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FUTURE OF CIA RELATIONSHIPS WITH CONGRESS

Statutory Basis

Unlike other intelligence agencies in the major democracies, CIA is a creature of statute. The National Security Act of 1947 and the Central Intelligence Agency Act of 1949 free the Agency from normal reporting requirements, in order to protect intelligence sources and methods, the identity of Agency personnel, and the organization and budget of the Agency.

Congressional Oversight - Historical

For the past 27 years the oversight of the Agency operated under guidelines that only the senior members of the four oversight committees (Armed Services and Appropriations) were entitled to information on CIA clandestine activities and other protected information such as its budget, organization and personnel.

Cracks in the Dam

While this oversight structure remains essentially intact, it has been the object of increasing attack in the Congress from junior members out of jealousy and senior members who feel that oversight is ineffectual and that they are entitled to full access to information on Agency activities

as it bears upon their responsibilities as an elected member of Congress.

These attacks have narrowed down to three issues:

Guidelines : Questioning the validity of withholding any information on the Agency from a member of Congress, or other committees of Congress.

Substantive Intelligence: Questioning the validity of withholding compartmented information from personal staff of a member of Congress and not assuring that congressional committees with an interest are kept fully and currently informed as contrasted with responding to committee requests for briefings from time to time.

Routine Agency Management: Questioning the exclusive jurisdiction of the oversight committees in the areas of the economy and efficiency with which the Agency is managed.

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providing of certain operational information to the Senate Watergate Committee; and (4) prolonged debate in the Senate over the so-called "secret war" in Laos with Senators such as Symington who is on both the Armed Services oversight Subcommittee and the Foreign Relations Committee, and the deceased Senator Ellender who was Chairman of the Appropriations Subcommittee, stating publicly that they were unaware of what was going on; both the effectuality of oversight and the guidelines restricting information on Agency activities to the oversight committees were seriously eroded.

Legislative Initiatives Changing and Challenging Existing Structure (93rd Congress)

Guidelines:

1. Kissinger/Colby agreement with Chairman Morgan and the senior members of the House Armed Services Subcommittee to provide information on certain covert action programs to a yet unknown structure within the House Foreign Affairs Committee.

2. A change was recently made in the rules of the House to direct the furnishing to the House Foreign Affairs Committee, (yet an unknown structure for receipt) of information on "intelligence activities relating to foreign policy." Chairman Nedzi of the Armed Services Intelligence Subcommittee agreed to this language as reflecting the arrangement referred to in (1) above.

4. An amendment to the pending Foreign Assistance Act before the House prohibiting the expenditure of funds by CIA for operations in foreign countries (intelligence collection activities excepted) without a Presidential finding of their importance and timely report on the operation to the appropriate committees of Congress specifically including the Committee on Foreign Relations and Foreign Affairs.

5. An amendment to the Foreign Assistance Act in the Senate which has been recommitted to committee along the lines of (4) above with the exception that the reporting somewhat begs the question as being only to "appropriate committees."

6. An amendment to bar outright covert action was defeated on both the Senate and House floor by about a 2 to 1 margin.

7. An amendment to require an open one line item budget for CIA was defeated on the Senate floor.

8. Hearings are planned by the Senate Government Operations Committee when Congress reconvenes in November to consider a joint committee to supplant Armed Services Committee jurisdiction which would extend to all Government activities involving intelligence gathering including CIA, FBI, Secret Service, DIA, and NSA. There are other bills which would establish similar committees either for one House or both Houses.

Substantive Intelligence

There have been a number of serious proposals to enact legislation which would make four committees of Congress, the Armed Services and foreign affairs committees, statutory clients of CIA with authority to be privy to all intelligence produced by the Agency for the Executive Branch, including the President, and to perform special analytical studies and estimates for those committees. Those committees in turn would be permitted to pass on such information to all members of Congress and certain staff members. This despite the fact that the Agency makes every effort to be fully responsive to all congressional committees for those substantive intelligence needs which relate to their jurisdiction.

Routine Agency Management

The House Government Operations Committee, whose predecessor, the Committee on Expenditures in the Government, actually exerted legislative jurisdiction over the National Security Act of 1947, has in its charter the authority to examine the efficiency and economy with which all Federal agencies are managed. With the retirement of Chairman Holifield, it is expected that the new Chairman, Congressman Jack Brooks, of Texas, may well be energetic in trying to assert some type

of jurisdiction over CIA. He has already gotten in fairly deep on the disposition of Southern Air Transport and Air America and it is expected that he would show like interest in the disposal of other proprietaries by CIA if such action comes to his attention. If this crack develops it is expected that the Senate Government Operations Committee, with a similar charter may push to exert like jurisdiction.

Ramifications

Clearly the sine qua non of clandestine activities is to protect the supporting sources and methods. The spinoff from revelations creates an atmosphere where liaison services and other sources are wary of continued cooperation and feeds the appetite of those such as former disaffected employees Agee, if not worse, and Marchetti to tell their tales.

The changes already effected in Congress and those with the likely prospect of success, would expand the theoretical access to sensitive Agency information many fold. Not counting the increase in staff members who would obtain access as contrasted with the twelve members of the House oversight structure, we are facing the proposition of including as many as 40 additional members of the Foreign Affairs Committee and 41 members of the Government Operations Committee

not to count the 87 members of the Appropriations and Armed Services Committees who may feel that they are at least entitled to equal treatment. A similar, but less numerous, situation can be envisaged for the Senate.

The Congress as a whole has changed substantially and this is seen in the actions of the Democratic caucus and in the 94th Congress may well be duplicated by the Republican conference as the more junior members seek to get a bigger role. At the same time, those who have been in the forefront of protecting Agency secrets are probably nearing the end of their service and their replacements are unlikely to be able to wield the power and discipline of their elders.

What Will Congress Do?

It appears that due to circumstances outside of their control the senior members of the CIA Subcommittees are being forced to make accommodations on such issues as access to covert action information, without being in a position to argue the merits. The implications of the agreements already reached on the covert action matter raise a number of serious problems:

a. Constitutionality. The scheme that is being devised shares responsibility but not authority. The President has certain inherent rights and responsibilities under the constitution to take action in the field of foreign affairs which he simply does not share with the Congress, and the proposition should be examined carefully for its possible impairment of the President's effectiveness. Constitutional responsibility to the people presumes that it will be effectively carried out, not hampered.

b. What are the ramifications if a covert action comes to the surface? Under the legislation it would appear that the President and the Congress through its agents must be made aware of such actions. If one comes to the surface, the failure to fire the Director of Central Intelligence would imply that they were aware. Are they ready to take the political heat and subject our institutions to the logical outgrowth of such admissions, or are they prepared to simply fire a series of Directors?

c. Legal ramifications. What are the public law, international law, and private law ramifications resulting from a procedure which would put the official stamp of approval on intervention in the affairs of a foreign state?

d. Covert action vs. overt action. The President should not have to be faced with the extraneous consideration of the notification and findings laid out in the Hughes bill. Either the President has a clear authority to do what is necessary in this field or he does not. No one would complain if the President by overt means attempted to influence, say another country's delegation, so that the outcome would be favorable to the interests of the United States. The Congress would not share any responsibility and the President would not be required to make a finding and report his actions to the Congress. If he accomplishes the same thing "covertly" it doesn't change the constitutional legitimacy of his action, nor the illegitimacy of Congressional involvement.

e. Definition. The proponents and opponents of the measures probably have their own definition of covert action. Covert action could include paramilitary activities. [This would be interesting

because such activities are not covered by the War Powers bill which sets forth specific rules for Presidential notification and congressional approval for regular military action. Under the Hughes amendment, approval for paramilitary activities would not require congressional approval, but merely a report of findings by the President. This defect could be easily overcome in the Hughes amendment.] The two major concerns appear to surround paramilitary activities and "political destabilization," and I suggested that perhaps these phrases should become the exclusive definition of what is subject to the Hughes-type Bill, thus eliminating many problems.

f. Covert action in Statutes. It was most unfortunate to acknowledge covert action in the United States Statutes, just as it was unfortunate to have the revelations in Congress force the President to acknowledge such actions. The vote in the House and the Senate defeating amendments which would have completely prohibited covert actions should be viewed as a consensus that the United States needs this capability. Once this fact is admitted all the rest falls in line, since in order for the capability to succeed what is done must remain secret, and the Congress will just have to acknowledge this simple fact and work out its procedures accordingly.

g. Necessity being the mother of invention, if the Agency's capability to perform effectively is impaired, the Executive may be forced to turn to less conventional instrumentalities which are in no way subject to congressional oversight.

Recommendation

In light of the above developments, it is now time for both the Executive Branch and the congressional leadership to bite the bullet and agree upon an oversight structure for this Nation's secret intelligence service which will be able to withstand the pressures that are developing. The most attractive mechanism for this task is a joint committee. Many of the Agency's critics in the Congress have advocated such a committee and its establishment will steal their thunder. Such a joint committee must include membership from the Foreign Affairs and Foreign Relations Committees for the same reason and because much of what the Agency does in the field of clandestine activities and in the production of intelligence is of legitimate interest to these parent committees. The creation of such a committee would bring along an active full-time professional staff and attendant problems of interference with Agency management or assistance to the Agency depending upon the caliber of the individual. Just as the Joint Committee on Atomic Energy, this joint committee should be created by statute. As in the Atomic Energy legislation, such an enactment would offer an excellent opportunity to legislate rules relating to the restriction on dissemination of intelligence sources and methods information and attendant criminal sanctions and civil injunction authority.

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