, p. 13.

37 S.Rept. 95-274, p. 8.

38 S.Rept. 95-274, p. 8.

39 S.Rept. 95-274, p. 8.

40 S.Rept. 95-274, pp. 9-10.

41 S.Rept. 95-274, p. 8.

42 Additional Views of Senators Chafee et al., S.Rept. 95-274, p. 15.

43 DCI Stanfield Turner, S.Rept. 95-274, p. 8.

44 This argument was reiterated in 1999 by then-DCI Tenet. See "Declaration of George Tenet," *Aftergood v. CIA*, U.S. District Court for the District of Columbia, Civ. No. 98-2107, April, 1999, at <http://fas.org/sgp/foia/tenet499.html>. Tenet remarks "Disclosure of the budget request reasonably could be expected to provide foreign governments with the United States' own assessment of its intelligence capabilities and weaknesses. The difference between the appropriation for one year and the Administration's budget request for the next provides a measure of the Administration's unique, critical assessment of its own intelligence programs. A requested budget decrease reflects a decision that existing intelligence programs are more than adequate to meet the national security needs of the United States. A requested budget increase reflects a decision that existing intelligence programs are insufficient to meet our national security needs. A budget request with no change in spending reflects a decision that existing programs are just adequate to meet our needs."

45 Such legislation is not new. For example, H.R. 3855, *The Intelligence Budget Transparency Act of 2014*, was introduced in the 113th Congress.

46 H.R. 2272 §2.

47 U.S. Congress, Senate Select Committee on Intelligence, *Whether Disclosure of Funds for the Intelligence Activities of the United States is in the Public Interest*, 95th Cong., 1st sess., S.Rept. 95-274, June 16, 1977 (Washington: GPO, 1977), p. 8.

48 Intelligence Community Directive (ICD) 104 provides overall policy to include a description of the DNI's roles and responsibilities as program executive of the NIP. See <https://www.dni.gov/files/documents/ICD/ICD%20104.pdf>

49 U.S. Department of Defense, DOD Directive 5205.12, *Military Intelligence Program (MIP)*, signed in November 2008, https://fas.org/irp/doddir/dod/d5205_12.pdf